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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XX-2

(ESPAGNE)

Articles 3, 11, 12, 13 and 14 of the 1961 Charter

Ce texte peut subir des retouches de forme.

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

Information on the Charter and the Committee as well as statements of interpretation and general questions formulated by the Committee appear in the General Introduction to the Conclusions.[1]

The 1961 European Social Charter was ratified by Spain on 06 May 1980. The 1988 Additional Protocol was ratified on 24 January 2000. The time limit for submitting the 25th report on the application of this treaty to the Council of Europe was 31 October 2012 and Spain submitted it on 21 December 2012. On 3 April 2013, a letter was addressed to the Government requesting supplementary information regarding Article 4 of the 1988 Additional Protocol and on 18 July on Article 13§2. The Government submitted its reply on Article 13§2 on 4 August 2013. Comments on the report from the Working Group "Social Charter" from the Conference of the international Non-Governmental organisations were registered on 3 March 2013.

This report concerned the accepted provisions of the following articles belonging to the thematic group “Health, social security and social protection”:

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

Spain has accepted all of these articles, with the exception of Article 3§4.

The reference period was 1 January 2008 – 31 December 2011.

The present chapter on Spain concerns 17 situations and contains:

– 9 conclusions of conformity: Articles 3§1, 3§3, 11§2, 11§3, 12§2, 12§3, 13§2, 13§3 and 13§4;

– 6 conclusions of non-conformity: Articles 12§1, 12§4, 13§1, 14§1, 14§2 and Article 4 of the Additional Protocol.

In respect of the other 2 situations concerning Articles 3§2 and 11§1, 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 Charter. The Committee consequently asks the Government to comply with its obligation to provide this information in its next report on the articles in question.

The next report from Spain deals with the accepted provisions of the following articles belonging to the thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for the report was 31 October 2013.

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

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations

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

Content of the regulations on health and safety at work

The general framework in the field of health and safety at work is set out in Act No. 31/1995 on the prevention of occupational hazards. The report mentions a number of amendments made to this Act during the reference period. In this connection, the Committee notes:

- Act No. 25/2009, introducing amendments geared to facilitating the implementation of activities to prevent occupational hazards in small and medium-sized enterprises;
- Act No. 36/2011 on social jurisdiction, which – in accordance with the Spanish Strategy in matters of health and safety at work (2007-2012) – concentrated all litigation relating to work accidents in the social judicial system;
- a series of Royal Decrees and other legal provisions on: sub-contracting in the building sector; health and safety in building works; criteria governing the organisation of resources for exercising health activities in prevention services; accident prevention activities in enterprises; improving health and safety in the workplace for pregnant employees; preventing occupational risks for the staff of specific central government departments; temporary work agencies; domestic employees; improving working conditions for elderly workers; protection against risks deriving or liable to derive from exposure to mechanical vibrations, artificial optical radiation and ionising radiation; minimum conditions for health protection and medical assistance for marine workers; and workplace bullying (amendment to Article 173 of the Penal Code).

During the reference period many resolutions resulting from collective bargaining among the employers' representatives and the trade unions were approved; these resolutions refer to the themes of occupational health and safety in relation to a wide range of the country's economic and commercial sectors. The report mentions a significant number of legal instruments (laws, decrees, orders and resolutions) adopted by different authorities over the reference period, which also refer, directly or indirectly, to the aforementioned themes.

Protection against dangerous agents and substances

Many legal provisions were adopted on dangerous substances and agents between 2008 and 2011. In this connection, the report refers to a series of laws and decrees relating to: the notification of new substances and the classification, packaging or labelling of dangerous substances and chemical mixtures; the storage of chemicals; limits on the marketing and use of certain dangerous substances and preparations, as well as on biocides, phytosanitary products and fertilisers; and health protection against risks linked to exposure to artificial optical radiation.

In its previous conclusion (Conclusions XIX-2, 2009), the Committee once again asked whether the limits on exposure to benzene were in conformity with the values set out in Appendix III to Directive 2004/73/EC concerning the protection of workers against risks linked to exposure to carcinogens or mutagens (codified version of Directive 90/394/EEC on carcinogens), and whether Spanish regulations comprised measures to prohibit the use of benzene in line with ILO Convention No. 136 on benzene.

