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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

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.

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The 1961 European Social Charter was ratified by Spain on 6 May 1980. The time limit for submitting the 31st report on the application of this treaty to the Council of Europe was 31 October 2018 and Spain submitted it on 30 October 2018.

This report concerned the following “non-hard core” provisions of the Charter:

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

Spain has accepted all of these articles.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Spain concerns 26 situations and contains:

– 12 conclusions of conformity: Articles 7§1, 7§2, 7§4, 7§6, 7§7, 7§8, 8§1, 8§4 19§1, 19§5, 19§7 and 19§8;

– 7 conclusions of non-conformity: Articles 7§5, 8§2, 8§3, 16, 19§4, 19§6 and 19§10.

In respect of the other 7 situations concerning Articles articles7§3, 7§9, 7§10, 17, 19§2, 19§3 and 19§9, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Spain under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Spain on this provision.

The next report from Spain deals with the accepted provisions of the following articles belonging to the thematic group “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 persons with disabilities to education, training and employment (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

The deadline for the report was 31 December 2019.

¹ The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

The Committee takes note of the information in the report submitted by Spain. It also takes note of the information in the comments of the Trade Union Confederations Unión General de Trabajadores (UGT) and Comisiones Obreras (CCOO) provided on 15 April 2019.

The Committee previously examined the legal framework applicable to the minimum age of employment for young workers. It noted that Section 6§1 of the Statute of Workers prohibits the admission to employment of children under the age of 16. Section 6§4 of the same Statute provides for the employment of children in public shows, which is permitted in exceptional cases by the labour authorities, provided it does not involve any dangers to their physical health or for their professional and personal development. The permit must be in writing and it must specify the activities for which permission is granted (Conclusions XIX-4 (2011)).

The present report states that the consolidated text of the law on the Statute, of Workers as approved by Royal Legislative Decree 1/1995 of 24 March 1995, has been replaced by a new consolidated text of the law on the Statute of Workers, as approved by Legislative Royal Decree 2/2015 of 23 October 2015. The new consolidated text also amended paragraph 4 of Section 6, authorising the employment of children under the age of 16, on an exceptional basis, in public shows, deleting the word “*physical*” where reference is made to children’s “*health*”.

Accordingly, the relevant provisions of Section 6 of the Statute of Workers on the employment of children read as follows: “1. *The employment of children under the age of 16 shall be prohibited. [...] 4. The employment of children under the age of 16 in public shows shall be permitted only in exceptional cases by the labour authorities, provided that it does not involve any danger to their health or to their professional or personal development. The permit shall be in writing and shall be valid only for specified events.*”

As regards the monitoring activities conducted by the Labour Inspectorate, the Committee previously asked for information in this respect as well as for detailed data, broken down by sector of activity, on the inspections concerning the prohibition of employment of children under the age of 16 (Conclusions XX-4 (2015)).

The report states that Law 23/2015 of 21 July 2015 structuring the labour and social security inspection system has been adopted and the National Labour and Social Security Inspectorate set up. The labour sub-inspectors of the unit in charge of employment and social security are also responsible, under the new legislation, for monitoring compliance with the rules prohibiting the employment of children under the age of 16 (Article 14.2.b of Law 23/2015) and with the regulations on contracts of employment.

The report provides data on the activity of the Labour and Social Security Inspectorate and violations found with respect to the prohibition on employing children under the age of 16. According to these data, 12 violations were identified in 2015, 15 in 2016 and 19 in 2017 (this last figure being provisional).

The report provides data disaggregated by sectors of activity for 2016, during which 15 violations of the prohibition of employment under the age of 16 were identified, mainly in the following sectors: pubs and restaurants, cafés and other eating and drinking places (6 violations), agriculture (3 violations), film production (2 violations), advertising (2 violations), performing arts (1 violation), events management (1 violation). The Committee requests that the next report provide updated information on inspections carried out by the Labour Inspectorate aiming at verifying compliance with the prohibition on employing children under the age of 16.

The Committee refers to its General question on Article 7§1 in the General Introduction.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§1 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

The Committee takes note of the information in the report submitted by Spain. It also takes note of the information in the comments by the Trade Union Confederations Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT) of 15 April 2019.

The Committee previously noted that, under Section 6§2 of the Workers' Statute, young workers under the age of 18 may not be employed in activities or work that is unhealthy, painful, harmful or dangerous for their health and for their professional and human development (Conclusions XIX-4 (2011)). The Committee also noted that under Article 27 of the Law 31/1995 on occupational risk prevention, prior to any involvement of young workers under 18 in work and prior to any significant change in their working conditions, the employer must conduct an evaluation of the activities which are likely to involve any risks to the safety, health or development of young workers (Conclusions XX-4 (2015)).

The present report states that Section 6§2 of the Workers' Statute has been amended to replace the reference to the prohibition on engaging in activities or holding posts "*recognised by the government, on a proposal from the Ministry of Labour and Social Security and after consulting the most representative trade union organisations, as unhealthy, painful, harmful or dangerous for their [i.e. the children's] health or for their professional and human development*" with a different reference to activities and posts "*which are subject to employment restrictions under Law No. 31/1995 of 8 November 1995 on occupational risk prevention and the relevant regulations*".

The report adds that the wording of the Workers' Statute has accordingly been adapted to the provisions of Article 27§2 of Law No. 31/1995 which reads as follows: "*in view of the factors mentioned above, the government shall impose restrictions on the employment of persons under the age of 18 in posts which expose them to particular risks*". The report states that this article requires the government to legislate so that the said restrictions are introduced, through legislation and by implementing the relevant legislative procedure, which requires the most representative employers' and trade union organisations to be consulted in matters relating to employment law.

In its previous conclusion, the Committee requested detailed data on the nature and number of violations detected and sanctions applied by the Labour Inspectorate with regard to the prohibition of employment of young workers under 18 in dangerous or unhealthy occupations (Conclusions XX-4 (2015)).

With regard to occupations prohibited to young workers over the age of 16 but under the age of 18, the report states that the Labour Inspectorate conducted 23 inspections in 2015 without identifying any violations, 68 inspections in 2016 during which it identified 4 violations and 43 inspections in 2017, during which it identified 4 violations (provisional figures for 2017). The sanctions applied amounted to €94,474 in 2016 and in 2017 (provisional figure). The Committee asks that updated information on this subject be included in the next report.

The Committee takes note of the information in the comments by the UGT and the CCOO to the effect that protection for children performing domestic work within a family home (domestic work for private employers) is not guaranteed because Law No. 31/1995 on occupational risk prevention (Article 3§4) excludes (irrespective of the worker's age) the particular case of domestic service within the family home and imposes no restrictions for those under the age of 18. According to the same comments, the Labour Inspectorate cannot monitor the manner in which minors (or adults) carry out work in private dwellings, because of the principle of inviolability of the home enshrined in Article 18 of the Spanish Constitution. The Committee asks that the next report provide information on this subject.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

The Committee takes note of the information in the report submitted by Spain. It also takes note of the information in the comments by the Trade Union Confederations Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT) of 15 April 2019.

As regards the rules on the employment of minors who are still subject to compulsory education, the report points out that in Spain, school attendance is compulsory until the age of 16 and Spanish labour law prohibits the employment of persons below that age. Section 6§1 of the Workers' Statute prohibits the employment of children under the age of 16. The report adds that the only possible derogation, provided for in Section 6§4 of the Workers' Statute, concerns the possible participation of children under 16 in public shows. This derogation may be granted in exceptional cases only and requires the prior authorisation of the labour authority. On no account, however, may such authorisation be granted if the said participation poses a danger to the child's health or to their professional or personal development. The permit must be in writing and is valid only for specified events (Section 6§4 of the Workers' Statute).

The report states that this possibility of a derogation is likewise governed by Article 2 of Royal Decree 1435/1985 of 1 August 1985 regulating the employment relationship applicable to artists in the context of public shows, which further states that the request for authorisation must be made by the minor's legal representatives and must be accompanied by the minor's consent, if they are capable of discernment.

The Committee previously asked whether the rest period free of work included a duration of at least two consecutive weeks during the summer holidays and what the rest periods were during the other school holidays (Conclusions XIX-4 (2011) and Conclusions XX-4 (2015)).

The report explains that the issue of overlap between rest periods and school holidays for children under the age of 16 arises only in the case of activities involving the participation of minors in public shows. Although Spanish employment law contains no specific provisions in this regard, it is clearly understood that this is a factor which the employment authority must consider before deciding whether or not to authorise such participation. The authority must judge whether or not any overlap would prevent the child from obtaining the necessary rest or be detrimental to their health and/or development. It is the responsibility of the said authorities, therefore, to evaluate whether the rest periods coincide with the school holidays before authorising the employment of children under 16 in public shows.

