



March 2024

European Social Charter (REVISED)

European Committee of Social Rights

Conclusions 2023

SPAIN

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, the Committee, the national reports as well as the Statement of interpretation on Article 17 adopted by the Committee during the supervision cycle can be found in the General Introduction to all Conclusions.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report requested from the States Parties concerned the following provisions of the thematic group IV " Children, families and migrants ":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The reference period was from 1 January 2018 to 31 December 2021.

The following chapter concerns Spain, which ratified the Revised European Social Charter on 29 March 2021. The deadline for submitting the 1st report was 31 December 2022 and Spain submitted it on 16 January 2023.

The Committee recalls that Spain was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2019).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If, in its previous conclusion (Conclusions 2019), the Committee concluded that the situation was in conformity, there was no examination in 2023.

The comments of Save the Children Spain, and the Confederación Intersindical Galega (CIG) on the 1st report were registered on 29 June 2023. The comments submitted by the Confederación sindical de Comisiones Obreras (CCOO) and Unión general de trabajadoras y trabajadores de España (UGT) on the 1st report were registered on 30 June 2023. The Government's response to these comments was registered on 5 September 2023.

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

The conclusions relating to Spain concern 36 situations and are as follows:

– 17 conclusions of conformity: Articles 7§1, 7§2, 7§4, 7§§6-7, 8§1, 8§§3-5, 17§2, 19§§1-5, 19§7, 19§11.

– 19 conclusions of non-conformity: Articles 7§3, 7§5, 7§§8-10, 8§2, 16, 17§1, 19§6, 19§§8-10, 19§12, 27§§1-3, 31§§1-3.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

The Committee notes that it has previously considered that the situation in Spain was in conformity with Article 7§1 of the Charter.

The Committee has observed that many States’ legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the Committee is concerned about the situation in practice. There are data that suggest that in many countries there are significant numbers of children working illegally. However, there are few official data on the extent of the problem. Therefore, as targeted questions to the States, the Committee asked for information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. It also asked for information on the number of children actually working, as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.

The Committee notes the information concerning the numbers of infractions detected in the course of the reference period concerning the employment of children below the age of 16.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§1 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

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

The Committee recalls that no targeted questions were asked for Article 7§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion (Conclusions 2019) the Committee found that the situation in Spain was in conformity with the Charter. The Committee reiterates its previous finding of conformity.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§2 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of children subject to compulsory education

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

In its previous conclusion (Conclusions 2019) the Committee asked for confirmation that children who are still subject to compulsory education (under the age of 16) are permitted to participate in public shows for a maximum period of six hours per day and 30 hours per week during school holidays and 2 hours on a school day and 12 hours a week in term time (outside the hours fixed for school attendance). The Committee does not provide any information in this respect. Therefore, the Committee considers that the situation is not in conformity with the Charter.

In its previous conclusions (Conclusions 2019), the Committee took note of the information provided by the UGT and the CCOO, indicating that cases of children missing school because they were accompanying their parents during the harvesting of various crops produced in Spain had been detected and reported. The UGT and the CCOO stressed the need for awareness campaigns to stop the use of children under 16 (who usually accompany the rest of their family) in harvesting. The Committee asked that the next report provide information on this subject, in particular information about the measures taken to prevent the employment of children under 16 who accompany their parents during harvesting and to guarantee the right to receive an education and to attend school. The Committee also asked for information about involvement of children in the informal economy.

The Committee notes that the report does not provide this information. It notes from comments provided by the *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadoras y trabajadores de España (UGT)* that the national report has failed to provide the requested information regarding the situation in practice. In particular, no information is provided regarding the number of children actually working in both the formal and informal economy. Nor is there any information about the measures adopted by the authorities to detect child labour, including children who work in the informal economy, or in those formal sectors to which the Labour Inspectorate might not have access, such as work in the private homes. Moreover, there is no mention of any specific intervention plans to enable the Social Security and Labour Inspectorate to detect, monitor, and combat the various forms of child labour.

According to the *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadoras y trabajadores de España (UGT)*, poverty in different social strata can place minors in situations where they work in what could be considered assistance, or jobs to support the family. In some cases, this could be considered to amount to a form of child exploitation that hinders their basic educational development.

There are no specific means to ensure that the work carried out by minors is done in conditions that meet the requirements of light work or jobs that do not hinder their education. In particular, there are no regulations in place that ensure compatibility with education, apart from in the field of compulsory education and work contracts for acquiring work experience.

The Committee also notes that, in its response to these observations, the Government mentions the entry into force, on 25 June 2021, of Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents. The purpose of this law is to guarantee the fundamental rights of children and adolescents to physical, mental, psychological and moral integrity in the face of all forms of violence, to ensure the free development of their personality and to set in place comprehensive protection measures, including awareness-raising, prevention, early detection, protection and reparation of harm in all areas of their development.

The Committee considers, however, that the Government has failed to demonstrate that the employment of children who are still in compulsory education is regularly and properly monitored and supervised, in particular, as regards their involvement in the informal economy and in agriculture. Therefore, the situation is not in conformity with Article 7§3 of the Charter.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Spain is not conformity with Article 7§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter:

-confirmation that children still in compulsory education cannot work more than 6 hours a day and 30 hours a week;

-information in practice concerning monitoring the employment of children who are still in compulsory education.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

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

The Committee recalls that no questions were asked for Article 7§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee recalls that Article 7§4 requires that the working hours of persons under 18 years of age are limited in accordance with the needs of their development, and particularly with their need for vocational training.

In its previous conclusion, the Committee found that the situation in Spain was in conformity with Article 7§4 of the 1961 Charter (Conclusions XXI-4). Accordingly, there was no examination of the situation in 2023 and the Committee reiterates its conclusion of conformity.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§4 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

The Committee takes note of the information contained in the report submitted by Spain. It also notes comments submitted by the Confederación Intersindical Galega (CIG) and Confederación sindical de Comisiones Obreras (CCOO) and Unión general de trabajadoras y trabajadores de España (UGT). The Committee further notes the Government's responses to the observations of the social partners.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 7§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with Article 7§5 of the 1961 Charter on the grounds that young workers' wages were not fair and that it had not been established that apprentices' allowances were adequate (Conclusions XXI-4 (2019)).

Fair remuneration for young workers and apprentices

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive is taken into account. However, the apprenticeship system must not be used to circumvent the payment of fair wages to young workers. Accordingly, the term should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship to at least two-thirds at the end.

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15/16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

As regards young workers pay, in its previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that there was no differentiation based on age between the minimum wage of young workers under 18 and the adult minimum wage. The Committee noted that young workers in Spain were paid the same wage as adults. However, since minimum income represented 34.1% of average income, the Committee considered that young workers' pay did not secure a decent standard of living.

The report indicates that between 2022 and 2018, the reference period of this report, the minimum wage was increased by 35.9%. Over the period from January 1 to December 31, 2022: • the amount of the SMI was 33.33 euros/day or 1,000 euros/month, depending on whether the salary was fixed per day or per month. In 2020, the average annual salary amounted to 25,165.51 euros gross per worker, which represents an increase of 3.2% compared to the previous year. The report does not provide information on the net amounts of both minimum wage and average wage.

The Committee also notes comments submitted by Confederación Intersindical Galega (CIG) and Confederación sindical de Comisiones Obreras (CCOO) and Unión general de trabajadoras y trabajadores de España (UGT), stating that the average gross annual salary in Spain in 2021 (last year affected by this reporting cycle) was, according to Eurostat, 27,570.48 euros, so that 60% of that amount amounted to 16,542, 28 euro. However, the annual SMI for 2021 was 13,510 euros, so it was 49% of the average gross salary.

The Committee further observes that in its conclusion under Article 4§1 (see Conclusions 2022), it has noted the evolution of the minimum wage, however, it concluded that it had not been established that the minimum wage in the private and in the public sector could ensure a decent standard of living within the meaning of Article 4§1 of the Charter. Accordingly, young worker's wage is likewise not considered fair.

As regards the apprentices allowance the Committee noted in its previous conclusion (Conclusions XXI-4 (2019), that apprenticeship contracts are the types of contracts employed most frequently for young workers and if there is no collective agreement applicable, companies are allowed to reduce pay further, by up to 40% in the first year and 25% the second.

The report provides that in 2021, the Royal Decree-Law 32/2021 adopted urgent measures for the reform of labor law, the guarantee of stability in employment and the transformation of the labor market modified training contracts. The Decree introduces rules, in particular concerning working time and remuneration, stating that in the absence of an collective agreement, remuneration cannot be less than 60% in the first year, nor 75% in the second year, of the remuneration set in the agreement for the professional group and the level of remuneration corresponding to the functions performed, in proportion to actual working time. Remuneration cannot in any case be lower than the amount of the inter-professional minimum wage and is calculated in proportion to actual working time. As regards training contracts to obtain professional experience and the rules that apply to them, in particular working time and remuneration, the remuneration for actual work. Similarly to previous reports, the report does not provide the repeatedly requested information on the net national minimum/average levels of apprentices' allowances at the beginning and at the end of the apprenticeship.

The Committee further notes the comments submitted by the CIG, CCOO and UGT, raising concerns that the regulations allow ample freedom to collective bargaining to establish the remuneration for training contracts; and, consequently, allow for lesser remuneration compared to adult workers in a similar post, with the only limit being that of the Interprofessional Minimum Wage. In particular, the Workers' Statute allows collective bargaining to establish specific remuneration according to the type of contract used to hire the worker, rather than the work that is to be carried out. The sectorial agreement is not cited but rather it enables any agreement, including the company agreement, to lower the salary of these workers, who are also temporary ones, compared to the salary they should receive in accordance with their post and professional experience. Both the new "alternating training contract" and the new "training contract to obtain professional experience" establish the SMI calculated pro rata of effective working time as a minimum wage reference, which, in their opinion, does not guarantee a decent standard of living.

In the light of the information in its possession, the Committee considers that the apprentices' allowances remain not adequate.

Fair remuneration in atypical jobs

For the present monitoring cycle, the Committee requested updated information on net minimum wages and allowances payable to persons under 18 years of age. In particular, it asked for information on measures taken to ensure that fair remuneration is guaranteed to young workers:

- i) in atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.)
- ii) in the gig or platform economy and
- iii) having zero hours contracts.

The report does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter.

Enforcement

In the context of the present monitoring cycle the Committee also requested information on measures taken to ensure that this right of young persons to fair pay is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions).

The report does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter on the grounds that:

- young workers' wages are not fair;
- apprentices' allowances are not appropriate.

Due to the failure to provide the information listed below the Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article 21 of the 1961 Charter.

List of questions:

- information on measures taken to ensure that this right of young persons to fair pay is effectively enforced;
- information on measures taken to ensure that fair remuneration is guaranteed to young workers in the following context - in atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers), in the gig or platform economy and on zero hours contracts.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The Committee recalls that no questions were asked for Article 7§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee recalls that Article 7§6 requires that time spent on vocational training by young people during normal working hours must be treated as part of the working day (Conclusions XV-2 (2001), Netherlands). Such training must, in principle, be done with the employer’s consent and be related to the young person’s work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked (Conclusions V (1977), Statement of Interpretation on Article 7§6). This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

As the previous conclusion found the situation in Spain to be in conformity with the 1961 Charter, there was no examination of the situation in 2023. Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§6 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that no targeted questions were asked for Article 7§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Spain was in conformity with Article 7§7 of the 1961 Charter (Conclusions XXI-4 (2019)). Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§7 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee recalls that no targeted questions were asked for Article 7§8 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee concluded that the situation in Spain was in conformity with Article 7§8 of the 1961 Charter, pending receipt of the information requested (Conclusions XXI-4 (2019)).

The Committee asked whether there were exceptions to the prohibition of night work in some sectors. The report does not provide the requested information.

Due to the failure to provide requested information on any exceptions to the prohibition of night work for young workers under 18 years of age in some sectors, the Committee concludes that the situation in Spain is not in conformity with Article 7§8 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 7§8 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on any exceptions to the prohibition of night work for young workers under 18 years of age in some sectors.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee takes note of the information contained in the report submitted by Spain, the comments submitted by Confederación sindical de Comisiones Obreras (CCOO) and Unión general de trabajadoras y trabajadores de España (UGT), and by Confederación Intersindical Galega (CIG) respectively, as well as the reply to those comments submitted by Spain.

The Committee recalls that no targeted questions were asked for Article 7§9 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee deferred its previous conclusion, pending receipt of the information requested (Conclusions XXI-4 (2019)).

The Committee asked for a full and up-to-date description of the situation in law and in practice (Conclusions XXI-4 (2019), as well as Conclusions XX-4 (2015)). The report references several legal provisions, some of which have been examined on previous occasions. Article 22.1 (health surveillance) of Law 31/1995 on the Prevention of Occupational Risks lays down a general monitoring obligation as regards the health of workers, regardless of their age. Article 27 (protection of minors) of the same law requires that a risk assessment be carried out every time a person under the age of 18 enters employment. Furthermore, Article 37(3)(b)(3) of Royal Decree 39/1997 approving the Regulations on Prevention Services requires medical examinations to be performed before the start of employment or in the event of any important change in working conditions, regardless of the worker's age. The same provision further refers to "health monitoring at periodic intervals", but without stating the length of those intervals.

CCOO and UGT note in their comments that national legislation does not provide for compulsory regular medical examinations for young workers under 18 years of age, in violation of Article 7§9 of the Charter. CCOO and UGT further note the absence of data in the national report concerning the implementation of relevant regulations in practice. For its part, the CIG concurs in noting that national legislation is in violation of Article 7§9 of the Charter. In its response, the Government points out that the length of the intervals between medical examinations is usually specified in collective agreements.

The Committee recalls that, in the application of Article 7§9 of the Charter, domestic law must provide for compulsory regular medical examinations for persons of under 18 years of age employed in occupations prescribed by national laws or regulations. These examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed. The obligation entails a full medical examination on recruitment and regular examinations thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between examinations must not be too long. In this regard, an interval of two years has been considered to be too long (Conclusions 2011, Estonia). Having regard to the above-mentioned legal provisions, the Committee notes that they do not specify with sufficient precision the length of the intervals between mandatory medical examinations for young workers. Therefore, the Committee concludes that the situation in Spain is not in conformity with Article 7§9 of the Charter on the ground that young workers under 18 years of age employed in occupations prescribed by national laws or regulations are not subject to regular medical control.