The report explains that Royal Decree No. 1124/2000 amending Royal Decree No. 665/1997 on the protection of workers against risks linked to exposure to carcinogens at work, in paragraph 5 of its single Article in Appendix III, sets out the limit values for exposure to benzene, which coincide with the limit values set out in Appendix III to Directive 2004/37/EC. In connection with measures to prohibit the use of benzene in line with ILO Convention No. 136, the report refers to the provisions of Royal Decree No. 665/1997 on the protection of workers against risks linked to exposure to carcinogens and the statutory amendments thereto.

The Committee understands that these provisions are in conformity with ILO Convention No. 136 – which Spain ratified on 8 May 1973 – and consequently requests that the next report clarify the content of the aforementioned measures and explicitly confirm the conformity of these provisions with ILO standards.

Protection of workers against asbestos

In its previous conclusion (see above), the Committee asked whether Directive 1999/77/EC prohibiting the marketing and use of products containing asbestos from 2005 onwards had been transposed into domestic law and whether such prohibition was applied. It also asked whether the authorities had taken stock of all asbestos-contaminated buildings and materials.

The report points out that in Spain the production, use and marketing of asbestos had been prohibited since 2001 under a Decree issued by the Ministry of the Prime Minister's Office on 7 December 2001, which transposed Directive 1999/77/EC. That being the case, exposure to asbestos can only occur during the demolition, dismantling, maintenance, repair or transport of materials containing asbestos. During such operations, the exposure limit is 0.1 fibres/cc (Royal Decree No. 396/2006, transposing Directive 2003/18/EC). The report specifies that at the present time, as mentioned in the previous report, the relevant legislation on protecting workers in cases of risk of exposure to asbestos is Royal Decree No. 396/2006, which establishes the minimum health and safety provisions applicable to work comprising a risk of exposure to asbestos.

Protection of workers against ionising radiation

As noted in the previous conclusion, the regulations on protection against ionising radiation adopted under the terms of Royal Decree No. 738/2001 transposed Directive 96/26/EURATOM into domestic law. The Committee notes that Royal Decree No. 1439/2010 amending the aforementioned regulations was adopted during the reference period. The Committee requests that the next report provide further details on the amendments made under Royal Decree No. 1439/2010 to the above-mentioned regulations.

Personal scope of the regulations

Protection of temporary workers

In previous conclusions, the Committee considered that in view of the large number of temporary workers in Spain and the high rate of accidents observed within this category, the regulations applicable to temporary workers were still not effective enough to consider the situation in conformity with the Charter. It therefore requested further information on the manner in which health and safety regulations are applied to temporary workers (temporary agency workers and workers on fixed-period contracts).

On this subject, the Government considers that current legislation in the field of health and safety at work is sufficiently effective for conformity with the Charter, because it applies to all workers, whatever the type of labour contract used. The report specifies that Article 28 of Act No. 31/1995 contains a series of provisions which ensure that temporary agency workers and workers on fixed-term contracts enjoy the same level of protection in terms of health and safety as all other workers in the enterprise employing them.

Furthermore, the report states that Act No. 14/1994 on temporary work agencies – which was recently amended to transpose Directive 2008/104/EC on temporary agency work into domestic law – and Royal Decree No. 216/1999 on minimum provisions for health and safety at work in the field of temporary work agencies constitute further guarantees for the workers in question. According to the report, Act No. 35/2010 on urgent measures for the labour market (integrated under Royal Decree No. 10/2010) also comprised changes to Act No. 14/1994. On this revised basis, no labour supply contracts can be concluded to fill posts in dangerous occupations (eg posts involving exposure to ionising radiation, carcinogens or agents harmful to the human reproductive system).

The report also points out, in connection with the conclusion of labour supply contracts, that under certain conditions, inter-professional or collective agreements may, for reasons linked to health and safety at work, set limits in relation to specified posts or positions. In this connection, the report mentions some practical examples of dangerous occupations in the building and metalworking sectors (the latter case concerning electrical risks).