The report indicates that children under 16 employed in public shows are subject to the same rules regarding rest periods and holidays as young persons under 18, namely:

- it is prohibited for them to perform night work (work performed between 10 p.m. and 6 a.m.) or overtime (Sections 6§2 and 6§3 of the Workers' Statute);
- young workers under 18 may not work more than 8 hours per day, including, where applicable, the time devoted to training and when they work for several employers the total hours must not go beyond this limit (Section 34§3);
- a rest period of at least 30 minutes per day must be provided in the case of young workers under 18 working more than four and a half hours per day (Section 34§4.2 of the Workers' Statute);
- the duration of their weekly rest period must be at least two consecutive days (Section 37§1).

The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted

duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. In addition, the Committee notes that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday (Conclusions 2015, General Introduction).

As regards the duration of light work during school term, the Committee has considered that a situation in which a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, is in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

The Committee seeks confirmation, therefore, that children who are still subject to compulsory education (under the age of 16) are permitted to participate in public shows for a maximum period of six hours per day and 30 hours per week during school holidays and 2 hours on a school day and 12 hours a week in term time (outside the hours fixed for school attendance). In the meantime, the Committee reserves its position on this point.

In reply to a previous question from the Committee, inquiring as to whether the Labour Inspectorate had detected cases where children who were still subject to compulsory schooling were working in family undertakings (Conclusions XX-4 (2015), the report states that the Labour and Social Security Inspectorate has no information on this subject.

The Committee notes the information provided by the UGT and the CCOO, which have detected and reported cases of children not in school accompanying their parents for the purpose of harvesting various crops produced in Spain. The UGT and the CCOO stress the need for awareness campaigns to stop the use of children under 16 (who usually accompany the rest of their family) in harvesting. The Committee asks that the next report provide information on this subject, in particular information about the measures taken to prevent the employment of children under 16 who accompany their parents during harvesting and to guarantee the right to receive an education and to attend school.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

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

The Committee previously noted that there had been no changes to the legal situation which it had previously found to be in conformity with Article 7§4 of the 1961 Charter (Conclusions XX-4 (2015)).

The Committee previously noted that Section 34§3 of the Workers' Statute stipulates that young workers under 18 may not work more than 8 hours per day, including, where applicable, the time devoted to training. In cases where a young worker works for several employers, the total hours must not go beyond this limit. Section 6§3 of the Workers' Statute prohibits young workers from working overtime (Conclusions XIX-4).

The report contains a detailed, up-to-date description of the Labour Inspectorate's monitoring activities as regards the employment of young persons aged from 16 to 18 for the period 2015-2017, including notably information on the number of inspections and violations identified, the amount of the sanctions imposed, the number of minors concerned and the number of notices to comply issued.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

The Committee takes note of the information contained in the report submitted by Spain. It indicates that the only legislative change during the reference period was the new version of the Workers' Statute, as approved by Royal Legislative Decree 2/2015 of 23 October 2015. Nevertheless, the provisions on the remuneration of children and apprentices remained the same. In terms of remuneration, under Article 11.2 of Royal Legislative Decree 2/2015, training and apprenticeship contracts are subject to the following rules: "(...) f) actual working time, which shall be compatible with training activities, shall not exceed 75% of the maximum working time provided for in the relevant collective agreement or, failing that, of statutory working time during the first year, or 85% thereof during the second and third years. (...) g) remuneration of workers employed on training and apprenticeship contracts shall be proportionate to the actual time worked, in accordance with the provisions of the relevant collective agreement. The remuneration shall not in any circumstances be lower than the minimum inter-professional wage calculated in proportion to the actual time worked."

Young workers

The Committee points out that a young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15-year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16 and 17-year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the 1961 Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

The Committee points out that in 2016, the average annual earnings of single workers without children (100% of an average worker) were €26,710.29 (€2,225.86 per month over 12 months) gross and €20,998.93 (€1,749.91 per month over 12 months) net of social security contributions and taxes. The minimum income represented 34.1% of average income. The Committee therefore concluded that the situation in Spain was not in conformity with Article 4§1 of the 1961 Charter because the minimum wage for workers in the private sector did not secure a decent standard of living (Conclusions 2018, Article 4§1).

The report indicates that there is no differentiation based on age between the minimum wage of young workers under 18 and the adult minimum wage. The Committee notes that young workers in Spain are paid the same wage as adults.

Nevertheless, the report indicates that the minimum inter-professional wage for 2018 was €24.53 per day or €735.90 per month. Given that gross annual average earnings in 2018 according to the OECD were €26,880 (€2,240 per month), the Committee considers that young workers' right to fair pay is not guaranteed.

The Committee reiterates its previous request that the next report provide information on net values of both minimum and average wages for the relevant reference period. It underlines that it is asking for information on the net values, i.e., after deduction of taxes and social security contributions, with calculations being for a single person.

Apprentices

The Committee points out that the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions II (1971), Statement of Interpretation on Article 7§5; also Conclusions (2006) Portugal).

The report indicates that apprentices' allowances are set in collective agreements and, in any case, may not be lower than the minimum wage. Moreover, actual working time, which must be compatible with training activities, must not exceed 75% of the maximum working time provided for in the relevant collective agreement or of statutory working time during the first year, or 85% thereof during the second and third years.

The Committee has repeatedly requested information on the net national minimum/average levels of apprentices' allowances at the beginning and at the end of the apprenticeship. The report does not provide the information requested. The Committee considers that owing to lack of information, it has not been established that apprentices' allowances are adequate. Moreover, according to the report submitted by the UGT and CCOO trade unions, apprenticeship contracts are the types of contracts employed most frequently for young workers and if there is no collective agreement applicable, companies are allowed to reduce pay further, by up to 40% in the first year and 25% the second.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the 1961 Charter on the grounds that:

- young workers' wages are not fair;
- it has not been established that apprentices' allowances are adequate.

Article 7 - Right of children and young persons to protection

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

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

The report indicates that contracts for vocational training may not be concluded for part-time work. Actual working time, which must be compatible with training activities, must not exceed 75% of the maximum working time provided for in the relevant collective agreement or, failing that, of statutory working time during the first year, or 85% thereof during the second and third years. The workers may not perform overtime, night work or shift work.

The report indicates that the remuneration of contracts for training and apprenticeships is established by collective agreements and cannot in any circumstances be less than the minimum wage in proportion to actual working time.

The Committee notes from the report that new legislation was passed during the reference period, in particular Royal Legislative Decree 2/2015, ministerial order ESS/41/2015 of 12 January 2015 of the Ministry of Employment and Social Security amending ministerial order ESS/2518/2013 of 26 December 2013 regulating the training aspect of training and apprenticeship contracts, Royal Legislative Decree 4/2015 of 22 March 2015 on urgent measures for reform of the workplace vocational training system and, lastly, Law 30/2015 of 9 September 2015 regulating the workplace vocational training system. The new regulations were a further stage in the changes started with entry into force of Law 3/2012 on urgent measures for labour market reform. That law granted workers an individual right to training, prioritised training activities linked to new technologies and the internationalisation of companies and, for the first time, gave training institutes direct access to the funding available for managing workers' training plans, which previously could only be accessed by employers' organisations and trade unions.

In the light of the new regulations, the Committee requests updated information on vocational training contracts and conditions for young workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

The Committee takes note of the information contained in the report submitted by Spain, according to which the legal framework remains unchanged.

The Committee notes that, during the previous period, the situation in Spain was already found to be conformity with the Charter in this respect (Conclusions XX-4(2015)).

The Committee concludes that the situation in Spain is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The report indicates that the legislation has not changed: the Workers' Statute prohibits night work for persons aged under 18, "night work" being defined as work performed between 10 p.m. and 6 a.m.

During the previous cycle, the Committee asked for detailed data on the number of inspections concerning the prohibition of night work for young workers under 18 and for precise explanations, including as to whether all young workers were covered by the general prohibition of night work (Conclusions XIX-4 (2011)).

