March 2021

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-1 (2020)

SPAIN

This text may be subject to editorial revision.

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

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Spain, which ratified the 1961 European Social Charter on 6 May 1980. The deadline for submitting the 32nd report was 31 December 2019 and Spain submitted it on 19 December 2019.

The Committee recalls that Spain was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions XXI-1 (2016)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-1 (2016)) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 32nd report by the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT) were registered on 7 July 2020.

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 concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15);
- the right to engage in a gainful occupation in the territory of other Contracting Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 1 of the Additional Protocol).

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

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Spain concern 10 situations and are as follows:
– 4 conclusions of conformity: Articles 1§3, 10§1, 18§1 and Article 1 of the Additional Protocol.
– 3 conclusions of non-conformity: Articles 1§1, 1§4 and 10§3.

In respect of the other 3 situations related to Articles 1§2, 15§1 and 15§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Spain under the 1961 Charter.

The next report from Spain will deal with the following provisions of the thematic group II "Health, social security and social protection":

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

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

The Committee recalls that in 2016, it concluded that the situation in Spain was not in conformity with Article 1§1 of the 1961 Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation (Conclusions XXI-1 (2016)).

Employment situation

According to Eurostat, the GDP growth rate decreased from 3.8% in 2015 to 2.4% in 2018, but remained higher than the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 57.8% in 2015 to 62.4% in 2018, a rate which is below the EU 28 average (68.6% in 2018).

The employment rate for men increased from 62.9% in 2015 to 67.9% in 2018, which is below the EU 28 average (73.8% in 2018). The employment rate for women increased from 52.7% in 2015 to 56.9% in 2018, which is below the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 46.9% in 2015 to 52.2% in 2018, which is below the EU 28 average (58.7% in 2018). The youth employment rate (15 to 24-year-olds) increased from 17.9% in 2015 to 21.7% in 2018, which is well below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell sharply, from 22.2% in 2015 to 15.4% in 2018, but remained well above the EU 28 average (7% in 2018). The same was true of the unemployment rates for most of the categories below.

The unemployment rate for men fell from 20.9% in 2015 to 13.8% in 2018 (EU 28 average in 2018: 6.7%). The unemployment rate for women fell from 23.7% in 2015 to 17.1% in 2018 (EU 28 average in 2018: 7.2%). Youth unemployment (15 to 24-year-olds) decreased from 48.3% in 2015 to 34.3% in 2018 (EU 28 average in 2018: 15.2%). Long-term unemployment (12 months or more as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 51.6% in 2015 to 41.7% in 2018, a rate which is below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 15.6% in 2015 to 12.4% in 2018 (as a percentage of the 15 to 24-year-old age group), a rate which is higher than the EU 28 average (10.5% in 2018).

The Committee notes that the economic situation has improved as compared with the previous reference period (2011-2014), and that this positive trend went hand in hand with favourable developments in the labour market (an increase in the employment rates and a sharp drop in unemployment). However, employment rates were still lower than the EU 28 averages, particularly for young people, and unemployment rates remained high.

Employment policy

The Committee takes note of the detailed information in the report on the legislative basis for the employment measures implemented or introduced during the reference period in continuation of the labour market reform initiated in 2012, in particular Royal Decree No. 1/2015 on the creation of a “second chance” scheme reducing employers’ financial charges and social security contributions when hiring workers on permanent contracts, Act No. 31/2015 regulating and promoting self-employment and the social economy (this act amended and updated several existing employment policy measures) and Royal Decree No. 28/2018 amending various social security regulations with a view to favouring employment.

The report refers to the Strategy for entrepreneurship and employment of young people 2013-2016, which comprises more than 100 measures aimed at stimulating the employment of young workers. All these measures remained in force until the end of 2018, when, according to the Government, the objective of reducing overall unemployment below the threshold of 15% had been achieved. Within the framework of this strategy, the Government in 2014 (Act No. 18/2014) put in place a National Youth Guarantee System. The Youth Guarantee legislation was amended in 2016 (Royal Decree No. 6/2016) to strengthen its implementation and impact.

The report also provides information on measures taken to specifically promote self-employment by young people, including in addition to Act No. 31/2015 and Royal Decree No. 28/2018 mentioned above, Act No. 6/2017 on urgent measures to reform self-employment. Moreover, in December 2018, the Council of Ministers adopted a Plan of Attack Youth Employment 2019-2021 containing 50 measures aimed at restoring the quality of jobs for young workers, combatting gender inequalities and reducing youth unemployment.

The Committee notes the various measures and projects implemented and underway to promote the integration and employment of migrants.

While noting the wealth of information on the legislative basis and objectives of the many different measures, the Committee did not find the information requested in the previous conclusion on the drop in the activation rate (from 2009 to 2013) and on whether the employment policies in place are monitored and how their effectiveness is evaluated. It also did not find replies to the questions asked in the letter of 27 May 2019 concerning the number of participants in active measures (training), the activation rate (participants/unemployed ratio) and public expenditure on passive and active labour market measures as a percentage of GDP (cf. questions included in the appendix to the letter of 27 May 2019 requesting a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

In this last respect, the Committee notes from another source (the European Commission) that public expenditure on labour market policies as a percentage of GDP decreased from 2.6% in 2015 to 2.2% in 2017 (however the share of expenditure allocated to active measures increased slightly, from 0.45% in 2015 to 0.54% in 2017).

The Committee wishes to emphasise that quantitative information on the various measures and their impact is necessary in order to properly assess the situation under Article 1§1 of the Charter and it therefore reiterates its request for the above-mentioned information. Moreover, having noted that the long-term unemployment rate remains at a high level, the Committee asks to receive information on measures specifically targeted towards this category and on the results achieved.

According to comments on the report submitted by the Trade Union Confederation of Workers’ Commissions (CCOO) and the General Union of Workers (UGT), the situation in Spain in respect of Article 1§1 of the Charter has actually worsened during the reference period. From 2015/2016, the real effect of the crisis in the job market went beyond unemployment, affecting the quality of employment and working conditions of those that still have a job and those that are being hired in the recovery phase. A situation that according to CCOO/UGT results in greater job insecurity, with more temporary employment, worse working hours, less-qualified jobs and lower wages.

CCOO/UGT claims that despite a certain improvement in the economy, the uneven quality of the resulting job creation has led to a surge in low-quality jobs for those who are “overqualified” and an increase in the number of workers engaged in fake self-employment.

CCOO/UGT also deplores the absence in the report of quantitative data on employment policy and furnish a variety of statistical information. Referring to an OECD report (Reforms for more and better quality jobs in Spain, Economics Department Working Papers, No. 1386/2017) the trade unions point out in particular that Spain spends less on active labour market policies per

unemployed person than other OECD countries and that the effort measured as expenditure per unemployed person in relation to GDP *per capita* is among the lowest of the OECD (3.9% for Spain compared to an average of 14.5% in the OECD in 2013).

In view of the absence of key information requested, taking into account the comments received and noting that despite a certain improvement in the main unemployment figures, unemployment remained high during the reference period, the Committee does not consider it established that the efforts made were sufficient to meet the requirements of Article 1§1 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 1§1 of the 1961 Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments by the trade union confederations *Comisiones Obreras (CCOO)* and *Unión general de trabajadores (UGT)*.