The report provides information about the monitoring activity of the Labour and Social Security Inspectorate as regards medical examinations, but without disaggregating it based on the age of the workers concerned.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 7§9 of the Charter on the ground that young workers under 18 years of age employed in occupations prescribed by national laws or regulations are not subject to regular medical control.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by Spain, in the comments by the Confederación Intersindical Galega, Save the Children and Confederación Sindical de Comisiones Obreras (CCOO) and Unión General de Trabajadoras y Trabajadores de España (UGT) and in the Government's response.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§10 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

Previously, the Committee deferred its conclusion (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of deferral and the targeted questions.

Protection against sexual exploitation

The Committee has previously asked for information on measures taken to prevent the sexual exploitation of children and assist victims. It also asked whether child victims of sexual exploitation, whether related to trafficking or not, could be held criminally liable for their actions. The Committee considered that if this information was not provided in the next report, there would be nothing to establish that the situation is in conformity with Article 7§10 of the Charter (Conclusions XXI-4).

In the targeted questions, the Committee asked for updated information on measures taken to strengthen the protection of children, including migrant, refugee, and displaced children, from sexual exploitation and abuse (in particular, in response to the risks posed by the Covid-19 pandemic) during the reference period, including information on the incidence of such abuse and exploitation.

In its comments, Save the Children states that access to statistical records, data and the real situation of child and adolescent victims of sexual abuse, as well as data on their treatment in courts, is limited.

Due to the failure to provide the requested information on measures taken to prevent the sexual exploitation of children and assist victims, whether child victims of sexual exploitation, whether related to trafficking or not, can be held criminally liable for their actions, on measures taken to strengthen the protection of children, including migrant, refugees, and displaced children, from sexual exploitation and abuse, the Committee concludes that the situation in Spain is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Protection against the misuse of information technologies

The Committee has previously asked for updated information on measures taken in law and in practice to protect children from the misuse of information technologies and whether Internet service providers were required to delete illegal content of which they were aware or prohibit access to it (Conclusions XXI-4).

In the targeted question, the Committee asked for information on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).

Due to the failure to provide the requested information on measures taken in law and practice to protect children from misuse of information technologies and whether Internet service

providers were required to delete illegal content which they were aware of or prohibit access to it, on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming), the Committee concludes that the situation in Spain is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter

Protection from other forms of exploitation

The Committee has previously asked for information on measures adopted to prevent trafficking of children and identify and assist all child victims of trafficking. It also asked what measures had been taken to assist children in street situations and considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Spain is in conformity with Article 7§10 of the Charter. The Committee also asked what measures had been taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas (Conclusions XXI-4).

In its comments, Confederación Intersindical Galega, as well as CCOO and UGT state that Spain has no specific legislation to protect children and young persons from work-related risks. In its response, the Government states that the Decree of 26 July 1957, as amended, prohibits young people under the age of 18 from carrying out work in a series of activities and industries.

Due to the failure to provide the requested information on measures adopted to prevent trafficking of children and identify and assist all child victims of trafficking, on measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas, the Committee concludes that the situation in Spain is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Covid-19

In the context of the Covid-19 pandemic, the Committee asked for information on the impact of the pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen monitoring mechanisms.

The Committee recalls that Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.), which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic (Statement on Covid-19 and social rights, 24 March 2021).

The report does not provide the information requested.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on measures taken to prevent the sexual exploitation of children and assist victims;
- whether child victims of sexual exploitation, whether related to trafficking or not, could be held criminally liable for their actions;

- on measures taken to strengthen the protection of children, including migrant, refugees, and displaced children, from sexual exploitation and abuse;
- on measures taken in law and practice to protect children from misuse of information technologies;
- whether Internet service providers are required to delete illegal content which they are aware of or prohibit access to it;
- on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming);
- on measures adopted to prevent trafficking of children and identify and assist all child victims of trafficking;
- what measures have been taken to assist vulnerable children, including children in street situations and children at risk of child labour, including those in rural areas.

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

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

The Committee recalls that no targeted questions were asked in relation to Article 8§1 of the Charter, only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group "Children, families and migrants").

As the previous conclusion found the situation in Spain to be in conformity with the Charter (Conclusions XXI-4), there was no examination of the situation in 2023. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the right to paid maternity leave.

The report does not submit any specific information concerning the Covid-19 crisis and its impact on the right to paid maternity leave.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§1 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

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

The Committee recalls that no targeted questions were asked in relation to Article 8§2 of the Charter only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (XXI-4, 2019), the Committee concluded that the situation in Spain was not in conformity with Article 8§2 of the Charter on the grounds that the grounds for dismissing an employee during pregnancy or maternity leave went beyond the permissible exceptions.

Prohibition on dismissal

The Committee had previously noted (Conclusions XXI-4 (2019)) that it remained possible to dismiss an employee during her maternity leave on grounds such as collective redundancy, even if the company had not ceased trading (Article 51 of the Workers' Statute). The Committee recalled that Article 8§2 of the Charter only authorises the dismissal of an employee during pregnancy or maternity leave in certain cases, in particular following serious misconduct justifying the dismissal of the worker, if the company ceases its activities or if the period provided for in the employment contract expires. As it is possible to dismiss an employee during pregnancy or maternity leave on other grounds, such as collective redundancy, even if the company has not ceased trading, the Committee concluded that the grounds for dismissing an employee during pregnancy or maternity leave went beyond the permissible exceptions and that the situation therefore was not in conformity with Article 8§2 of the Charter.

The report refers to certain legislative amendments adopted in 2019, according to which protection against dismissal after maternity leave is extended from 9 to 12 months. However, there has been no change to the situation regarding the possibility of dismissing a pregnant worker or a worker on maternity leave in a collective redundancy scheme, even if the company has not ceased to exist. The Committee therefore reiterates its previous conclusion on this point.

Redress for unlawful dismissal

In its previous conclusion (2019), the Committee noted in the report that Spanish legislation did not allow workers to freely choose reinstatement or termination of the employment contract with the corresponding compensation when the dismissal has been declared null and void. When it is impossible to reinstate the worker due to the cessation or closure of the obliged company or any other cause of material or legal impossibility, the judge or court will declare that the employment relationship is terminated as of the date of this decision and will rule that the worker receives compensation and unpaid wages.

In this case, the employer must pay, in addition to the pay not received, the compensation provided for in Article 56.1 of the Workers' Statute for unjustified dismissal, i.e. compensation "equal to 33 days' pay per year of service, with periods of less than one year being calculated on a pro rata basis for the months completed, up to a maximum of 24 months". The courts may award additional compensation amounting to 15 days' pay per year of service (the sum is calculated on a pro rata basis for periods of less than one year), up to a maximum of 12

months' pay "on account of specific circumstances and the harm caused by non-reinstatement or unlawful reinstatement" (arts. 281.2 and 286.1 Social Jurisdiction Act). The Committee notes that both awards are subject to a ceiling.

The Committee points out that the ceiling on the compensation scales does not allow an employee to be awarded a higher amount of compensation depending on all the circumstances, since the courts can only order compensation within the limits of the scale. In this regard, in *Finnish Society of Social Rights v. Finland*, Complaint no. 106/2014, op. cit. It considered that the capping of compensation at 24 months' salary, as provided for by Finnish legislation, was insufficient as it did not allow for adequate compensation within the meaning of Article 24 of the Charter. It also recalls that in *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint no. 158/2017, op. cit. it considered that the pre-established amounts of compensation (capped at 12, 24 or 36 monthly payments depending on the case, and at six for small businesses) made the compensation inadequate over time in relation to the harm suffered. The Committee also recalls that in *Confédération générale du travail Force Ouvrière (CGT-FO) v. France*, claim no. 160/2018 and in *Confédération générale du travail (CGT) v. France*, claim no. 171/2018, decision on the merits of 23 March 2022 and in *Syndicat CFDT de la métallurgie de la Meuse v. France*, Complaint no. 175/2019, op. cit, and *Syndicat CFDT général des transports et de l'environnement de l'Aube v. France*, claim no. 181/2019, it considered that the compensation ceiling set at 20 months' salary was insufficient.

The Committee considers that, even if reinstatement is the general rule, in cases where reinstatement proves impossible, the judge cannot award compensation that is adequate and compensates for all the harm suffered, in order to set a ceiling on compensation.

The Committee had asked for specific examples of compensation awarded in cases of unlawful dismissal of pregnant employees or employees on maternity leave.

The report refers to three different cases in which the courts imposed the reinstatement of the dismissed pregnant worker and declared the dismissal null and void, awarding compensation to redress the workers' fundamental rights.

Covid-19

The Committee asked whether the Covid-19 crisis had an impact on the possibility of dismissing employees who are pregnant or on maternity leave; it also asked whether there have been any exceptions to the ban on dismissal during pregnancy and maternity leave during the pandemic.

The report does not provide any information on this subject.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 8§2 of the Charter on the ground that

-the grounds for dismissing an employee during pregnancy or maternity leave go beyond the permissible exceptions.

-If reinstatement proves impossible a judge may not award adequate compensation to compensate for all loss suffered.

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

The Committee recalls that no targeted questions were asked for Article 8§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 8§3 of the Charter on the grounds that it had not been established that women working in the public sector were entitled to paid breastfeeding breaks (Conclusions XXI-4, 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

According to the report Royal Decree 5/2015 as amended provides that women in the public sector (civil service) are entitled to nursing breaks in respect of a child under 12 months of age of one hour a day. This hour maybe divided into two thirty minute breaks, or the woman may opt to begin work an hour later or finish an hour earlier.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

This is the first examination of the situation in Spain under Article 8§4 of the Revised Charter therefore the Committee's assessment will therefore concern the information provided by the Government in the report and the response to the targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in the case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.

According to the report if the assessment of the working conditions, including night work, reveals particular risks for pregnant or nursing women, the employer must take the necessary measures to eliminate those risks (Section 26§1 of the Prevention of Professional Risks Act, No. 31/1995). Should the adaptation of the post prove impossible, the workers concerned should be transferred to another post while keeping the same pay (Section 26§2). If no transfer is possible, the employment contract will be suspended. The Committee notes from previous conclusions and the comments of the trade unions that the employee will receive special cash benefits, of an amount equivalent to her pay, from the social security system (Royal Decree No. 295/2009, Chapter IV).

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§4 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

The Committee takes note of the information contained in the report submitted by Spain and the comments submitted by *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadoras y trabajadores de España (UGT)*, by the *Confederación Intersindical Galega (CIG)* and the response of the Government.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

This is the first examination of the situation in Spain under Article 8§5. The Committee's assessment will therefore concern the information provided by the Government in the report and in response to the targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in the case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave and women concerned retain the right to return to their previous employment once their condition permits.

According to the report if the assessment of the working conditions, including night work, reveals particular risks for pregnant or nursing women, the employer must take the necessary measures to eliminate those risks (Section 26§1 of the Prevention of Professional Risks Act, No. 31/1995). Should the adaptation of the post prove impossible, the workers concerned should be transferred to another post while keeping the same pay (Section 26§2). If no transfer is possible, the employment contract will be suspended. The Committee notes from previous conclusions and the comments of the trade unions that the employee will receive special cash benefits, of an amount equivalent to her pay, from the social security system (Royal Decree No. 295/2009, Chapter IV).

The Committee notes that a benefit is paid during the period of suspension or leave necessary to protect the safety or health of the worker or foetus and ends on the day before the day on which the suspension of the employment contract on grounds of maternity begins or the day on which the worker returns to her previous job or another job compatible with her condition (Art. 35.2 Royal Decree No. 295/2009)

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§5 of the Charter.

Article 16 - Right of the family to social, legal and economic protection

The Committee takes note of the information contained in the report submitted by Spain, in the comments submitted by *Save the Children Spain*, the *Confederación Intersindical Galega (CIG)*, the *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadoras y trabajadores de España (UGT)*. It also takes note of the information contained in the Spanish Government's response to the comments made by the above-mentioned bodies.

The Committee recalls that for the current reporting cycle, States were asked to respond to several targeted questions for Article 16 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferral or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the Charter's implementation in respect of the provisions relating to the "Children, family and migrants" thematic group).

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee found that the situation in Spain was not in conformity with Article 16 of the Charter on the ground that the level of family benefits was inadequate as it did not constitute a significant income supplement.

The Committee's assessment will therefore relate to the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Legal protection of families

Rights and obligations, dispute settlement

- **Mediation services**

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that a memorandum on the implementation of the Comprehensive Family Support Plan 2015-2017 and the final assessment thereof were to be submitted to an interministerial committee in 2018. The Committee therefore asked that the next report provide information on the final assessment of family mediation services.

In response, the report states that under the Comprehensive Family Support Plan, 83 projects received funding for family intervention and support services (family education, family counselling and mediation), benefiting 44,224 households and 58,020 people.

Domestic violence against women

The Committee notes firstly that Spain has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force in Spain in August 2014.

Among the targeted questions that it raised, the Committee asked for updated information on measures taken to reduce all forms of domestic violence against women, including information on incidence and conviction rates.

In addition, in its previous conclusion (Conclusions XXI-4 (2019)), the Committee requested statistical data on the number of convictions for domestic violence against women issued by the courts specialising in gender-based violence provided for in Organic Law No. 1/2004 and information on the trends in those figures in recent years.

It also requested updated information on domestic violence against women and related convictions, on the implementation of the various measures taken or planned, and on their contribution to the fight against such violence, including in the light of the Committee on the Elimination of Discrimination against Women (CEDAW) recommendations.

In response, the report lists various measures being considered, including the development of a National Strategy to combat male violence for 2022-2025. However, the Committee notes that most of these measures fall outside the reference period.

The Committee notes from the report that the number of women murdered by their (ex-)partner decreased during the reference period (53 in 2018, 47 in 2021). In total, there were 203 femicides during the reference period.

The Committee also notes an increase in the number of persons prosecuted for domestic violence against women (from 21,217 in 2018 to 23,206 in 2021) and in the number of people convicted for this type of violence (from 18,224 in 2018 to 20,672).

In its comments, the *Confederación Intersindical Galega* (CIG) points out that, according to the 2019 Macro-survey on violence against women, 11% of women and girls aged 16 and over (i.e., 2.2 million) have suffered physical or sexual violence at the hands of their partner or ex-partner during their lifetime.

Due to the failure to provide requested information on measures taken during the reference period to reduce all forms of domestic violence against women, including incidence rates, the Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Social and economic protection of families

Family counselling services

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that a memorandum on the implementation of the Comprehensive Family Support Plan 2015-2017 and the final assessment thereof were to be submitted to an interministerial committee in 2018. The Committee therefore asked that the next report provide information on the final assessment as regards family counselling services.

