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EUROPEAN SOCIAL CHARTER **(REVISED)**

Response by the Government of Spain to comments
submitted by

The Save the Children; Trade Unions General Workers'
Union (UGT), Workers' Commissions (CCOO), and
Galician Inter-Union Confederation (CIG)
concerning the 1st National Report on the implementation
of the European Social Charter (revised)

Comments registered by the Secretariat
on 5 September 2023

CYCLE 2023



SECOND VICEPRESIDENT OF
THE GOVERNMENT

MINISTRY
LABOUR AND SOCIAL
AND SOCIAL ECONOMY

UNIT FOR INTERNATIONAL RELATIONS

**RESPONSE OF THE SPANISH GOVERNMENT TO THE COMMENTS FROM SAVE THE CHILDREN;
TRADE UNIONS GENERAL WORKERS' UNION (UGT); WORKERS' COMMISSIONS (CCOO) AND
GALICIAN INTER-UNION CONFEDERATION (CIG) ON NATIONAL REPORT NO. 35 ADDRESSED TO
THE COMMITTEE ON SOCIAL RIGHTS (CEDS) OF THE EUROPEAN SOCIAL CHARTER.**

The European Committee on Social Rights selected the thematic group to be reviewed in 2022. This is the **CHILDREN, FAMILIES AND MIGRANTS** Group, which covers Articles **7,8,16,17,19,27 and 31** of the European Social Charter. The reference period established by the Committee formally covers from **1/1/2018 to 31/12/2021**.

The 35th report was submitted by the Government of Spain on 16 January 2023, and concerns the accepted provisions relating to thematic group 4, "Children, families and migrants", which includes the following articles:

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

Through this document, the Spanish Government submits observations on the comments and observations made by Save the Children Spain Foundation, Galician Unions' Confederation (CIG), and Confederación sindical de Comisiones Obreras (CCOO) and Unión general de trabajadoras y trabajadores de España (UGT) on the 35th National Report from the Government of Spain on the Implementation of the European Social Charter. Those comments are related to Conclusions of non-compliance and requests for additional information required by the Committee (Conclusions XXI-4 (2019)).

The above-mentioned comments were brought to the attention of the European Committee of Social Rights and published on the Council of Europe website.

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

—Paragraph 2: Take, measures to facilitate exit, the journey and reception of these workers and their families, and to provide them during the trip, within of the limits of its jurisdiction, the necessary health and medical services, as well as good hygiene conditions.

—Paragraph 3: Promote collaboration, required in each case, between social services, public or private, from countries of emigration and immigration.

—Paragraph 4: equality in employment, trade union law and accommodation.

—Paragraph 6: Family reunification.

—Paragraph 9: Allow, within legal limits, the transfer of the portion of income and savings of the workers they may wish.

—Paragraph 10: Equal treatment for self-employed persons.

—Paragraph 11: States parties should promote and facilitate the teaching of the State's national language recipient to migrant workers and their families.

—Paragraph 12: States parties should promote and facilitate, as far as possible, education.

from the worker's mother tongue to the children of the migrant worker.

Article 27 Right of workers with family responsibilities to equal opportunities and equal treatment.

Article 31 Right to Housing.

Article 7 – RIGHT OF CHILDREN AND YOUTH TO PROTECTION.

Paragraph 1: Provide that the minimum age for admission to employment is 15 years, with exceptions for children employed in light work prescribed without prejudice to their health, morals or education

The Committee determines that it needs additional information to that one provided in Report 31, in order to assess the situation. Information is required on measures taken by the authorities (e.g. Labour Inspections and Social Services) to detect child labour, including children working in the informal economy. In this regard, information is required on the number of children actually working (either from existing statistics on this topic or on the surveys to be carried out to obtain such information), as well as on the measures taken to identify and monitor the sectors in which children are strongly suspected to be working illegally.

Trade Union Organizations' understand that the conclusion must be deferred due to lack of information from the Spanish Government.

RESPONSE

Labour infringements

With regard to the Committee's request in its conclusions XXI-4 (2019), in response to National Report No 31, it is appropriate to clarify that these action data on the monitoring of the minimum age for admission to work (16 years) would correspond to the data on monitoring the work of children of compulsory school age (also up to 16 years), which the Committee seemed to call for in its 2019 conclusions in relation to Article 7(3) of the Charter.

Information on the number of labour infringements detected for non-compliance with the legal prohibition on minimum working age (period 2018-2021) is provided below:

Year	Infringements detected
2018	17
2019	18
2020	16
2021	16

Article 7: RIGHT OF CHILDREN AND YOUTH TO PROTECTION

Paragraph 3: prohibition of child labour.

To provide that persons who are still subject to compulsory education shall not be employed in such work that would deprive them of the full benefit of their education.

The Committee requires information regarding the measures adopted by the authorities to detect child labour, including children that work in the informal economy.

Labour Unions believe that, in relation to forbidding child labour, Spain does not comply with the Charter.

RESPONSE:

On 25 June 2021, Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents entered into force. The purpose of this standard is to guarantee the fundamental rights of children and adolescents to their physical, mental, psychological and moral integrity against any form of violence, ensuring the free development of their personality and establishing comprehensive protection measures, including awareness-raising, prevention, early detection, protection and reparation of harm in all areas in which their lives develop.

Other subsequent milestones:

-On 5 May 2022, the “Action Plan against the Sexual Exploitation of Children and Adolescents in the Child Protection System” was approved by the Sectoral Conference on Children and Adolescents (in conjunction with the Sectoral Conference on Equality), which provides for various measures to be developed by the Ministries of Social Rights and Agenda 2030 and the Interior.

-In addition to the above, the Strategy for the Eradication of Violence on Children was adopted in the Council of Ministers on 15 November 2022. The Strategy covers the period 2023-2030 and contains five strategic areas, each of which sets out a target, a series of action lines, as well as the most important measures with their respective results to assess the impact.

Article 7 – RIGHT OF CHILDREN AND YOUTH TO PROTECTION.

Paragraph 5: Fair remuneration

The Committee concludes that the situation in Spain is not in accordance with Article 7§5 of the 1961 Charter as follows:

- *The remuneration of young workers is not fair;*
- *It has not been established that the benefits paid to apprentices are adequate*

In addition to the reply to the conclusions, the following points should be taken into account:

1. The report shall indicate the minimum and average wages, in net value, for the reference period in question. Its net amount, i.e. (after deduction of taxes and social security contributions), is requested for a single worker.

2. The Committee has repeatedly requested information on the average and minimum net amounts at national level received by trainees at the beginning and at the end of their apprenticeships. The previous report (No. 31) does not contain the requested information. The Committee considers that, in the absence of information, it has not been established that the benefits paid to apprentices are adequate.

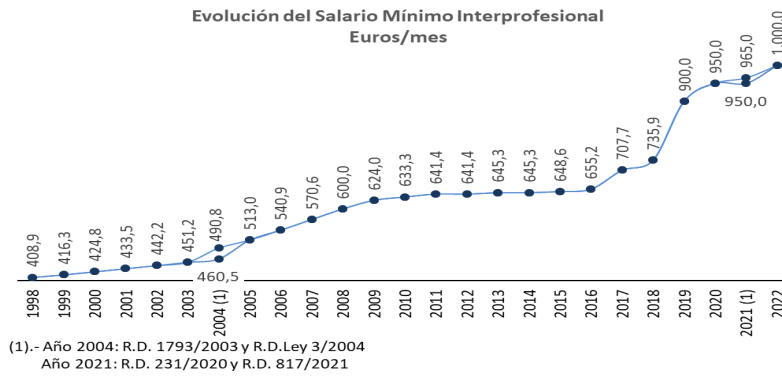
Labour Unions consider that the information provided by the Government is insufficient. The information provided does not correspond to the requested information, with regard to both its content and its period of reference. In view of all the above, we believe that in the matter of fair pay, Spain does not comply with the Charter.

RESPONSE

Remuneration of young workers.

Article 27(1) of the Workers' Statute Act stipulates that it is the Government, after consultation with the social partners, who shall fix the Minimum Interprofessional Wage (SMI in Spanish) annually, according to a number of factors indicated above.

In 2022, in fulfilment of this mandate, and with the aim of approaching the objective of the European Social Charter so that the minimum wage represents 60 % of the average wage, the SMI increased to EUR 1.000 gross monthly, **without distinction of age or sex**. This increase represents an increase of 3.63 % compared to the 2021 SMI so it reaffirms the upward trend that the minimum wage has been experiencing in Spain since 2014, the year in which it did not see its amount increase.