1. Prohibition of discrimination in employment

Article 1§2 of the 1961 Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 1 of the Additional Protocol not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

The Committee recalls that Spain has accepted Article 15§2 of the 1961 Charter and Article 1 of the Additional Protocol to the 1961 Charter. For aspects concerning discrimination in employment on grounds of gender and disability, the Committee thus refers to its Conclusions on these provisions.

With regard to legislation prohibiting discrimination in general terms, the report states that in the field of the right to work, the principle of non-discrimination is enshrined in and governed by Articles 4.2.c), 17.1, 28 and 55.5 of the Workers' Statute. Article 4.2.c) of the Workers' Statute provides that: "In the context of employment relationships, workers have the right (…) c) not to be directly or indirectly subjected during recruitment or once employed to discrimination on grounds of sex, civil status or age, or within the limits set by this law, on grounds of racial or ethnic background, social status, religion or beliefs, political views, sexual orientation, union membership or non-membership or use of one of the languages of the Spanish state".

The report points out that all discriminatory practices are prohibited. In the event of discrimination, Article 17 of the Workers' Statute provides as follows: "Regulations, clauses in collective and individual agreements and employers' unilateral decisions shall be deemed null and void when they result directly or indirectly in negative discrimination at work in relation to remuneration, working hours or other working conditions, on the grounds of age, disability, sex, background, including racial or ethnic background, civil status, social status, religion or beliefs, political views, sexual orientation or sexual identity, union membership or non-membership or adherence to agreements concluded by trade unions, a family relationship with persons working for the undertaking or having a relationship with it, or use of one of the languages of the Spanish state."

As for the regulations prohibiting any type of discrimination in employment on the grounds of race or ethnic origin, Article 71 of Organic Law No. 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration provides for the establishment of the Spanish Observatory on Racism and Xenophobia (OBERAXE), which is tasked with studying and analysing these two phenomena. This body is empowered in particular to present proposals for measures to combat racism and xenophobia. The report states that Royal Decree No. 903/2018 of 20 July 2018 outlines OBERAXE's functions.

As to measures taken to combat discrimination in the employment of migrants and refugees, the report states that the process for recognising occupational skills acquired when engaging in an activity, governed by Royal Decree No. 1224/2009, and the assessment procedures set

up to validate these skills both help to make citizens more employable and mobile and foster social cohesion and lifelong learning, as this measure is aimed at unskilled workers. Given their profile, migrants and refugees are likely to benefit from this measure. The Committee asks whether migrants must be Spanish citizens in order to benefit from this measure.

With regard to the remedies available, the report states that Article 55.5 of the Workers' Statute provides: "Any dismissal on one of the grounds for discrimination prohibited by the Constitution or by law, or decided in breach of workers' fundamental rights and civil liberties shall be null and void. Where a dismissal is declared null and void, the worker shall be immediately reinstated and any outstanding wages shall be paid."

The report refers to Article 10 of the Organic Law on effective equality, which provides that: "Any victim of a discriminatory act or decision shall have the right to be reinstated in the position they were in prior to the decision, with all the legal consequences that the nullity of the said act entails." The report also specifies that in addition to any compensation which may be owed to the victim *ex lege* because of the loss of their employment, if the decision to terminate their contract was taken on a discriminatory ground but it is impossible to reinstate them in their job, provision is made for additional compensation that is "real, effective and proportionate to the prejudice suffered".

The report points out that there are three fundamental aspects to the compensation that victims of discrimination must receive: (i) its amount must be real, effective and proportionate; (ii) when deciding on the amount, the court has a binding responsibility to assess whether victims will be afforded adequate reparation and restored fully to their initial position, viewing these as valid and appropriate considerations; (iii) the compatibility between the *ex lege* compensation provided for by employment law in the event of termination or loss of employment and compensation awarded by a court in view of the losses incurred as a result of discrimination.

The report adds that any breach by an undertaking of the principle of non-discrimination in access to employment and in the employment relationship is a very serious offence under Articles 16.1.c) and 8, paragraph 12 of Royal Legislative Decree No. 5/2000 of 4 August 2000 approving the amended law on offences and penalties in the field of social law. The penalties for these offences range from € 6,251 to € 187,515, in accordance with Article 40.1.c) of Royal Legislative Decree No. 5/2000.

Article 314 of the Criminal Code criminalises "serious discrimination in public or private employment on the grounds of a person's ideology, religion or beliefs, ethnic background, race or nationality, sex, sexual orientation, family status, illness or disability, of being a legal or trade union representative, a family relationship with other workers in the undertaking, or use of one of the official languages of the Spanish state" when the situation of equality under the law is not restored after a warning or an administrative sanction and no compensation is granted for the pecuniary losses incurred. This article provides for prison sentences ranging from six months to two years or a fine of 12 to 24 months.

To punish such discriminatory behaviour more severely, Organic Law No. 1/2015 of 30 March 2015 amending Organic Law No. 10/1995 of 23 November 1995 on the Criminal Code increases the aggravating nature of the circumstances which may generally be invoked for any offence committed "on racist or anti-Semitic grounds, or because of any other discrimination based on the victim's ideology, religion or beliefs, ethnic background, race or nationality, sex, sexual orientation or identity, or on the grounds of gender, illness or disability".

In its previous conclusion, the Committee found that the situation was not in conformity with the 1961 Charter on the ground that restrictions on the employment in the public sector of nationals of States Parties to the Charter were excessive, and that this constituted discrimination on the ground of nationality (Conclusions XXI-1 (2016)). The report fails to address this finding of non-conformity.

The Committee takes note of the information in the report of the Governmental Committee concerning Conclusions XXI-1(2016) of the 1961 Charter. It notes that the Spanish delegation provided additional information showing that nationals of non-EU countries or countries not covered by international treaties concluded by the European Union and ratified by Spain, have access to posts in various occupational categories in a wide variety of ministries and public institutions. The delegation also provided a list of ministries and public institutions which, in 2016, had opened access to permanent posts of all kinds and occupational categories in the public sector (see paragraphs 24-26 of the report). The Committee also takes note of the amendments made to Law No.7/2007 of 12 April 2007 on the general status of civil servants by Royal Legislative Decree 5/2015 of 30 October 2015 approving the consolidated text of the Law on the general status of civil servants, particularly Article 57, which concerns access by nationals of other states to posts in the public service (see paragraph 24 of the above-mentioned Governmental Committee report). In the light of this information, the Committee considers that the situation is in conformity with the 1961 Charter on this point.

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 1§2 of the 1961 Charter with regard to the prohibition of discrimination in employment.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* § 123; *C.N. and V. v. France,* § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery or servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the "gig economy" or "platform economy".

The Committee notes that the present report replies to the specific, targeted questions for this provision on forced labour except with regard to the issue relating to the prevention of forced labour and slavery in supply chains (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

Criminalisation and effective prosecution

The Committee takes note of the information in the report on legislation relating to the exploitation of vulnerable persons, forced labour and modern slavery, enabling legal proceedings to be initiated against exploiters. The Criminal Code makes it an offence for employers to impose working conditions on their employees through deception or the abuse of a state of necessity, which infringe, remove or restrict their rights, as prescribed by law, collective agreements or their employment contract (Article 311). It includes specific safeguards for foreign citizens and minors (Article 311 bis) and penalties for trafficking in illegal labour (Article 312). Article 177 bis of the Criminal Code (as amended by Organic Law No. 1/2015 of 30 March 2014), which criminalises trafficking in human beings, expressly makes it an offence to recruit, transport, transfer or take on Spanish or foreign nationals, through violence, intimidation or deception or by taking advantage of a situation of superiority or the victims' state of need or vulnerability to compel them to accept forced work or services, slavery or practices similar to slavery, servitude, begging or other forms of exploitation (in compliance with European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims).