In response, the report states that as part of the Comprehensive Family Support Plan, funding was provided for:

- 26 projects to help reconcile family and working life for families with dependent children who are subject to social and occupational integration measures; these projects involved 12,602 households and 16,930 people;
- 122 projects to alleviate the plight of vulnerable families and improve their situation by meeting their basic needs and providing them with support; these projects involved 62,110 households and 209,776 people.

Childcare facilities

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked to what extent the supply of places in childcare facilities matched demand, including the number of applications rejected due to a lack of places.

Due to the failure to provide requested information, the Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

In its comments, *Save the Children* states that there is no legal right to a place in pre-school education or childcare for children under the age of three. In particular, it highlights the lack of access to pre-school education for vulnerable children: more than 800,000 vulnerable children (aged 0-2) have not started pre-school education. It points out that disadvantaged families face financial and non-financial constraints, such as the strict opening hours of pre-school establishments, admission criteria, lack of information and awareness, and bureaucratic

obstacles. *Save the Children* also points to the lack of sufficient regulation in this area and the under-funding of pre-school education and childcare budgets.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked for confirmation that there was no length-of-residence requirement for nationals of States Parties to be eligible for family benefits.

In addition, in a targeted question, the Committee asked whether a length of residence requirement was imposed on nationals of other States Parties lawfully resident in the country for eligibility to family benefits.

In reply, the report confirms that there is no requirement for nationals of States Parties to have been resident for a certain period in order to have access to family benefits. However, the report notes that in order to benefit from the recently introduced minimum vital income, claimants must have been legally and effectively resident in Spain during the year immediately preceding their claim. This condition is mandatory regardless of the claimant's nationality. However, there are exceptions for children from mixed marriages, women who have been victims of gender-based violence and victims of human trafficking or sexual exploitation.

Given that the child allowance was replaced by the introduction of the minimum vital income scheme on 1 June 2020 (see below), the Committee considers that the situation is not in conformity with Article 16 of the Charter, on the ground that access to family benefits is not guaranteed because of the excessive length of residence requirement.

Level of family benefits

Among the targeted questions that it raised, the Committee asked for information about the amounts paid in family benefit as well as the median equivalised income for the reference period. It also asked whether family or child benefits were subject to a means-test and, if so, what percentage of families were covered.

The Committee points out that family benefit must be such as to provide a significant number of families with sufficient extra income. Adequacy is assessed with respect to the monthly median equivalised net income as calculated by Eurostat.

The Committee notes from Eurostat data (published on 17 March 2023) that the monthly median equivalised income stood at €1,324 in 2021.

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee found that the situation was not in conformity with Article 16 of the 1961 Charter on the ground that family benefits were not of an adequate level for a significant percentage of families.

The report states that Royal Decree-Law 20/2020 of 29 May 2020 establishing the minimum vital income and amending Article 351 of the consolidated text of the General Law on Social Security came into force on 1 June 2020. The Minimum Vital Income (MVI) scheme was introduced as a non-contributory, monetary benefit to mitigate the economic impact of the pandemic on the most vulnerable Spanish families. The report explains that the allowance for dependent children under 18 with no disability or with a disability of less than 33% was abolished on 1 June 2020. The allowance was replaced, initially, by the transitional MVI benefit and, from 1 January 2023 (outside the reference period), by the MVI benefit in its definitive form (provided that the eligibility criteria are met and that claimants have applied for it by 31 December 2022).

According to the report, the MVI benefit is designed to prevent the risk of poverty and social exclusion for individuals living alone or within a cohabitation unit and who lack the financial means to fulfil their basic needs.

In particular, the report states that it seeks to protect single-parent households by providing a supplement equal to 22% of the monthly non-contributory retirement pension for single persons (€10,103.8 per annum in 2022).

The MVI scheme also offers protection for children by introducing a child support supplement. This takes the form of a monthly payment for each child, set according to their age on 1 January of the year in question, as following:

- under 3: €100;
- 3 to 6: €70;
- 6 to under 18: €50.

The Committee notes that the child support supplement came into effect in 2022 (outside the reference period).

It also notes that the number of family benefit recipients (i.e., children) on regular payment schedules fell from 1,621,815 in 2018 to 1,218,907 in 2021.

The report states that claims for the dependent child allowance submitted prior to 1 June 2020 will continue to be subject to the rules in force at the time the claim is submitted, including the fact that eligibility is conditional on not receiving income exceeding an amount defined by law.

In its comments, Save the Children points out that the MVI scheme was a major step forward in the fight against extreme poverty, as it was designed to reach 850,000 households, half of which had children. However, according to Save the Children, 29.3% of households below the poverty line did not receive this benefit in 2021, including one in three households in extreme poverty (just over 4 million), because they did not meet the eligibility criteria. Save the Children also points out that the implementation of the MVI scheme is not in itself an effective measure to put an end to the economic crisis faced by many vulnerable families in Spain. Many did not even apply because they did not know about it, were unaware of the conditions for applying and had to overcome administrative barriers.

In addition, the *Confederación Intersindical Galega* (CIG) commented on the low coverage of households by the MVI. It also mentioned the administrative requirements, the delays in assessing applications and the complexity of the procedure for granting the MVI and using it as a tool to combat poverty and social exclusion.

Lastly, the Committee notes from the comments submitted by the *Confederación General de Comisiones Obreras* (CCOO) and the *Union General de Trabajadores de España* (UGT) that, from 2018 until 1 June 2020, Spanish legislation, in particular Articles 352.1 et seq. of the General Law on Social Security, provided for a non-contributory benefit for dependent children aged under 18, or over 18 in the case of disability of 65% or more. Eligibility was subject to an income threshold of €12,313 a year (€18,532 a year for large families, increased by €3,002 from the fourth child). The amount of the benefit is €341 a year and €588 a year for families living in extreme poverty.

In the light of the information provided, the Committee considers that the situation is not in conformity with Article 16 of the Charter on the grounds that (1) the child benefit does not provide significant extra income and (2) family allowances do not cover a significant number of families.

Measures in favour of vulnerable families

In its previous conclusion, the Committee noted that Royal Decree No. 106/2018 of 9 March 2018 on the National Housing Plan 2018–2021 provided for a specific assistance programme for persons in situations of forced eviction (see previous conclusion for details) and requested information on the results of these measures with regard to single-parent families and Roma families. The Committee also requested information on the measures planned or taken to ensure that these slums ceased to exist once and for all.

The Ministry of Social Rights and Agenda 2030 responded by referring to a survey on housing and the Roma population in Spain (2015, outside the reference period), which covered 105,289 dwellings and reported on the significant improvements made since 2007 and the areas that still require improvement. There are also plans to carry out a new mapping exercise to assess the progress made in achieving the objectives set out in the National Strategy for Equality, Inclusion and Participation of the Roma Population 2021–2030.

The strategy aims to reduce the number of slums (from 2.17% to 0%) and substandard housing units (from 6.46% to 3%), guarantee the Roma population access to various basic services, improve basic facilities and the quality of housing, and reduce discrimination in access to housing (from 30.8% to 15%).

The Committee takes note of the various measures taken outside the reference period to achieve the targets set out in the 2022–2026 Action Plan.

The budget for the Family Protection and Child Poverty Programme has also continued to increase, according to the report. Since 2019, it has included a specific programme to guarantee the fundamental right to food, leisure and culture for children and teenagers during school holidays and to reconcile family and working life.

Among the targeted questions that it raised, the Committee asked what measures had been taken to ensure that vulnerable families could meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services).

Due to the failure to provide requested information, the Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

In a targeted question, the Committee asked whether, in cases where specific temporary measures had been taken to financially support families during the covid-19 pandemic, they would or were expected to be maintained or withdrawn and, if they had been withdrawn, what effect this was expected to have on vulnerable families.

The Committee notes that the report provides no information on this point.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter on the grounds that :

- access to family benefits is not guaranteed because of the excessive length of residence requirement;
- child benefit does not provide a significant extra income;
- family allowances do not cover a significant number of families.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Information missing:

- measures taken during the reference period to reduce all forms of domestic violence against women, including incidence rates;
- the match between demand and supply of childcare places, indicating the number of applications rejected for lack of places;
- measures taken to ensure that vulnerable families can meet their energy needs.

See dissenting opinion by Carmen Salcedo Beltrán on Article 16 of the Revised European Social Charter.

DISSENTING OPINION ON ARTICLE 16 BY CARMEN SALCEDO BELTRÁN

SPAIN

The Committee concluded that the situation in Spain is not in conformity with Article 16 of the Charter on the grounds that access to family benefits is not guaranteed because of an excessive residence requirement, that child benefit does not provide a significant income supplement and that family allowances do not cover a significant number of families.

I agree with the Committee's majority conclusion of non-conformity. My dissent lies, with much respect for my fellow Committee members' arguments, in my belief that a fourth ground of non-conformity should be added with regard to the inadequacy of family benefits.

This provision guarantees the right of families to social, legal and economic protection. In this connection, the Parties undertake to promote the economic, legal and social protection of family life, particularly through social and family benefits. These must be of a sufficient amount to be effective, and two examples prove that this is not the case in Spain.

The first example is death grant. Under Article 218 of Royal Legislative Decree 8/2015 of 30 October 2015 on the General Law on Social Security, a person's death entitles the person responsible for arranging the funeral to immediate payment of a death grant/benefit designed to cover the funeral costs. Article 30 of Decree 3158/1966 of 23 December 1966 (which is still in force) specifies the amount of the financial grant and the conditions of access to these benefits. The current rate of the benefit is €46.50.

The cost of funeral services varies from one autonomous community to another. The average has been calculated to be about €3 800. Families, including vulnerable households, are not entitled to any public assistance.

Sooner or later, families must deal with such expenses, once or several times. The amount paid by Spain is ridiculous in the light of the figures given above. If we look at studies on the existing legislation in other countries, this is all the more obvious (Denmark – Offentlig begravelseshjælp; Netherlands – Overlijdensuitkering; Austria – Zuschuss zu den Bestattungskosten; France – Capital décès; Ireland – Funeral costs under Exceptional Needs Payments) . Hence, the lack of protection is manifest.

Secondly, the amount of widows' benefits paid in Spain is very low. In 2020 (during the reference period), it was €790.70 per month (€11,069.80 per year) for persons with family responsibilities; €683.50 per month (€9,569 per year) for persons aged 65 or over or persons with a 65% disability or more; €639.50 per month (€8,953 per year) for persons aged 60 to 64; and €517.80 per month (€7,249.20 per year) for persons under the age of 60.

If we also take account of the dependent situation of most of the elderly people who are entitled to such benefits and therefore of their need for a person to help them, the reality is that families do not have the means of satisfying the most essential needs in their lives. According to the National Institute for Statistics, in 2020, 29.2% of persons over the age of 64 had a recognised level of dependency.

It might be claimed that these two examples should be dealt with under Articles 12 and/or 13 of the Charter but I do not agree with this view. The Charter must be interpreted in the light of the principle of internal consistency or harmony between all its provisions. The fact that the rights to social security and social and medical assistance are recognised specifically in Articles 12 and 13 of the Charter neither prevents nor rules out the examination of matters relating to this group of people under Article 16 of the Charter, which establishes the right of the family to social, legal and economic protection.

The rights enshrined in the Charter are not seen as separate compartments; they are closely linked to one another. The aim and the purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (International

Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This effectiveness is precisely what determines the synergies between the provisions of the treaty and a coherent interpretation by the Committee in this respect.

It has already made such links in the past. For instance, when examining Article 16 of the Charter, although the right to housing is established by Article 31 of the Charter, the Committee considered that as this right formed part of the right of families to social, legal and economic protection, it was also recognised within the scope of application of Article 16 (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9; European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 10 November 2014, §48).

This case law concerning the interpretation of provisions of the Charter should in my humble opinion, have also been applied between Article 16 and Articles 12 and 13 of the Charter. I note of course, as the Committee has already pointed out, that this does not entail the “automatic” transfer of the rights in question between the two articles (International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision of 12 May 2017, §26). However, it should be stressed that these provisions overlap partly in several respects, particularly with regard to some of the matters which the Committee contemplated when deciding whether the situation was in conformity with this article, namely the level of family benefits and the measures taken to support vulnerable families. The process of interpretation of a treaty is a unity, a single combined operation (Article 31 of the Vienna Convention on the Law of Treaties, *Golder v. the United Kingdom*, 21 February 1975, §30).

Before concluding, I would like to add that these two situations were reported by trade unions or non-governmental organisations. In its conclusion, the Committee does not take these reports into account, whereas it would have been appropriate to take a position on their complaints. Since it did not do so, it should have given the reasons for this omission.

Consequently, on this point, and with much respect for the arguments of my fellow Committee members, I believe that the conclusion should have contained another finding of non-conformity on the ground that family benefits are inadequate.

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

The Committee takes note of the information contained in the report submitted by Spain and in the comments by Save the Children and in the Government's response.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 17§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

The Committee also recalls that in the General Introduction to Conclusions 2019, it posed general questions under Article 17§1 and asked States to provide, in the next report, information on measures taken to reduce statelessness; to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation; to reduce child poverty; combat discrimination and promote equal opportunities for children from particularly vulnerable groups; and on the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

Previously, the Committee deferred its conclusion (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of deferral, targeted questions and the general questions.

The legal status of the child

In the general questions, the Committee asked for information on measures taken by the State to reduce statelessness (e.g., ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth). It also asked for information on measures taken by the State to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation.

Due to the failure to provide requested information on measures taken to reduce statelessness; on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation, the Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

In its comments, Save the Children states that in 2021, 147 minors applied for stateless status in Spain and 37 children were granted it.

Child poverty

In the general questions, the Committee asked for information on measures to reduce child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing, etc.); to combat discrimination and promote equal opportunities for children from particularly vulnerable groups, such as ethnic minorities, Roma children, children with disabilities and children in care.

Due to the failure to provide requested information on measures taken to reduce child poverty; on measures taken to combat discrimination and promote equal opportunities for children from particularly vulnerable groups, such as ethnic minorities, Roma children, children with disabilities and children in care, the Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to

provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

The Committee notes from EUROSTAT that 33.4% of children in Spain in 2021 were at risk of poverty or social exclusion, an increase in comparison with 2018, when the percentage was 30.5%. The Committee notes that the 2021 rate is significantly higher than the EU average of 24.4% and concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter on the ground that the rate of children at risk of poverty is too high.

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection under Article 17 of the Charter. Consistent with its approach in relation to the conceptualisation and measurement of poverty adopted by the Committee in terms of Article 30, the Committee's consideration of child poverty for the purposes of Article 17 reflects an understanding of both income and multi-dimensional understandings of poverty (Statement of interpretation, 2013, Article 30). This understanding is reflected in the indicators and elements the Committee takes into account when assessing State Party compliance with Article 17. For the States that have not accepted Article 17, child poverty will be addressed under Article 30.