Other types of workers

In its last conclusion in 2009, (Conclusions XIX-2), the Committee concluded that self-employed workers were not sufficiently protected by health and safety regulations. In this connection it asked whether the legislative and statutory texts in the field of health and safety applied to self-employed workers. It also requested specific information on domestic workers.

The report states that the legislation on health and safety for self-employed workers was in conformity with the law. In this connection, the report refers to Act No. 20/2007 on the Status of Self-Employed Work, Article 4 of which lays down that self-employed workers, in the exercise of their occupations, have the right to their physical integrity and to appropriate protection for their safety and health in the workplace. Reference is also made to Article 8 of the aforementioned Act, which concentrates on the prevention of occupational hazards. The report specifies that Act No. 20/2007 provides that where self-employed workers and employees from other enterprises are working on the same site and where the self-employed workers exercise their occupation in the premises or

on the workplace of the enterprises for which they are working, the obligations on co-operation, information and instructions set out in Article 24 paras. 1 and 2 of Act No. 31/1995 are applicable to them.

Other provisions of Act No. 20/2007 lay down that: enterprises recruiting self-employed workers must ensure that the latter observe current regulations on prevention of occupational hazards; where self-employed workers have to operate machinery or handle equipment, products, substances or tools provided by the enterprise for which they are working and where such activity is not performed in the workplace of the said enterprise, the latter is liable to the obligations set out in the last paragraph of Article 41.1 of Act No. 31/1995; self-employed workers are entitled to stop work and leave the worksite if they consider that such activity involves a serious and imminent risk to their lives or health. These provisions apply without prejudice to the legal obligations imposed on self-employed workers who are acting as employers with responsibility for employees. More specifically, the report refers to the provisions of Royal Decree No. 1627/1997 laying down minimum health and safety provisions in building worker vis-à-vis self-employed workers.

In connection with domestic employees, the report states that Law No. 31/1995, in accordance with Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work as transposed by this Law, stipulates that the head of a household is required to ensure that his or her employees' work is conducted under optimum health and safety conditions. Moreover, it explains that new legislation on provisions to protect the health and safety of domestic workers has been approved, namely Royal Decree No. 1620/2011 regulating the specific contractual relationship of domestic work. Article 7 of this Royal Decree reads as follows: "The employer shall ensure that the domestic worker can work under optimum health and safety conditions. The employer must adopt all effective measures to that end, having regard to the specific characteristics of domestic work".

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations

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

Occupational accidents and diseases

In its previous conclusion (Conclusions XIX-2, 2009), the Committee noted that even though the standardised rate of incidence of serious accidents (involving a minimum 4 days' absence from work) and that of fatal accidents at work had dropped during the reference period, these rates were still high, exceeding the average in other EU countries over the period under consideration (2005-2007). For this reason the Committee concluded that the situation in Spain was not in conformity with Article 3§2 on this point.

The Committee notes that over the period 2008-2010, according to data provided by Eurostat, the number of work accidents (excluding traffic accidents and accidents on board transport during working hours) further decreased. In particular, these data show that serious accidents totalled 546 732 in 2008 and 356 709 in 2010 (in 2006, accidents of this type had totalled 663 182). The standardised rate of incidence per 100 000 workers, which had stood at 4 782 in 2008, consequently fell to 3 466 in 2010 (it had been 5 533 in 2006). The Committee notes here that during the aforementioned period the average in EU countries (EU-27) was 2 269 in 2008 and 1 582 in 2010. In Spain, still according to Eurostat, 309 fatal accidents took place in 2008 and 185 in 2010 (in 2006 there had been 395 fatal accidents). The standardised rate of incidence, which had been 2.62 in 2008, thus decreased to 1.76 in 2010 (during the previous reference period the standardised rate of incidence had been between 3.2 and 3.5). The Committee notes that in this field the average for EU-27 countries was 2.36 in 2008 and 1.87 in 2010.