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the Court did (Chowdury and Others, § 116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities. The Committee therefore asks that the next report provide information on the enforcement of the abovementioned criminal law legislation. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for slavery, forced labour and servitude during the next reference period, in order to assess in particular how the legislation is interpreted and applied.

According to GRETA, there have been reports of suspected cases of trafficking for the purpose of labour exploitation in the sectors of agriculture, construction, domestic work and footwear manufacturing (GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, Second Evaluation Round, GRETA (2018)7, 20 June 2018, para. 16). GRETA was concerned in particular about the low number of convictions for trafficking for labour exploitation (ibid., para. 257; according to the GRETA report, there were 18 convictions for trafficking leading to deprivation of liberty in 2016, including one for forced begging and one for labour exploitation/slavery). The Committee asks for updated statistics in the next report on prosecutions and convictions against exploiters under the aforementioned provisions of the Criminal Code (Articles 311, 312 and 177 bis), including specific examples ofcase law, in order to assess in particular how the legislation is interpreted and applied.

Prevention

The Committee considers that States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforcerelevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

As to the powers in this area (identifying or detecting victims) of the Labour and social security Inspectorate (governed by Law No. 23/2015 of 21 July 2015), the report states that their work is generally carried out in conjunction with the state security forces. The Ministry of Employment and Social Security and the Ministry of the Interior have signed a co-operation agreement to co-ordinate the activities of the Labour Inspectorate, the social security services and the state security forces to combat unlawful employment and social security fraud (resulting in 17,000 joint activities during the reference period). Where cases of trafficking are detected, the Labour Inspectorate is required to refer the matter to the relevant judicial authority or the prosecution service. Furthermore, since 2004, all newly qualified labour inspectors have been given special training in human trafficking. The report points out that in any case, the Inspectorate regularly checks workers' working and employment conditions.

The Committee notes in this respect that GRETA has urged the Spanish authorities to increase efforts to proactively identify victims of trafficking for the purpose of labour exploitation, by reinforcing the capacity and training of labour inspectors and involving trade unions (GRETA, 2018 report, para. 151). It asks for information in the next report on any action taken on these comments, particularly in sectors such as agriculture, construction, the hotel industry and manufacturing.

With regard to the agricultural sector, the Committee notes that GRETA has also urged the Spanish authorities to address the risks of trafficking in human beings in this particular sector (GRETA, 2018 report, para. 90). It also notes that concerns have been raised about the exploitation of migrant workers in such sector. The United Nations Special Rapporteur on extreme poverty and human rights has drawn attention to the situation of female migrants from Morocco traveling each year (approximately 3,000 female migrants) to the city of Huelva during the annual strawberry harvest, where they often work longer hours than the legal limit on working hours and are paid below the minimum wage, or sometimes not paid at all (26 June 2020, outside the reference period). According to him, "the complete dependence on seasonal migrant workers in the strawberry business in Huelva routinely leads to situations that amount to forced labour, in complete disregard both of international human rights standards and of domestic legislation". He also referred to the lack of protection of these workers during the COVID-19 pandemic. The Committee notes from another source that on 1 August 2020 (outside the reference period), a Nicaraguan citizen who was working in a

watermelon plantation in the region of Murcia died of heat and dehydration, after eleven hours of work. He was left unconscious in front of a health centre. The Committee asks that the next report indicate whether specific legislative or other measures have been introduced to address the situation of migrant workers in the agricultural sector with a view to preventing forced labour and labour exploitation. Should the information requested not be provided in the next report, nothing will allow to show that the situation is in conformity with Article 1§2 with regard to labour exploitation of migrant workers in the agricultural sector.

The report does not provide any information on whether Spanish legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains. It requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. Consequently, the Committee repeats its question in this respect.

Protection of victims and access to remedies, including compensation

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The report states that Article 177 of the Criminal Code exempts trafficking victims from any criminal liability for crimes they may have committed when being exploited. Law No. 4/2015 of 27 April 2015 on the status of victims of offences also sets out the procedural rights and othersenjoyed by victims and the functions of victim support offices (for example, informing victims about their rights, particularly their right of access to a state compensation scheme, the formalities to claim compensation for damage and access to free justice). The Committee also notes that victims of trafficking are entitled to free legal assistance without having to provide evidence that they cannot afford legal proceedings (Law No. 45/2015 reforming the law on civil procedure).

The Committee asks for information in the next report on the number of identified victims of forced labour or labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants).

The Committee also asks for confirmation that the existing legal framework providesthe victims of these practices, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. In this context, the Committee refers to the Protocol of 2014 to the ILO Forced Labour Convention of 1930 (ratified by Spain on 20 September 2017), which requires States Parties to ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have accessto appropriate and effective remedies, such as compensation (Article 4). The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

With regard more particularly to domestic work, the report states that this is governed by Royal Decree No. 1620/2011 of 14 November 2011. There are objectively justified differences between the legal rules on this special employment relationship and the standard relationship, but there has been a steady assimilation of the two patterns.

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions XX-I (2012), General Introduction, General

Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§2 of the 1961 Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter). It considers that such inspections must be clearly provided for by law, and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

The Committee therefore asks for confirmation in the next report that the Labour and social security Inspectorate have specific permission to carry out inspections in private homes to prevent abuses in the domestic and care work sector (see also questions in the General Introduction to Conclusions XX-1 (2012)), and if this is so, for up-to-date information to be provided on the number of inspections carried out and identified breaches of the legislation on working conditions.

"Gig economy" or "platform economy" workers

In reply to the request for information on any measures taken to protect workers from exploitation in the platform or gig economy, the report refers to Royal Decree-Law No. 8/2019 of 8 March 2019 (outside the reference period) on emergency measures for social protection and action to combat insecure employment with regard to the length of working hours, which requires employers to record their employees' working hours every day. The aim of this measure is to ensure compliance with the rules on maximum working hours and enable the Labour and social security Inspectorate to carry out checks to help remedy the insecure situation of many workers who are victims of abuse. The report also states that a master plan for decent working conditions for the period from 2018 to 2020 was approved by the Council of Ministers on 27 July 2018. The plan refers among other things to a problem of "forcedlancers" (false self-employed workers), which is particularly prevalent in the platform economy sector. The Committee notes from the comments submitted by the trade union confederations that "platform" workers have been obliged to register as self-employed workers, while working under very precarious working conditions, with very low wages, without any prevention of occupational hazards, and experiencing work-related accidents. The Committee asks for information in the next report on the implementation of the abovementioned plan and the results obtained with regard to this category of workers. It asks for clarification as to whether workers in the platform or gig economy are covered by the Decree-Law in question and whether they are regarded for this purpose as employees or self-employed workers. Lastly, the Committee asks whether the powers of the Labour and social security Inspectorate cover the prevention of exploitation and unfair conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to dispute their status and/or unfair practices.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1§3 provides for the right to free employment services. In its previous conclusion (Conclusions XXI-1 (2016)), the Committee concluded that the situation was not in conformity with the requirements of this provision, on the ground that the measures taken during the reference period did not make it possible for public employment services to function in an effective manner. It pointed out that in order to assess the effectiveness of employment services it looks at a number of performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time to fill these vacancies, and that the report failed to provide them.