The largest percentage increase occurred in 2019, when it rose by 22.3 % compared to the previous year to EUR 900 gross monthly. Between 2022 and 2018, the reference period for this report, the SMI has increased by 35.9 %.

As regards the average salary, in 2020 (last available data) it stood in Spain at EUR 25.165,51 gross per worker, an increase of 3.2 % compared to the previous year, despite being an exceptional year marked by the pandemic. Monthly stands at EUR 2,038 gross, above EUR 1.944,42 gross monthly in 2018. That is, in 2020 average wages increased 2.84 % more than at the beginning of the reference period of this report, according to data from the **Annual Wage Structure Survey** published by the INE.

Article 7 – RIGHT OF CHILDREN AND YOUTH TO PROTECTION.

Paragraph 9: Provide that persons under the age of 18 employed in occupations prescribed by national laws or regulations shall be subject to regular medical supervision

In its Conclusions XXI-4 (2019), the Committee determines that it requires more information than that provided in the 31st National Report 31 in order to evaluate the situation:

1. General legal framework, as well as the scope of possible reforms.
2. Adopted measures (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3. Pertinent figures, statistics, or any other relevant information.

Labour Unions believe that, with regard to regular medical control, Spain does not comply with the Charter.

RESPONSE

General legal framework

The legal framework continues to be made up of Articles 22.1 (health surveillance) and 27 (protection of minors) of Law 31/1995 of 8 November 1995 on the Prevention of Occupational Risks and Article 37 of Royal Decree 39/1997 of 17 January 1997 approving the Regulations on Prevention Services. In any event, health surveillance must be carried out on “periodic intervals” (Article 37(3)(b)(3) of the Royal Decree). Collective agreements usually specify this periodicity.

Measures taken

With regard to the medical monitoring of workers under the age of 18, the Labour and Social Security Inspectorate carries out an activity to monitor compliance with Spanish occupational safety and health regulations, in relation to the employer’s obligations on periodic monitoring of the state of health of workers, in accordance with the risks inherent in the work, and in particular the obligations aimed at protecting the health and safety of minor workers.

The inspection actions carried out, whether initial or periodic medical examinations, are recorded in a unitary way for all workers, including both inspection actions that have affected workers under 18 years of age and those referring to workers over 18 years of age.

Article 7 – RIGHT OF CHILDREN AND YOUTH TO PROTECTION.

Paragraph 10: *Ensure special protection against the physical and moral hazards to which children and young people are exposed, and in particular against those directly or indirectly resulting from their work.*

The Committee determines that it needs more information than that provided in the 31st National Report in order to evaluate the situation: 19

1. General legal framework, as well as the scope of possible reforms.

2. Adopted measures (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3. Pertinent figures, statistics, or any other relevant information.

Labour unions believe that National Report No 35 has not provided information on the legal framework, in relation to occupational dangers and Spain does not comply with the Charter.

RESPONSE**Legal framework**

In this regard, it should be recalled that in Spain the legislation on the protection of young people at work applies to the age group between 16 and 18 years old. In addition, work prohibited for minors (aged 16 to 18) in Spain has been regulated since 1957 in a much more protective relationship than that established by Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, and which is considered to be up-to-date.

The Decree of 26 July 1957 prohibits young people under the age of 18 from carrying out work in a series of activities and industries related to the rule, which sets out, in each case, the reason for the prohibition and, where appropriate, the particular conditions of the prohibition.

In addition, the prohibitions set out in the standard extend to work carried out in the industry groups in which the prohibition is included and to any analogous work whatever the industry group in which it is carried out.

The fifth final provision of Royal Decree-Law 32/2021, of December 28, contains the mandate to the Ministry of Labour and Social Economy, to analyze the social security regulations applicable to minors based on the conclusions of the National Strategy for Safety and Health at Work.

In this sense, the Spanish Strategy for Safety and Health at Work 2023-2027 includes among its lines of action the improvement of the protection of young and underage workers, for which it is foreseen that the regulations applicable to the work of minors will be analyzed and article 27.2 of the Law on the Prevention of Occupational Risks will be developed, in order to ensure adequate protection of workers and minors.

Measures taken

As regards the activity of the Labour Inspectorate (ITSS) in terms of the control of labour regulations and the prevention of occupational risks in relation to the work of minors (under 16 years of age and between 16 and 18 years), the data for the period 2018-2021 are provided:

ACTIONS AND RESULTS OF THE ITSS IN LABOUR MATTERS RELATED TO CHILD LABOUR**WORK OF CHILDREN AGED 16 TO 18**

Year	Number of actions	Infringements detected	Amount of proposed sanctions (EUR)	Workers concerned	Number requirements
2018	226	31	218.377	45	50
2019	215	32	197.061	40	38
2020	143	28	183.777	32	18
2021	176	16	94.391	17	20

WORK OF CHILDREN UNDER 16

Year	Number of actions	Infringements detected	Amount of proposed sanctions (EUR)	Workers concerned	Number requirements
2018	1.034	17	106.267	23	59
2019	1.064	18	118.769	20	67
2020	598	16	109.390	52	21
2021	988	16	100.016	18	11

Article 8 – RIGHT OF WOMEN EMPLOYED TO PROTECTION.

Paragraph 2: Unlawful dismissal during maternity leave

The Committee concludes that the situation in Spain does not comply with the Charter's Article 8§2, since the reasons for dismissing a female worker during her pregnancy or maternity leave go beyond the permitted exceptions.

Based on the information provide in the 31st National Report, the Committee once again observes that it is still possible to dismiss a female worker during her maternity leave for other reasons, such as collective dismissals, even if the company has not stopped operating (Article 51 of the Workers' Statute).

In addition to the reply to this conclusion, the following clarifications should be taken

According to CCOO and UGT, Spanish legislation does not provide for the prohibition of dismissal during the absence of a worker due to pregnancy or during her maternity leave, thus violating the Charter guarantee. They point out that the situation of pregnancy or absence during maternity leave makes it difficult for workers to file the claim against dismissal within the legal period.

RESPONSE

The following should be noted in this regard: in accordance with Article 103.1 of Law 36/2011, of October 10, regulating social jurisdiction, the worker may claim against dismissal, within twenty working days following that in which it occurred. This period shall be time-barred for all purposes and shall not be counted on Saturdays, Sundays and public holidays at the seat of the court.

Therefore, the applicable limitation period for filing the claim before the social jurisdiction is 20 working days following the one in which the dismissal took place. The limitation period for bringing proceedings against dismissal begins on the day following the actual and effective termination of the worker, but if the worker becomes aware of the dismissal letter after the date indicated therein, the date of notification is valid unless the deficiencies in the notification are attributable to the worker (Supreme Court Judgment of 9-4-1990).

Grounds for suspension of the limitation period are the request for prior conciliation, which is mandatory before the application against dismissal (Article 63 of Law 36/2011 of 10 October), with resumption on the day after the conciliation was attempted or fifteen days after its filing without having been concluded (Article 65.1 Law 36/2011 of 10 October).

In addition, it should be recalled that, in the case of dismissal for objective reasons, the undertaking is obliged to comply with a number of formal requirements, including written communication with the cause, compensation and the granting of a notice period of 15 days (Article 53(1) ET).

Having established one of the previous grounds for the invalidity of the dismissal, the judge must give priority to the dismissal, regardless of the manner in which the dismissal took place (Article 108(3) of Law 36/2011 of 10 October 2011).

Article 8 – RIGHT OF WOMEN EMPLOYED TO PROTECTION.

Paragraph 3: *Provide that mothers who are breastfeeding their children have the right to sufficient time off for this purpose.*

The Committee concludes that the situation in Spain does not comply with the Charter's Article 8§3, since it has not been established that women employed in public service enjoy the right to paid breaks for nursing.

Labour Unions believe that in the matter of time off for nursing mothers, Spain does not comply with the Charter.

RESPONSE

Spain has a protective regulation for the breastfeeding situation. It should be borne in mind that the Committee's finding of non-conformity concerns breastfeeding leave in public employment. The trade unions' allegations therefore have nothing to do with the Committee's finding of non-conformity, referring to the extension of breastfeeding leave in two special cases: death of one of the parents and single parents.

In relation to these allegations, this Ministry may point out that the infant care leave provided for in Article 37.4 of the Workers' Statute complies with the Charter by guaranteeing mothers who breastfeed their children sufficient time off to do so.

In cases of birth, adoption, custody for the purpose of adoption or placement, in accordance with Article 45(1)(d), working persons shall be entitled to one hour of absence from work, which may be divided into two fractions, for the care of the infant until he reaches the age of nine months. The duration of leave shall be increased proportionately in cases of birth, adoption, custody for the purpose of multiple adoption or placement.