The downward trend in work accidents over the reference period is confirmed by the report, which – drawing on data published by the Ministry of Employment and Social Security – points out that 859 679 accidents with work absences were registered in 2008 and 645 954 in 2010; the corresponding standardised rate of incidence was 5 069 in 2008 and 3 870 in 2010. The following data were provided on fatal accidents (during working hours): 810 accidents in 2008, 569 in 2010, with a standardised rate of incidence of 5.1 in 2008 and 3.9 in 2010.

Beyond the differences in the data taken into account by Eurostat and the Spanish authorities, the Committee notes that during the reference period the number of work accidents in Spain has been constantly decreasing. In this connection, it notices that in 2010, the standardised rate of incidence of fatal accidents was below the average in the other EU-27 countries; furthermore, it takes note of the positive developments registered during the reference period in connection with accidents requiring absence from work. Nevertheless, the Committee sees that in 2010 the standardised rate of incidence of serious accidents was still twice as high as the average for EU-27 countries.

In view of the diversity of trends registered during the reference period in relation to the different types of work accidents, and in order better to assess the developments registered during its recent conclusions, the Committee reserves its position on this

point. It requests that the next report provide a full summary table of the data on serious and fatal accidents.

Activities of the Labour Inspectorate

In its previous conclusion (XIX-2, 2009), the Committee noted that the report provided no new information on the structure and attributions of the Inspectorate departments. It consequently requested that forthcoming reports state whether any changes had occurred in the inspection system during the reference period. The Committee had also noted that, according to the previous report, the Spanish Strategy in the field of health and safety at work 2007 – 2012 provided for increasing the staffing of these departments. On this subject, however, the report did not indicate the number of staff employed by these departments. Nor did it specify the number of inspections carried out or the number of workers covered by the inspections. The Committee consequently requested that the following report provide information on these points so that it could decide on the conformity of the situation with the Charter.

In connection with the structure and attributions of the Inspectorate departments, the report merely quotes the relevant provisions of Act No. 42/1997 on the Labour Inspectorate. It does not mention any changes made during the reference period.

The report does not contain the information requested by the Committee on the staffing of the Labour Inspectorate or on the increase of such staffing provided for in the aforementioned strategy. As regards the reference period, the report supplies detailed information on the number of inspections carried out (97 789 in 2008 – 79 276 in 2011); the number of interventions consequent upon inspections (363 882 in 2008 – 374 727 in 2011); the number of violations noted (27 882 in 2008 – 19 900 in 2011); the amounts of sanctions proposed (€ 118 319 988.18 in 2008 – € 60 384 768.44 in 2011); the workers affected by the violations (320 551 in 2008 – 123 598 in 2011); the number of accidents investigated (12 528 in 2008 – 10 064 in 2011); the number of violations noted in the aforementioned accidents (5 851 in 2008 – 3 261 in 2011).

This information shows that the activities of the Inspectorate decreased overall during the reference period. The Committee requests that the next report provide explanations on the decrease in these activities and reiterates its request concerning Labour Inspectorate staffing.

The report states that in 2008, 18 700 occupational diseases were registered, falling to to 16 928 in 2010. According to the report, the trend in occupational diseases in Spain has been fairly uneven: over the 2008-2010 period the total number of declared diseases and of diseases with work absences decreased by 9.5% and 25.6% respectively, whereas the number of diseases without work absences increased by 15.9% over the same period.

Conclusion

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

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues

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

In its previous conclusion (Conclusions XIX-2, 2009), the Committee concluded that the consultation structures and procedures at the national level and in the enterprises, as provided for in Chapter V of Act No. 31/1995 on prevention of occupational risks, were in conformity with Article 3§3 of the Charter.

On the same occasion, the Committee took note of the fact that the "Spanish Strategy in the field of health and safety at work 2007 – 2012" (SESST) was geared to reinforcing the role of the different social actors and ensuring greater participation by employers and employees in improving health and safety at work. The Committee consequently requested that the following report provide information on the practical measures used to implement this strategy.