In order to be able to assess the actual effectiveness of free employment services, the Committee requested the following information for each year of the reference period:

- the total number of jobseekers and unemployed persons registered with the Public Employment Service (PES);
- the number of vacancies notified to the PES;
- the number of persons placed via the PES;
- the placement rate (i.e. the percentage of placements compared to the number of notified vacancies);
- the average time taken by the PES to fill a vacancy;
- the number of placements by the PES as a percentage of total recruitments on the labour market;
- the respective market shares of public and private services. Market share is defined as the number of placements made as a proportion of total recruitments on the labour market.

Furthermore, the Committee requested data on: a) the number of persons working in the PES (at central and local level); b) the number of advisors involved in placement services and the ratio of placement staff to registered jobseekers; c) the coordination between central and local employment services (one of the objectives of the National Reform Programme 2012 and 2013).

Lastly, it requested that the next report provide information about the participation of trade unions and employers' organisations in organising and running employment services.

In reply, the report provides comprehensive statistical data on the matter. It points out that despite the decrease of the total number of jobseekers during the years of the reference period, the number of participants in training activities raised (from 3.9% of a total of 6,342,835 jobseekers in 2015 to 5.34% of 4,912,995 jobseekers in 2018). The number of vacancies notified to the PES ranged between approximately 500,000 and 600,000 and the placement rate stood at 72.18-79.70%, with the average time taken by the PES to fill a vacancy of 32-34 days. The number of placements by the PES constituted between 10.86 and 12.16% of total recruitments on the labour market; with the market share of private services of approximately 1.30%. The report also provides data on the employees of the PES at the central and regional level (between 22,313 and 22,199 in the reference period, with over 80% involved exclusively in placement services).

The report further lists trade unions and employers' organisations participating in various employment services. The Committee asks the next report to provide more details on how are they involved in organising and running employment services and what relevant roles they possess in this regard.

The Committee noted in its previous conclusion (Conclusions XXI-1 (2016)) that free of charge public employment services operated as a National Public Employment Service (state level), as well as public employment services run by the autonomous regions. It also noted that there

was limited progress recorded by Spain for speeding up modernisation in public employment services and resolving regional disparities.

In reply, the report provides that according to the provisions of the Law 3/2015 on Employment, the Spanish Employment Recovery Strategy was the first instrument for coordinating the national employment system with the employment policies of the regions. In accordance with the role entrusted to them, the various entities that make up the national system should achieve the structural and strategic objectives set out in the Employment Recovery Strategy, in accordance with the principles it establishes and with the resources it provides for this purpose. The report further states that the Spanish Employment Recovery Strategy 2014-2016 had given priority to the establishment of a new organisational and conceptual framework, within which it was planned to develop all the activities of planning, programming, execution and evaluation of active employment policies for the entire National Employment System. After four years of operation, the report provides that it can be considered that this framework is fully consolidated, which does not exclude its constant improvement and adaptation. With the new 2017-2020 strategy, the objective is the development of new infrastructures, tools or information systems, or optimising existing ones, and making them available to all the agents of the national employment system, seeing the pooling of resources as the best vector for modernising the system. The new strategy has also incorporated the recommendations of the first evaluation of factors affecting the performance of public employment services, carried out in 2016 within the framework of the European Network of Public Employment Services, and is in line with the changes promoted by this network for the second evaluation cycle. The Committee asks the next report to provide information on any developments, in particular on the outcomes and impact of the new strategy.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 1§3 of the 1961 Charter.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

As Spain has accepted Article 9, 10§3 and 15§1 of the 1961 Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) (Conclusions XXI-1 (2016)) and to training for persons with disabilities (Article 15§1) (Conclusions XXI-1 (2016)).

It considered however that the situation was not in conformity with the 1961 Charter as regards measures concerning vocational training and retraining of workers (Article 10§3) on the ground that it had not been established that the right of adult workers to vocational training and retraining was guaranteed (Conclusions XXII-1 (2020)). Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 of the 1961 Charter on the same ground.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 1§4 of the 1961 Charter on the ground that it has not been established that the right of adult workers to vocational training and retraining is guaranteed.

Article 9 - Right to vocational guidance

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 10 - Right to vocational training

Paragraph 1 - Promotion of technical and vocational training ; access to higher technical and university education

The Committee takes note of the information contained in the report submitted by Spain and the information provided by the Trade Union Confederation of Workers' Commissions (CCOO) and the General Labour Union (UGT).

The Committee points out that in its previous conclusions, it found that the situation was not in conformity with this provision on the ground that it had not been established that equal access to higher vocational education was guaranteed to nationals of other States Parties residing lawfully in Spain.

In their report, the authorities state that to facilitate access to vocational training within the education system, entry examinations for intermediate and higher vocational training are held regularly. In this context, they specify that there is no discrimination between candidates' on the grounds of nationality when deciding on their entitlement to sit tests.

It will be recalled that in the past, the Committee has considered that equal treatment must be guaranteed for nationals of other States Parties lawfully residing or regularly working in the State Party concerned. This implies that there should be no length of residence requirement for students or trainees residing on the territory of the State Party in any capacity, or having authorisation to reside there due to their ties with persons residing there, before they can start their training.

Therefore, the Committee asks for confirmation from the authorities in the light of the criteria it has set out that the information submitted meets the requirements of the Charter.

Measures taken to match the skills with the demands of the labour market

The Committee takes note of existing measures aimed at facilitating access to vocational training within the education system (introduction to vocational training in the compulsory school curriculum; entry examinations and preparatory classes for intermediate and higher vocational training; increased provision of basic vocational training courses) and co-operation between the different persons and institutions concerned.

The Committee notes that there is a procedure to validate experience acquired ("recognition of the skills acquired through work experience"), which is intended in particular for persons without any qualifications. The statistics submitted by the authorities show an increase in the number of persons taking part in this procedure. The procedure is open to everyone irrespective of nationality or background. It is viewed by the authorities as a tool for integration, including that of migrants and refugees.

To ensure that the education and training strategies and measures put in place meet the requirements of the labour market, the Committee asks for detailed and up-to-date information in the next report on existing types of training, particularly training to develop skills in new technologies. The authorities are asked to provide figures for the total capacity of these training activities (ratio between training places and candidates), the completion rate of the persons enrolled, the employment rate and the average length of time needed by persons who have successfully completed this training to acquire a first skilled job.

Measures taken to integrate migrants and refugees

The Committee notes that the Secretariat General for Immigration and Emigration is an intermediate body managing the funds of the European Union's European Social Fund (ESF), which is the financial instrument that provides assistance with job creation, vocational training and career development for migrants.