The report states that the Labour Inspectorate carries out inspections *in situ* in order to monitor whether employers comply with the bans on night work and overtime in respect of young workers under 18. The report provides information on the activities of the Labour Inspectorate. It provides the total number of inspections, breaches detected and sanctions applied in respect of the ban on the employment of young persons under 16 and the ban on night work and overtime for young workers under 18. In 2015, a total of 305 256 inspections were carried out concerning compliance with employment regulations for young persons, but only 15 sanctions were imposed for breaches of the regulations on night work, overtime and rest periods (daily and weekly) for workers under 18. In 2016, 279 048 inspections were carried out and 29 breaches were found in this area. Lastly, in 2017, 266 102 inspections were carried out and 20 sanctions were imposed (according to data from the Labour and Social Security Inspectorate). The report states that the figures show compliance with the regulations, given that the Labour and Social Security Inspectorate conducts ongoing monitoring of compliance with the regulations on the employment of children and young persons, in particular the ban on the employment of those under 16. The low number of sanctions gives a clearer picture of the level of non-compliance with the regulations on the employment of children and young persons observed in Spain.

The Committee also asked whether there were exceptions to the prohibition of night work in some sectors. It reiterates its question on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee notes from the information provided in the Spanish report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§9 of the 1961 Charter. It requested that the report provide a full and up-to-date description of the situation in law and in practice. The report does not include any details on this point but refers to the information provided in connection with the prevention of occupational risks for young workers, which gives figures concerning labour inspections carried out and breaches detected but does not specifically explain the risks or situations identified, or indicate the medical examinations conducted or how regular they are. The Committee therefore repeats its request.

Conclusion

Pending the information requested, the Committee defers its conclusion.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information in the comments of 17 May 2019 by the trade union confederations, Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT).

Protection against sexual exploitation

The Committee notes from the report that Law No. 26/2015 of 28 July 2015 amending the system for protecting children and young persons enhanced the protection of children against sexual abuse.

It notes that the Government Delegation against Gender-Based Violence of the Ministry of Health, Social Services and Equality is currently implementing measures for child victims of gender based violence and trafficking for the purpose of sexual exploitation.

The Committee notes from the GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (2018), that preventing trafficking in children for the purpose of sexual exploitation has been the predominant concern in Spain. The Ministry of Health, Social Services and Equality, in co-operation with the autonomous regions, runs online courses for professionals providing direct assistance to children aimed at preventing, identifying and intervening in cases of child abuse, sexual abuse, trafficking and sexual exploitation. Training on trafficking in human beings was provided through this online course to 56 professionals in 2015 and 83 professionals in 2017.

The Committee notes from the Concluding Observations of the United Nations Committee on the Rights of the Child on the combined fifth and sixth periodic reports of Spain (CRC/ESP/CO/5-6, 2018), that the Spanish authorities are called on to increase efforts to combat the sexual exploitation of children in the context of travel and tourism.

The Committee points out that to uphold the right protected by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, particularly children's involvement in the sex industry. This prohibition must be combined with a monitoring mechanism and appropriate sanctions.

The Committee therefore asks for information in the next report on measures taken to prevent the sexual exploitation of children and assist victims. It also asks again whether child victims of sexual exploitation, whether related to trafficking or not, can be held criminally liable for their actions. The Committee considers that if this information is not provided in the report there will be nothing to establish that the situation is in conformity with the Charter.

Protection against the misuse of information technologies

In its previous conclusion (Conclusions XX-4/2015), the Committee asked for updated information regarding measures taken in law and in practice to combat the sexual exploitation of children through the use of Internet technologies, such as by providing that Internet service providers are responsible for monitoring the material they host and encouraging the development and use of the best system to supervise Internet activities.

The Committee notes from the above-mentioned GRETA report that the possibility of blocking websites is expressly provided for in Article 10 et seq. of Law No. 34/2002 of 11 July 2002 on Information Society Services and E-commerce. The Prosecution Service has a Unit specialising in IT crimes, including child pornography.

The report states that in the context of its awareness-raising campaigns on violence, the Government Delegation against Gender-Based Violence has focused in the last few years on children and young persons and the use of new technologies, through several campaigns

The Committee asks for updated information on measures taken in law and in practice to protect children from the misuse of information technologies and whether Internet service providers are required to delete illegal content which they are aware of or prohibit access to it.

Protection from other forms of exploitation

The Committee notes from the report that on 1 December 2017, the Observatory on Childhood, run by the Ministry of Health, Social Services and Equality, adopted an "Appendix to the Framework protocol for the protection of victims of trafficking in human beings concerning measures to be taken to identify and provide care to child victims of trafficking", which applies to all children who are the victims of trafficking for whatever purpose.

The Committee notes from the above-mentioned GRETA report that the number of child victims of trafficking identified over the period from 2013 to 2016 was 42 (37 girls and 5 boys). However, GRETA notes that the data do not reflect the real scale of trafficking in human beings in Spain, as a result, in particular, of the lack of a comprehensive approach to detecting and combating all forms of trafficking. In addition, the GRETA report states that the vast majority of identified victims are women and girls trafficked for the purpose of sexual exploitation (84%).

The Committee notes from the Comment of the ILO (CEACR), adopted in 2016 and published at the 106th session of the ILC (2017), that a new Comprehensive Plan to combat the trafficking of women and girls for sexual exploitation (2015-2018) has been approved.

It also notes that CCOO and UGT trade unions state in their comments to the Committee that specific activities to help trafficked children are carried out only if trafficking is for sexual exploitation and the minors concerned are female. The Plan, therefore, excludes all boys who are trafficked, whatever the purpose, and girls trafficked for non-sexual purposes.

The Committee requests information on measures adopted to prevent trafficking of children and identify and assist all child victims of trafficking.

In its previous conclusion (Conclusions XX-4/2015), the Committee asked what measures have been taken to assist children in a street situation. The report does not answer this question. The Committee considers that if this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee also asks what measures have been taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural area

The Committee refers to General Comment No. 21 of the United Nations Committee on the Rights of the Child which provides authoritative guidance to states on ways of developing comprehensive, long-term national strategies on children in street situations using a holistic, child-rights approach and addressing both prevention and response.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

In its previous conclusion (Conclusions XX-4 (2015)), the Committee found that the situation was in conformity with Article 8§1. Accordingly, it will examine only the recent developments and additional information.

Right to maternity leave

The report states that there was no change in the legislation on maternity leave during the reference period. Article 48§4 of the Royal Decree on the Status of Workers provides for 16 weeks of maternity leave for employed women, with an additional two weeks per child in the event of multiple births.

Right to maternity benefits

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity in this respect. Under Royal Decree No. 295/2009, maternity benefits must be equivalent to 100% of the contribution basis constituted by the wage received in the month preceding maternity leave (according to the MISSOC database, the maximum basis for contribution was € 4,070.10 in 2019). This benefit is paid throughout maternity leave.

The Committee asks that the next report provide information regarding the right to any kind of benefits for the women employees who do not qualify for maternity benefit during maternity leave.

In its previous conclusion, the Committee asked whether the minimum amount of maternity benefits corresponded to at least 50% of the median equivalised income.

The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

According to Eurostat data, the median equivalised income in 2017 was €14,207 a year, or €1,184 a month. 50% of the median equivalised income was therefore €7,104 a year, or €592 a month. The gross minimum monthly wage in Spain was €825.65. In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

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

Prohibition of dismissal

The Committee previously noted (Conclusions XX-4 (2015) and XIX-4 (2011)) that, pursuant to Articles 52 to 55 of the Workers' Statute Act, dismissal is prohibited from the beginning of pregnancy, throughout maternity leave and up to the end of other types of suspension of the employment contract linked to maternity and breastfeeding. Dismissal is also prohibited after reintegration for the nine months that follow the birth. The report states that there was no change in the situation during the reference period.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee also asked that the next report clarify in which cases it was possible to terminate an employee's contract during maternity leave on one of the "reasonable grounds" listed in Article 52 of the Workers' Statute, i.e. in case of the employee's inability to perform her duties; if the worker fails to adapt to technical changes despite training offered by the employer; in case of repeated absenteeism, other than for health reasons, representing 20% of the working days in any two consecutive months, or 25% of the working days in any four non-consecutive months during the course of a year; in case of redundancies concerning a smaller number of workers than was established for a collective redundancy scheme; or in case of state-funded activities of non-profit entities if the funding ceases to be available. In reply, the report indicates that under Articles 53.4 and 55.5 of the Workers' Statute, and Articles 108.2 and 122.2 of Law No. 36/2011 of 10 October 2011 regulating the labour courts, the dismissal of a pregnant employee, an employee who has recently given birth or who is breastfeeding, *inter alia*, is null, except when it is declared legal because it is decided on grounds which are unrelated to the pregnancy or to the right to take the corresponding leave.