The EUROSTAT data and the EU-27 rate of children at risk of poverty or social exclusion is used as key point of reference and indicator of state compliance with Charter rights by the Committee. The Committee will also have regard to disimprovement in terms of the rate of children at risk of poverty or social exclusion in a State Party. Furthermore, the Committee also takes into account non-monetary measures adopted at reducing child poverty and social exclusion such as ensuring access to quality and affordable services in the areas of health, education and housing. When assessing State conformity with Article 17, the Committee will also take into account the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

Right to assistance

The Committee has previously asked for information on accommodation facilities for migrant children, whether accompanied or unaccompanied, including measures taken to ensure that children were accommodated in appropriate settings which were adequately monitored. It also again requested for information on the assistance given to unaccompanied minors, in particular to protect them from exploitation and abuse and considered that if the information requested was not provided in the next report, there would be nothing to establish that the situation in Spain was in conformity with the Charter. It also asked whether children who were in an irregular migration situation, whether accompanied by their parents or not, could be detained and, if so, under what circumstances. Finally, it asked in what situations Spain used bone testing and what potential consequences it could have (Conclusions XXI-4).

In the targeted question, the Committee asked for information on any measures adopted to protect and assist children in crisis situations and emergencies.

In its comments, Save the Children states that migrant children continue to face obstacles and disadvantages that prevent them from improving their living conditions through the regularisation of their administrative situation. In its response, the Government states that Spain puts children in the centre of public policies.

Due to the failure to provide requested information on measures taken to ensure that accommodation facilities for children in an irregular situation, whether accompanied or unaccompanied, are appropriate and adequately monitored; on assistance given to unaccompanied children in order to protect them from abuse and exploitation; on whether children in an irregular situation, accompanied by their parents or not, could be detained, and, if so, under what circumstances; on any measures adopted to protect and assist children in crisis situations and emergencies, the Committee concludes that the situation in Spain is not

in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

The Committee notes from other sources (GRETA Evaluation Report, Second evaluation round, GRETA(2018)7, 23 March 2018) that Spain uses bone testing to determine the age of children. The Committee recalls that it has already stated that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §113). In these circumstances, the Committee considers that the situation in Spain is not in conformity with Article 17§1 of the Charter on the ground that bone testing is used to assess the age of children in irregular situation.

The Committee notes from other sources (UN Committee on the Rights of the Child, Views adopted concerning communication No. 4/2016, 1 February 2019) that Spanish policy of expulsion of minors without a procedure to identify minors and protect their rights was in violation of the UN Convention on the Rights of the Child. It also notes that on 19 November 2020, the Spanish Constitutional Court concluded that the Organic Law on the protection of citizen security, which establishes a special regime for the rejection at the borders was in line with the Spanish Constitution, but underlined the importance of judicial control and effective remedies to appeal a rejection at the border. The Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter on the ground that immediate expulsion of children in an irregular migration situation can be carried out by the authorities without providing them with any assistance.

Rights of children in public care

In its previous conclusion, the Committee asked to be kept informed of all trends in the area. In particular, it asked for data on the number of children placed outside their families in non-institutional care centres, and the number of children placed in an institution (Conclusions XXI-4).

In its comments, Save the Children states that in 2021, there were 16,177 children in residential care and 18,455 children in non-institutional care. There were 503 children under the age of three in residential care.

Due to the failure to provide requested information on the number of children placed outside their family in non-institutional settings, and the number of children placed outside their family placed in an institution, the Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Children in conflict with the law

The Committee has previously asked what was the maximum length of pre-trial detention and prison sentence that could be imposed on a child and considered that if the information requested was not provided in the next report, there would be nothing to establish that the situation in Spain was in conformity with the Charter. The Committee also asked whether children could be placed in solitary confinement and, if so, for how long and under what circumstances (Conclusions XXI-4).

The Committee notes that in its report on its periodic visit to Spain from 14 to 28 September 2020 (report published on 9 November 2021), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted that pre-trial detention measures may last up to nine months and the maximum length of a detention measure may last up to five years (for juveniles aged between 15 and 16) and eight years (if

they are aged between 16 and 17). The Committee recalls that it has previously found that eight-month and seven-month period of pre-trial detention was not in conformity with the Charter (Conclusions XX-4, 2015, Denmark, Conclusions 2019, Slovak Republic). The Committee considers that, in order to be in conformity with the Charter, the pre-trial detention of children should not exceed six months. It therefore concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter on the ground that the length of pre-trial detention of children is excessive.

The Committee notes from the CPT report that solitary confinement of children can last up to seven days.

Due to the failure to provide requested information on the maximum length of prison sentence that can be imposed on a child, the Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter on the grounds that:

- the rate of children at risk of poverty is too high;
- bone testing is used to assess the age of children in irregular migration situation;
- immediate expulsion of children in an irregular migration situation can be carried out by the authorities without providing them with any assistance;
- the length of pre-trial detention of children is excessive.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on measures taken to reduce statelessness;
- on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation;
- on measures taken to reduce child poverty;
- on measures taken to combat discrimination and promote equal opportunities for children from particularly vulnerable groups, such as ethnic minorities, Roma children, children with disabilities and children in care;
- on measures taken to ensure that accommodation facilities for children in an irregular situation, whether accompanied or unaccompanied, are appropriate and adequately monitored;
- on assistance given to unaccompanied children in order to protect them from abuse and exploitation;
- on whether children in an irregular situation, accompanied by their parents or not, could be detained, and, if so, under what circumstances;
- on any measures adopted to protect and assist children in crisis situations and emergencies;
- on the number of children placed outside their family in non-institutional settings, and the number of children placed in an institution;
- on the maximum length of prison sentence that can be imposed on a child.

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 2 - Free primary and secondary education - regular attendance at school

The Committee takes note of the information contained in the report submitted by Spain and in the comments by Confederación Intersindical Galega, Save the Children and Confederación Sindical de Comisiones Obreras (CCOO) and Unión General de Trabajadoras y Trabajadores de España (UGT) and the Government's response.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 17§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

The Committee also recalls that in the General Introduction to Conclusions 2019, it posed general questions under Article 17§2 and asked States to provide, in the next report, information on measures taken to introduce anti-bullying policies in schools; and on measures taken to facilitate child participation across a broad range of decision-making and activities related to education.

The Committee notes that Spain ratified the revised European Social Charter on 17 May 2021 and accepted Article 17§2, which does not exist in the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Spain's situation is in conformity with Article 17§2 of the Charter.

Legal framework and measures taken to implement it

The report states that the general organisation of the education system is the Government's responsibility.

The report mentions a number of programmes and projects aimed at supporting vulnerable pupils and preventing early school leaving. The report also mentions a programme for the creation of additional places in public kindergartens, as well as a programme for the digitalisation of the education system.

In its comments, the Confederación Intersindical Galega states that the number of subjects taught in Galician in schools where English has been introduced is as low as 33%. Galician is present only in a fraction of pre-schools and teaching material in Galician is insufficient. The Government did not provide a response on this point.

Enrolment rates, absenteeism and drop out rates

The report states that the educational authorities must adopt budgetary, organisational and other measures in their area of competence to reduce the number of pupils leaving the school system early.

The Committee notes from other sources (UNESCO database) that the enrolment rates in 2021 were as follows: 98.14% in primary education, 97.22% in lower secondary education and 94.58% in upper secondary education

In its comments, the Confederación Intersindical Galega states that the enrolment rate in the first cycle of infant education (0-3) in Spain varies considerably according to income level.

In its comments, Save the Children reports that by the age of 15, 29% of pupils have repeated a class at some point, which significantly reduces pupils' self-esteem and efforts, and encourages early school leaving.

In its comments, the CCOO and UGT say that Spain does not take enough measures to deal with absenteeism and early school leaving.

In its response, the Government states that Spain's goal is to achieve the European target of reducing early school leaving to 9% by 2030.

Costs associated with education

The report states that basic education is compulsory and free of charge for all. Public education is the principal element in the education system. It is possible to receive the assistance and support necessary to compensate for personal, family, economic, social and cultural gaps and disadvantages, particularly in the case of specific educational needs, which prevent or impede access to the education system. Pupils from disadvantaged socio-economic backgrounds are eligible for scholarships and study grants.

In its comments, Save the Children reports that more than one million children and adolescents living below the poverty line pay for the school meals in full or do not have access (to one) at all. In general, the economic investment made by Spain is insufficient and coverage is not strategic, since aid fails to reach those who need it. In its response, the Government states that basic education is compulsory and free of charge. With regard to schooling, the education authorities are responsible for taking preventive and compensatory steps to ensure the most favourable schooling conditions for all children whose personal or social circumstances hinder their access to the various stages of education. Such students are entitled to scholarships and study grants. Moreover, there are territorial cooperation programmes for financing textbooks and teaching materials, inclusive education and emotional welfare in education.

Vulnerable groups

The Committee notes that where the States have accepted Article 15§1 of the Charter, the right to education of children with disabilities is dealt with under that provision.

The report indicates that the State is promoting quality and equity in education, in particular for children in vulnerable situations. Educational institutions must implement an appropriate organisation of the school curriculum and make the adjustments and diversifications of the programmes necessary to facilitate the achievement of the objectives set for all pupils. Public administrations must ensure adequate and balanced schooling for pupils with special needs and provide for the necessary measures to avoid the segregation of pupils.

In its comments, Confederación Intersindical Galega refers to the decision of the United Nations Committee on the Rights of Persons with Disabilities of 28 August 2020, communication No. 41/2017, where it was found that the administrative decision to enrol a child with Down syndrome in a special education centre without taking into account the opinion of his parents, without effectively exploring the possibility of making reasonable accommodations that could have allowed him to remain in the mainstream education system, without giving any weight to the reports of the clinical psychologist and the special education assistant, and without taking into account the authors' allegations regarding acts of discrimination and abuse suffered by the child in the mainstream school, constitutes a violation of the Convention on the Rights of Persons with Disabilities. The Committee notes that Spain has accepted Article 15§1 of the Charter, therefore the matters of education of children with disabilities are dealt with under that provision.

In its comments, Confederación Intersindical Galega also states that school insurance benefits are extremely low. The Committee notes that the issue of school insurance does not fall within the scope of Article 17§2 of the Charter as interpreted by the Committee.

In its comments, Save the Children states that the lack of implementation of efficient and equitable education policies leads to the problems of repetition, in many cases total drop out and school segregation. Segregation is caused by the concentration of students from very vulnerable socio-economic situations in certain schools. The Government did not provide a response on this point.

The Committee also reserves its position on the assessment of Article 17§2 of the Charter with regard to the situation in Cañada Real Galiana shantytown, until a decision is taken in the Collective Complaint No. 206/2022 Defence for Children International (DCI) and Others v. Spain, registered on 2 March 2022, which relates, inter alia, to Article 17§2 of the Charter. The complainant organisation maintains that without access to electricity, the full development of the personality of children and young persons is hindered and the resulting living conditions impact their access to education, fostering absenteeism and making it harder to study, revise or do homework.

Anti-bullying measures

In the general questions, the Committee asked what measures have been taken to introduce anti-bullying policies in schools, i.e. measures relating to awareness raising, prevention and intervention.

The report states that the territorial cooperation programme for emotional well-being in the field of education is designed to help meet the needs of pupils from an educational perspective.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on measures taken to address the effects of the Covid-19 pandemic on the education of children (including in particular disabled children, Roma and Traveller children, children with health issues and other vulnerable children).

The Committee recalls that under Article 17§2 of the Charter equal access to education must be ensured for all children during the Covid-19 crisis. In this respect, particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children with disabilities, children in hospital, children in care, pregnant teenagers, children deprived of their liberty (Statement on Covid-19 and social rights, 24 March 2021).

The report states that the “Educa en Digital” programme aimed to provide computer work stations for homes and equipment that could be loaned to vulnerable pupils.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 17§2 of the Charter.

See dissenting opinion by Carmen Salcedo Beltrán on Article 17§2 of the Revised European Social Charter.

DISSENTING OPINION OF CARMEN SALCEDO BELTRÁN ON ARTICLE 17§2

SPAIN

I regret that I cannot share the opinion of the majority of the Committee concerning Spain's conformity with Article 17§2 of the Charter. The Committee's conclusion failed to take two very important circumstances into account.

Although the Spanish Government did not mention these, despite being required to do so (Article 21 of the Charter), they were referred to by the non-governmental organisations in their submissions to the Committee. These matters should be analysed in the same terms as the government document, with due regard for adversarial principles, especially bearing in mind that the states (including Spain) repeatedly omit totally or partly to provide the information requested from them or to answer the targeted questions put to them.

This opinion is based firstly on the application of two legal tenets which are key to the interpretation of the Charter and of international law.

The first of these is that the Charter must be interpreted in the light of the principle of the internal consistency and harmony of all its provisions. Article 15 of the Charter guarantees the right of persons with disabilities to independence, social integration and participation in the life of the community. The effective exercise of this right requires the Parties in particular to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes where possible or, where this is not possible, through specialised bodies, public or private (§1).

The fact that the rights of persons with disabilities are specifically referred to in Article 15 of the Charter does not rule out the consideration of questions relevant to this population group under Article 17 of the Charter, which relates to the right of children and adolescents to social, legal and economic protection. With a view to guaranteeing them the full exercise of their right to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the provision requires the Parties to take all the necessary and appropriate measures, either directly or in co-operation with public or private organisations, to provide them with a free primary and secondary education and to encourage regular school attendance (Article 17§2).

This link between Articles 15 and 17 of the Charter has been explicitly established by the Committee. In its decision of 26 June 2007 on the admissibility of Complaint No. 41/2007 (Mental Disability Advocacy Centre (MDAC) v. Bulgaria), the Committee stated: "9. The Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions. 10. This is the case with education. The Committee considers that the fact that the right of persons with disabilities is guaranteed by Article 15§1 of the Revised Charter does not exclude that relevant issues relating to the right of children and young persons with disabilities may be examined in the framework of Article 17§2 (see Conclusions 2003, Bulgaria, §70)".

Similarly, when examining Article 16 of the Charter, although the right to housing is recognised in Article 31, the Committee considered that as this right formed part of the right of families to social, legal and economic protection, it was also recognised within the scope of application of Article 16 (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9; European Federation of National

Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 10 November 2014, §48).