The authorities emphasise that the Operational Programme for Social Inclusion and the Social Economy (POISES) which Secretariat General for Immigration and Emigration is currently

working on, focuses in particular on improving the social and vocational integration of migrants. The projects targeting them are intended to help them with language learning, provide basic knowledge on their rights and duties, offer vocational training in the most sought-after activities, especially training and skill acquisition in new technologies, and provide career guidance (help with drafting a CV, information on the resources available and advice). Other projects set up in the area of non-discrimination in the workplace make it possible to conduct information and awareness-raising activities in companies in the areas of cultural diversity, training for employers and trade unions on diversity management, and the preparation and dissemination of statistics.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 10§1 of the Charter.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

The Committee takes note of the information contained in the report submitted by Spain and the information sent by the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT).

In 2016, the Committee deferred its conclusion (Conclusions 2016).

The Committee notes that Spain was asked to answer the specific targeted questions about this provision (these questions were included in the appendix to the letter of 27 May 2019 in which the Committee requested a report on the implementation of the Charter in relation to the provisions in the "Employment, training and equal opportunities" thematic group).

In its previous conclusion (Conclusions XXI-I [2016]), the Committee requested that the next report give details of the types of continuing vocational education and training available, the overall participation rate of persons in training, the proportion of employed persons participating in vocational training, and the total expenditure. It also asked the authorities to state whether the legislation provided for individual training leave and, if so, what its characteristics are, in particular the length, the remuneration and the party who initiates it. The Committee also requested figures for the total number of unemployed persons having participated in training and the percentage of them as a proportion of the total number of unemployed persons, as well as the percentage of those who found a job afterwards. The Committee considered at that time that if this information was not provided in the next report, there would be nothing to establish that the situation was in conformity with the Charter.

The report indicates that the National Catalogue of qualifications in the vocational training system is regularly reviewed and updated, along with educational programmes and certificates of basic, intermediate-level and higher-level vocational training.

With regard to measures to prevent deskilling of workers who are still active, the Committee notes that the authorities have provided no details of the types of continuing education and training available, the overall participation rate of persons in training, the proportion of employed persons participating in vocational training and the total expenditure.

The authorities did not answer the Committee's question as to whether or not the legislation provides for individual training leave and what its main characteristics are (duration; remuneration; party who initiates it).

The authorities stated in relation to Article 1§3 that during the reference period, between 3.9% and 5.34% of the unemployed people registered with the Employment Agency participated in active training measures. However, the authorities do not state what the effects of these active training measures on employment were or the percentage of persons who found a job afterwards.

In the absence of this information, the Committee is unable to establish that the situation is in conformity with the provisions of Article 10§3 of the Charter. The Committee reiterates its request that this information be provided.

In response to the Committee's request for details of the strategies and measures implemented in order to offer opportunities to obtain the training and retraining that workers need to be competitive in new labour markets, the Committee notes the existence of the "mentor classes" training introduced by the Ministry of Education and Vocational Training in collaboration with autonomous communities and local authorities. This digital training, which is aimed at adults, offers courses concerning new working environments, digital literacy or digitisation. The information sent by the CCOO and the UGT indicates that the number of enterprises that provide training on information and communications technologies is very low. Only 12% of workers (20% within enterprises with more than 499 employees) are trained in "general information technology skills" and 6% are trained in "specialised information technology skills".

The Committee reiterates its targeted question and asks that the next report describe the strategies and measures (legal, regulatory and administrative frameworks, financing methods and practical arrangements) put in place to offer training and retraining opportunities across the entire range of skills (basic digital knowledge, new technologies, human-machine interaction and new working environments, use and operation of new types of tools and machines) that workers need in order to be competitive in new labour markets.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 10§3 of the 1961 Charter on the ground that it has not been established that the right of adult workers to vocational training and retraining is guaranteed.

Article 10 - Right to vocational training

Paragraph 4 - Encouragement for the full utilisation of available facilities

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

Paragraph 1 - Education and training for persons with disabilities

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

It previously found that the situation in Spain was in conformity with Article 15§1 of the 1961 Charter, pending receipt of the information requested (Conclusions XXI-1, 2016).

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

Legal framework

The Committee refers to its previous conclusions (particularly Conclusions XX-1 (2012) and XXI-1 (2016)) for a description of the relevant legal framework with regard to the definition of disability (Law No. 26/2011) and non-discrimination (Article 14 of the Constitution, Royal Decree No. 1/2013, Law No. 26/2011) as well as regards provisions concerning in particular education and vocational training of persons with disabilities, including as regards the legislative basis for inclusion.

The report does not highlight any new developments on the legislative or judicial front (see, in particular, Conclusions XX-1 (2012) and XXI-1 (2016)).

In this connection, the Committee notes that the latest report on the implementation by Spain of the UN Convention on the Rights of Persons with disabilities, published in 2019 but covering the reference period, states that the relevant legislation (several national, regional and municipal laws and policies, particularly the revised text of the general act on the rights of persons with disabilities and their social inclusion, 2013 and the Personal Autonomy Promotion Act, 2006), is not in line with the human rights model of disability and fails to cover some mental health problems. The Committee asks for clarification on this subject in the next report, outlining in particular what categories of disability are covered by the abovementioned legislation, how these are defined and what concrete measures have been taken in terms of their implementation.

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination "on the basis of disability" may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but

may nevertheless be treated by others as if they had a disability (the so-called “attitudinally disabled’).

The Committee therefore asks the next report to clarify whether the assessment of disability in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of “reasonable accommodation”.

Access to education

The statistical data provided in the report indicate an increase in the proportion of pupils with special educational needs (SEN) linked to a disability educated in the mainstream system (from 79.6% in 2013-2014 to 83.6% in 2017-2018). According to the data (concerning 2016-2017) presented in the 2018 report of the European Agency for special needs and inclusive education (EASIE European Agency Statistics on Inclusive Education, 2018 Dataset Cross-Country Report), in primary education, children with recognised SEN were 3,69% of the school population; 80,38% of them were in mainstream inclusive education, 4,21% in special classes and 15,40% in special schools while in upper secondary education, students with SEN were 1,36% of the school population, all in mainstream settings.

The Committee notes however that, according to the Academic Network of European Disability Experts (ANED) European Semester 2018/2019 country fiche on disability, there are not enough specific programs in education to meet the needs of people with disabilities and ensure in particular the provision of reasonable accommodation and accessible support services on education. The ANED notably points out that there are very significant differences in educational attainment by regions, and that there are many fewer disabled people with tertiary studies (15.1%) than their non-disabled peers (33.2%), and more disabled people with only primary schooling (23.9%) and without studies (5.8%) than their non-disabled peers (9.6% and 0%, respectively).

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

Measures aimed at promoting inclusion and ensuring quality education

With regard to the measures taken or planned in order to provide access to mainstream education to children with disabilities, the report refers (under the information provided in respect of Article 15§2) to the Action Plan of the Spanish Disability Strategy for 2014-2020, which includes a strategic objective on Education. The report does not explain, however, what

measures have been implemented or what impact specific measures have had in terms of advancing access to mainstream education and what progress has been achieved as regards persons with disabilities inclusion in mainstream education and the quality of education.

The report also mentions the launching in 2019 (out of the reference period) of a programme (*Programa Reina Letizia para la inclusión)*, which provides university grants to students with disabilities (see details in the report). The Committee also asks the next report to provide information on the implementation of the programme and the results obtained.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that "integration" and "inclusion" are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child's right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that "inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion".