In view of the information provided in the report, the Committee notes again that it remains possible to dismiss an employee during her maternity leave on other grounds such as a collective redundancy, even if the company has not ceased to operate (Article 51 of the Workers' Statute). The report refers to a judgment of the Court of Justice of the European Union of 22 February 2018 which found that the economic, technical, organisational or production-related grounds which permit an employer to proceed lawfully with a collective redundancy may be regarded as exceptional grounds not related to the person of the worker, constituting an exception to the prohibition to dismiss a pregnant worker. In this connection, the Committee points out that Article 8§2 of the Charter permits the dismissal of an employee during pregnancy or maternity leave solely in certain cases, in particular as the result of serious misconduct which justifies terminating the worker's employment, if the company ceases to operate or if the period prescribed in the employment contract expires. These exceptions are however strictly interpreted by the Committee. In view of the above, the Committee notes that dismissing an employee during maternity leave on other grounds, such as a collective redundancy, even if the company has not ceased to operate, raises issues of compatibility with Article 8§2 of the Charter. Therefore, it concludes that the grounds for dismissal of an employee during pregnancy or maternity leave go beyond the admissible exceptions and that the situation is consequently not in conformity with Article 8§2 of the Charter.

Redress in case of unlawful dismissal

In its previous conclusions, the Committee asked for information on situations where reinstatement was not possible and for clarification on the compensation that might be awarded for unlawful dismissal on the basis of the Equality Act, which prohibits discrimination based on pregnancy and maternity.

In reply, the report states that Article 55.6 of the Workers' Statute provides that "declaring the nullity of a dismissal shall lead to the immediate reinstatement of the worker and payment of any remuneration not received", and that this provision applies to both objective and disciplinary dismissals. Article 113 of Law No. 36/2011 of 10 October 2011 regulating the labour courts provides, in similar terms, that "if the dismissal is declared null, the employer shall be ordered to reinstate the worker immediately and pay any remuneration not received". However, the Committee notes from the report that the Spanish legislation does not allow workers to freely choose either reinstatement or termination of the employment contract with corresponding compensation when the dismissal has been declared null. Article 286 of Law No. 36 of 2011 provides that when the worker's reinstatement is not possible, due to the closure of the enterprise or other factual reasons, the court can declare the end of the employment relationship and award the worker compensation. In that case, the employer must pay, in addition to the remuneration not received, the compensation provided for by Article 56.1 of the Workers' Statute for unjustified dismissal, i.e. compensation "amounting to 33 days' salary per year of service, with the periods of less than one year calculated on a *pro rata* basis of the months completed, up to 24 months". In addition, Article 286.2.b) of Law No. 36/2011 provides that a judge may award additional compensation amounting to 15 days' salary per year of service (the sum is calculated on a *pro rata* basis for periods of less than one year), up to 12 months' salary "due to specific circumstances and the damage caused by non-reinstatement or unlawful reinstatement". The report also states that the case law recognises that in the event of discrimination for reasons related to maternity, an employee may have a right to damages, i.e., to compensation other than that provided for in cases of the termination of a contract.

The Committee reiterates that, in the event of unlawful dismissal of an employee during pregnancy or maternity leave, domestic law must provide for adequate and effective means of redress, and employees who consider that their rights in this matter have been violated must be able to take their case before the courts. Reinstatement must be the rule. Exceptionally, if reinstatement is impossible (for example, where the company ceases to operate) or the worker concerned does not wish it, adequate compensation must be awarded. Domestic law must permit the courts to award a level of compensation that is sufficient to both deter the employer and fully compensate the victim of the dismissal. The Committee asks for specific examples of compensation awarded in cases of the unlawful dismissal of employees who were pregnant or on maternity leave. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Spain is in conformity with Article 8§2 of the Charter in this respect. In the meantime, it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 8§2 of the 1961 Charter on the ground that the reasons for dismissal of an employee during pregnancy or maternity leave go beyond the admissible exceptions.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

In its previous conclusion (Conclusions XX-4 (2015)), the Committee concluded that the situation was in conformity with Article 8§3 of the Charter. It asked for confirmation that the breaks for breastfeeding which civil servants are entitled to were paid (Conclusions XIX-4 (2011) and XX-4 (2015)).

It considered that, in the absence of this information, there would be nothing to establish that the situation is in conformity with the Charter in this respect. As the report does not reply to this question, the Committee repeats it and finds in the meantime that the situation is not in conformity with Article 8§3 of the 1961 Charter on the ground that it has not been established that women working in the civil service are entitled to paid breastfeeding breaks.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 8§3 of the 1961 Charter on the ground that it has not been established that women working in the public sector are entitled to paid breastfeeding breaks.

Article 8 - Right of employed women to protection

Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work

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

Regulation of night work in industrial employment

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

In its previous conclusion (Conclusions 2015), the Committee noted that, if the assessment of the working conditions, including night work, reveals particular risks for pregnant or nursing women, the employer must take the necessary measures to eliminate those risks (Section 26§1 of the Prevention of Professional Risks Act, No. 31/1995). Should the adaptation of the post prove impossible, the workers concerned should be transferred to another post while keeping the same pay (Section 26§2). If no transfer is possible, the employment contract will be suspended, and the employee will receive special cash benefits, of an amount equivalent to her pay, from the social security system (Royal Decree No. 295/2009, Chapter IV).

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of the protected period.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§4 of the 1961 Charter.

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

The Committee takes note of the information 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)*, and in the comments by *Confederación Intersindical Galega*, as recorded on 15 and 26 April 2019 respectively, as well as the addendum to Spain's report, in response to these comments, forwarded on 24 June 2019.

Legal protection of families

Rights and obligations, dispute settlement

With regard to **rights and responsibilities of spouses** and the **settlement of disputes**, the Committee previously found that the situation was in conformity with the 1961 Charter (Conclusions XX-4 (2015) and XIX-4 (2011)). The Committee understands that there has been no change in these areas. It therefore concludes that the situation remains in conformity.

Issues relating to **restrictions to parental rights and placement of children** are examined under Article 17.

The Committee refers to its previous conclusion (Conclusions XXI-2 (2017)), in which it found that the situation was in conformity with Article 16 of the 1961 Charter with respect to **mediation services**. It asked for information on the implementation of the Comprehensive Family Support Plan 2015-2017. The Committee takes note of the detailed information (including statistical data for the reference period) provided in the report with respect to court and out-of-court mediation. The report states that to support the development of family mediation, grants have been awarded to non-profit-making entities providing mediation services and funds made available to the autonomous communities in recent years. As regards more specifically the Comprehensive Plan 2015-2017, the report states that a memorandum on its implementation and final assessment was to be submitted to an interministerial committee in 2018. The Committee therefore asks that the next report provide information on this final assessment as regards family mediation services.

Domestic violence against women

Spain has signed and ratified the Istanbul Convention on preventing and combating violence against women and domestic violence (which entered into force on 1 August 2014). As yet the requisite assessment under this instrument has not been carried out.

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)) for a description of the legislative framework regarding gender-based violence (in particular Organic Law No. 1/2004 introducing comprehensive protection measures to combat gender-based violence). It had asked that the next report provide figures.

The Committee takes note of the information in the present report regarding measures for the prevention of domestic violence against women and the protection of victims. As regards prevention, the report mentions the requirement for convicted persons to participate in training in sex education, equal treatment and non-discrimination as one of the conditions to which the court may subject the suspension of sentences handed down to persons convicted of violence against women (Article 83 of the Criminal Code). As regards victim protection, sentences of this type may likewise be suspended by the court on condition that the convicted person is prohibited from approaching the victim or from residing in a particular place. The report also states that victims of gender-based violence have the right to receive free legal aid, whether or not they have the means to take legal action (reform of Law No. 1/1996 on free legal aid). Law No. 4/2015 on the standing of victims of crimes provides, more generally, for the introduction of measures to protect victims, including victims of

crimes against sexual freedom and integrity (victim support offices, counselling and emotional support, public compensation system).

As regards prosecution of domestic violence, the Committee takes note of the latest legislative developments during the reference period: the reform of the Civil Code by Law No. 15/2015 on Non-Contentious Proceedings which includes provisions prohibiting persons convicted of involvement in the deliberate killing of their spouses from marrying, and depriving persons convicted of other domestic and gender-based violence offences of the right to inherit; the reform of the Criminal Code (reform of Organic Law No. 1/2015) introducing the offence of coercion into marriage and the offence of harassment in cases where the victim is the perpetrator's spouse or has been in an emotional relationship with him or her, tougher penalties for perpetrators of offences involving violence against women and life imprisonment for the offence of murder preceded by an offence against the sexual freedom of the victim, and explicitly criminalising the removal of technical devices attached for the purpose of monitoring the execution of sentences or security measures. The Committee requests that the next report provide statistical data on the number of convictions for domestic violence against women issued by the courts specialising in gender-based violence provided for in Organic Law No. 1/2004, and on the trends in these figures in recent years.