Anyone who exercises this right, by his will, may replace it with a reduction of his working time by half an hour for the same purpose or accumulate it in full hours in the terms provided for in the collective bargaining or in the agreement reached with the company respecting, where appropriate, the provisions of that.

The reduction in working hours referred to in this paragraph constitutes an individual right of working persons without their exercise being transferred to the other parent, adopter, guardian or welcoming person. However, if two employees of the same undertaking exercise this right by the same deceased person, their exercise may be limited simultaneously for well-founded and objective reasons for the operation of the undertaking, duly substantiated in writing, and in that case the undertaking must offer an alternative plan to ensure the enjoyment of both workers and to enable the exercise of the rights of conciliation.

Where both parents, adopters, guardians or fosters exercise this right with the same duration and regime, the period of enjoyment may be extended until the infant reaches 12 months, with a proportional reduction in salary from the end of nine months.

Moreover, this right is broader than that required by the Charter, since the other parent's right is also recognized, whereas the Charter only requires its application to mothers. Therefore, under no circumstances does the Charter oblige to extend it in the special cases cited by the trade unions.

Article 8 – RIGHT OF WOMEN EMPLOYED TO PROTECTION.

Paragraph 4: *Regulating the night work of women who are pregnant, who have recently given birth or who are raising their children.*

The Committee requires the Government to describe the general legal framework, specifying the nature, reasons, and scope of any reforms.

Labour Unions believe that in the matter of regulating the employment in night work of pregnant women, women who have recently given birth, or women nursing their infants, Spain does not comply with the Charter.

RESPONSE

National Report No 35 has already provided information on the legal framework governing night work in the case of such women in order to protect their safety and health at work and of the fetus.

With regard to conciliation rights, Article 34.8 ET provides for the right to request adjustments of working hours in order to give effect to the right to work and family reconciliation. This article has recently been amended by Royal Decree-Law 5/2023 of 28 June to bring it into line with Article 9 of Directive (EU) 2019/1158 on Flexible Working Formulas, improving the protection of conciliation rights.

Thus, since it is a right of application before the company of adaptations of working hours to give effect to their rights of work and family reconciliation, it is required that the accommodations be reasonable and proportionate in relation to the needs of the worker and the organizational and productive needs of the company. But the law provides for a number of guarantees to ensure that adaptations are granted when the request is reasonable and proportionate.

In this sense, although it is necessary to negotiate with the company on the worker's request, which must be reasonable and proportionate in relation to the needs of both parties, the latter will have to take place as quickly as possible and, in any event, for a maximum period of 15 days, its concession being presumed if there is no express reasoned opposition within this period. In addition, any decision rejecting the application or offering an alternative proposal must be based on objective reasons. Finally, there is judicial review of this right, which can weigh the needs of the parties.

Article 8 – RIGHT OF WOMEN EMPLOYED TO PROTECTION.

Paragraph 5: Prohibit the employment of pregnant women, women who have recently given birth or who are breastfeeding their children in underground mining and any other work that is inappropriate because of its dangerous, unhealthy or arduous nature and take appropriate measures to protect the labour rights of these women.

The Committee requires information indicating what measures (administrative dispositions, programmes, action plans, projects, etc.) have been adopted to implement the legal framework.

CCOO and UGT allege that insufficient statistical data have been provided, an issue beyond the remit of this Management Centre.

CIG considers that the situation in Spain is of non-conformity because there is no general rule identifying the sectors or activities in which work dangerous to women in such situations is prohibited. Points out that the legislation leaves its decision to the assessment of occupational risks at the company level.

For all these reasons, we believe that in the matter of prohibiting work that is unsuitable for maternity, Spain does not comply with the Charter.

RESPONSE

In relation to this argument, the Ministry refers to what was stated in the report, which reproduced Article 4(2)(b) of Royal Decree 39/1997 of 17 January 1997 approving the Prevention Services Regulation, which was not reproduced in its entirety in the or in National Report No 35.

Article 16 – RIGHT OF FAMILY TO SOCIAL, JURIDIC AND ECONOMIC PROTECTION.

The Committee concludes that the situation in Spain does not comply with Article 16 of the Charter of 1961, since the level of family benefits is not adequate, amounting to an insignificant amount of additional income.

Trade Unions Organizations' and Save The Children consider that insufficient measures have been taken and therefore believe that in the matter of the family's right to social, legal, and economic protection, Spain does not comply with the Charter.

RESPONSE

In the matter of family protection several measures and concrete action plans have been adopted, such as minimum living income scheme or the National Plan for Response to the Economic and packages of urgent measures to support vulnerable groups and families.

Relevant Plans and Schemes

- **Minimum living income**

Life Minimum Income adopted on May 29, 2020 is a benefit aimed at preventing the risk of poverty and social exclusion of people who live alone or are integrated into a living unit and lack basic economic resources. It protects single-parent households in particular by providing for a one-parent supplement of 22 per cent of the monthly amount of the one-person non-contributory pension. It also protects children more intensely, by establishing a child support supplement that involves a monthly amount for each minor member of the unit of coexistence according to their age. To receive the supplement to children, income and net worth thresholds are established.

The child support supplement consists of a monthly amount for each minor member of the unit of cohabitation, depending on the age reached on 1 January of the corresponding year, according to the following tranches:

- Under 3 years of age: EUR 100.
- Older than 3 years and under 6 years of age: EUR 70.
- Older than 6 years and under 18 years of age: EUR 50.

- **Program of Family Protection and Care for Child Poverty**

Through the “Protection of the Family and Care for Child Poverty” Scheme, social projects supporting families and children and adolescents in situations of vulnerability or poverty developed by the Autonomous Communities (all except Navarre and the Basque Country) and the cities of Ceuta and Melilla, with no commitment to co-financing by these administrations.

- **Non-contributory benefits**

The protective action of the Spanish social security system includes the non-contributory family benefits regulated in Chapter I of Title VI “Non-contributory benefits” of the consolidated text of the General Law on Social Security approved by Royal Legislative Decree 8/2015 of 30 October 2015.

Non-contributory family benefits, which fall within the protection of the social security system, are financial benefits whose main purpose is to contribute to the maintenance of the costs of the birth or adoption of children and the maintenance thereof, especially in the case of large families or with some additional circumstance such as the existence of a single parent, disability of the child or parents, etc.

Since 1 June 2020, when Royal Decree-Law 20/2020 of 29 May 2020 establishing the minimum living income and amending Article 351 of the recast text of the General Law on Social Security enters into force, family benefits in their non-contributory form are as follow:

-Financial allowance per dependent child with a disability.

-A flat-rate financial benefit for the birth or adoption of a child, in the case of large, single-parent families and in the case of mothers with disabilities.

-A one-time payment financial benefit for multiple childbirth or adoption.

This state programme, which in the last financial year (2022) had a budget of 65 million euros, is developed from three types of projects to be financed:

- **Non-contributory family benefits**

The conditions for entitlement to these non-contributory family benefits are laid down, in general terms, in Article 352.1 of the consolidated text of the General Law on Social Security approved by Royal Legislative Decree 8/2015 of 30 October 2015 and are: to reside legally in Spanish territory; to have dependent children or minors in permanent foster care; not be entitled, either the father or the mother, to benefits of the same nature under any other public social protection scheme.

- **Measures for vulnerable families.**

National Strategy for Equality, Inclusion and Participation of Gypsy People 2021-2030.

This Strategy, which was approved by the Council of Ministers on 2 November 2021 and has been developed following the guidelines of the European Framework for Programming for Roma Equality, Inclusion and Participation until 2030, provides:

- ✓ Eradicate chabolism (from 2.17 to 0 %) and infra-housing (from 6.46 to 3 %).
- ✓ Reduce segregation and residential concentration of the Roma population (2.9 to 1 %).
- ✓ Ensure access to the various essential services for the Roma population and improve basic equipment and quality of housing.
- ✓ Reduce discrimination in access to housing (from 30.8 to 15 per cent).

With regard to vulnerable families in general, the Ministry of Social Rights and Agenda 2030 manages a credit line to finance projects of the Autonomous Communities in social services, with the aim of addressing the situation of families with children, who suffer severe material deprivation or are at risk of poverty, in order to improve their social and employment situation.

- **Accommodation of families evicted**

Royal Decree 106/2018 of 9 March 2018, which regulates the national housing plan 2018-2021, establishes a **Programme to assist the evicted**.

It also refers to persons who, in the event of forced eviction in the context of non-mortgage enforcement proceedings, cannot or may not have the accommodation that constitutes their main residence and do not have the economic means to acquire new dwellings. This measure applies to persons who have been or will be subject to forced eviction in the context of a mortgage or non-mortgage foreclosure procedure or after a request for eviction for non-payment of rent, even if they are individuals or family units already benefiting from other national, regional or local programmes, social or host housing.