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of 'reasonable accommodation' to ensure it is adequately tailored to an individual's circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in

mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

Remedies

The Committee repeats its request (in Conclusions XX-1 (2012) and XXI-1 (2016)) for information on the remedies available in the event of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

It points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 15§1.

Conclusion

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

Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

Paragraph 2 - Employment of persons with disabilities

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information provided by the trade union confederations *Comisiones Obreras (CCOO)* and *Unión general de trabajadores (UGT)*, in their comments of 2 July 2020.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

The Committee previously found the situation to be in conformity with the Charter pending receipt of the information requested (Conclusions XXI-1, 2016).

Legal framework

The Committee refers to its previous conclusions (particularly Conclusions XX-1 (2012) and XXI-1 (2016) – see also the conclusions relating to Article 15§1) for a description of the relevant legal framework with regard to disability and non-discrimination, particularly in employment and vocational training (Law No. 62/2003, Royal Decree No. 1/2013) and with regard to the obligation to make reasonable accommodation (Law No. 51/2003, Law No. 49/2007, judgment No. 2489/2007 of the Supreme Court of Justice of Catalonia of 10 April 2007).

Access of persons with disabilities to employment

The report refers to a study of 2018 (the Olivenza report) on the situation of disbility in Spain (changes in the regulatory framework, public spending, statistics, labour market, etc.). According to this report, in 2016, out of a total of 1 840 700 persons with disabilities of working age, 647 200 (35.2%) were active, and 462 000 of these had a job (25% of the disabled population of working age but 71% of the active disabled population). According to the national statistics referred to in the report, the employment rate of persons with disabilities of working age has decreased since 2009 (see Conclusions XX-1(2012)) but increased anew between 2015 and 2016, and among persons with disabilities with a job, 88% were employees and 76.2% had an indefinite-term contract in 2016. Since the report fails to specify to what extent this applies respectively to employment on the open labour market and sheltered employment, the Committee asks for more detail to be included in the updated information to be presented in the next report.

As to job quotas for persons with disabilities, the Committee notes that between 2017 and 2018 there was an increase in breaches recorded by the labour inspectorate (from 144 to 260) and the workers concerned (from 1959 to 8794) but asks for information in the next report on the proportions in which quotas are respected in the public and private sector.

Measures to promote and support the employment of persons with disabilities

With regard to the measures taken or planned to afford persons with disabilities access to employment on the open labour market, the report refers:

- to the Action Plan of the Spanish Disability Strategy for 2014-2020, which includes a strategic objective on employment;
- to the annual Employment Policy Plan for 2018, whose structural objectives include activities to encourage hiring and job creation or preservation, particularly for groups which find it most difficult to access or retain jobs, including persons with disabilities;

- to funding of economic and technical support;
- to Law No. 9/2017 of 8 November 2017 on public procurement, which prohibits public contracts with companies which fail to meet the quota of 2% of workers with disabilities (or alternative measures to the quota) and proposes to increase the pool of contracts reserved for special employment centres;
- to the adoption of new rules which, under certain circumstances, reserve a quota of public sector jobs (7%) for persons with disabilities (Royal Legislative Decree No. 5/2015 of 30 October 2015) – the report also points out that reasonable accommodation applies in public tendering procedures;
- to the initiatives of the National Institute for Public Administration (INAP) designed to keep public service employees informed and alert them to disability issues in the workplace.

While taking note of all these measures, the Committee also notes that there is no information in the report on how these, and those announced in the previous conclusions (see the questions put in this connection in Conclusions XXI-1 (2016)), have actually improved access for persons with disabilities to employment on the open labour market. It notes that the trade union confederations (see above) complain in their comments that they are also not aware of how the measures proposed in previous action plans have been implemented, whether any assessment of such measures has been carried out and what tangible progress has been made. They note that the inactivity rate has remained high and denounce in particular the situation of women with disabilities as regards access to employment. The Committee asks the next report to comment on this.

The Committee also notes the concerns expressed in the latest report on the implementation by Spain of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), published in 2019 but covering the reference period, regarding the lack of progress on employment rates of persons with disabilities in the open labour market, the lack of information on the application of anti-discrimination legislation, including provisions on direct and indirect discrimination and denial of reasonable accommodation in the workplace, and failure to comply with the quota set in the revised version of Law No. 9/2017 on public procurement. The Committee therefore repeats its request for information on these points and reserves its position in the meantime.

Remedies

While taking note of the detailed regulations on reasonable accommodation referred to in the report including those relating to adjustments to civil service entrance competitions, the Committee notes that the report does not enable an assessment to be made of their implementation with a view to affording effective access to employment for persons with disabilities in the public and private sectors. The Committee repeats therefore its request for information (in the light of any relevant judicial or administrative decisions or decisions by other institutions with responsibility for issues of non-discrimination).It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation. It points out that should the report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 15§2.

In view of the many questions to which the report fails to provide an adequate answer, including those that have already been repeated, the Committee defers its conclusion.

Conclusion

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

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Work permits

The Committee refers to its previous conclusion (Conclusions XXI-1 (2016)) for a detailed description of the rules governing the right of non-EU/EEA foreign nationals to be gainfully employed, either on a self-employed basis or as employees.

The report states that only one agreement has been concluded, with Andorra. France, Andorra and Spain have concluded a trilateral agreement on the entry, movement, residence and settlement of their nationals (which entered into force on 1 July 2003). According to the report, “the settlement requirements which apply to Andorran nationals within the territory of the other party are at least as favourable as those which Spain and France apply to nationals of EU member states”.

In its previous conclusion, the Committee asked for detailed information concerning the types of work permits available. In reply, the report states that Spain issues various types of permits that allow the holder to work in the country:

a) In the case of salaried employment, there are several types of work permits:

- temporary residence and work permits (usually issued pending the grant of a long-term residence permit);
- residence and work permits for highly skilled professionals (temporary residence and work permits for jobs which require a university degree or equivalent or, in exceptional cases, at least five years’ professional experience);
- the temporary residence permit bearing the words "European Blue Card";
- residence permits with a work permit exemption (more than 90 days, for persons wishing to engage in a gainful or professional occupation which is exempt from the requirement to obtain authorisation to work; for further details, see the report);
- temporary work permits for persons wishing to undertake fixed-term work (less than one year; seasonal contracts, traineeships, works or service contracts, senior management contracts);
- temporary work permits in connection with cross-border service provision (for employees of companies based outside the EU/EEA who have to move to Spain temporarily);
- permits for persons wishing to engage in harvest or other seasonal work in the context of cross-border service provision;
- temporary work permits for sportsmen or sportswomen;
- temporary work permits for cross-border workers.

b) residence permits related to business and talent which confer the right to work (investors, entrepreneurs, managers and highly skilled staff, etc., including family members).

c) temporary residence and work permits for self-employed persons (issued to non-Spanish resident foreign nationals wishing to work on a freelance basis).