As regards integrated policies, the report refers to the monthly and annual statistical bulletins published by the Government Delegation for Combating Gender-Based Violence during the reference period. These bulletins provide information on the number of women victims of gender-based violence resulting in death, the number of 016 calls (helpline for information and legal advice on violence against women), the number of women who have used the helpline for the care and protection of victims of gender violence (ATENPRO), the number of complaints, cases submitted for comprehensive monitoring of gender violence, protection orders, detainees, etc. In this connection, the report states that eradicating violence against women calls for a comprehensive, multidisciplinary and cross-cutting approach and therefore requires the involvement of everyone involved in the collection and disclosure of data.

The Committee further notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its Concluding observations on the seventh and eighth periodic reports of Spain (6-24 July 2015), expressed alarm at the prevalence in Spain of violence against women, and the high percentage of women who had died as a result of gender-based violence in close relationships. It was concerned to note the deterioration of protective services for women victims of domestic violence in several autonomous communities, including the limited availability of shelters for women. The CEDAW has also recommended that Spain take the appropriate measures to follow up its decision of 16 July 2014 concerning Communication No. 47/2012, *González Carreño v. Spain*. In this decision, the CEDAW found there had been several breaches under the Convention on the Elimination of Discrimination against Women with respect to the rights of a mother and her deceased daughter, murdered by her father. In particular, it recommended that Spain strengthen application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence; provide mandatory training for judges and administrative personnel on the application of the legal framework in this area; and take appropriate and effective measures so prior acts of domestic violence would be taken into consideration when determining custody and visitation rights regarding children and so that the exercise of custody or visiting rights would not endanger the safety of the victims of violence.

The Committee asks that the next report provide updated information on domestic violence against women and related convictions (see above), the implementation of the various measures taken or planned, and on their contribution to the fight against violence of this type, also in the light of the aforementioned recommendations of the CEDAW.

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusion (Conclusions XXI-2 (2017)) for a description of the situation, which was found to be in conformity with the Charter. The Committee takes note of the information in the present report on family counselling services, in particular as regards the various services and schemes available in the autonomous communities. With regard to the Comprehensive Family Support Plan 2015-2017, whose objectives included promoting the development of family counselling services at regional and local level, the report explains that a memorandum on its implementation and final assessment was to be submitted to an inter-ministerial committee in 2018. The Committee therefore asks that the next report provide information on this final assessment as regards family counselling services.

Childcare facilities

The Committee refers to its previous conclusion (Conclusions XXI-2 (2017)), in which it found the situation to be in conformity with the Charter and asked that future reports provide updated information on childcare facilities.

The report states that according to the statistics for the year 2015-2016, the coverage rates for preschool education were 34.96% for children aged 0 to 2 years and 96.45% for children aged 3 to 5 years. These rates exceed the targets set by the European Union for the year 2010 (33% for children under the age of three years and 90% for children aged between three and mandatory school age).

The Committee notes in this regard that according to the European Commission's 2018 report on the Barcelona objectives, 39.3% of children aged 0 to 3 years were cared for in formal childcare structures in 2016 (as against an average of 32.9% for the 28 EU member states). The Committee nevertheless takes note of the *Confederación Intersindical Galega's* comments on this subject, to the effect that there are very few places available in public childcare facilities, resulting in long waiting lists. According to this confederation, public funding for childcare facilities for children under the age of three years and grants for private facilities have been discontinued. The Committee accordingly asks that the next report assess to what extent the supply of places in childcare facilities corresponds to the demand, indicating the number of applications rejected because there are not enough places.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked about the conditions for granting family benefits to nationals of other States Parties to the Charter residing or working legally in Spain. The Committee notes that, according to MISSOC, the personal scope of family benefits extends to all persons, including children's parents and guardians, legally resident in Spain.

The Committee notes that under Article 16, states must guarantee equal treatment for nationals of States Parties residing legally in their territory with regard to eligibility for family benefits. States can apply a length-of-residence requirement for non-contributory benefits, on condition that the period is not excessive. The Committee has ruled that a period of six months is reasonable and therefore compatible with Article 16. It asks for the next report to confirm that there is no length-of-residence requirement for nationals of States Parties to be eligible for family benefits.

Level of family benefits

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

The Committee notes that, according to MISSOC, family benefits amounted to € 24.25 per child in 2017. According to EUROSTAT, the median equivalised monthly income was € 1.183. The Committee notes, therefore, that family benefits represent 2% of median equivalised monthly income.

The Committee notes from the comments of the *Comisiones Obreras* (CCOO) trade union confederation and the *Union general de trabajadores de España* (UGT) that the main family benefit under the Spanish social protection system is an allowance for each dependent child, which is received by nearly 800 000 families and frozen at € 291 per annum. This benefit is clearly inadequate and does nothing to solve the severe problem of child poverty in Spain, which is made worse by the economic crisis. According to the most recently available statistics, families with dependent children are more likely to have an income below the poverty level, with a poverty rate of 24% for two-adult families, rising to 41% for one-parent families, the majority of which are headed by a single mother. The Committee also notes that in its reply, the Government states that Royal Legislative Decree 8/2019 of 8 March on urgent measures to provide social protection and combat employment insecurity regarding working hours, which came into force on 1 April 2019, included special and urgent social protection measures which raised the allowance for each dependent child to € 341 per annum, and to € 588 per annum for families in extreme poverty. The estimated cost of this increase in benefits for dependent children under 18 was € 142 million in 2019. The Committee asks for updated information in the next report on these family benefit levels.

In the meantime, the Committee considers that there has been no change in the situation which it found previously not to be in conformity with the Charter. It therefore reiterates its finding of non-conformity on the ground that the level of family benefits is inadequate as it does not constitute a significant income supplement.

Measures in favour of vulnerable families

In reply to the Committee's question in its previous conclusion, the report states that the measures introduced in the reference period to assist socially and economically vulnerable families are fully applicable to single-parent families, which have a significantly higher than average poverty rate. Regarding the mortgage loans crisis, single-parent families are among those considered particularly likely to need assistance with loan repayments. The relevant measures include the establishment of a social housing stock of properties owned by credit institutions and support for highly vulnerable families having difficulties with their mortgage repayments. According to the Government, Chapter IV of Royal Decree 106/2018 of 9 March 2018 setting out the regulations governing the National Housing Plan 2018-2021 provides for a programme to assist persons who have been evicted. The programme also covers persons who, in the event of enforced eviction in other than mortgage-related proceedings, cannot or will not be able to occupy their principal residence and lack the financial resources to secure alternative accommodation. This measure concerns persons who have been or are about to be forcibly evicted following mortgage or non-mortgage-related proceedings or following eviction applications for non-payment of rent, even if the individuals or families concerned already benefit from other national, regional or local social housing or assistance programmes. The Royal Decree lays down the regulations governing the constitution, operations and management of the rented social housing stock. The Committee asks for information in the next report on the impact of these measures on single-parent and Roma families.

Housing for families

In its previous conclusion (Conclusions XIX-4 (2011) and Conclusions XX-4 (2015)), the Committee asked for information on procedural safeguards against unlawful eviction, such as alternative solutions to eviction, a reasonable notice period, legal remedies, access to legal aid and compensation in case of illegal eviction.

The Committee notes that the report does not provide answers to all these questions. The report does nevertheless explain that there is a Social Housing Fund through which housing units owned by lending institutions are used as social housing and offered to people who have been evicted from their primary residence for non-payment of their mortgage, do not have sufficient income and are in a highly vulnerable situation (single-parent families with at least two dependent children and in general any family with dependent children). The Committee notes from the report that this system also operates in cases where no actual eviction has yet occurred, for example where the foreclosure procedure ends in the property being repossessed by the bank or the property is the subject of a “dation in payment”. The Committee also takes note of Royal Decree No. 106/2018 regulating the National Housing Plan 2018-2021 (outside the reference period), which provides for a specific assistance programme for persons in situations of forced eviction (owing to mortgage foreclosure or failure to pay rent).