- **Measures envisaged and possibly taken in the framework of the 2018-2021 National Housing Plan**

Details of the implementation of the Rental Housing Promotion Programme are provided below. (Programme to promote the rental housing stock).

In relation to the implementation of the objective of promoting the social housing park, data are provided for the implementation of the Program to promote the rental housing stock of the Housing Plan 2018-2021.

Bilateral Commission Agreements, Program to promote the rental housing stock. Year 2018

AUTONOMOUS COMMUNITY	TOTAL AGREEMENTS	NO OF DWELLINGS	AMOUNT MINISTRY	AMOUNT ACS	AMOUNT CITY COUNCIL	IMP. OTHER ADMONES.	PROMOTER/PRIVATE AMOUNT	AMOUNT TOTAL
ANDALUSIA	3	86	1.813.210,00	6.946.098,19	0,00	0,00	0,00	8.759.308,19
ASTURIAS	4	11	118.562,28	35.450,12	154.488,53	0,00	0,00	308.500,93
BALEARIC	1	18	0,00	2.786.175,24	0,00	0,00	0,00	2.786.175,24
C. AND LEON	2	70	0,00	1.158.382,50	5.818.733,88	0,00	0,00	6.977.116,38
CATALONIA	15	465	4.197.146,75	4.197.146,75	10.210.635,53	0,00	29.158.163,69	47.763.092,72
EXTREMADURA	2	71	1.973.545,60	1.105.178,40	0,00	0,00	3.468.240,00	6.546.964,00
MADRID	17	682	14.932.754,00	22.259.298,78	47.941.235,07	0,00	0,00	85.133.287,85
MURCIA	6	65	1.275.731,79	510.292,71	0,00	0,00	3.673.826,10	5.459.850,60
TOTALS	50	1.468	24.310.950,42	38.998.022,69	64.125.093,01	0,00	36.300.229,79	163.734.295,91

Bilateral Commission Agreements, Program to promote the rental housing stock. Year 2019

AUTONOMOUS COMMUNITY	TOTAL AGREEMENTS	NO OF DWELLINGS	AMOUNT MINISTRY	AMOUNT ACS	AMOUNT CITY COUNCIL	IMP. OTHER ADMONES.	PROMOTER/PRIVATE AMOUNT	AMOUNT TOTAL
ANDALUSIA	23	722	15.150.559,10	4.675.000,01	0,00	841.875,00	43.644.282,99	64.311.717,10
BALEARIC	2	43	0,00	5.515.911,25	0,00	0,00	0,00	5.515.911,25
CANARIES	2	100	2.050.000,00	50.000,00	0,00	8.868.213,74	0,00	10.968.213,74
CANTABRIA	1	22	492.345,00	200.590,00	0,00	0,00	918.348,90	1.611.283,90
C AND LEON	2	71	0,00	941.625,00	6.684.282,61	0,00	0,00	7.625.907,61
CATALONIA	17	470	7.798.424,00	0,00	0,00	0,00	36.971.881,88	44.770.305,88
GALICIA	4	96	1.427.100,34	945.667,17	0,00	0,00	4.207.184,73	6.579.952,24
MADRID	1	83	1.394.577,00	0,00	0,00	0,00	9.698.280,01	11.092.857,01
MURCIA	15	166	2.191.869,83	868.734,61	0,00	0,00	10.427.237,71	13.487.842,15
LA RIOJA	2	21	402.184,00	120.655,00	0,00	0,00	1.319.304,88	1.842.143,88
TOTALS	69	1.794	30.907.059,27	13.318.183,04	6.684.282,61	9.710.088,74	107.186.521,10	167.806.134,76

The program involves the signing of Bilateral Commission Agreements (BCAs) between the State and the Autonomous Communities to establish the financing of the actions. Between 2018 and 2019, 119 CBAs were signed under this programme.

- **Housing assistance for the most vulnerable families, in particular large families and single-parent families.**

See reply given in Article 16(10)(e). In addition, the Code of Good Mortgage Practices has been approved to mitigate the rise in mortgage rates to vulnerable or middle-class families at risk of vulnerability, facilitating the early repayment of loans and the conversion of variable-rate mortgages to fixed rates.

- **Access to housing for Roma families**

Regarding measures taken to permanently and completely eliminate slums and allow their residents to be relocated to legal housing to improve the living conditions of Roma, *the location of slums*, (2 % Roma population in 2016, compared to 10 % in 1991, according to the Roma Housing and Population Map), is very different according to each Autonomous Community.

- **Sexist Violence**

The Government Delegation for Gender-Based Violence of the Ministry of Equality has been developing different action plans in this area.

Following the *Strategic Plan for Equal Opportunities 2014-2016*, which touched on gender-based violence from a closer perspective to inequality, and the *Plan against Trafficking in Women and Girls for the Purposes of Sexual Exploitation 2015-2018*, as well as the adoption of an Operational Plan for Women and Girls Victims of Trafficking, Sexual Exploitation and Women in Contexts of Prostitution (2022-2026), “Plan Camino”, which includes the First Socio-Working Insertion Programme, work is currently under way on the elaboration of the **State Strategy to Combat Sexist Violence in Spain 2022-2025**.

In order to meet the demands of our society and the needs of women, this Strategy aims to be a roadmap for public policies for the prevention, care, recovery and reparation of the victims of all sexist violence in Spain during the period 2022-2025.

The Strategy will contain measures on the different forms of sexist violence, not just on intimate partner or ex-partner violence. This progresses in the implementation of some of the recommendations contained in the first evaluation report to Spain by the Group of Experts on Combating Violence against Women and Domestic Violence (GREVIO) of November 2020, which calls on Spain to improve the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, to which Spain acceded in 2014).

It has also approved a number of other measures, such as the Royal Decree amending the Regulation on Free Legal Assistance in relation to victims of gender-based violence and other vulnerable victims; it has been agreed, together with the Autonomous Communities, to extend and improve the funding of the State Pact against Gender-Based Violence; the State Strategy to Combat Sexist Violence 2022-2025 has been adopted; the catalogue of Reference on Policies and Services on Violence against Women has been approved; official data on femicides outside the scope of the couple or ex-partner have been submitted for the first time; **the 016 service has** been strengthened with an *online* chat to assist victims of gender-based violence; The Guide to Coordination Criteria in the Field of Criminal and Civil Procedures on Violence against Women has been developed; the General Protocol of Action for the dissemination of the Violet Points campaign has been published at train stations, airports and Spanish ports; measures have been put in place to allow access to certain services and resources for potential victims of trafficking in human beings and sexual exploitation, including those resulting from the displacement of persons fleeing the armed conflict in Ukraine.

Figures on gender-based violence and Spain.

Figures on gender-based violence are given below: figures related to gender-based violence (area 1/2004). Reference period: 1/01/2018 until 31/12/2021.

A) WOMEN KILLED BY GENDER-BASED VIOLENCE (PARTNER OR EX-PARTNER)

Spain began to count the murders of women due to gender-based violence (in the couple or ex-partner) in 2003. The data in this regard are as follows:

- Data from 01/01/2018 to 31/12/2021: in this period, 203 women were killed:
 - 2018: 53 women.
 - 2019: 55 women.
 - 2020: 48 women.
 - 2021: 47 women.

B) MINORS KILLED BY GENDER-BASED VIOLENCE

Spain begins to count the murders of minors killed by gender-based violence in 2013. The data in this regard are as follows:

- Data from 01/01/2018 to 31/12/2021: in this period, 20 minors were killed:
 - 2018: 7 minors.
 - 2019: 3 minors.
 - 2020: 3 minors.
 - 2021: 7 minors.

With regard to the figures of judicial proceedings and convictions for domestic violence against women, the following statistical chart are presented from 1 January 2018 to date.

YEAR	Number of persons prosecuted for domestic violence against women	Number of domestic violence convictions against women	Percentage of Convicted
2018	21.217	18.224	85.90 %
2019	21.718	19.039	87.70 %
2020	16.446	16.446	88.10 %
2021	23.206	20.672	89.10 %
1Q 2022	5.917	5.269	89.0 %

With regard to the evolution of these data, the percentage evolution is as follows:

- Between 2018 and 2019, there was a 4 % increase in the number of domestic violence convictions against women.
- Between 2019 and 2020, the figure decreased by 14 %.
- However, between 2020 and 2021 the number of domestic violence convictions against women is growing again, this time by 26 %.
- As for the change in the overall period from 2018 to 2021, this is a 4 % increase in domestic violence convictions to women.