The report states that, as laid down in SESST Objective 3, the role of the social dialogue partners was reinforced and that this reinforcement was based, *inter alia,* on amending Article 39§1 of the aforementioned law, which stipulates that the choice of mode of organisation of the enterprise and, where appropriate, the management methods of any specialised bodies with which the enterprise has agreed to implement preventive activities must be debated by the Health and Safety Committee before their implementation, including their impact on the risk prevention system.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 3§3 of the 1961 Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Right to the highest possible standard of health

The Committee notes from WHO data that life expectancy at birth (average for both sexes) was 81.91 years (average recorded for EU-27: 79 years) in 2009.

With 8.29 deaths/1 000 inhabitants in 2010, the mortality rate remained relatively stable during the reference period.

Infant mortality fell slightly over the reference period, with 3.35 deaths per 1 000 live births in 2008, and 3.2 in 2011.

Maternal mortality also fell during the reference period, from 4.62 deaths per 100 000 live births in 2008 to 2.98 in 2011.

The Committee believes that the above indicators provide a good general overview of the health situation in Spain, which is characterised by high life expectancy and low infant and maternal mortality. This is confirmed from another source[1] which states that the top three causes of death in Spain since 1970 have been: cardiovascular diseases, cancer and respiratory diseases, albeit there has been a steady decrease in the actual mortality rates from these causes. Moreover, mortality rates for these causes are among the lowest in the WHO European Region. Maternal and child health indicators (neonatal, perinatal and maternal mortality rates) have also experienced a dramatic improvement, current rates scoring below European averages.

Right of access to health care

The Committee refers to another source[2] for a description of the health system. The statutory national health system is universal coverage-wise, funded from taxes and predominantly operates within the public sector. Provision is free of charge at the point of delivery with the exception of the pharmaceuticals prescribed to people aged under 65, which entail a 40% co-payment with some exceptions. Health competences were totally devolved to the regional level (Autonmous Communities) as from the end of 2002; this devolution resulted in 17 regional health ministries with primary jurisdiction over the organization and delivery of health services within their territory. Private voluntary insurance schemes play a relatively minor, though increasingly relevant, role within the Spanish health system.

The report provides information about access by disadvantaged groups to the health care system, including details of the National Strategy for Fairness in Health Care (2010 to present) and health care initiatives under the Strategic Citizenship and Integration Plan (2011-2014), the Action Plan for Roma Development (2010-2012) and the National Roma Integration Strategy (2012-2020). According to the report, these measures are in line with Article 11 of the Social Charter and the relevant clauses of the 1978 Constitution (Articles 9.2, 10, 14 and 43 on health protection), the criteria of publicly funded, universal health services free of charge at the time of delivery laid down in General Law 14/1986 of 25 April on Health and in Law 16/2003 on the quality and

cohesion of the national health system, according to the description of the general legal framework set out in the report.

The Committee recalls that the right of access to health care also requires that the arrangements for access to care must not lead to unnecessary delays in its provision. The report states that Royal Decree 1039/2011 of 15 July lays down the framework criteria for ensuring a maximum waiting period for access to health services under the National Health System. The Committee takes note of this legislative basis but asks for specific data on average waiting times for hospital treatment and for initial primary care consultations so as to show that access to health care is possible within reasonable timeframes.

In addition, the report supplements the description of the general legal framework and the reforms to it with a specific reference to Royal Legislative Decree 16/2012 of 20 April on urgent measures to guarantee a sustainable national health system and improve the quality and security of care and Royal Decree 1192/2012 of 3 August, which regulates the status of insured persons and beneficiaries for publicly funded health care in Spain through the national health system. However, the Committee notes an amendment in Article 1 of the said Royal Legislative Decree 16/2012 (which the report states is supplemented by Royal Decree 1192/2012), which has the effect of denying foreigners irregularly present in the country access to health care except in "special situations" (emergency resulting from serious illness or accident; care for pregnant women, both prenatal and postnatal; foreign minors aged under 18 years)

From this point of view, the Committee considers that this denial of access to health care for adult foreigners (aged over 18 years) present in the country irregularly is contrary to Article 11 of the Charter. The Committee has already held that the States Parties to the Charter (both the 1961 version and the revised 1996 version) "have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention on Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations" (Conclusions 2004, Statement of interpretation of Article 11, p. 10).