As regards categories of employment for which there is no preliminary review of the national employment situation, under the Community preference rules, the report, in response to the question from the Committee, provides a list of these categories including:

- 1) the occupations listed in the Catalogue of difficult-to-fill jobs, which is published every quarter by the Public Employment Service (see also Conclusions XXI-1 (2016));

- 2) cases where Chilean or Peruvian nationals are employed under the dual-nationality agreements with Peru and Chile;
- 3) investors, entrepreneurs, workers participating in inter-enterprise movements, highly skilled professionals and researchers, as well as their spouses and adult children (Law No. 14/2013 of 27 September 2013 on support for entrepreneurs and their internationalisation);
- 4) persons engaging in any type of economic activity, under certain conditions, under Article 40 of Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, LOEX (those who have been granted refugee status, stateless persons, foreigners with ascendants/descendants of Spanish nationality, foreigners born and residing in Spain, etc., see the report for further details).
- 5) managerial or highly skilled staff in a company, highly qualified technicians and scientists, university lecturers and internationally renowned artists (under Article 178 of the implementing regulation for the LOEX)

While taking note of the information submitted in the report, the Committee asks for further information on the conditions and procedures for issuing or renewing each type of work permit. It asks that the next report indicate in which circumstances the holders of such permits may be refused a work permit.

Relevant statistics

In its previous conclusion (Conclusions XXI-1 (2016)), the Committee pointed out that its assessment of the degree of liberality in applying existing regulations was based on figures showing the refusal rates for granting work permits both for first-time and for renewal applications. It accordingly concluded that the situation in Spain was not in conformity with Article 18§1 of the 1961 Charter on the ground that it had not been established that the regulations concerning the right of foreigners to engage in a gainful occupation were applied in a spirit of liberality.

The Committee takes note of the data provided in the report, in response to its request, concerning the number of applications made, granted and rejected in respect of nationals of States Parties to the Charter, other than EU/EEA countries. The Committee observes that the data make distinction between first-time awards of permits and renewals. It notes that the number of applications made fell during the reference period (from 6,251 in 2015 to 5,322 in 2018) and that almost 87.75% of such applications (4,670) were granted in 2018, against 88.87% in 2015 (5,555). The rate of rejections remained low, however, at around 12% in 2018 (652 rejections, including 459 first-time applications), against 11.1% in 2015 (696, including 398 first-time applications).

The Committee notes from the OECD report of 2019 on recent changes in migration movements and policies that Spain's foreign-born population stood at 6.2 million people (52% of them women) in 2018, accounting for 13% of the total population. According to the same report, in 2017 Spain received 324,000 new immigrants on a long-term or permanent basis (including changes of status and free mobility). This figure comprises 43.8% immigrants benefitting from free mobility, 9.4% labour migrants, 36% family members (including accompanying family) and 1.3% humanitarian migrants.

The Committee asks that the next report indicate the grounds on which work and residence permits may be refused. In the meantime, in the light of the low overall work permit refusal rate with respect to nationals of Contracting Parties to the Charter which are not members of the EEA, it considers that the situation in Spain is in conformity with Article 18§1 of the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 18§1 of the 1961 Charter.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 3 - Liberalising regulations

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 18 - Right to engage in a gainful occupation in the territory of other States Parties

Paragraph 4 - Right of nationals to leave the country

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

There are no key changes in the legislation during the reference period, but the report provides up-to-date information on legislation guaranteeing gender equality in Spain. Two decrees were adopted with positive impact on the fair remuneration principle: legislative royal decree 2/2015, which establishes that all collective agreement, contract or unilateral decision of the employer contrary to the principle of equality and equal pay is null and void; and legislative decree 5/2015, which extends specifically the principle of non-discrimination to public employees. The report also refers to the legislative royal decree 6/2019, which entered into force on 1 March 2019. Although outside the period of reference, this decree adopts urgent measures to guarantee equality of treatment between women and men and equality of opportunities in employment and professional development, the text extends the principle of non-discrimination directly to part-time employees.

Moreover, the report refers to the creation of special provisions, in legislative royal decree 1399/2018 to develop the organic structure of the Military Observatory for Equality, within the Ministry of Defence, to ensure and implement equality and non-discrimination within the military personnel. The report also details that there have been specific developments regarding access to employment at the *Guardia civil*, to ensure equal access, as well as equal working conditions, remuneration and career opportunities. The Committee had already considered the legal framework to be in conformity with the 1961 Charter and it has been strengthened during the period of reference. Therefore, the situation is in conformity in this respect.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Moreover, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted meaning that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus should be on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

The Committee points out that it examines the right to equal pay under Article 4§3 and Article 1 of the 1988 Additional Protocol to the 1961 Charter, and does so therefore every two years

(under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

Accordingly, the Committee refers to its previous conclusion on Article 4§3 in 2018, in which it concluded that the situation was in conformity with the 1961 as regards the existing judicial safeguards. The report states that the victims of discrimination have access to courts on the basis of Article 24 of the Constitution. It further states, in reply to the specific questions relating to the shift in the burden of proof and ceilings of compensation for pay discrimination victims, that the legislation provides for the shift in the burden of proof. However, there are no specific examples about how this is applied in practice and the Committee requests that the next report indicates information on the number of cases relating to pay discrimination decided by Spanish courts and the practice followed regarding the shift in the burden of proof. Retaliatory dismissal is forbidden and the period in which dismissal is forbidden after a maternity or paternity leave has been extended from 9 to 12 months. There are no ceilings of compensation for pay discrimination victims.

The Committee further notes from the European Network of Legal Experts on Gender Equality and Non-Discrimination, Country Report on gender equality: Spain 2019, that equal pay victims have standing before the courts and, if the victim consents, so do trade unions and associations. In theory and according to the legal framework, there are many mechanisms for interventions by interest groups and legal entities for the defense of victims of discrimination. However, the report points out that these actions are quite rare and most cases of gender discrimination submitted to the courts are pursued by individual victims.

The Committee requests that the next report include information about existing national case law relating to breaches of the right to equal pay, as well as on the amount of compensation awarded for non-pecuniary damage and if a pay discrimination victim is entitled to pecuniary damage compensation which covers the difference in pay for all the period in which there was unequal pay.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination.

As regards *pay transparency* in the labour market and notably the possibility for workers to receive information on pay levels of other workers and available information on pay, the report refers to Article 28 of the Workers’ Statute, according to which the employer has to keep data on the average salaries of workers, disaggregated by sex and professional group, professional categories and on work of equal value. For enterprises of at least 50 workers, if there is a difference in the average wages of over 25% between workers of different sex, the employer has to produce a justification that such difference is not based on discrimination.

The Committee notes from the above-mentioned Country report that the Government presented in 2017 a bill to implement the European Commission Recommendation on pay transparency. The bill did not go ahead during the period of reference and during 2019, when the Parliament was dissolved twice for general elections. However, even outside the period of reference, the legislative royal decree 6/2019 introduced some of the measures recommended, such as equality plans for companies of more than 50 workers.

As regards *job classification systems*, the report refers to the Workers' Statute, modified by the legislative royal decree 6/2019, according to which the definition of professional categories and groups has to be free from any direct or indirect discrimination between women and men (Article 22). Article 28 of the Workers' statute also refers to the definition of work of equal value. The report does not contain any reference to specific case-law on this point and the Committee asks that the next report provides former information on the classification systems and the implementation of the notion of work of equal value within case-law.