Article 17 – RIGHT OF MOTHERS AND CHILDREN TO SOCIAL AND ECONOMIC PROTECTION.

Paragraph 1: to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; to protect children and young persons against negligence, violence or exploitation; to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support

In its 2019 Conclusions, the Committee requested the State to provide information on stateless children and on the Legal Framework of assistance provided to foreign children, especially unaccompanied children.

According to Save The Children foreign children continue to face obstacles and disadvantages that prevent them from improving their living conditions through the regularization of their administrative situation and the State did not provide the information requested by the Committee in 2019 in this regard.

RESPONSE

Following the adoption of Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents from violence (hereinafter LOPIVI), the legal framework for guaranteeing the rights of children in Spain, from which a series of commitments arise, such as the creation of the Sectoral Conference on Children and Adolescents, in September 2021.

With this Sectoral Conference, Spain puts children in the centrality of public policies so that the needs and problems of the more than eight million people under the age of 18 who live in Spain are treated as a matter of state.

The Sectoral Conference is a high-level political body that, like other similar bodies, is only understood as a space of work, dialogue and consensus between the competent public administrations (local, regional and state) in the field of protection of children and adolescents.

Article 17 – RIGHT OF MOTHERS AND CHILDREN TO SOCIAL AND ECONOMIC PROTECTION.

Paragraph 2: *Provide free primary and secondary education. Reduction of absenteeism in school and dropout in compulsory education.*

The Committee requires information regarding:

1. Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.
2. Indicate the measures (administrative requirements, programmes, action plans, projects, etc.) adopted to implement the legal framework.
3. Provide figures, statistics, or any other pertinent information, particularly with regard to the number of children that do not complete their compulsory education and leave school without any qualifications, and measures to tackle absenteeism.

Labour Unions and Save The Children believe that in the matter of imparting free primary and secondary education, and reducing school absenteeism and leaving school early, Spain does not comply with the Charter.

RESPONSE

General legal framework.

In the field of education, the Autonomous Communities have competences to develop state rules, regulate the non-basic aspects of the education system, as well as develop those executive-administrative powers that allow them to manage the educational system in their own territory.

The MEFP and the educational administrations of the Autonomous Communities can agree on the establishment of common criteria and objectives in order to improve the quality of the education system and guarantee equity, as stated in Article 7 of the LOE, which also states that, the Sectoral Education Conference (CSE) will promote such agreements and be informed of all those that are adopted.

Gratuity in teaching

Article 27(4) of the Spanish Constitution already states that basic education is compulsory and free of charge. Organic Law 2/2006 of 3 May 2006 on Education (LOE) states that primary education, compulsory secondary education and basic education constitute basic education. Also stipulates that basic education is compulsory and free of charge for all persons.

With regard to schooling, it is for the educational administrations to ensure preventive and compensatory action guaranteeing the most favourable conditions for schooling for all children whose personal or social conditions suppose an initial inequality to access the different stages of education.

Grants and Subsidies

Organic Law 8/1985 of 3 July 1985 regulating the Right to Education (LODE) recognises as one of the basic rights students *“receive the necessary aid and support to compensate for personal, family, economic, social and cultural deficiencies and disadvantages, especially in the case of special educational needs, which prevent or hinder access to and permanence in the educational system”*.

In order to ensure equality of all persons in the exercise of the right to education, students with unfavourable socio-economic conditions shall be entitled to scholarships and study grants.

As a complementary measure, the contribution of a supplementary scholarship of EUR 100 per month has been approved for all students over the age of 16 who already enjoy a scholarship, to continue guaranteeing equal opportunities and that no student is forced to leave their studies out of necessity.

Measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

a) Action plans.

The two main strategic lines of action are scholarships and grants to study and Territorial Cooperation Programs.

- Scholarships and grants for education
- Territorial Cooperation Programs (PCT)

The Ministry of Education and Vocational Training is committed to promoting territorial cooperation programmes aimed at achieving general educational objectives for students, teachers and educational establishments.

b) Other territorial cooperation programmes

- Territorial cooperation programme for the financing of Textbooks and Teaching Materials.

The purpose of this annual programme is to establish the necessary cooperation mechanisms between the Ministry of Education and Vocational Training and the Autonomous Communities in order to collaborate with families through support for the financing of textbooks and teaching materials, seeking to promote the principles of equity and equality in order to compensate for the most unfavourable socio-economic situations, in order to help the education system ensure equity in education and equal rights and opportunities.

- Territorial Cooperation Programme for Educational Inclusion

The objective is to increase the provision and optimise the organisation of specialised resources that address the diversity of students, promote early detection and intervention and enhance the central role of families in the initial stages of the educational process.

- Territorial Cooperation Programme for Emotional Welfare in Education

This program is designed to help meet the attention needs that students can show in the fields of emotional well-being from the perspective of educational intervention.

c) Early abandonment of education and training

Early abandonment of education and training is defined as the percentage of population aged 18-24 who have not followed any type of training in the last four weeks and do not have the upper secondary level.

In 2021 the early abandonment of education and training in Spain stood at 13.3 %, which represents a decrease of 2.7 points compared to the previous year (16.0 % in 2020), which also means a reduction of 17 % as a percentage of that figure. These annual variations place the drop in abandonment in 2021 as the largest since 2000 in percentage change (17 %) and equals the previous largest fall as a difference of percentage points (2.7 pps). Compared to 2011 (26.3 %), a decade ago, there has been a drop of 13.0 points, reducing by almost half the weight of the group of abandonment.

These figures reduce the distance to the European Union average by 3.6 points (9.7 % in 2021), when the distance in 2011 was 13.1 points, and is close to the European target of below 9 % by 2030, as indicated in *the Strategic Framework for European Cooperation in Education and Training for the European Education Area and beyond (2021-2030)*.

In 2021, there is a significant difference between the figures for men (16.7 %) and that of women (9.7 %), although the difference in percentage points decreases slightly, 7.0 pps lower in women than in men (8.6 pps difference in 2020).

Spain's goal is to achieve the European target of reducing early school leaving to 9 % by 2030. This is a national target that is part of the national objectives of the European Pillar of Social Rights Action Plan.

d) Graduates in basic education: graduates in compulsory secondary education and basic degree

The gross graduation rate in Compulsory Secondary Education (ESO) is defined as the relationship between the students who successfully complete this educational stage and are proposed for the bachelor's degree in ESO, regardless of their age, and the total population of the "theoretical age" of the beginning of the last year of this stage (15 years).

The gross rate of graduate population at ESO and graduate in basic VET is 88.3 %.

In the 2019-20 academic year, the gross graduation rate at ESO is 84.0 % compared to the 15-year-old population. Analysing the evolution of the gross graduation rate in ESO, an increase of 9.4 points compared to the 2009-2010 academic year, which means that the percentage reached marks a maximum in the historical series since the introduction of this teaching, in addition to a significant increase of 5.3 points

compared to the previous year. In this period there is a clear difference between men and women, progressively decreasing this difference from 11.6 p.p. at the beginning of the period to 8.4 in the last year. On the other hand, 4.3 % obtained the degree of Vocational Training of Basic Degree.

e) Population aged 20-24 years with at least upper secondary education

The significant increase in the level of education of the young population in the last decade and which has been the basic aspect for the significant reduction of early school leaving, is also reflected through the evolution of the 20-24 year old population percentage indicator that has reached at least the second stage level of E. Secondary, which in 2021 reaches 78.8 %, 16.8 percentage points higher than the 2011 figure (62.0 %).

Compared to the European average, the difference increased from 17.6 percentage points lower in 2011 to 5.9 pps in 2021 (84.7 % European average). For this indicator, although the 2030 European reference level has not been defined, it is indicated in the strategic framework that its monitoring will complement that of early school leaving.

As in the drop-out indicator, the gender gap is very significant, with in 2021 the percentage of women aged 20 to 24 who have completed at least the second stage of secondary education of 83.7 %, 9.5 percentage points higher than the data for men (74.2 %), the difference between both sexes having been reduced compared to that existing in 2011 (15.3 pps).

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION and ASSISTANCE.

Paragraph 2: *Take, within the limits of their jurisdiction, appropriate measures to facilitate the departure, travel and reception of these workers and their families, and to provide them during the journey, within the limits of their jurisdiction, with the necessary health and medical services, as well as good hygiene conditions.*

The Committee indicates that it requires more information than what is provided in the 31st National Report in order to evaluate the situation. The information on the application of Royal Decree 702/2013 regarding the access of migrant workers and their families to accreditation cards, in particular upon arrival, necessary for the enjoyment of the services of the National Health System was not provided.