The Committee has held here that the States Parties to the Charter have positive obligations in terms of access to health care for migrants, "whatever their residence status" (Médecins du Monde – International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §144). With specific regard to Article 11, the Committee has pointed out that "paragraph 1 requires States Parties to take appropriate measures to remove the causes of ill-health and that, as interpreted by the Committee, this means, inter alia, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population", insofar as "health care is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights" (International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 31; Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 100-101). This idea of universal accessibility has also been underlined as one of the essential elements of the right to

protection of health by the United Nations Committee on Economic, Social and Cultural Rights: "§12. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party" [General Comment No. 14 (2000): *The right to the highest attainable standard of health*, Art. 12 of the International Covenant on Economic, Social and Cultural Rights].

Moreover, according to the preamble to Royal Legislative Decree 16/2012 of 20 April, the measure at issue is necessary against the background of the economic crisis. In this context, the Committee noted in the general introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights that while the "increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increases while tax and social security contribution revenues decline", by acceding to the 1961 Charter, the Parties "have [agreed] to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised." The Committee accordingly concluded that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most" (GENOP-DEI and ADEDY v. Greece, Complaints No. 65/2011 and No. 66/2011, decisions on the merits of 23 May 2012, §16 and §12). Similarly, the Committee has held that even taking into account the particular context created by the economic crisis, the relevant Governments are required to conduct the minimum level of research and analysis, and discussions and consultations with the organisations concerned, about the effects of the measures in question, whose full impact on the most vulnerable groups in society should be properly assessed (IKA-ETAM v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, § 79). In any case and given the complexity of the measures to reorganise the health system (possible alternatives that are less costly in financial terms and regarding the real impact of the measure at issue on the public health of the population as a whole), the economic crisis cannot serve as a pretext for a restriction or denial of access to health care that affects the very substance of the said right.

Despite the regressive legislative developments concerning access to health care by foreigners irregularly present in the country mentioned above, as these have been adopted outside the reference period (2008-2011), the Committee is unable to take them into account in the present conclusion. However, if such legislation is maintained, there will be nothing to show in the next cycle that the situation is in conformity with the Charter.

Conclusion

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

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[1] *Health Systems in Transition, Spain, WHO*
[2] *Ibid*

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In reply to the Committee's questions, the report mentions several awareness-raising activities and campaigns to promote health and prevent diseases. Advertising campaigns were also conducted during the reference period, inter alia on preventing HIV/AIDS, other sexually transmitted diseases and unwanted pregnancies, promoting healthy eating and physical exercise, preventing alcohol consumption among minors and pregnant women and promoting healthy lifestyles among the population.

Health education in schools is ensured by means of various rules covering all levels of schooling. The provisions cover prevention and health promotion, including preventing the use of addictive substances (tobacco, alcohol and other drugs), by encouraging and fostering responsible attitudes in response to pressures to take such substances. Order ECI/2020/2007 of 12 July lays down the curriculum and the rules for the primary education system and the rules for compulsory secondary education. Royal Decree 1467/2007 of 2 November lays down the structure for senior secondary schools and the minimum teaching requirements. The Committee requests that the next report indicate how health education in schools is included in curricula (separate subject or part of other subjects) and what it involves.

The report also refers to a framework agreement between the Ministry of Education and Science and the Ministry of Health, Social Services and Equality on health education and promotion in schools. Various health promotion activities have been carried out in this connection, for instance dissemination of the recommendations of a guide on improving health at school and of quality criteria for the expansion of health promotion programmes and activities in the education system.

Counselling and screening

The Committee notes that the common services of the national health system include pregnancy and postnatal care, child and adolescent care. Examinations during pregnancy include diagnosis during the first three months and detection of high-risk pregnancies; co-ordinated, standardised monitoring of normal pregnancies with specialist care in accordance with the organisation of the corresponding health service; and a postnatal consultation during the first month after delivery to check the health of the mother and the newborn. Child health care services include checks on the state of nutrition, height and weight and psychomotor development, and the detection of health problems at different ages, with early detection in co-ordination with specialist care. For teenagers, the services available include advice on behaviour involving health risks (tobacco, alcohol and drugs), including accident prevention, and assessment and advice concerning eating habits and body image.