As regards *pay comparisons across companies*, the Committee had noted in its former conclusion that the trade union CCOO had criticised the situation. Pay comparisons are possible in three different types of cases: when several companies are covered by a collective works agreement, insofar as all collective agreements are published; the cases in which the terms and conditions of employment are laid down centrally for more than one company; finally, when the holding itself sets the conditions of the employment contract (and this is not set through a collective agreement), a copy of these contracts are given to the workers' representatives. However, CCOO stated that the legislation does not ensure the right of workers to access information on the gender pay gap (Conclusions 2018, Spain, Article 4§3). There is no further information on whether workers can access information on pay levels in the present report. The Committee reiterates its question in this respect. In the meantime, it reserves its position on this point.

Enforcement

The Committee notes from the report that a new legislation regulates the labour inspectorate services (law 23/2015 of 21 July 2015), with the goal to increase its effectiveness. It has become operational in 2018, after the adoption of royal decree 192/2018. The labour inspectorate has legal personality, its own budget and autonomy to manage it. Its competences are defined by law 23/2015. A new general council has been established, in which are represented the State labour inspectorate, the autonomous communities' labour inspectorates and employers' and unions' representatives. A new body of sub-labour inspectors has also been created. The report states that the labour inspectorate is in charge of monitoring and ensuring compliance with the principle of equal pay. Should there be a violation detected, there can be sanctions imposed, fines and also the obligation to prepare equality plans if the enterprise does not have one. In 2015, there were 274 inspections in the field of equal employment, 6 violations found and over 50 000 euros in fines. In 2016, 283 inspections conducted and 6 violations found; in 2017, 297 inspections and 22 violations found and in 2017, 16 violations out of 319 inspections conducted. As regards gender discrimination, there were 4 999 inspections and 92 violations found. Sanctions amounted to more than 900 000 euros.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, the work of monitoring developed by equality bodies and the State Labour Inspectorate in this respect.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender

pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The Committee notes from the report the measures and action plans adopted. The report refers particularly to the adoption of the first action plan for the personnel of the *Guardia Civil.* Moreover, the legislation adopted in 2019 requires enterprises of 50 workers (before it was enterprises of 250 workers) to include an equality plan to tackle gender pay discrimination. The Committee welcomes this legislation, although it is outside the period covered by this assessment. The Committee also notes from the above-mentioned Country Report, that surveys on the gender pay gap have been carried out in Spain in relation to the situation of women in the labour market, conducted jointly by the Institute of Women and for Equal Opportunities and the National Institute of Statistics. This study should, in theory, be periodically updated but the latest data it contains regarding the wage gap are from 2016 (although the study is from 2018). In addition, the survey contains only economic data and does not analyse possible causes or strategies. According to the 2018 report, the most frequent annual salary for women (EUR 13 500) represented 77.1% of the most frequent salary for men (EUR 17 509). When applied to the medium salary this percentage was 77.8% and in relation to the gross average salary it was 77.7%.

Concerning the unadjusted gender pay gap, the Committee notes from EUROSTAT that it was 14.2% in 2015, 14.8% in 2016, 13.5% in 2017 and 11.9% in 2018 (data of 29 October 2020). The gender overall earnings gap stood in Spain at 35.7% in 2014, the latest available data (the average gender overall earnings gap in the EU was 39.8%).

The Committee notes that the Government has made efforts to reduce the gender pay gap and has taken measures to raise awareness. The Committee also observes that the gender pay gap, as an indicator of the effectiveness of these measures, has changed in a significant manner in the years covered by the current cycle. The gender pay gap is below the EU average. The measures adopted by the Government have therefore achieved measurable progress in this respect and the situation i is in conformity with Article 1 of the 1988 Additional Protocol.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 1 of the 1988 Additional Protocol.

Partly dissenting opinion of Barbara KRESAL relating to Article 20 (Spain)

I cannot agree with the conclusion that the situation in Spain is in conformity with Article 20 of the Charter. In my opinion, the situation is not in conformity with Article 20 on the ground that the obligation to make sufficient measurable progress in reducing the gender pay gap has not been fulfilled. My dissent is therefore limited only to the last part of the assessment which appears in the Section 'Obligations to promote the right to equal pay'.

The State Party must adequately promote the right to equal pay with a view to ensure its effective realisation in practice, and it must accordingly demonstrate adequate 'results' in terms of the relevant indicators. These indicators are used to assess the effectiveness of the policies and measures adopted. As regards the gender pay gap indicator, I consider that in order to be in conformity, it is of course necessary to demonstrate a positive trend, i.e. that the gender pay gap has been decreasing. However, it does not suffice that the gender pay gap has been decreasing (even if it has changed in a significant manner over a period of time), the gender pay gap must also be sufficiently low, minimal. Furthermore, it should not be relevant for the assessment whether the gender pay gap is below the EU average. Non-discrimination is one of the cornerstones of international human rights law and at the very heart of the Charter, explicitly enshrined in Article E of the Charter. It is the essential substance of all human rights, including the right to fair remuneration, and it is explicitly guaranteed in relation to pay/remuneration by Article 4§3 and Article 20.c of the Charter. The right to equal pay for equal work or work of equal value must be guaranteed here and now.

In its decisions on the UWE collective complaints (*University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden*, Collective Complaints Nos. 124-138/2016, Decisions on the merits 5.-6.12.2019; see, in particular, the preliminary considerations and the assessment parts), the Committee developed strict assessment criteria with respect to the right to equal pay. It is important that these criteria are also applied in a strict and consistent manner, either in the collective complaints procedure or in the reporting procedure when assessing the situation in the States Parties as regards the right to equal pay. The fact that actual realisation in practice of gender equality in general, and equal pay as one of its aspects, is a persistent, long-standing problem in all States Parties should not result in loose criteria or loose application of strict criteria when assessing the state compliance with their obligations stemming from Article 4§3 and Article 20.c of the Charter.

Considering the importance of the right to equal pay and if the criteria developed by the Committee as regards the promotion of equal pay are applied in a strict and consistent manner, the gender pay gap in Spain is, in my opinion, too high, indicating that the measures taken in this respect and the progress made are – despite positive trends – still insufficient.

An important emphasis of the Committee is that "in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial" and that "it is necessary to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it" (see Complaints Nos. 124 to 138, UWE, *op. cit.*). Without identifying and understanding the causes of gender pay differences it is impossible to design adequate measures that could effectively address this problem.

It is also true that the gender pay gap is not *per se* evidence of pay discrimination. However, it is one of the most widely accepted indicators of the differences in pay which, together with other relevant indicators, reveals pay inequalities that exist in practice and, to a certain extent, also the causes of those inequalities. Unequal pay is a complex problem. Only a combination of various indicators could give a better picture and allow for a better assessment (for example, if the employment rate of women is high, the gender pay gap is usually also higher and *vice versa*, therefore, the relative gender pay gap in correlation with the female employment rate

is probably more relevant than absolute figures; in addition to the unadjusted gender pay gap, the adjusted gender pay gap should also be taken into account, together with the decomposition and analysis of the explained and unexplained gender pay gap, as well as the overall gender gap in earnings, differences between sectors of activity, occupations, age groups and similar, the female employment rate etc.). The Committee recognises the complexity of the concept of (un)equal pay and in this context refers to various indicators that can be used in the assessment. However, the Committee's assessment of the situation in Spain as regards the obligation to promote the right to equal pay is mainly based – apart from taking into account awareness raising measures – on the unadjusted gender pay gap, its changes over time and its comparison with the EU average, without sufficiently taking into account various other relevant indicators mentioned above.