The obligation to “provide, within their own jurisdiction, appropriate health services, medical care and good hygienic conditions during travel” refers to migrant workers and their families travelling either collectively or in a public or private regime for collective bargaining.

Labour Unions consider the need for providing information, as requested by the Committee

RESPONSE

Travel

As regards the travel of groups of workers hired at source, the Collective Management of Contracts in Origin constitutes a specific regime and procedure linked to labour migration, established in Article 39 of Organic Law 4/2000 of 11 January 2000 on ‘rights and freedoms of foreigners in Spain and their social integration’, (LOEX), developed by Article 167 et seq. of Royal Decree 557/2011 of 20 April 2011 approving the Regulation of Organic Law 4/2000 and Order ISM/1289/2020 of 28 December 2020 regulating the collective management of contracts at source for 2021.

Through this practice, it is also intended to contribute to the strengthening of collaborative relations with the countries of origin and to meet the needs of the internal labour market that are detected throughout 2021, ensuring the activity of essential sectors, guaranteeing the health and safety of workers,

In particular, the following three measures are highlighted:

- The obligation of the employer of the preparation of a specific contingency plan that includes an assessment of the risks, as well as a list of the organizational, technical and hygiene measures adopted to prevent and control SARS-CoV-2 both in the workplace, in the accommodations and those for which the employer provides means of transport.

- The information and training to be provided to the working person is extended in order to ensure that all staff involved in these collective management procedures at source have specific and up-to-date information and training over and above the specific measures put in place by employers.

-It is the employer's obligation to carry out all the health control measures required for the crossing of the border.

Reception

Royal Decree-Law 7/2018, of 27 July, on universal access to the National Health System, which, aims to guarantee such access in a general way, including groups in situations of vulnerability, in particular to the foreign population not registered or authorised to reside in Spain.

This rule separates insurance from public funds from Social Security and links them to residence in Spain. The fundamental element in recognising access to the right to health care is habitual residence in Spanish territory. Holders of the right to healthcare shall all persons with Spanish nationality will be entitled to healthcare and also foreign persons who have established their residence in the Spanish territory regardless of the regularity of this situation.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION and ASSISTANCE.

Paragraph 3: Promote the collaboration, required in each case, between the social services, public or private, of the countries of emigration and immigration.

the Committee determines that it requires more information than that provided in the 31st National Report in order to evaluate the situation.

Although it believes that the legal framework adopted in Spain fulfils the requirements of the Charter of 1961's Article 19§3, it would like to receive examples of co-operation between the Autonomous Regions and the most important emigration and immigration countries, particularly in relation to what services are involved and what is the type and nature of the contacts and exchanges of information.

The Committee indicates that the report does not deal with the matter of Spanish workers living in other Member States and repeats its request for information about whether any aid is offered to Spanish workers abroad who may have difficulties in labour, social security, or family matters.

Labour Unions consider the need for providing information, as requested by the Committee.

RESPONSE

Legal framework

- **Examples of cooperation of the Autonomous Communities with the most important countries of emigration and immigration**

In Spain, foreign action is a competence that the Constitution attributes to the central government. Therefore, the administrative action of the Autonomous Communities is limited to providing aid to Spanish nationals residing abroad or to the centres and associations created by them. The different representations that the Autonomous Communities maintain abroad are mainly dedicated to the field of commercial and business promotion.

- **Spanish workers abroad who may have difficulties in terms of employment, social security or family.**

The functions of support and care for Spanish citizens living abroad and returnees entrusted to the Directorate-General for Migration, within the Secretariat of State for Migration, are materialised in a series of financial benefits and assistance assistance, among which are of particular importance the provision due to necessity, the assistance pensions for returnees and the provision in favor of the "Children of the war".

- **Benefits**

Benefit due to necessity. Its objective is to provide a minimum subsistence allowance for Spaniards over 65 years of age or disabled who lack resources and live in countries where public social protection systems do not cover their basic needs.

— Financial benefit for old age.

-Benefits for “Children of War”. They are financial benefits for citizens of Spanish origin who, during their minority, were displaced to other countries as a result of the Civil War, designed as a complement to improve other pensions that the beneficiaries could receive by other concepts.

-Elderly care pension for returning Spaniards of origin. It is a pension that is granted to Spaniards of origin resident in countries where the precariousness of the social protection system justifies the existence of the benefit on grounds of necessity when they return to Spain.

-Extraordinary assistance for residents abroad. Aid is intended to alleviate the situation resulting from the lack of resources of Spanish emigrants and their dependants, as well as to cover the extraordinary expenses resulting from the fact of emigration, provided that insufficient resources are shown.

-Health care. Recipients of the necessity benefit are entitled to coverage of the health care contingency (including health and pharmaceutical benefits) when they do not have it in the country of residence or when its content and scope are insufficient. To this end, the Ministry of Inclusion, Social Security and Migration has agreements with entities located in 15 countries, which determine the extent of the provision of health care (medical expenses, home care, pharmaceutical provision, prosthesis) and its financing. Currently, healthcare agreements for Spanish residents in need cover: Argentina, Brazil, Uruguay, Paraguay, Peru, Chile, Bolivia, Colombia, Venezuela, Ecuador, Dominican Republic, Mexico, Morocco, Ukraine and Russia.

-Return

Spaniards of origin residing abroad who return to Spain, employed, self-employed and Spanish pensioners of origin resident abroad, in their temporary travel to Spain, will be entitled to health care when, in accordance with the provisions of Spanish social security legislation, those of the State of origin or the international standards or social security agreements established for this purpose, they did not have this coverage foreseen.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION and ASSISTANCE.

Paragraph 4: Equality in employment, trade union law and accommodation.

The Committee concludes that the situation in Spain does not comply with the Charter of 1961’s Article 19§4 since it has not been established that the lack of discrimination, in law and in practice, is guaranteed as regards the enjoyment by foreign workers of the advantages provided by collective agreements.

In addition to the reply to this conclusion, the following clarifications should be taken into account:

-Policies for integrating immigrants.

-Membership of trade unions and enjoyment of the benefits provided by collective agreements.

-Housing for long-term foreign residents.

-Jurisdictional monitoring and control in order to prevent discrimination in practice.

Trade Unions request more information relating social inclusion of migrants and therefore consider that in the matter of equality in employment, trade union rights, and accommodation, Spain does not comply with the Charter.

RESPONSE

The Government considers that the situation of the different categories of workers is as follow:

Posted workers.

As regards the legal status of workers posted to Spain from abroad and the application of membership rights and the advantages offered by collective agreements, the following can be noted:

In the case of workers temporarily posted by undertakings from the European Union or the European Economic Area in the framework of the provision of transnational services, Law 45/1999 of 29 November 1999 on the posting of workers in the framework of the provision of transnational services applies. This law guarantees the application of a core of provisions of Spanish labour law, as well as collective agreements and arbitration awards applicable in the place and in the sector or branch of activity concerned.

Among the working conditions that must be guaranteed to workers posted to Spain are free syndication and the rights of strike and assembly.

Non-EU workers

We can recall what has already been pointed out in previous reports on Article 11 *Freedom of syndication and strike* of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration. This article was amended by Organic Law 2/2009 of 11 December 2009 to eliminate, in accordance with the Constitutional Court’s declaration of unconstitutionality in judgment 236/2007, of 7

November, the previous requirement that foreign workers be in a situation of legality in Spanish territory to exercise these rights.

Review of legality.

With regard to the detection of possible discrimination against immigrant workers regarding the enjoyment of the working conditions recognised by collective agreement, in accordance with the provisions of Law 23/2015 of 21 July 2015, authorising officer of the Labour and Social Security Inspection System, it is the responsibility of the Labour and Social Security Inspectorate to monitor compliance with social order rules and to demand appropriate responsibilities.

In this way, the ITSS carries out a monitoring activity on the employment and working conditions applied to migrant workers, ensuring that these conditions are in conformity with the right to equal treatment and non-discrimination with respect to those of other workers. Without prejudice to actions initiated as a result of a complaint, ITSS plans each year a specific campaign in this regard. The following table shows the main data recorded for this campaign in the period 2018-2021:

ACTIONS AND RESULTS OF THE ITSS IN THE CAMPAIGN ON DISCRIMINATORY CONDITIONS OF IMMIGRANT WORKERS

Year	Number of actions	Infringements detected	Amount of proposed sanctions (EUR)	Workers concerned	Number requirements
2018	1.608	34	329.939,78	615	238
2019	1.369	97	398.912,32	313	207
2020	638	25	73.442	143	128
2021	1.116	86	237.022,63	891	82

These results also include actions relating to the application of the working conditions set out in the collective agreements to immigrant workers, on an equal footing with other workers. However, the infringements detected which relate to working conditions contained in collective agreements are not recorded separately from those laid down in the laws or regulations and therefore a breakdown of data in this regard is not possible.