When examining this paragraph, the Committee assessed the legal framework, the measures taken to implement it and the degree of quality and equity in education, particularly for children in vulnerable situations. In this respect, the Committee stated firstly that education establishments must organise themselves appropriately and make the necessary adjustments and diversifications to curricula to enable the goals set for all pupils to be achieved. Secondly, it specified that the authorities must ensure that pupils with special needs can have appropriate and balanced schooling and take the necessary measures to avoid segregation of pupils.

Under these conditions, the right to education for children with disabilities (vulnerable group) was more apposite as this right enabled many other Charter rights to be exercised and was of key importance in the scope of application of the social protection which they are also guaranteed under Article 17§2 of the Charter.

The rights enshrined in the Charter are not seen as separate compartments; they are closely linked to one another. The aim and the purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This effectiveness is precisely what calls for the synergies between the provisions of the treaty to be established and a coherent interpretation by the Committee in this respect.

With all due respect for the opinion of the majority of the Committee members, this case law concerning the interpretation of the case law of the Committee should in my humble opinion, have also been applied between Article 17§2 and Article 15 of the Charter. I note of course, as the Committee has already pointed out, that this does not entail the “automatic” transfer of the rights in question between the two articles (International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision of 12 May 2017, §26). However, it should be stressed that these provisions overlap partly in several respects, particularly with regard to the three factors which the Committee contemplated when deciding whether the situation was in conformity with this article, namely minor children, the right to education and its application to vulnerable groups. The process of interpretation of a treaty is a unity, a single combined operation (Article 31 of the Vienna Convention on the Law of Treaties, Golder v. the United Kingdom, 21 February 1975, §30).

As to the second legal principle, the Charter must also be interpreted in the light of the principles of external consistency or harmony. For a long time, the Committee has interpreted the rights and freedoms enshrined in the Charter in the light of current conditions (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194), and of international instruments and the interpretations made of these treaties by their respective regulatory bodies (European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §64), bearing in mind that the Charter is a living instrument.

In its monitoring work, it is customary for the Committee to refer to a large number of international texts and instruments. This means that the Charter must be interpreted in accordance with this context, in other words international law and practice, of which it forms an integral part (Article 31§3 c) of the Vienna Convention on the Law of Treaties, 1969, Golder v. the United Kingdom, 21 February 1975, §§30 and 35). Consequently, the Committee must take account of them when making its assessment, not only theoretically, by citing them, but also by adopting an approach which is compatible with them, none of which rules out a conclusion or a decision entailing a higher level of protection.

I raise these matters in order to provide arguments for my subsequent disagreement with the majority’s conclusion of conformity. Firstly, on 20 August 2020, the UN Committee on the

Rights of Persons with Disabilities presented Spain with the views it had adopted under Article 5 of the Optional Protocol concerning communication No. 41/2017. This is a well-known case at national level concerning the right to education of a minor who contested the State Party's administrative decision to enrol him in a special education centre on account of his Down syndrome. The UN Committee considered that the State party (Spain) had failed to fulfil its obligations under Articles 7, 15, 17, 23 and 24 of the Convention, read alone and in conjunction with Article 4. It made the following recommendations to Spain:

- a) provide an effective remedy, including reimbursement of any legal costs, together with compensation, taking into account the emotional and psychological harm the complainant had suffered as a consequence of the treatment he had received and the way his case had been handled by the authorities;
- b) ensure that the complainant was admitted to a truly inclusive vocational training programme, in consultation with him and with his parents;
- c) conduct an effective investigation into the allegations of abuse and discrimination reported by the authors of the communication and ensure accountability at all levels;
- d) recognise publicly, in accordance with the views adopted, the violation of the rights to inclusive education and to a life free from violence and discrimination, as well as the violation of the rights of his parents, who had been wrongly charged with the criminal offence of neglect, which had had psychological and financial consequences.

The Spanish state has not implemented these recommendations. On 29 November 2023, the Supreme Court adopted a judgment in which it required the state to comply with the decision of the UN Committee finding discrimination against a disabled minor in the education field.

Although the UN Committee rules on the right to education of an individual, because of the procedural arrangements, this individual represents a category of people. This is clear, firstly, from the conclusions of the abovementioned document, which refer to the Recommendations made in its Concluding observations (CRPD/C/ESP/CO/2-3, §§46 and 47) and from the report on the inquiry concerning Spain under Article 6 of the Optional Protocol to the Convention (CRPD/C/ESP/IR/1). These documents call on Spain in particular to work in close consultation with persons with disabilities and their representative organisations:

- a) to expedite legislative reform, in line with the Convention, to fully eliminate the medical model of disability and clearly define the full inclusion of all children with disabilities and its specific objectives at each level of education;
- (b) to take measures to ensure that inclusive education is considered as a right, and grant all students with disabilities, regardless of their personal characteristics, the right of access to inclusive learning opportunities in the mainstream education system, with access to support services as required;
- (c) to formulate a comprehensive, inclusive education policy with strategies for promoting a culture of inclusion in mainstream education, including individual rights-based assessments of educational needs and necessary accommodation, support for teachers, respect for diversity in ensuring the rights to equality and non-discrimination, and the full and effective participation of persons with disabilities in society;
- (d) to eliminate any educational segregation of students with disabilities in both special education schools and specialised units within mainstream schools;
- (e) to ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand that their children's right to inclusive education on an equal basis with others be respected

Reports by organisations specialising in this field confirm this situation. Every year since 2008, the Spanish Committee of Representatives of Persons with Disabilities (CERMI) has

published a report which shows that many administrative and judicial complaints or appeals to international bodies are motivated by problems faced by children with disabilities in accessing inclusive education, and the ensuing discrimination. They detail the worst infringements of the rights of children with disabilities. These include the lack of sufficient public support for families with a child with disabilities, their greater exposure to bullying, abuse and violence, exacerbated poverty and poor accessibility of recreation and leisure facilities.

Likewise, the report of the National Observatory on Disability (2019, during the reference period) concludes that children face many integration problems, emphasising that one of the main difficulties at the root of failing school inclusion in Spain is undoubtedly the lack of specialist support resources in mainstream schools.

These requirements are in keeping with the Committee's case law on the rights to education of children with disabilities. On this subject, it can be pointed out that the Committee has ruled that the right to inclusive education "is about the child's right to participate in mainstream school and the school's obligation to accept the child taking account of the best interests of the child as well as their abilities and educational needs" (MDAC v. Belgium, Complaint No. 109/2014, decision on the merits of 16 October 2014, §66) or that Spain does not respect the rights of this population group because it has not been established that the integration of persons with disabilities into mainstream education and training is actually guaranteed (Conclusions XIX 1, XVIII-2, Article 15).

Lastly, this situation was reported to the Committee by one of the trade unions (Confederación Intersindical Galega, pages 18-19, "Additional information on the right to education of children with special needs"). In its conclusion, the Committee merely reproduces the information provided by the trade union and says nothing else, whereas it would have been appropriate to take a position on their complaints. Since it did not do so, it should have given the reasons for this omission.

For these reasons I consider that, in the context of Article 17§2, it would have been more appropriate to come to a conclusion of non-conformity on the ground that Spain had failed to meet its obligations with regard to the right of children and young people to social, legal and economic protection, on the basis of a legal interpretation of the provision showing internal and external consistency and harmony.

The second reason for which I consider that our examination of Spain should lead to a conclusion of non-conformity with Article 17§2 is the situation with regard to school insurance. Under Article 1 of the Law of 17 July 1953 (which is still in force), the purpose of school insurance is to "take social action for the benefit of students affording them the broadest possible protection and assistance to offset fortuitous and unpredictable circumstances". The aim therefore is to enable students to "cope with a social need". The three contingencies protected are accidents at school, family misfortune (an unexpected situation which prevents the student from continuing studies they have begun, and which may be caused, for example, by the death of the person providing the family income or by bankruptcy) and sickness.

According to the National Institute of Statistics (data for 2019/2020, during the reference period), students in higher education spend on average €2 173 solely on education during an academic year, while expenditure for pupils at nursery level is €936, pupils in primary school €797 and, finally, pupils in secondary education €778. Average spending on items for educational purposes is €573.

If we compare these figures, which relate only to education costs, with the cover provided by school insurance, it is more than obvious that this cover is completely inadequate:

a. if the accident causes complete and permanent incapacity to continue with studies already begun, the victim is paid an allowance ranging from €150.25 to €601.01, set in proportion to the studies already completed and the reduction in the victim's subsequent capacity to engage in an occupational activity;

b. if the accident has caused death, family members receive €30.05 for related expenses. If the accident occurred somewhere other than the family home the payment may be increased to up to €120.20.

c. where the head of the family has died (the man or woman who contributes most through their earnings to family finances), the amounts paid are: €86.55 for students belonging to small families; €103.85 for students belonging to large families in the standard category; and €129.82 for students belonging to large families in the special category.

It is the responsibility of the education authorities to take preventive or compensatory measures to afford the most favourable schooling arrangements and access to the right to education to all children and young people whose personal and social situation impedes their access to the various stages of education. These pupils and students are entitled to study grants and support.

This situation was also reported to the Committee by one of the trade unions (Confederación Intersindical Galega, page 19, "Additional information about school insurance"). In its conclusion, the Committee did not take this account whereas it would have been appropriate to take a position on its complaints. Since it did not do so, it should have given the reasons for this omission.

The detailed information given above confirms that the provision is not respected as children and young people are not afforded adequate social, legal and economic protection in the education field. Consequently, on this point, I believe, albeit with much respect for the arguments of my fellow Committee members, that a conclusion of non-conformity should have been adopted, as Spain has failed to establish a legal framework which guarantees children's and young people's right to education.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

The Committee notes the information contained in the report submitted by Spain and in the comments by the *Confederación sindical de Comisiones Obreras (CCOO)*, the *Unión general de trabajadoras y trabajadores de España (UGT)* and the *Confederación Intersindical Galega (CIG)*, as well as the reply to those comments submitted by Spain.

The Committee points out that no targeted question was asked in respect of Article 19§1 of the Charter. For this reason, only States whose previous conclusion was one of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee considered that the situation in Spain was in conformity with Article 19§1 of the 1961 Charter, pending receipt of the information requested.

The Committee's assessment will therefore focus on the information provided in the report in response to the questions raised in its previous conclusion.

Free services and information for migrant workers

In its previous conclusion, the Committee reiterated its request for information on the integration of migrant workers, in particular with regard to the information provided to migrants before and after their arrival in order to help them integrate into Spanish society (Conclusions XXI-4 (2019)).

The report does not provide information on this point. The Committee notes from the Migrant Integration Policy Index (MIPEX) 2020 that one of the positive developments on the MIPEX indicators has been the involvement of migrants in information provision, service design and delivery.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§1 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 2 - Departure, journey and reception

The Committee notes the information contained in the report submitted by Spain and in the comments by the *Confederación sindical de Comisiones Obreras (CCOO)*, the *Unión general de trabajadoras y trabajadores de España (UGT)* and the *Confederación Intersindical Galega (CIG)*, as well as the reply to those comments submitted by Spain.

The Committee points out that no targeted question has been asked in respect of Article 19§2 of the Charter. For this reason, only those States for which the previous conclusion was one of non-compliance, deferral or compliance pending information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee deferred its conclusion pending receipt of the information requested.

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of deferral.

Immediate assistance for migrant workers

In its previous conclusion, the Committee requested information on the application of Royal Decree 702/2013 on access by migrant workers and their families to the accreditation cards needed to benefit from the services of the national health system, particularly on arrival (Conclusions XXI-4 (2019)).

The report states that the regulatory change made by Royal Decree-Law 7/2018 of 27 July 2018 on universal access to the national health system, aims to guarantee this access in a general way, including to groups in vulnerable situations, particularly the foreign population not registered or authorised to reside in Spain. This text removes all conditions of access to insurance financed by the public funds of the social security system and makes it subject solely to residence in Spain. The fundamental element for recognising access to healthcare is habitual residence on Spanish territory. The report specifies that the following people are entitled to health cover: all Spanish nationals, on the one hand, and all foreigners who have established their residence in Spain, regardless of the legality of their situation, on the other hand.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§2 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration states

The Committee notes the information contained in the report submitted by Spain and in the comments by the *Confederación sindical de Comisiones Obreras (CCOO)*, the *Unión general de trabajadoras y trabajadores de España (UGT)* and the *Confederación Intersindical Galega (CIG)*, as well as the reply to those comments submitted by Spain.

The Committee points out that no targeted question has been asked in respect of Article 19§3 of the Charter. For this reason, only those States for which the previous conclusion was one of non-compliance, deferral or compliance pending information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee deferred its conclusion pending receipt of the information requested.

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of deferral.

In its previous conclusion, the Committee considered that the legal framework in force in Spain meets the requirements of Article 19§3 of the Charter (Conclusions XXI-4 (2019)). However, it requested that the next report provide examples of collaboration between the Autonomous Communities and the main countries of emigration and immigration and indicate, in particular, which services are involved and the form and nature of contacts and exchanges of information (Conclusions XXI-4 (2019)).

The report points out that in Spain, external action is a competence that the Constitution assigns to the central government. As a result, the administrative action of the autonomous communities is limited to providing assistance to Spanish nationals living abroad or to centres and associations set up by them. The various representations that the Autonomous Communities have abroad are mainly active in the field of business and trade promotion.

In its previous conclusion, the Committee reiterated its request for information on whether assistance is offered to Spaniards working abroad in the event of any professional, family or social security problems (Conclusions XXI-4 (2019)).

The report states that the functions of support and assistance for Spanish nationals living abroad and those returning to Spain are the responsibility of the Directorate General for Migration, which is part of the Secretariat of State for Migration. They consist of a series of cash and social assistance benefits, the most significant of which are the benefit for reasons of necessity, social assistance pensions for returnees and the benefit for "children of war" (*Niños de la Guerra*). The report provides detailed information on these benefits, including statistical data. For example, the countries with which healthcare agreements have been signed in favour of Spanish residents in need are: Argentina, Brazil, Uruguay, Paraguay, Peru, Chile, Bolivia, Colombia, Venezuela, Ecuador, the Dominican Republic, Mexico, Morocco, Ukraine and Russia. The report also points out that some autonomous communities, particularly those with large migratory flows abroad, have their own aid programmes.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§3 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

The Committee notes the information contained in the report submitted by Spain and in the comments by the *Confederación sindical de Comisiones Obreras (CCOO)*, the *Unión general de trabajadoras y trabajadores de España (UGT)* and the *Confederación Intersindical Galega (CIG)*, as well as the reply to those comments submitted by Spain.