The Committee also takes note of the comments made by the *Confederación Intersindical Galega*, according to which 30 000 households (tenants) have been evicted from their homes. In its response to these comments, the Government refers to various co-operation protocols in the event of eviction, concluded between the General Council of the Judiciary and regional and local social services. At the same time, the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations on the sixth periodic report of Spain (28 March 2018, § 37, outside the reference period), expressed concern about the absence of an adequate legislative framework that provides statutory legal and procedural safeguards for the persons affected (see also the views adopted by this Committee concerning the individual communication *López Albán v. Spain*, on 11 October 2019, outside the reference period, regarding an eviction in the case of illegal occupation). The Committee accordingly asks that the next report provide detailed information on the legislative framework applicable in cases of eviction (for failure to pay rent, illegal occupation and foreclosure), in the light of the requirements laid down in Article 16 of the 1961 Charter (European Roma and Travellers Forum (ERTF) v. The Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §§ 81-82). The Committee points out that to comply with the Charter, legal protection for persons threatened by eviction must be prescribed by law and include a prohibition on carrying out evictions at night or during winter. It therefore requests that the next report state whether this prohibition exists in law or in practice. The Committee also asks that the next report provide updated figures on the number of evictions actually carried out, and examples drawn from domestic case-law on whether the judicial review in this area includes an examination of the proportionality of the eviction. It underlines that should the next report not provide the information requested there will be nothing to establish that the situation in Spain is in conformity with the 1961 Charter on this point. In the meantime, the Committee reserves its position.

The Committee takes note of the information contained in the report on the objectives of the National Plan for the Promotion of Renting, Rehabilitation of Buildings and Urban Regeneration and Renewal, drawn up for the period 2013-2016 and extended until 2017. One of the objectives was to encourage the use of the public social housing stock in order to improve the supply of low-cost housing for families in more vulnerable situations. The Committee notes, however, that the report does not contain any information on the implementation of the objectives set in the National Plan. It therefore requests that the next report provide such information, together with information on the measures planned and possibly adopted under the National Housing Plan 2018-2021 mentioned in the report.

The Committee notes from other sources that the number of social housing units in Spain does not appear to satisfy existing needs (United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Spain, 28 March 2018, § 35, outside the reference period; Housing Europe, *The State of Housing in the EU 2017*, p. 98). To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards adequate provision of housing for families, the Committee invites the Government to indicate in the next report the total number of social housing units in Spain as a whole, the percentage of applications granted, and the average waiting time for the allocation of social housing. It also wishes to be provided with information on the availability of housing benefits for the most vulnerable families, in particular large families and single-parent families. Pending receipt of the information requested, the Committee reserves its position on this point.

As regards access to housing for Roma families, the Committee previously requested (Conclusions XX-4 (2015)) information on the measures taken to end completely and definitively the existence of slum dwellings and permit the relocation of their inhabitants to standard housing, thereby improving Roma living conditions. The report does not provide any information on this point. The Committee notes from the most recent ECRI report on Spain (5 December 2017, § 85) that the housing situation is relatively good and that only 2% of Roma in Spain live in slums and households without running water inside the dwelling (as opposed to 10% in 1991). The Committee asks that the next report provide information on measures planned or taken to definitively end the existence of these slums.

Lastly, having regard to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015), the Committee asks that the next report also provide general information on the housing situation of refugee families, in particular after the initial reception period. It also wishes to be provided with concrete information on the accommodation conditions for asylum seekers in temporary holding centres for immigrants (*Centros de estancia temporal de inmigrantes*, CETI) in Ceuta and Melilla (see in this regard the comments made by the United Nations Committee on Economic, Social and Cultural Rights, *ibid.*, § 39, and also by the Special Representative of the Council of Europe Secretary General on Migration and Refugees, Report on the fact-finding mission to Spain from 18 to 24 March 2018, outside the reference period).

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions XXI-2 (2017)) for a description of the situation, which it found to be in conformity with the 1961 Charter. The Committee wished to receive information on the reform of the National Family Council envisaged in the Comprehensive Family Support Plan 2015-2017.

The Committee takes note of the information in the report concerning the various entities consulted when preparing the Comprehensive Family Support Plan, and the regulation which calls for civil society to be involved in the preparation of draft legislation and regulations, in particular through prior consultations.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with the 1961 Charter on the ground that the level of family benefits is inadequate as it does not constitute a significant income supplement.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

Regarding the right of the child to know his or her origins the Committee refers to its previous conclusion (Conclusions 2015). The report states following an amendment to the Civil Code in 2015 the right of an adopted person to know their origins was reinforced. Public institutions are required to hold information on the identity of the biological parents' medical history for at least 50 years following the adoption. Once a person has reached the age of majority (before through the child's legal representatives) he or she has the right to receive information regarding their biological origins.

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare.

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states. Nor does it include children born stateless in Europe or those who have not sought asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

Therefore the Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).

The Committee asks further what measure have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers, children in an irregular situation.

Protection from ill-treatment and abuse

The Committee notes that corporal punishment continues to be prohibited in all settings, including in the home.

Rights of children in public care

Amendments to the law on the Legal Protection of Minors (LOPJM) provide that the placement of a child outside his or her family should take place in a family setting and only where this is not possible in an institution. This is particularly so with regard to children under six years of age. Children under three years of age should never be placed in an institution unless it is their best interest or there is no possibility of placing the child in a family setting. In all cases the placement of children under 6 years of age in an institution should last no longer than three months.

New provisions were also introduced concerning the inspection of institutions, which must now take place every semester and where deemed necessary.

The rights of children in care were also strengthened. According to LOPJM, a child has the right to be informed of all decisions regarding their placement, the right to contact the public institution directly and be informed of any important facts regarding their placement. In addition a child has the right to maintain contact with their family of origin, the right to bring to the attention of the prosecution service any complaints or claims regarding the terms of their placement, the right to have their privacy respected, the right to keep personal belongings, and the right to participate in the development and implementation of the institutions activities

According to the report, in 2016 14,104 children were placed in institutions and 19,641 in foster families.

The Committee notes the positive developments in the situation however it notes that the number of children in institutions remains quite high. It also notes the Concluding Observations of the UN Committee on the Rights of the Child on the combined fifth and sixth periodic report on Spain [CRC/C/ESP/CO/5-6 March 2018] where the UN Committee expressed concern, inter alia, the high number of children in institutions.

The Committee asks to be kept informed of all trends in the area. The Committee asks in particular that the next report to provide data on the number of children placed outside their family in non-institutional settings, and the number of children placed outside their family placed in an institution.

Children in conflict with the law

The Committee previously asked what is the maximum length of pre-trial detention and prison sentence that can be imposed on a child (Conclusions 2015).

The report provides no information on children in conflict with the law, therefore the Committee reiterates its request for the above mentioned information. It notes that if the requested information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee also asks whether children may be placed in solitary confinement and if so for how long and under what circumstances.

Right to assistance

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation [International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the merits of 20 October 2009, §§70-71, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50].

The Committee considers that the detention of children on the basis of their or their parents' immigration status is contrary to the best interests of the child. Likewise unaccompanied minors should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.

The Committee previously asked for information on what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation. The report provides no information on this.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the combined fifth and sixth periodic report on Spain [CRC/c/ESP/CO/5-6 March 2018] that the UN Committee expressed concern that conditions in reception and accommodation centres were substandard and there was neglect in overcrowded temporary holding centres. In addition, as regards unaccompanied children, the UN Committee expressed concern about the inadequate and uneven protection standards for unaccompanied children across autonomous communities, including cases of lack or delay of legal assistance, or of provision of inadequate information to children; and the high levels of violence, the inadequate nature of the treatment and protection provided by professionals in reception centres for children, including allegations of prostitution of girls and insufficient access to regular education and leisure activities, and the lack of a complaints mechanism;

The Committee requests information on accommodation facilities for migrant children, whether accompanied and unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings which are adequately monitored. The Committee also requests again information on the assistance given to unaccompanied minors, in particular to protect them from exploitation and abuse. If the requested information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter on this point. Lastly it requests information as to whether children who are irregularly present in the State, whether accompanied by their parents or not, may be detained – and if so under what circumstances.

As regards age assessments, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable [European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee notes from individual cases before the UN Committee on the Rights of the Child [NBF v. Spain 11/2017, L v. Spain 16/2017] that Spain uses bone testing to assess age and, asks in what situations the state does so. The Committee asks what are the potential consequences of such testing? (e.g., can the results of such a test serve as the sole basis for children being excluded from the child protection system?).

Child poverty

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State Parties efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the State Parties obligations in terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 31.3% of children in Spain were at risk of poverty or social exclusion, significantly higher than the EU average (24.9%).

Nevertheless the Committee asks the next report to provide information on the rates of child poverty as well as on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty.

Conclusion

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

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

The report specifies that according to census data in the reference period, 13.6% of the population residing in Spain is of foreign origin. The main countries of origin are, in this order: Romania, Morocco, the United Kingdom, Italy, China, Bulgaria, Germany and Ecuador. Although immigration has declined as a result of the economic crisis, since 2012 the trend in the number of immigrants arriving in Spain has been on the rise.