Other issues of interest

1. Policies for the integration of immigrants.

From the State Secretariat for Migration, the implementation of integrated and personalised itineraries of insertion projects are promoted annually, whose ultimate objective is to improve the social and labour insertion of immigrants through the activation of integrated and personalised itineraries of insertion.

2. Membership of trade unions and enjoyment of the benefits offered by collective agreements.

With regard to the union of foreign workers, the applicable legal regime guarantees them access to the right to organise, even if they are not in a regular situation in Spain.

3. Housing.

Article 13 of the LOEX determines that resident aliens have the right to access public housing aid systems under the terms established by the laws and competent administrations. In any event, long-term resident foreigners are entitled to such aid under the same conditions as Spaniards.

Follow-up and judicial review.

In the specific area of Labour, we refer to what has been said about the control of legality by the Labour Inspectorate, as well as the legal protection exercised by the courts of law.

With regard to equal treatment and non-discrimination in general, Act 62/2003 articulated the establishment of an agency for equal treatment and non-discrimination of persons on grounds of racial or ethnic origin. Its mission, composition and functions were regulated in 2007.

The Council for the Elimination of Racial or Ethnic Discriminations an independent body, consisting of various state, regional and local public administrations, representative business and trade union organisations, as well as non-profit organisations working in the field of promoting equal treatment and non-discrimination of persons on grounds of racial or ethnic origin.

The Council's mission is to promote the principle of equal treatment and non-discrimination of persons based on racial or ethnic origin in areas such as education, health, access to benefits, social services, housing, employment, training, etc. and in general to any good or service.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION AND ASSISTANCE.

Paragraph 6: Family reunification

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter of 1961's Article 19§6 since:

Social welfare benefits are excluded from the calculation of a worker's income for the purposes of family reunification; it has not been established that the requirement that the migrant must have suitable accommodation in order to bring their family, or that the language or health restrictions are not so restrictive so as to prevent family reunification. Finally, the Committee again asks whether it is possible to decide to expel the family members of a migrant worker that has lost their right to residency and, if so, under what conditions Unions agree with the non-compliance observed by the Committee. Labour Unions agree with the non-compliance observed by the Committee.

RESPONSE:

In this regard, and apart from everything already stated in the previous report, we must add that it must be understood that it is reasonable to distinguish between the recognition of the right to family reunification for the first time, from the subsequent maintenance of it, since it does not seem logical that a person who needs social assistance is granted the right to family reunification in order to keep his family members reunited, nor does it seem logical that, once the right has been acquired, that right cannot be retained when having financial means, they derive, in whole or in part, social assistance benefits.

For this reason, Article 54 of the LOEX Regulation, approved by Royal Decree 557/2011 of 20 April, provides for the financial means to be accredited by a foreign national in order to obtain a residence permit by regrouping in favour of his family members.

Requirement for the migrant to have adequate accommodation to bring his or her family, or that language or health restrictions are not restrictive as to prevent family reunification.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION AND ASSISTANCE.

Paragraph 9: Allow, within legal limits, the transfer of the portion of workers' income and savings that they may desire.

The Committee declares that it needs more information than that provided in the 31st National Report in order to evaluate the situation.

Although the previous report confirmed that migrants are entitled to transfer their income and savings, without limitations to any country, the interpretation of Article 19§9 (Conclusions 2011) asserts that the right to transfer earnings and savings includes the right of migrant workers to transfer personal property.

It asked whether there were any restrictions in this regard. Since the report does reply to this matter, the Committee repeats its question and points out that, if the next report not provide complete information in this regard, there will be nothing to demonstrate that the situation complies with the Charter on this.

The trade union organizations, regarding the government's report, repeat the need for providing information as required by the committee.

RESPONSE

Law 19/2003 of 4 July 2003 establishes in general the freedom of movement of capital:

Any acts, business, transactions and transactions between residents and non-residents that involve or from which external collections and payments may be derived are free, as well as transfers from or abroad and changes in accounts or financial positions debtor or creditor vis-à-vis the outside, without any limitations other than those provided for in this law and in specific sectoral legislation (Article 1.2 of Law 19/2003 of 4 July).

On the other hand, as far as the EU is concerned, the Treaty establishing the European Union proclaimed such freedom, thus bringing it into line with the other basic Community freedoms. It goes even further, when Article 56 of the Treaty establishing the European Community prohibits not only restrictions on the movement of capital and payments between Member States, but also between Member States and third countries.

In line with the Treaty establishing the Constitution, the principle of freedom of movement of capital reflects, from an objective point of view, what is to be understood by economic transactions with the outside world. From a subjective point of view, the fundamental criterion in terms of capital movements is that of residence, whose concepts (of resident and non-resident, in Spain) are defined in Article 2 of Law 19/2003 of 4 July 2003.

At the same time, Article 58(1)(b) of the Treaty itself recognises the right of Member States to establish procedures for the declaration of capital movements for the purposes of administrative or statistical information, or to take measures justified on grounds of public policy or public security.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION and ASSISTANCE.

Paragraph 10 – Equal treatment of self-employed persons

The Committee concludes that the situation in Spain does not comply with the Charter's Article 19§10, since the reasons for non-compliance apply by virtue of Article 19, paragraphs 4 and 6, also to self-employed migrant workers.

RESPONSE

The current Spanish legislation on foreigners and immigration equates self-employed and employed workers for the purposes of the regime of rights and protection measures it regulates. Differences between self-employed persons and employed persons relate only to the conditions necessary for the granting of the corresponding work permits and are determined by the very nature of the gainful activity to be carried out.

Thus, it can be concluded that LOEX makes no distinction with regard to self-employed persons in terms of protection and assistance measures.

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION AND ASSISTANCE.

Paragraph 11: States parties should promote and facilitate the teaching of the national language of the receiving State to migrant workers and their families.

The Committee believes that the Government should provide information about the following aspects:

- 1. Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*
- 2. Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
- 3. Provide pertinent figures, statistics, or factual information, especially regarding the treatment of migrants, about their being taught the national language of the receiving state.*

The trade union organisations point to the need for providing information, as required by the Committee.

RESPONSE

General legal framework.

Organic Law 2/2006 of 3 May 2006 on Education (LOE), as amended by the LOMLOE, establishes the regulation of the subjects referred to in Paragraph 11 concerning Students of foreign origin (Schooling and Specific Programmes)

Measures taken

In development of the provisions of the Organic Law, the basic curriculum regulations of the different levels of education have been issued, adapting the *Council Recommendation of 22 May 2018 on key competences*

for lifelong learning to the aims and objectives of the Spanish education system. It includes, among others, the development of language communication competence and multilingual competence on the part of all students, including, of course, that of migrant students:

- Royal Decree 95/2022, of 1 February, establishing the ordination and minimum education of early childhood education.
- Royal Decree 157/2022 of 1 March establishing the ordination and minimum education of Primary Education
- Royal Decree 217/2022 of 29 March establishing the ordination and minimum education of compulsory secondary education
- Royal Decree 243/2022 of 5 April establishing the ordination and minimum teaching of the Baccalaureate

It is the responsibility of the educational administrations of the Autonomous Communities to develop the above-mentioned basic legislation.

It should be noted that the official language schools, managed by the educational administrations, are open to all citizens. The languages taught include Spanish as a foreign language and co-official languages. Any individual citizen may enroll in such schools in order to learn the languages of the State. Similarly, educational administrations can organise specific courses to respond to the specific needs of immigrant groups, as has been the case, for example, with the arrival of refugees from Ukraine.

Figures, statistics or relevant factual information.

The Programme for International Student Assessment (PISA) helps to systematically assess what young people know and are able to do at age 15 in more than 80 countries around the world. This study allows statistical information to be available in one of the three core competencies: the reading. It also allows to obtain comparative information on the educational results of students that PISA calls “native” and students of foreign origin of first and second generation and their comparison according to socioeconomic level.

Reading data, immigration background and socioeconomic status

Pisa ranks 15-year-old students based on their immigration background in natives, 1st and 2nd generation immigrants. A student is classified as an immigrant student when both parents are born in a foreign country. It is called 1st generation if the student is also born in a foreign country and 2nd generation if he is born in the country where he takes the PISA test.

Using data from PISA 2018, last published report, and performance in reading comprehension significant differences are observed between these groups of students. Native students scored 483 points, while 2nd generation immigrant students scored 464 points and 1st generation 442 points.