The Committee points out that no targeted question has been asked in relation to Article 19§4 of the Charter. For this reason, only those States for which the previous conclusion was one of non-compliance, deferral or compliance pending information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee considered that the situation in Spain did not comply with Article 19§4 of the 1961 Charter on the grounds that it had not been established that the absence of de jure and de facto discrimination was guaranteed as regards the enjoyment by foreign workers of the advantages offered by collective agreements.

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of non-conformity and to the questions raised in its previous conclusion.

Remuneration and other employment and working conditions

In its previous conclusion, the Committee requested information on the initiatives and practical measures put in place to give effect to the legislative framework - awareness-raising, monitoring and measures taken to address the disproportionate impact of economic hardship on migrants (Conclusions XXI-4 (2019)).

The report states that each year the State Secretariat for Migration promotes and encourages actions and projects aimed at improving the socio-professional integration of migrants, as well as information, training and awareness-raising actions to prevent discrimination, racism, xenophobia and intolerance and to promote a commitment to cultural diversity in companies as a profitable and socially desirable strategy.

Membership of trade unions and enjoyment of the benefits of collective bargaining

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee considered that the situation in Spain did not comply with Article 19§4 of the 1961 Charter on the grounds that it had not been established that the absence of de jure and de facto discrimination was guaranteed as regards the enjoyment by foreign workers of the advantages offered by collective agreements.

The report states that, with regard to trade union membership for foreign workers, the applicable legal regime (Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration - the "LOEX") guarantees them trade union freedom, even if they are not legally resident in Spain and do not have a residence permit. Article 11 (freedom of association and right to strike) of LOEX stipulates that foreign nationals have the right to freely join a trade union or professional organisation, under the same conditions as Spanish workers. Paragraph 2 of the same article states that foreigners may exercise the right to strike under the same conditions as Spanish nationals.

The Committee takes note of the comments submitted by *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadoras y trabajadores de España (UGT)* according to which the collective agreements signed by their organisations do not contain any discrimination as regards the enjoyment on the part of foreign workers of the

advantages provided by such agreements, and, where applicable, the above mentioned trade union confederations take action to revoke anything to the contrary, if subscribed by other trade unions.

In its previous conclusion, the Committee also requested information on the legal status of workers posted from abroad. It stressed that, should the information requested not be included in the next report, there would be no way of establishing that the situation complied with the 1961 Charter on this point (Conclusions XXI-4 (2019)).

The report states that Law 45/1999 of 29 November 1999 on the posting of workers in the framework of the transnational provision of services guarantees these workers, irrespective of the legislation applicable to the work contract, the terms and conditions of employment set out under Spanish labour legislation. The Committee notes that for these purposes, the terms and conditions of employment set out under Spanish labour legislation shall be those contained in the legal or regulatory provisions of the State and those set out in the collective agreements and arbitration awards applicable in the place in question or in the sector or branch of activity concerned. This is without prejudice to the application to posted workers of more favourable terms and conditions of employment resulting from the provisions set out in the legislation applicable to their work contract, in collective agreements or in individual work contracts (www.mites.gob.es). The report specifies that among the working conditions that must be guaranteed to posted workers in Spain are the freedom to join a trade union, freedom of assembly and the right to strike.

Monitoring and judicial review

In its previous conclusion, the Committee noted in the MIPEX 2015 data that the equality body in Spain, created in 2009, has few powers at its disposal to inform and support potential victims, which undermines the effectiveness of anti-discrimination laws and jeopardises the authorities' broad commitments to equality (Conclusions XXI-4 (2019)). It requested that the next report provide a full update on the functioning and competences of this body, as well as on any remedies or possibilities of control available in relation to the aspects covered by this provision of the Charter (Conclusions XXI-4 (2019)).

The report states that the Labour and Social Security Inspectorate (ITSS) monitors the employment and working conditions applied to migrant workers, and ensures that their conditions comply with the law and respect equality of treatment and non-discrimination in relation to other workers. In addition to the actions taken following a complaint, the ITSS plans a specific campaign in this respect each year. The report provides data recorded as part of this campaign during the 2018-2021 period. ITSS monitoring activity also includes actions relating to the application of the working conditions provided for in collective agreements to migrant workers on an equal footing with other workers.

The report provides detailed information on the *Council for the Elimination of Racial or Ethnic Discrimination*, which is an independent body made up of various public administrations of the State, autonomous communities and local authorities, representative employers' organisations and trade unions, as well as non-profit organisations working in the field of promoting equal treatment and non-discrimination of people on the grounds of their racial or ethnic origin. The Council's mission is to promote the principle of equal treatment and non-discrimination of persons on grounds of racial or ethnic origin in areas such as education, health, access to benefits, social services, housing, employment, training and, in general, any goods or services.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§4 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 5 - Equality regarding taxes and contributions

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

The Committee recalls that no targeted questions were asked for Article 19§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

As the previous conclusion found the situation in Spain to be in conformity with the Charter (Conclusions XXI-4 (2019)), there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§5 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 6 - Family reunion

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

The Committee points out that no targeted questions were asked in relation to Article 19§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee concluded that the situation in Spain was not in conformity with Article 19§6 on the grounds that:

- social benefits are excluded from the calculation of the income of a migrant worker for the purposes of family reunion;
- it has not been established that the requirements for suitable accommodation to house family members or restrictions relating to language or healthcare are not so restrictive as to prevent any family reunion.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity and to other questions raised by the Committee in the previous conclusion.

Conditions governing family reunion

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee took note from the previous report that income from the social assistance system is not included in the calculation of the level of means required for this purpose. Accordingly, the Committee reiterated its finding of non-conformity on this point.

In reply, the report states that a distinction should be established between the recognition of the right to family reunification for the first time and the subsequent maintenance of this right. According to the report, it would not seem logical that the right to family reunification be granted to a person needing social assistance to provide for the needs of the members of his or her reunited family, and it would also not seem logical that, once this right is acquired, this cannot be retained when the financial means available to the sponsor come, in whole or in part, from social benefits.

According to the report, therefore, under The Law on Foreigners (“LOEX”), in the process of recognition of the right to family reunification for the first time, income from the social assistance system is not taken into account in the calculation of required minimum income for family reunification. The report states that contributory unemployment benefit is taken into account since it is not considered social assistance. However, according to the report, under the provisions of LOEX with regard to renewal of residence permits for family reunification, income from the social assistance system is taken into account.

In their third-party submissions concerning the national report submitted by Spain, the Confederación Intersindical Galega (CIG) states that the report reiterates the arguments expressed by the Government in previous reports, in order to justify that social assistance benefits are excluded from the calculation of the worker's income for the purposes of recognizing the right to family reunification for the first time. According to CIG, it is therefore accepted that the regulations have not changed during the reference period (Royal Decree 557/2011, of April 20, is still in force) nor is there any forecast that it will change, despite the repeated conclusions of non-conformity.

In their third-party submissions concerning the national report submitted by Spain, the *Confederación sindical de Comisiones Obreras (CCOO)* and the *Unión general de*

trabajadoras y trabajadores de España (UGT) state that they agree with the previous non-conformity conclusion of the Committee and that the arguments put forth by the Government in their report cannot change this conclusion.

The Committee recalls that its Statement of Interpretation on Article 19§6 (Conclusions 2011) which states that social benefits should not be excluded from the calculation of the necessary financial means, does not distinguish between first time request for family reunification on one hand and the renewal of residence permit for family reunification on the other. The Committee understands on the basis of the report that social benefits are excluded from the calculation of the necessary financial means (for first time applications) and the situation has not changed during the reference period. The Committee therefore reiterates its conclusion of non-conformity on this point.

With regard to suitable accommodation requirement, in the previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that during the previous reference period, between 2,210 and 2,889 applications for family reunification were refused yearly due to insufficient accommodation means. In the absence of any other information as to how the relevant criteria are set, the Committee concluded that it had not been effectively demonstrated that the requirements for sufficient or suitable accommodation to house family members are not so restrictive as to prevent any family reunion.

In reply, the report indicates according to the provisions of LOEX, a foreigner who requests a residence permit for the reunification of their family members must attach, at the time of submitting the application, a report issued by the competent bodies of the autonomous community concerning the place of residence of the sponsor, in order to prove that they have adequate housing to meet their needs and those of their family. The authorities must issue the report and inform the interested party within a maximum period of thirty days from the date of the request. At the same time, it transmits the report electronically to the competent Aliens Office. To this end, the municipality where the foreign sponsor's usual domicile is located may be consulted in order to obtain any information that the municipality may have on the suitability of the accommodation. The report must state, at a minimum, the following points: title of occupancy of the accommodation, number of bedrooms, use to which the different rooms are assigned, number of people living in this accommodation, habitability conditions and equipment present.

In their third-party submissions concerning the national report submitted by Spain, the Confederación Intersindical Galega (CIG) states that under the domestic legal provisions referred to in the report, adequate housing is an essential requirement for family reunification, and this requirement falls on the migrant him/herself and not on the State, which is in fact responsible of the realisation of the right to family reunification, as the State must eliminate any legal obstacle preventing the members of a migrant worker's family from joining them (Conclusions II (1971), Cyprus).

In their third-party submissions concerning the national report submitted by Spain, the *Confederación sindical de Comisiones Obreras (CCOO)* and the *Unión general de trabajadoras y trabajadores de España (UGT)* state that they agree with the previous non-conformity conclusion of the Committee concerning suitable accommodation.

The Committee refers to its Statement of Interpretation on Article 19§6 (Conclusions 2015 – housing requirements) which states that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. On the basis of the information provided in the report, the Committee finds that the situation is in conformity with Article 19§6 on this point.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee found that the previous report did not provide the requested information on restrictions relating to language and healthcare. In view of the repeated absence of information, it concluded that it had not been established that the situation was in conformity with the Charter on these points.

As to the restrictions concerning healthcare, the report refers to the provisions of the Regulation on the visa application (Article 57.2) which provides that the visa application must be accompanied with a medical certificate establishing that the applicant is not suffering from any illness likely to have serious repercussions on public health in accordance with the provisions of International Health Regulation.

The Committee recalls that under Article 19§6, a refusal on health grounds is only justified in the case of specific illnesses, which are so serious as to endanger public health (Conclusions XVI-1(2002) Greece). These are the diseases requiring quarantine, which are listed in the WHO International Health Regulation or other serious contagious or infectious diseases. The Committee understands from the information provided in the report that the reference made by Article 57.2 of the Regulation on the visa application to the International Health Regulation results in that the refusal on health grounds is possible only if the disease in question is listed among the infectious diseases in the WHO International Health Regulation. The Committee therefore concludes that the situation is in conformity with the Charter in this respect.

As to the restrictions concerning language, the report provides, in response to the previous conclusion of non-conformity, that according to the provisions of LOEX, the public authorities promote the full integration of foreigners into Spanish society, within a framework of coexistence of diverse identities and cultures without any limits other than respect for the Constitution and the law. Public administrations incorporate the objective of integration between migrants and the host society, into all public policies and services, promoting the economic, social, cultural and political participation of migrants. The authorities ensure in particular, through training actions, knowledge and respect for the constitutional and statutory values of Spain, the values of the European Union as well as human rights, public freedoms, democracy, tolerance and equality between women and men, and put in place specific measures to promote access to the education system, guaranteeing, in all cases, schooling at the compulsory age, learning official languages and access to employment as essential factors of integration.

Committee takes note of the information provided. It also takes note from the webpage of the Ministry of Foreign Affairs, that language proficiency is not listed among the requirements of family reunification in Spain. The Committee concludes that the situation is in conformity with Article 19§6 of the Charter.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee recalled that migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory (Conclusions XVI-1 (2002), Netherlands, Article 19§8). It asked whether it is possible to remove family members when the migrant worker has personally lost his right to stay, and if so, under what conditions. No information is provided in the report in this respect. The Committee therefore concludes that the situation is not in conformity with the Charter due to the failure to provide this information. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the Charter on the grounds that social benefits are excluded from the calculation of the necessary financial means (for first time applications).

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter. List of questions/Information missing:

- whether it is possible to remove family members when the migrant worker has personally lost his right to stay, and if so, under what conditions.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 7 - Equality regarding legal proceedings

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

The Committee points out that no targeted questions were asked in relation to Article 19§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee found the situation in the Spain to be in conformity with Article 19§7 of the Charter without raising any specific question.

Since no targeted questions were asked under Article 19§7, and the previous conclusion found the situation in Spain to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2023.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§7 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 8 - Guarantees concerning deportation

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

The Committee points out that no targeted questions were asked in relation to Article 19§8 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee, pending receipt of the information requested, concluded that the situation in Spain was in conformity with Article 19§8 of the Charter. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to its previous questions.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee took note that expulsion is applicable if the residence permit has expired for more than three months. However, before such decision is taken, it is mandatory to take into account the individual circumstances of the person, such as residence time in Spain and the links created, age, the consequences for the individual and for family members and the links with the country to which the person would be expelled. The Committee also noted that it is not allowed to expel persons who were of Spanish origin and who have lost Spanish nationality, persons who are beneficiaries of a permanent incapacity for work resulting from an accident at work or an illness that occurred in Spain, beneficiaries of contributory unemployment benefits or beneficiaries of social security intended to achieve their integration or their social or professional reintegration, foreign spouse who is in one of the situations mentioned above and who has resided legally in Spain for more than two years, or his ancestors and their minor children, disabled elderly who are not objectively able to meet their own needs because of their state of health, pregnant women when this could pose a risk to pregnancy or maternal health.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee asked the next report to provide statistics on deportations of migrant workers, as well as on grounds on which the relevant deportations were based. It also requested information on the frequency of appeals against expulsion orders, as well as the proportion which are successful. Finally, it asked whether persons who may not be expelled are granted leave to remain.

The report does not provide any answer to the above-mentioned questions of the Committee. The Committee therefore concludes that the situation is not in conformity with the Charter due to the failure to provide the requested information on statistics on deportations of migrant workers, as well as on grounds on which the relevant deportations were based; the frequency of appeals against expulsion orders, as well as the proportion which are successful; whether persons who may not be expelled are granted leave to remain. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§8 of the Charter due to the failure to provide the information listed below. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter. List of questions/Information missing:

- statistics on deportations of migrant workers, as well as on grounds on which the relevant deportations were based;
- information on the frequency of appeals against expulsion orders, as well as the proportion which are successful;
- whether persons who may not be expelled are granted leave to remain.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 9 - Transfer of earnings and savings

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

The Committee points out that no targeted questions were asked in relation to Article 19§9 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee deferred its conclusions pending receipt of the information requested. In the present conclusion, the assessment of the Committee will therefore concern the information provided in response to its previous questions.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee reiterated its previous question (which was not answered in the previous report) on whether there are any restrictions on the transfer of the movable property of migrant workers. The Committee also considered that if the next report does not provide comprehensive information in this respect, there would be nothing to show that the situation is in conformity with the Charter on this point.