Policy and the legal framework

The Committee noted in its conclusion in 2015 (Conclusions XX-4) that the European Committee against Racism and Intolerance (ECRI) welcomed in its 2013 report the adoption by Spain of a comprehensive strategy against racism, racial discrimination, xenophobia and other related forms of intolerance. It asked for comprehensive information in this respect, which the report extensively provides. It states, in particular, that the Strategy is managed by a ministerial structure at the Ministry of Employment and social security (OBERAXE) established in 2017. It encompasses actions in various fields: analysis of information systems and legal proceedings in matters of racism, racial discrimination, xenophobia and other forms of intolerance; promotion of institutional and civil society coordination and cooperation; comprehensive prevention and protection of victims of racism, racial discrimination, xenophobia and related intolerance; educational measures; employment; health; housing; sport and awareness. The report further indicates actions carried out in collaboration with various organizations which have competence in the matter and are included in the objectives of the Strategy and describes several programs carried out in different sectors both at national and regional level.

The Committee considers that the situation is in conformity with the 1961 Charter on this point.

Free services and information for migrant workers

The Committee recalls that this provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate (Conclusions I (1969), Statement of Interpretation on Article 19§1). Information should be reliable and objective, and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health) (Conclusions III (1973), Cyprus).

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres (Conclusions 2015, Armenia).

The Committee found the situation to be in conformity with the 1961 Charter in this respect, pending information on integration service entitled Integra Local.

The report provides information on several awareness-raising campaigns, aimed at sensibilisation as regards incidents of racism, hatred and intolerance. Furthermore, it indicates that a publication was issued on successful experiences, measures and tools for the promotion of equal opportunities and non-discrimination in business and translated to several languages of minor migrant groups.

The Committee recalls its question for information on integration of migrant workers, in particular on the information supplied to migrants before and after arrival to help their integration into Spanish life.

Measures against misleading propaganda relating to emigration and immigration

The Committee recalls that measures taken by the government should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions XIV-1 (1998), Greece).

The Committee considers that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia, as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views.

The Committee further recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. Finally, States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

The Committee has made a comprehensive assessment of the measures taken at national, regional and local level in this respect in its previous conclusion (see for detailed description [Conclusions XXI-2](#)) and concluded that the situation was in conformity with the 1961 Charter. It asked for further information on envisaged activities of an inter-ministerial group created in order to improve the systematic collection of empirical data on discrimination-related complaints and on results attained.

The report provides extensive details on various measures which continue to be carried out in this respect; projects and their outcomes, analytical reports on the situation, as well as on further suggested and ongoing measures.

The Committee considers that the situation is in conformity with the 1961 Charter on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§1 of the 1961 Charter.

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

Paragraph 2 - Departure, journey and reception

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

Immediate assistance offered to migrant workers

This provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus).

Reception means the period of weeks which follows immediately from the migrant workers' arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Charter requires States to provide explicitly for assistance in matters of basic need, or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary (Conclusions XX-4 (2015), Poland).

The Committee also reiterates that equality in law does not always and necessarily ensure equality in practice. Additional action becomes necessary owing to the different situation of migrant workers as compared with nationals (Conclusions V (1977), Statement of Interpretation on Article 19).

The Committee further notes that it addressed the legal framework relating to assistance offered to migrant workers and found it to be in conformity with the requirements of the Charter (see [Conclusions XIX-4 \(2011\)](#) and earlier ones). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2015 ([Conclusions XX-4](#)).

In the previous conclusion (Conclusions 2015), the Committee requested information on implementation of the Royal Decree 702/2013 as regards access of migrant workers and their families to certification cards, particularly on their arrival, required for enjoyment of the services of the National Health System. The report does not address this issue. The Committee notes from previous reports that all foreign nationals have the right to medical assistance on the same footing as Spanish nationals provided that they are lawfully registered with a municipality. Nonetheless, it reiterates its question as regards the new legislative elements of 2013. Should the next report not provide comprehensive information in this respect, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Services during the journey

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The report states that circular collective migration programs with countries with which migration management agreements are in place include information and support measures, both during the trip and at the time of arrival, addressed to seasonal workers traveling to Spain. These circular migration programs also guarantee health care for workers on their journey to Spain and ensure that travel takes place in the right conditions.

Conclusion

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

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

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

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

The Committee recalls that the scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1996), Norway), it holds that there must still be established links or methods for such collaboration to take place.

The co-operation required entails a wider range of social and human problems facing migrants and their families than social security (Conclusions VII, (1981), Ireland). Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

In its previous conclusion ([Conclusions XXI-2 \(2017\)](#)), the Committee considered that with the information in its possession it could not establish that there was adequate co-operation between the social services of Spain and emigration and immigration states and that, accordingly, the situation was not in conformity with Article 19§3 of the 1961 Charter. It requested information about measures taken by Autonomous Communities to promote co-operation between their social services and the social services of emigration and immigration states, as well as on any contacts and exchanges established between them.

In reply, the report states that territorial administrations are competent to provide social assistance through their public services with the autonomy accorded to them in this field by the Constitution and the Law on the Local Governments. Within this framework, there are specific collaborative initiatives between the social services of municipalities or Spanish autonomous communities and the countries of origin of immigration in Spain. The Committee recalls that it has positively assessed this framework in its former conclusions ([Conclusions XVIII-1\(2006\)](#) and the previous ones), under which the co-operation between the public and private services of the immigration and emigration countries is organised on the basis of co-operation agreements signed between the Spanish Federation of municipalities and provinces and NGOs working with migrants. It further recalls from previous reports that immigrant participation centres (CEPIs) provide legal and psychosocial assistance, training and help with jobseeking, extending beyond the social security assistance alone. Co-operation agreements abroad are signed with the support of the Ministries of Employment and Social Affairs and their employment offices. The Committee also notes from the International Organisation for Migration (IOM) report (see www.iom.int/countries/spain) that immigration in Spain is not homogeneous and acknowledges that the range of services on offer varies considerably from one Autonomous Community to another.

The Committee considers that the legal framework adopted in Spain, given the nature of its migration, complies with requirements of Article 19§3 of the 1961 Charter. It asks, however, that the next report provides examples of cooperation of the Autonomous Communities with

the most important emigration and immigration countries, in particular, what services are involved and what is the form and nature of contacts and information exchanges.

The Committee notes that the report does not address the issue of Spanish workers residing in other States Parties and repeats its request for information whether any assistance is offered to Spanish workers abroad who could face difficulties in employment, social security or family matters.

Conclusion

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

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

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

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

It further notes from the Migration Integration Policy Index (MIPEX) 2015 report on Spain that its anti-discrimination laws and equality policies are weaker than average. It asks the next report to comment on this observation.

Remuneration and other employment and working conditions

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training, promotion, as well as vocational training (Conclusions VII (1981), United-Kingdom).

It refers to its previous conclusion ([Conclusions XX-4 \(2015\)](#)) for description of the non-discrimination principle and the role of labour inspectorate to oversee it, together with the Strategic Citizenship and Integration Plan 2011-2014.

It further notes from MIPEX 2015 report that Spain offers non-EU citizens with equal legal access to jobs, general training, study grants and social benefits. Migrant workers have the same access to general education, training and employment services and experience the same working conditions and access unemployment benefits and social security based on what they paid into it as workers.

The Committee strongly reiterates its request for information on initiatives and practical measures taken to implement the legislative framework, such as awareness-raising, monitoring and measures to combat the disproportionate impact of the economic difficulties on the migrant population.

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

The Committee recalls that this sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

The Committee has observed in its previous conclusion ([Conclusions XX-4 \(2015\)](#)) that in accordance with the relevant Constitutional Court decisions, section 1 of Institutional Act No. 4/2000 states that: (a) foreign nationals have the right to join a trade union or a professional organisation on the same terms as Spanish nationals; (b) foreign nationals may exercise the right to strike on the same terms as Spanish nationals.

Since 2011 (see Conclusions XIX-4), the Committee has been asking for information regarding foreign workers' trade union membership and concerning non-discriminatory treatment in law and in practice with regard to enjoyment by foreign workers of the benefits afforded by collective agreements. As the report does not provide further information on these questions, the Committee lacks the necessary information to establish that the situation is in conformity with the 1961 Charter.

The Committee furthermore asked for information concerning the legal status of workers posted from abroad. The report does not address this issue and the Committee reiterates its request. It stresses that if the requested information does not appear in the next report, there will be nothing to establish that the situation is in conformity with the 1961 Charter on this point.