	Native	Immig. 2nd generation	Immig. 1st generation
Spain	483	464	442

		Difference
Native	Immig. 2nd generation	−18,442325
	Immig. 1st generation	−40,410992

However, if you take into account the socioeconomic status of the students, measured through the social, economic and cultural index (ISEC) of PISA, the differences between native students and the 2nd generation immigrant disappear. Significance continues to be maintained in the difference between the performance of native students and that of immigrant students of the first generation.

Thus, for example, native students of low socioeconomic level obtained a reading comprehension performance of 448 points, for the 450 points of immigrant students of 2nd generation with a similar socioeconomic level. However, immigrant students of the first generation stayed at 427 points, a significantly lower score. A similar situation occurs in the group of students with medium-low, medium-high or high socioeconomic status.

Reading data by socio-economic level

Socio-economic level	Native	Immig. 2nd generation	Immig. 1st generation
Low	448	450	427
Medium-low	468	462	444
Medium-high	489	478	451
High	519	514	493

Socio-economic level	Immigration history		Difference
Low	Native	Immig. 2nd gene.	1,960679
		Immig. 1st gene.	—21,037325
Medium-low	Native	Immig. 2nd gene.	—6,275259
		Immig. 1st gene.	—24,107844
Medium-high	Native	Immig. 2nd gene.	—10,439223
		Immig. 1st gene.	—37,529985
High	Native	Immig. 2nd gene.	—4,757731
		Immig. 1st gene.	—26,428879

Article 19 – RIGHT OF MIGRANT WORKERS AND THEIR FAMILY TO PROTECTION AND ASSISTANCE.
Paragraph 12: *States parties should promote and facilitate, as far as possible, the teaching of the worker's mother tongue to the children of the migrant worker.*

The Committee believes that the Government must provide information regarding these aspects:

1. Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.
2. Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.
3. Provide pertinent figures, statistics, or factual information, especially regarding how migrants learning their parents' mother tongue are treated.

Trade Union Organizations point to the need for providing information, as required by the Committee

RESPONSE

General legal framework.

In the Royal Minimum Teaching Decrees foresees that multilingual competence involves the recognition and respect of individual linguistic profiles and the use of one's own experiences to mediate and carry out transfers between languages, and to maintain and acquire skills in the family language or languages.

In any case, it is for the educational administrations of the Autonomous Communities to develop the basic legislation mentioned above.

Measures taken

The Ministry of Education and Vocational Training, coordinates two national implementation programmes implemented to promote the language and culture of migrant students:

- The *Portuguese Language and Culture Programme*,
- The *Arabic Language and Moroccan Culture Education Programme*
- The *Arabic Language and Moroccan Culture Programme* began to be developed during the 1994-1995 academic year. Among its main objectives are those of providing Moroccan students with training that allows them to safeguard their identity and live their culture, in addition to the teaching of the Arabic language and Moroccan culture.

Article 27 -RIGHT OF WORKERS WITH FAMILY RESPONSIBILITIES TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT. to enable workers with family responsibilities to access and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training; to take into account their needs in terms of conditions of employment and social security; to develop or promote services, public or private, in particular child daycare services and other childcare arrangements; to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of the child, the duration and conditions of which should be determined by national legislation, collective agreements of practice;

Requests for additional information required by the Committee.

conclusions XXI-4 (2019):

1. Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.
2. Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.
3. Provide pertinent figures, statistics, or other relevant information, if applicable.

Trade union organizations believe that on the matter of the right of workers with family responsibilities to equal opportunities and equal treatment, Spain does not comply with the Charter.

RESPONSE

General legal framework.

Regarding the main recently approved reforms in this area following the submission of the previous report, it should be noted:

Royal Decree-Law 5/2023 of 28 June adopting and extending certain measures to respond to the economic and social consequences of the war in Ukraine, to support the reconstruction of the island of La Palma and to other situations of vulnerability; transposing European Union Directives on structural changes to commercial societies and reconciling the work and family life of parents and carers; and enforcement and enforcement of European Union law.

The rule transposes Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the work-life balance of parents and caregivers, and improves reconciliation and co-responsibility leave by including guarantees for the exercise of such leave.

Measures:

-A new parental leave for the care of a child or a minor for a period of more than one year

-The right to adapt the working day of persons with dependent dependents is extended.

-New parenting leave to be absent:

- 5 days (compared to 2 of the previous regulation) due to accident or serious illness, hospitalisation or surgical intervention without hospitalisation that requires home rest. This leave may be granted to persons who live with the worker or worker who requires care in the same home and also couples in the area of leave, as well as consanguineous relatives of the partner.
- 4 days paid for the new right to be absent from work due to force majeure where necessary for urgent and unpredictable family reasons, in the event of illness or accident which renders their immediate presence indispensable. In the case of leave for the death of the spouse (2 days), de facto partners are taken into account.
- Reduction of working hours for those who need to take care of the direct care of a relative until the second degree of consanguinity of the spouse or partner, including the consanguineous family of the partner, provided that there were no relatives due to direct consanguinity until the second degree.
- The right to a reduction in working hours for the care of children or dependants with disabilities who are under 26 years of age and who have cancer or other serious illness, when the degree of disability exceeds 65 %, is extended, provided that this condition is accredited before the age of 23.
- In the case of single-parent families, new measures have been taken.

Anti-Discrimination Office

Order TES/867/2023 of 22 July establishing the State Anti-Discrimination Office within the State Labour and Social Security Inspectorate. The Office will pay particular attention to equality between women and men and ensure that all activities of the Inspectorate are carried out with a gender perspective.

State Care System

As stated in the previous report, the Government of Spain and, for its part, the Ministry of Equality is committed to the implementation of a State Care System. To this end, in September 2021, an Advisory Board for Care was formed and the result of its work has been published the Basic Document for Care (<https://cpage.mpr.gob.es/producto/documento-de-bases-por-los-cuidados/>), a reference text to establish the bases of a society based on the organization of care, that puts people in the center. The document contains a theoretical-conceptual framework of care, a diagnosis of the situation, as well as challenges and proposals, based and based, in general, on extensive sources and bibliographical references, which are an excellent starting point to inform and guide proposals of public policies in the field.

ARTICLE 31: THE RIGHT TO HOUSING.

1. To promote access to housing of an adequate standard;
2. To prevent and reduce homelessness with a view to its gradual elimination;

REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE.

Conclusions XXI-4 (2019):

The Committee requires the following information:

1. Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.
2. Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.
3. Provide pertinent figures, statistics, or other relevant information with a view to:
 - a. demonstrating access to adequate housing, including the duration of the waiting period.
 - b. the number of homeless persons, emergency and long-term measures for homeless persons, as well as evictions.
 - c. the construction of public housing and housing subsidies (number of applicants and beneficiaries, criteria to be satisfied to benefit from the subsidy).

Trade Union Organizations' and Save The Children believe that in the matter of the right to housing, specially social housing, Spain does not comply with the Charter.

RESPONSE

General legal framework.

Article 47 of the Constitution protects “the right to enjoy decent and adequate housing”, and states that the public authorities shall take measures to give effect to this right, regulating the use of land in accordance with the general interest to prevent speculation. Article 33 also stipulates the social function of the right to private property.

On 1 February 2022, the draft law of the new Housing Law was approved, which is currently being debated in the Congress of Deputies and which has already received more than 800 amendments, so that there will be a need for consensus among the different parliamentary groups in order for it to succeed. This law will regulate evictions, support for access to housing, the creation of affordable housing or the limitation of rental prices, among other issues.

Measures taken to implement the legal framework.

With the package of economic measures that the government introduced last March as a result of the war in Ukraine, and extended in June, a limit has been established on the increase in rent rents of 2 % until 31 December 2022. A measure to reduce the impact of inflation on the renewal of housing rental contracts.

Owners can raise the rental price once the contract ends. On the other hand, regardless of the CPI, lessors will not be able to raise their rent by more than 2 % to contracts that comply with the annuity in force in the contract until 31 December 2022.

The Ministry of Transport, Mobility and Urban Agenda (MITMA) participates in the Study on Victims of Racial or Ethnic Discrimination currently being conducted by the Council for the Elimination of Racial or Ethnic Discrimination, through the Study Group, with a representative of MITMA, which has proposed the inclusion of cases of discrimination in access to housing on racial or ethnic grounds.

Measures for vulnerable families.

The suspension of the eviction procedure and launches for vulnerable households without alternative housing has been approved. To this end, Article 3 of Royal Decree 401/2021 of 8 June 2021 has been amended, approving the necessary measures to enable the autonomous communities to use the resources of the State Housing Plan 2018-2021, in order to face the compensations that may arise, and establishing the procedure for the recognition of compensation to owners and lessors.