The Committee asks whether free medical check-ups are conducted throughout children's school education, as well as how frequently they take place, what their objectives are and what proportion of pupils are concerned.

As to screening for illnesses, the report states that the Public Health Committee of the Inter-Territorial Council of the National Health System in December 2010 approved a framework document on screening of the population, which lays down the criteria for guiding the Autonomous Communities' health care systems in strategic decision-making on screening and in establishing the key requirements for the location of the relevant programmes.

The report gives practical examples of screening programmes for the population at large which are covered by the public health system. These programmes include health care for women: the detection of high-risk groups and early diagnosis of gynaecological and breast cancer. As far as elderly persons are concerned, there are measures for the early detection of cognitive and functional deterioration and early detection of deterioration in physical health, with a particular focus on detecting loss of hearing, visual impairment and urinary incontinence. In the national health system cancer strategy approved in 2006 and updated in 2009, one of the key strands is early detection, with recommendations on screening for breast, uterine and colon cancer.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 11§2 of the 1961 Charter.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases

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

Healthy environment

The Committee takes note of the legislation in force to reduce environmental hazards, particularly in the areas of air quality, water quality, chemical products, food safety and ionising and non-ionising radiation. Several laws mentioned in the report were passed to bring environmental legislation into line with EU legislation. A national air quality improvement plan was approved in 2011. Its main purpose is to apply the limit values for PM10 and NO2, while simultaneously reducing ozone precursors. The report also states that Spain's geographical location and socio-economic characteristics mean that it is particularly vulnerable to climate change. There is a national climate change adaptation plan, which is the general framework for activities to evaluate the effects of climate change on health.

The Committee requests that the next report provide information on the institutional arrangements for implementing the above-mentioned legislation. It also asks for details of air pollution levels, drinking water contamination and food poisonings during the reference period so as to assess whether the trend is rising or falling.

Tobacco, alcohol and drugs

The Committee notes from another source[1] that Spain has ratified the WHO Framework Convention on Tobacco Control (11.1.2005). According to that source, smoking is banned in various public places, in particular, restaurants, bars, cafés, public transport, universities, health care establishments and indoor offices. The report also states that various measures, plans and programmes to combat smoking were carried out at Autonomous Community and local level during the reference period.

With regard to trends in smoking, the report states that there is a general reduction in overall smoking levels among adults and teenagers (a marked decline among men and a less marked decline among women). In the case of alcohol, although there has been a decline in consumption levels and an increase in the number of non-drinkers, there is an increasing tendency to drink more excessively among those who do drink, especially the youngest, in particular at weekends.

A national drug strategy for 2009-2016 has been drawn up and approved. It is a framework approved by all parties for establishing public policies and anti-drug measures at state level. The Committee asks to be kept informed of the implementation of the strategy and, in particular, its impact on drug taking.

Immunisation and epidemiological monitoring

The report states that the immunisation coverage rate for children is high (at least 95%). The Committee requests that the next report indicate all the vaccines included in the national immunisation programme (not only the main series), the criteria for inclusion in the programme and the coverage rate for each vaccine.

According to the report, the prevention of epidemic diseases comes under the development of national capacities to meet the requirements of the 2005 International Health Regulations and the EU's various early warning and response and epidemiological monitoring systems.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 11§3 of the 1961 Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

Risks covered, financing of benefits and personal coverage

In its previous conclusion (Conclusions 2009) the Committee asked for personal coverage under each branch of social security. It notes from the report that due to the labour market trends, the number of individuals affiliated with social security has decreased. This is the result of low employment rate. The Committee notes that the total number of persons affiliated with the general system decreased from 13,8 million in 2008 to 12,8 million in 2011.