In reply, the report states that all acts, business activities, transactions and operations between residents and non-residents which involve receiving money from abroad or paying it abroad are authorized, as well as transfers of money from or to abroad and debit and credit movements linked to abroad on accounts or financial statements, without other restrictions than those provided for in this law. According to the report, Spanish law, in the spirit of the Treaty establishing the European Community, enshrines the principle of freedom of movement of capital and defines from an objective point of view what must be understood as an economic transaction with foreign countries.

However, the report still does not provide an answer to the essential question raised by the Committee on whether there are any restrictions on the transfer of the movable property of migrant workers. The Committee concludes that the situation in Spain is not in conformity with Article 19§9 of the Charter due to the failure to provide the requested information. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§9 of the Charter due to the failure to provide the information listed below. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter. List of questions/Information missing:

- whether there are any restrictions on the transfer of the movable property of migrant workers.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants in respect of the rights guaranteed by Article 19.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Spain not to be in conformity with Articles 19§6, 19§8, 19§9, and 19§12 of the Charter. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in Spain is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§6, 19§8, 19§9, and 19§12 of the Charter apply also to self-employed migrants.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 11 - Teaching language of host state

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

The Committee points out that no targeted questions were asked in relation to Article 19§11 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

The Committee recalls that Spain ratified the Revised European Social Charter on 17 May 2021, accepting all of its 98 paragraphs. This means that in the present conclusion, the Committee will be assessing the situation in Spain with regard to Article 19§11 for the first time.

The report first describes the general legal framework of the right guaranteed under Article 19§11. Under Article 78 of the Education Law (2/2006), it is the responsibility of public administrations to promote the integration into the education system of students who, due to their foreign origin or for any other reason, join the Spanish education system late. In all cases, this integration is guaranteed for children of compulsory school age. Under the same provision, the educational authorities ensure that the achievements, age, educational background and context of students who join the Spanish education system late are taken into account, so that they can be educated at the level most suited to them. Moreover, according to Article 79 of the same law, it is the responsibility of educational authorities to take the necessary measures to ensure that parents or guardians of students who join the education system late are sufficiently informed of the rights, duties and opportunities that accompany integration into the Spanish education system.

The report also indicates that under the same law, as amended in December 2020, at the end of elementary education, each student must have full and equivalent knowledge of the Spanish language and, if applicable, the co-official language of the place of residence. Educational authorities implement the monitoring, evaluation and progression systems specific to the education system and encourage the carrying out of diagnostic assessments in educational establishments in order to ensure that each student acquires the required degree of competence in linguistic communication, in Spanish and, where applicable, in the co-official languages. They also encourage establishments to take the necessary measures to compensate for any deficiencies that students may present in any of the languages.

The report also provides information with regard to teaching addressed to adults and provides that under Article 67 of the Education Law, it is the responsibility of educational authorities to promote specific programs for learning the Spanish language and other co-official languages, where appropriate, as well as programs for teaching elementary cultural knowledge, in order to facilitate integration migrant people. According to the report, in addition to the language teaching provided throughout the school curriculum in educational establishments, there is also that offered in “official language schools”. These establishments are specially dedicated to language teaching and offer in particular in their training offering the teaching of Spanish as a foreign language and the co-official languages that exist in Spain. Their organization and admission conditions are governed by the education Law which provides that the lessons provided in official language schools aim to provide, outside of the ordinary school curriculum, the skills necessary for the adequate use of a language. To be admitted to an official language school, it is essential to be sixteen years old in the first year of classes. However, young people over the age of fourteen are authorized to take courses to learn a language other than that studied in compulsory secondary education. The Committee also notes from outside sources (Eurydice) that these schools are publicly funded.

The report provides a list of decrees adopted in application of the Law on Education in order to define the teaching programs throughout the school curriculum, taking into account the Recommendation of the Council of the European Union of 22 May 2018 relating to key skills for education and training throughout life and adapting it to the purpose and objectives of the Spanish education system. The report also underlines that official language schools, managed by educational authorities, are open to the entire population. Anyone can, as an individual, enrol in these schools to learn the languages of the Spanish state. Furthermore, educational authorities can organize specific courses to meet the concrete needs of certain groups of migrants. Courses were thus set up when the Ukrainian refugees arrived.

Finally, the report provides statistical information and relevant factual information which show that the authorities closely follow the course of education and the performance of migrant students in language classes, in particular through the Programme for International Student Assessment.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§11 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 12 - Teaching mother tongue of migrant

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

The Committee points out that no targeted questions were asked in relation to Article 19§12 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

The Committee recalls that Spain ratified the Revised European Social Charter on 17 May 2021, accepting all of its 98 paragraphs. This means that in the present conclusion, the Committee will be assessing the situation with regard to Article 19§12 in Spain for the first time.

The report first describes the general legal framework of the right guaranteed under Article 19§12. The report provides a list of decrees adopted in application of the Law on Education concerning multilanguage competence which implies the recognition and respect of individual linguistic profiles as well as maintaining and acquiring skills in the mother tongues of migrants. The report states that it is the responsibility of the administrations of the autonomous communities responsible for education to apply the aforementioned basic regulations.

The report provides also information concerning different measures taken by the authorities concerning the teaching of mother tongue to migrants and their families. According to the report, the Ministry of Education and Vocational Training, through the language programs service of the general sub-directorate of academic planning, ensures the coordination of two nationally applicable programs, developed with the aim of to promote the language and culture of migrant students. The Portuguese Language and Culture Program was launched in 1987-88 to promote the integration of migrant children from Portuguese-speaking countries (Portugal, Angola, Brazil, Cape Verde, etc.) and to promote among Spanish students respect and interest in their culture and language.

According to the report, the program evolved and became a program for teaching Portuguese as a foreign language; it is currently considered a program for the dissemination of Portuguese language and culture. It is implemented in Spanish schools and pursues a dual objective: to promote the integration of students from Portuguese-speaking countries and to offer students of other nationalities the opportunity to familiarize themselves with Portuguese culture and language.

The report further states that the Arabic language and Moroccan culture teaching program is part of the bilateral collaboration between the governments of Spain and Morocco. This is a linguistic and cultural program funded by the Government of Morocco and placed under the joint coordination of the Moroccan Embassy in Spain and the Spanish Ministry of Education and professional training. It is organized by the autonomous communities, through their education departments, and taught by Moroccan civil servant teachers. The Arabic language and Moroccan culture teaching program was launched during the 1994-1995 academic year. Its main objectives are to provide Moroccan students with training that allows them to preserve their identity and live their culture, and to provide lessons in Arabic and Moroccan culture.

The Committee notes that the report provides information under Article 19§12 with regard to teaching of mother tongue of migrants concerning only Arabic and Portuguese languages. No information has been provided, in particular, the teaching of Romanian (migrants of Romanian origin is the second largest migrant group in Spain, after Moroccans according to the Migration Policy Institute - migrationpolicy.org), Bulgarian and Chinese (whereas those two migrant groups constitute more than 5% of the total number of migrants in Spain according to the same

source). Therefore, the Committee concludes that the situation in Spain is not in conformity with Article 19§12 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§12 of the Charter on the ground that the teaching of the migrant worker's mother tongue to the children of the migrant worker is not adequately promoted and facilitated for all migrants.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

The Committee takes note of the information contained in the report submitted by Spain, observations submitted by “Confederación Sindical De Comisiones Obreras” (CCOO) and “Unión General De Trabajadoras Y Trabajadores De España” (UGT) and the Government’s response to these observations.

The Committee recalls that no targeted questions were asked in relation to Article 27§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral, or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

This is the first examination of the situation in Spain under Article 27§1. The Committee’s assessment will therefore concern the information provided by the Government in the report.

Employment, vocational guidance and training

According to the report, Spanish labour legislation allows workers with family responsibilities to be absent from their workplace in form of leave aimed at facilitating the reconciliation of professional and family life and it guarantees that they can return to their workplace at the end of such leave. The report provides information on different types of leave available for workers with family responsibilities under the Workers’ Statute (such as leave for the birth of a child (Article 48.4), paid leave for family events (Article 37.3b), unpaid leave (Article 46.3), absence to care for an infant (Article 37.4), etc.). It also provides information on Organic Law 3/2007 of 22 March 2007 on effective equality of women and men (LOIE) which aims to give effect to the principle of equal treatment and opportunities between women and men, to alleviate discrimination based on sex, direct or indirect, including discrimination arising from maternity, family responsibilities and civil status.

According to the report, the period during which the worker is on leave in accordance with the Workers’ Statute (Article 46.3 on Leave without pay) is taken into account for the calculation of seniority and the worker has the right to participate in professional training courses, in which the employer must invite him/her to participate, especially when returning to work. During the first year of his/her leave, a worker is entitled to maintain his/her job. At the end of this period, a worker may return to a job in the same professional group or equivalent category.

The Committee recalls that under Article 27§1a of the Charter, States Parties should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties in the labour market due to their family responsibilities (Conclusions 2005, Sweden). Therefore, measures need to be taken by States Parties to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training (Conclusions 2005, Estonia). Measures must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities (Conclusions 2003, Sweden).

The Committee notes that, apart from the situation described in Article 46.3 of the Workers' Statute, the report does not provide information on employment services that assist persons with family responsibilities to enter, remain and re-enter the labour market, nor information on whether vocational guidance, training and re-training is provided for workers with family responsibilities. Due to the failure to provide the requested information, the Committee concludes that the situation in Spain is not in conformity with Article 27§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conditions of employment, social security

The report provides information on the Reduction of working time provided by Article 37.6 of the Workers' Statute to care for a child under the age of twelve, a family member or a child suffering from cancer. The same right is ensured for any worker who must directly care for a relative up to the second degree who, due to age, accident or illness, cannot take care of himself, and does not engage in paid work. Any worker directly responsible for a child under the age of twelve or a person with a disability who is not engaged in paid activity is entitled to a reduction in daily working time, with a proportional reduction of the salary, from 12,5% (1/8) up to 50% (1/2). The right to a reduction in working hours may be extended for the care of children or dependants under 26 years of age, provided that their condition was diagnosed before the age of 23. It concerns disability above 65%, cancer or other serious illness.

The Committee recalls that periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights (Conclusions 2003, Sweden). However, the report does not provide information on whether the periods of unemployment due to family responsibilities are taken into account in the calculation of pension schemes or the determination of pension rights.

According to the MISSOC tables (published in 2023), Childcare leave (*Excedencia por cuidado de hijo*) is an unpaid leave governed by labour legislation. It may last up to three years for each child and is considered as a period of contribution. It is taken into account in order to complete the minimum contribution period required to qualify for retirement, permanent incapacity, maternity and paternity, and survivors' benefits (excluding unemployment and temporary incapacity benefits). For the purposes of retirement, permanent incapacity, maternity and paternity, and survivors' benefits, contributions made during the first two years of reduced working hours to take care of a child under 12 will be taken into account with an increase up to 100% of the amount of the contributions that would have been made if such working hours had not been reduced. On the other hand, parental leave (*permiso parental*) is an unpaid leave to take care of a child until the child is 8 years old. It may last up to 8 weeks for each child and is not considered as a period of contribution.

Since the parental leave is not taken into account in the calculation of pension schemes or the determination of pension rights, the Committee considers that the situation in Spain is not in conformity with Article 27§1 of the Charter.

Child day care services and other childcare arrangements

As regards child day care services and other childcare arrangements, the Committee refers to its conclusion under Article 16 of the Charter where it considered that due to the failure to provide the information on the match between demand and supply of childcare places, indicating the number of applications rejected for lack of places, the situation in Spain is not in conformity with Article 16 of the Charter. The Committee considered that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter. Therefore, the Committee concludes that, as regards child day care services and

other childcare arrangements, the situation in Spain is not in conformity with Article 27§1, either.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities to equal opportunities and treatment, in particular on the possibilities to work remotely and its consequences.

The report does not contain information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities in relation to remote work.

Conclusion

The Committee considers that the situation in Spain is not in conformity with Article 27§1 of the Charter on the grounds that the absence from work during parental leave is not taken into account for the calculation or determination of pension rights.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 27§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of its reporting obligations under Article C of the Charter.

List of questions/information missing:

- on employment services that assist persons with family responsibilities to enter, remain and re-enter the labour market,
- whether vocational guidance, training and re-training are provided for workers with family responsibilities
- the match between demand and supply of childcare places, indicating the number of applications rejected for lack of places.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

The Committee takes note of the information contained in the report submitted by Spain, observations submitted by “Confederación Sindical De Comisiones Obreras” (CCOO) and “Unión General De Trabajadoras Y Trabajadores De España” (UGT) and the Government’s response to these observations.

The Committee recalls that no targeted questions were asked in relation to Article 27§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral, or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

This is the first examination of the situation in Spain under Article 27§2. The Committee’s assessment will therefore concern the information provided by the Government in the report.

Entitlement to the parental leave

The Committee recalls that under the Charter, all categories of employees should be entitled to parental leave; States Parties need to provide the possibility for either parent to take parental leave, as an important element for the reconciliation of professional, private and family life; the national laws should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child; with a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent (Conclusions 2011, Armenia); the States Parties are under a positive obligation to encourage the use of parental leave by either parent (Conclusions 2015, Statement of Interpretation on Article 27§2).

The Committee notes that in response (dated 5 September 2023) to observations submitted by “Confederación Sindical De Comisiones Obreras” (CCOO) and “Unión General De Trabajadoras Y Trabajadores De España” (UGT) the Government states that it has transposed Directive (EU) 2019/1158 on the work-life balance of parents and caregivers, which improves reconciliation of family life and work, and includes guarantees for the exercise of parental leave right. The Committee notes that the mentioned Directive requires parental leave to be provided on similar conditions as those of the Charter. However, according to a press release of 16 November 2023 of the European Commission, the above Directive was still not fully transposed by Spain. Moreover, the report does not provide clear information on whether parental leave is an individual right provided on a non-transferable basis to each parent.

According to MISSOC tables, both childcare leave and parental leave are available to all employees to take care of a child (either biological or adopted). In terms of flexibility and transferability, both are individual and non-transferable rights of each parent which can be taken on a part time basis in one continuous period or partially over a period. Childcare leave (*Excedencia por cuidado de hijo*) may last up to three years for each child, while parental leave (*permiso parental*) may last up to 8 weeks for each child.