Accommodation

The Committee recalls that States shall eliminate all legal and de facto discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§1111-1113). It also recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

The Committee noted in its previous conclusion ([Conclusions XX-4 \(2015\)](#)) that long-term foreign residents were entitled to the public system of housing allowances on the same conditions as nationals. The trade unions stressed, however, that this provision excluded from public housing allowances foreigners without long-term residence authorisation and the Committee asked for explanations on this comment.

The report specifies that pursuant to relevant regulations in force, it is sufficient to have a legal residence in Spain and it is not necessary to be a long-term resident to be a beneficiary of the housing benefits on the same footing as nationals. It further provides that the housing policy for the reference period was based primarily on the National Plan for the Promotion of Tenancy, Building Rehabilitation and Urban Regeneration and Renovation, established for the period 2013 -2016 and extended until 2017, which applies to migrant workers and their families, as well as to nationals. This plan includes many practical measures to promote the social and economic protection of families, including financial support and provision of social housing (see 31 report for more details).

Monitoring and judicial review

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals (Conclusions XX-4 (2015), Germany).

The Committee further recalls that under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision (Conclusions XV-1 (2000) Finland). It considers that existence of such review is important for all aspects covered by Article 19§4.

The report does not address this issue. The Committee notes from MIPEX 2015 report that Spain's equality body, created in 2009, has the weakest powers to inform and support potential victims than any other comparable body in other countries. This weak mandate undermines the effectiveness of anti-discrimination laws and government's broad equality commitments. The Committee asks the next report to provide comprehensive information on the functioning and competences of this body, as well as on all avenues of appeal or review as regards the aspects covered by this provision of the Charter. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§4 of the 1961 Charter on the ground that it has not been established that non-discriminatory treatment is ensured in law and in practice with regard to enjoyment by foreign workers of the benefits afforded by collective agreements.

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

Paragraph 5 - Equality regarding taxes and contributions

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

The Committee recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (Conclusions XIX-4 (2011), Greece).

It recalls that it previously concluded that the situation in Spain was in conformity with the Charter (see, among others, [Conclusions XX-4 \(2015\)](#)).

Upon the Committee's request for an updated description of the situation, the report confirms that foreign nationals are treated in the same way as Spanish nationals with regard to matters such as social benefits and tax relief. The Committee also notes the bilateral agreements concluded with other States party to the Charter on taxation of work-related income, referred to in its previous conclusion ([Conclusions XIX-4 \(2011\)](#)).

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§5 of the 1961 Charter.

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

Paragraph 6 - Family reunion

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

Scope

This provision obliges States Parties to allow the families of migrants legally established in the territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies (Conclusions VIII (1984) Statement of Interpretation on Article 19§6).

In its conclusion in 2015 ([Conclusions XX-4](#)) the Committee found that the fact that no provision was made in law or in practice for the family reunion of dependent children of migrant workers aged between 18 and 21 who did not have a disability and did not require the assistance of a third party because of their state of health, was not in conformity with the Charter. The Committee notes from the report that eligibility was opened to partners and expanded for adult children in 2009. Accordingly, it considers that the situation is now in conformity with the Charter as to the scope of the right to family reunion.

Conditions governing family reunion

The Committee recalls that a state must eliminate any legal obstacle preventing the members of a migrant worker's family from joining him (Conclusions II (1971), Cyprus). Any limitations upon the entry or continued present of migrant workers' family must not be such as to be likely to deprive this obligation of its content and, in particular, must not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands; Conclusions 2011, Statement of Interpretation on Article 19§6).

The Committee furthermore recalls taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances (Conclusions 2015, Statement of Interpretation on Article 19§6).

In its 2015 conclusion ([Conclusions XX-4](#)) the Committee asked for a comprehensive description of the legal framework for family reunion, including any requirements or restrictions based on the criteria relating to available means and housing or such as language or health, and a description of the administrative process of consideration and appeal.

In its previous conclusion ([Conclusions XXI-2 \(2017\)](#)), the Committee assessed the requirement of accommodation and of sufficient level of means and considered that the situation was not in conformity with the 1961 Charter on the ground that it has not been established that social welfare benefits were not excluded from the calculation of the worker's income for the purposes of family reunion. It noted in particular that foreign nationals applying for family reunion must prove that they had suitable accommodation to provide for their own needs and those of their family members and asked for statistics on refusals for permit on this ground. The report provides statistics indicating that in the reference period between 2, 210 and 2,889 applications were refused yearly due to insufficient accommodation or means. No further details as to how the relevant criteria are set have been provided. The report solely confirms that income from the social assistance system is not calculated towards the level of means required for this purpose. Accordingly, the Committee reiterates its finding of non-conformity on this point. Furthermore, it considers

that it has not been effectively demonstrated that the requirements for sufficient or suitable accommodation to house family members are not so restrictive as to prevent any family reunion.

The report does not provide the requested comprehensive information on restrictions relating to language or healthcare. The Committee recalls that requirements for family members to pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion (Conclusions XVI-1 (2002), Greece). It also recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests). With this in mind, the Committee recalls that states must show that the national situation is in conformity with the Charter. In the event of repeated absence of information, the Committee will conclude that there is failure to comply and accordingly, it considers that it has not been established that the situation is in conformity with the Charter in this respect.

Finally, the Committee recalls that migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory (Conclusions XVI-1 (2002), Netherlands, Article 19§8). It asks whether it is possible to remove family members when the migrant worker has personally lost his right to stay, and if so, under what conditions.

Remedy

The Committee recalls that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (Conclusions 2015, Statement of Interpretation on Article 19§6).

In reply, the report provides that administrative decisions related to residence permits may be the subject to appeal before the same body that issued them or be challenged directly before the administrative courts.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

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

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

Paragraph 7 - Equality regarding legal proceedings

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

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions 2015, Armenia).

The Committee notes from the report that there have been no changes since the last cycle of conclusions, when the Committee assessed the situation in detail ([Conclusions XX-4 \(2015\)](#)), and found it to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§7 of the 1961 Charter.

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

Paragraph 8 - Guarantees concerning deportation

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

The Committee has interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behavior, as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

The Committee has assessed the legal framework and the grounds on which expulsion may be ordered in its previous conclusions (see for more details [Conclusions XVIII-1 \(2006\)](#), [Conclusions XIX-4 \(2011\)](#) and [Conclusions XX-4\(2015\)](#)). At its most recent examination in 2015, the Committee asked for specific information on the circumstances in which foreigners who have exceeded the expiry date of their residence permits could be expelled, as well as on the extent to which their individual circumstances could be taken into account.

The report states that expulsion is applicable if the residence permit has expired for more than three months, however, before such decision is taken, it is mandatory to take into account the individual circumstances of the person, such as residence time in Spain and the links created, age, the consequences for the individual and for family members and the links with the country to which the person would be expelled. Furthermore, it is not allowed to expel:

- persons who were of Spanish origin and who have lost Spanish nationality,
- persons who are beneficiaries of a permanent incapacity for work resulting from an accident at work or an illness that occurred in Spain, beneficiaries of contributory unemployment benefits or beneficiaries of social security intended to achieve their integration or their social or professional reintegration.
- foreign spouse who is in one of the situations mentioned above and who has resided legally in Spain for more than two years, or his ancestors and their minor children,
- disabled elderly who are not objectively able to meet their own needs because of their state of health.
- pregnant women when this could pose a risk to pregnancy or maternal health.

The Committee asks the next report to provide statistics on deportations of migrant workers, as well as on grounds on which the relevant deportations were based. It also wishes to receive information on the frequency of appeals against expulsion orders, as well as the proportion which are successful. Finally, it asks whether persons who may not be expelled are granted leave to remain.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§8 of the 1961 Charter.

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

Paragraph 9 - Transfer of earnings and savings

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

The Committee recalls that this provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country (Conclusions XIII-1 (1993), Greece).

The Committee further notes that it previously addressed the legal framework relating to transfer of earnings and savings of migrant workers ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter.

The report confirms that migrants are entitled to transfer their income and savings without any limitations to any country.

In the previous conclusion (Conclusions 2015) the Committee referred to its Statement of Interpretation on Article 19§9 ([Conclusions 2011](#)), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers. It asked whether there were any restrictions in this respect. As the report does not reply on the matter, the Committee recalls its question and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

Conclusion

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

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

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continue to be no discrimination in law between migrant employees and self-employed migrants.

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

The Committee has found the situation in Spain not to be in conformity with Articles 19§4 and 19§6. Accordingly, the Committee concludes that the situation in the Spain is not in conformity with Article 19§10 of the 1961 Charter

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non-conformity under Articles 19§4 and 19§6 apply also to self-employed migrant workers.