Definition, duration and conditions

The Committee notes the information provided in the report under Article 27§2, which mainly refers to leaves other than parental leave.

The Committee recalls that Article 27§2 provides for the right to parental leave which is distinct from maternity and paternity leave addressed under Article 8 of the Charter (Conclusions

2011, Azerbaijan) and that the parental leave is a period after the maternity leave. Therefore, the Committee asks for the reports to distinguish between these two rights and to provide distinctive information accordingly.

The report states that in the framework of the parental leave, there is a possibility of part-time work to care for an infant, granted until the infant's ninth month (Article 37.4 Workers' Statute), and reduction of working time until the child reaches 12 years of age (Article 37.6 of Workers' Statute). Moreover, parental leave is guaranteed by Spanish legislation through full-time unpaid leave (Article 46.3 of the Workers' Statute), under which a worker can benefit from unpaid leave for a maximum period of three years after the birth of the child or the date of the judicial or administrative decision of adoption or reception. In its response to observations submitted by "Confederación Sindical De Comisiones Obreras" (CCOO) and "Unión General De Trabajadoras Y Trabajadores De España" (UGT), the Government states that there is a new parental leave for the care of a child or a minor for a period of more than one year.

Remuneration

The Committee notes that the report does not provide information on remuneration related to parental leave. The information provided by the report concerns various childbirth, maternity and childcare allowances, benefits, and supplements and not the remuneration that would replace the income lost due to absence from work to take care of a child during parental leave. Moreover, according to the MISSOC tables (published in 2023), both parental leave and childcare leave are unpaid. The Committee also recalls the 16 November 2023 press release of the European Commission, according to which Directive (EU) 2019/1158, was not fully transposed by Spain. The Committee recalls that the mentioned Directive asks for parental leave to be adequately remunerated, similarly to the requirements of the Charter.

The Committee recalls that the remuneration of parental leave plays a vital role in the take up of childcare leave, in particular for fathers or lone parents (Conclusions 2011, Armenia); States must ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave; the modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations; regardless of the modalities of payment, the level must be adequate (Conclusions 2015, Statement of Interpretation on Article 27§2); unpaid parental leave is not in conformity with Article 27§2 (Conclusions 2019, Ireland, Malta).

The Committee considers that the situation in Spain is not in conformity with the Charter on the ground that parental leave is not remunerated.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities to parental leave.

The report does not contain information on whether Covid-19 crisis had an impact on the rights of workers with family responsibilities to parental leave.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 27§2 of the Charter on the ground that parental leave is not remunerated.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

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

The Committee recalls that no targeted questions were asked in relation to Article 27§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral, or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

This is the first examination of the situation in Spain under Article 27§3. The Committee's assessment will therefore concern the information provided by the Government in the report.

Protection against dismissal

According to the report, under Articles 53.4 and 55.5 of the Workers' Statute dismissal linked to family responsibilities such as leave for the birth of a child, reduction of working hours to care for an infant, reduction of working hours or unpaid leave to raise a child or care for a family member, is considered unlawful.

Effective remedies

As regards effective remedies, the Committee refers to its conclusion under Article 8§2 where it concluded that the situation in Spain is not in conformity with Article 8§2 of the Charter on the ground that where reinstatement is not possible there are ceilings on the amount of damages that may be awarded following dismissal during pregnancy or maternity leave. Therefore, the Committee concludes that, as regards effective remedies, the situation in Spain is not in conformity with Article 27§3, either.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on

- whether the Covid-19 crisis had an impact on the prohibition of dismissal on the ground of family responsibilities and whether there were any exceptions to the prohibition of dismissal on the ground of family responsibilities during the pandemic and
- whether a ceiling on compensation for unlawful dismissals was applied on the ground of family responsibilities during the Covid-19 crisis.

The report does not contain information on whether Covid-19 crisis had impact to the issues raised in Committee's questions. Nevertheless, it provided statistical data regarding the inspection carried out in relation to the right of workers to the reconciliation of family and professional life during the period 2018-2021 (Covid-19 pandemic).

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 27§3 of the Charter on the grounds that there are ceilings on the amount of damages that may be awarded to workers with family responsibilities following dismissal.

Article 31 - Right to housing

Paragraph 1 - Adequate housing

The Committee takes note of the information contained in the report submitted by Spain and in the comments by Confederación Intersindical Galega, Save the Children and Confederación Sindical de Comisiones Obreras (CCOO) and Unión General de Trabajadoras y Trabajadores de España (UGT) and the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 31§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

The Committee notes that Spain ratified the Revised European Social Charter on 17 May 2021 and accepted Article 31§1, which does not exist in the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Spain's situation is in conformity with Article 31§1 of the Charter. The Committee further recalls that all aspects of housing of families covered by Article 16 are also covered by Article 31 (Conclusions 2019, Finland). Therefore, for states that have accepted both articles, the Committee will examine all matters relating to the housing of families under Article 31 of the Charter, while taking due account of previous conclusions of non-conformity, deferrals, or conformity pending receipt of information under Article 16 of the Charter.

Criteria for adequate housing

In a targeted question, the Committee asked for updated information on the adequacy of housing (e.g. number of substandard dwellings, overcrowding, water, heating, sanitary facilities, electricity), on the percentage of the population living in inadequate housing, including overcrowded housing, and on the practical measures taken to improve the situation. The report provides detailed information about draft legislation on housing pending parliamentary approval, but not about legislation that was in force during the reference period.

Due to the failure to provide requested information on criteria for adequate housing, the Committee concludes that the situation in Spain is not in conformity with Article 31§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Responsibility for adequate housing

Due to the failure to provide requested information on the responsibility for adequate housing, the Committee concludes that the situation in Spain is not in conformity with Article 31§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Legal protection

Due to the failure to provide requested information on the legal protection of the right to adequate housing, the Committee concludes that the situation in Spain is not in conformity with Article 31§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Measures in favour of vulnerable groups

In a targeted question, the Committee asked for information on the measures taken to ensure adequate housing for vulnerable groups, including refugees, asylum seekers, Roma and Travellers, in particular during the Covid-19 crisis.

The report provides information about the creation of a working group under the coordination of the Council for Elimination of Racial and Ethnic Discrimination, and with the participation of a representative from the Ministry of Transport, Mobility and Urban Agenda, for the purposes of developing proposals for addressing the problem of discrimination with regard to access to housing.

Due to the failure to provide requested information on the measures taken to ensure adequate housing for Roma and Travellers, the Committee concludes that the situation in Spain is not in conformity with Article 31§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

In its previous conclusion under Article 16 of the Charter, the Committee requested general information on the housing situation of refugee families, in particular after the initial reception period and on the accommodation conditions for asylum seekers in temporary holding centres for immigrants in Ceuta and Melilla (Conclusions XXI-4 (2019)).

In reply, the report states that Royal Decree 220/2022 on the reception system for international protection was adopted on 29 March 2022 (outside the reference period). It establishes individualised integration pathways, which include several stages aimed at promoting the empowerment of those concerned and their social and occupational integration into the host society.

Regarding accommodation conditions in temporary holding centres for immigrants (CETI) in Ceuta and Melilla, the report explains that the centres are designed to serve as temporary facilities for the initial reception of migrants. They aim to provide access to basic social services and to respond to the primary needs of migrants and asylum seekers through assistance with housing, clothing, food, cleanliness, hygiene, and security, etc., as well as access to specialised services (psychological support, training activities, legal assistance and healthcare, etc.). The services may be accessed during the identification and medical examination phase, before any decisions are taken on the most appropriate solution for their administrative situation in Spain.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not conformity with Article 31§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on the criteria for adequate housing;
- on the responsibility for adequate housing;
- on legal protection of the right to adequate housing;
- on the measures taken to ensure adequate housing for Roma and Travellers.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

The Committee takes note of the information contained in the report submitted by Spain and in the comments by Confederación Intersindical Galega, Save the Children and Confederación Sindical de Comisiones Obreras (CCOO) and Unión General de Trabajadoras y Trabajadores de España (UGT) and the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 31§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

The Committee notes that Spain ratified the Revised European Social Charter on 17 May 2021 and accepted Article 31§2, which does not exist in the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Spain's situation is in conformity with Article 31§2 of the Charter. The Committee further recalls that all aspects of housing of families covered by Article 16 are also covered by Article 31 (Conclusions 2019, Finland). Therefore, for states that have accepted both articles, the Committee will examine all matters relating to the housing of families under Article 31 of the Charter, while taking due account of previous conclusions of non-conformity, deferrals, or conformity pending receipt of information under Article 16 of the Charter.

Preventing homelessness

In a targeted question, the Committee asked for information on the measures taken to prevent categories of vulnerable people from becoming homeless and to reduce the number of persons in a situation of homelessness, in particular during the Covid-19 crisis. The Committee also asked for information on the overall number/rate of homeless persons.

Due to the failure to provide requested information on preventing homelessness, the Committee concludes that the situation in Spain is not in conformity with Article 31§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Forced eviction

In a targeted question, the Committee asked if the State Party declared a moratorium/prohibition on evictions during the pandemic, about its legal basis, its scope, or, alternatively, if any other measures were taken to limit the risk of evictions, including by supporting households who were unable to pay their bills. The Committee also asked for information on the number of evictions carried out (tenant evictions, evictions from illegal camps or shanty towns, including those affecting camps where Roma or Travellers were installed).

The report notes that, under legislation adopted in March 2022, a 2% ceiling was introduced as regards annual rent increases, in force until 31 December 2022

In its previous conclusion under Article 16 of the Charter, the Committee pointed out that to comply with the Charter, legal protection for persons threatened by eviction must be prescribed by law and include a prohibition on carrying out evictions at night or during winter and asked whether this prohibition existed in law or in practice (Conclusions XXI-4 (2019)). It also asked for updated figures on the number of evictions actually carried out, and examples

drawn from domestic case law on whether the judicial review in this area included an examination of the proportionality of the eviction. It pointed out that if the requested information were not provided in the next report, there would be nothing to show that the situation in Spain was in conformity with the 1961 Charter in this respect.

In reply, the report states that Royal Decree No. 106/2018 on the National Housing Plan 2018–2021 provides for a specific assistance programme for persons in situations of forced eviction (owing to mortgage foreclosure or failure to pay rent). The programme is also available to people who, in the event of forced eviction through repossession of property, cannot or will not be able to occupy the home that was their main residence and who do not have the financial resources to purchase a new home.

In addition, the report states that a raft of measures to protect against unlawful eviction, known as the social shield (including alternatives to eviction, reasonable notice, legal remedies, access to legal aid and compensation in the event of unlawful eviction) was extended until 31 December 2022.

According to the report, 20,206 evictions were carried out in 2021.

In its comments, the Confederación Intersindical Galega (CIG) states that the Government once again decided to extend the validity of the measure suspending evictions (in Royal Decree-Law 20/2022 of 27 December 2022, outside the reference period) until 30 June 2023. However, suspension is subject to certain conditions: being unemployed, having lost almost half (40%) of one's income and not exceeding the family income threshold of approximately €1 613 per month.

The Committee takes note of the examples of domestic case law on the question of whether judicial review in this area includes an examination of the proportionality of the eviction. In this regard, it notes that the law provides for the refusal of an eviction order if the authorities have not taken measures to protect persons in vulnerable situations.

Due to the failure to provide requested information on the prohibition of evictions at night or in winter, the Committee concludes that the situation in Spain is not in conformity with Article 31§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Right to shelter

In a targeted question, the Committee asked for information on the availability and adequacy of emergency accommodation offered during the Covid-19 crisis. The Committee also asked for information on the right to shelter of unaccompanied foreign minors, including those irregularly present, in law and practice. The report does not provide any information in this respect.

Due to the failure to provide requested information on the right to shelter, the Committee concludes that the situation in Spain is not in conformity with Article 31§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 31§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on preventing homelessness;
- on the prohibition of evictions at night or in winter;
- on the right to shelter.

Article 31 - Right to housing

Paragraph 3 - Affordable housing

The Committee takes note of the information contained in the report submitted by Spain and in the comments by Confederación Intersindical Galega, Save the Children and Confederación Sindical de Comisiones Obreras (CCOO) and Unión General de Trabajadoras y Trabajadores de España (UGT) and the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 31§3 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Children, families and migrants").

The Committee notes that Spain ratified the Revised European Social Charter on 17 May 2021 and accepted Article 31§3, which does not exist in the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Spain's situation is in conformity with Article 31§3 of the Charter. The Committee further recalls that all aspects of housing of families covered by Article 16 are also covered by Article 31 (Conclusions 2019, Finland). Therefore, for states that have accepted both articles, the Committee will examine all matters relating to the housing of families under Article 31 of the Charter, while taking due account of previous conclusions of non-conformity, deferrals, or conformity pending receipt of information under Article 16 of the Charter.

Social housing

In a targeted question, the Committee asked for information on the measures taken to ensure an adequate supply of affordable housing, including with respect to the number of applications for social housing, the average waiting time for the attribution of social housing, the remedies available, and addressing the specific situation of Roma and Travellers. The Committee also asked for information as to whether and to what extent the Covid-19 crisis had an impact on adequate supply of affordable housing for persons with limited resources.

In its previous conclusion under Article 16 of the Charter, the Committee asked the Government to indicate the total number of social housing units in Spain as a whole, the percentage of applications approved and the average waiting time for the allocation of social housing (Conclusions XXI-4 (2019)). It also requested information on the availability of housing benefits for the most vulnerable families, in particular large families and single-parent families. Pending receipt of the information requested, the Committee reserved its position on this point. In reply, the report states that there are approximately 295,000 buildings in the social rental housing stock (public housing), representing 1.6% of Spanish households (18,625,700).

The Committee takes note of the data on the implementation of the Rental Stock Promotion Programme under the National Housing Plan 2018–2021. According to the report, Ministerial Decree TMA/336/2020 of 9 April 2020 extended the scope of the programme, making it possible to use Government subsidies to finance the purchase of social housing.

Due to the failure to provide requested information on the percentage of social housing applications met, and the average waiting time for housing, the Committee concludes that the situation in Spain is not in conformity with Article 31§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Housing benefits

In a targeted question, the Committee asked for information on housing benefits, whether in the framework of the housing benefit system, or in the framework of social assistance. The report does not provide any information in this respect.

Due to the failure to provide requested information on housing benefits, the Committee concludes that the situation in Spain is not in conformity with Article 31§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Spain is not in conformity with Article 31§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Spain of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on the percentage of social housing applications met, and the average waiting time for housing;
- on housing benefits.