The Committee requests that the next report provide the detailed information concerning the personal coverage of social security risks. For healthcare, the report should provide the percentage of covered persons out of the entire population. For income -replacement benefits (unemployment, sickness, maternity and old-age), the report should provide the percentage of insured individuals out of the total active population.

Adequacy of the benefits

The Committee notes that in 2011 50% of the Eurostat median equivalised annual income stood at € 6 258.

As regards old age pension, the Committee notes that the number of pensioners as well as the amount of the average pension has been rising in the period 2008-2011. According to the report, the levels increase at a higher rate than CPI which indicates that the purchasing power of pensions has increased.

As regards the *minimum contributory pension*, it was raised by 5,5% in 2010 and by 2,91% in 2011. Its annual level, for the single person stood at € 8 419 in 2011. The Committee notes that the level is adequate.

As regards *unemployment benefit*, in its previous conclusion the Committee held that the level of this benefit was inadequate. It notes from from MISSOC that the the minimum level of benefit is set at 107% of the IPREM (public income indicator used as a reference amount for calculation of benefits) for the unemployed with dependent children and 80% of the IPREM for single unemployed persons.

As regards *sickness benefit* , in its previous conclusions XVII-2 and XV-2 the Committee noted that it fell below 50% of the median equivalised income and asked whether additional benefits were paid to a person earning the minimum level of sickness benefit. The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2011) 2 §83-85) that calculated on the basis of the average salary of the manual worker, sickness benefit would amount to €32 until the 20th day of sickness (60% of the salary) and to €40 from the 21st day (75% of the salary).

The Committee notes from the report that for cases where the reference to the minimum wage has been replaced by the reference to IPREM pursuant to the provisions set out in the Royal Decree No 3/2004, the annual amount of IPREM was set

at € 7 455.14. Therefore, the Committee will take this amount into account in calculating the minimum levels of benefits. The example given of a manual worker cannot be used in the assessment of the situation as his/her salary does not represent the minimum base on which the minimum benefit is calculated.

Regarding unemployment benefit, the Committee notes from the Governmental Committee report that the minimum contributory unemployment benefit is supplemented by the additional payment made by the social security managing bodies which is equivalent to the employer's and employee's social security contributions. According to the representative of Spain, in 2010 gross minimum unemployment benefit amounted to € 497 per month and the social security contributions amounted to € 187, totalling € 684 per month. The Committee notes that 50% of the Eurostat median equivalised income stood at € 543 in 2010. Therefore, it holds that the minimum level of unemployment benefit was adequate. For 2011, the Committee notes that the minimum level of unemployment benefit calculated on the basis of 80% of the IPREM value stood at € 497 per month. With the additional payment, this level stands above 50% of the Eurostat median equivalised income. The Committee requests that the next report provide information about the IPREM base used to calculate the minimum levels of benefits and any additional payment, made to persons receiving the minimum level of unemployment benefit.

As regards sickness benefit, the Committee notes that it amounted to 60% of the IPREM and stood at € 4 473. The Committee holds that it falls below 40% of the median equivalised income and is therefore manifestly inadequate.

The Committee asks what are the minimum levels of invalidity and maternity benefits.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of sickness benefit is manifestly inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the International Labour Convention No. 102

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

Spain has ratified the European Code of Social Security and its Protocol on 8 March 1994 and has accepted parts I-VI, VIII, IX, XI, XII, XIII, IX, and XIV of the Code.

The Committee notes from Resolution CM/ResCSS(2012) 15 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Spain (period from 1 July 2010 to 30 June 2011) that the law and practice in Spain continue to give full effect to the parts of the Code which have been accepted, as amended by the Protocol. In so doing, Spain maintains a social security system that meets the requirements of ILO Convention No. 102.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 12§2 of the 1961 Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee takes note of legislative developments during the reference period. It observes that apart from amendments to the existing legislation as concerns adjustments to the contributions to the social security system and the rates of benefits, including the minimum level of non-contributory pension and the basis on which the social security benefits are calculated, measures have been taken to promote employment and professional training and retraining.

The Committee takes note of the Royal Decree 8/2010 which adopts extraordinary measures for reduction of public deficit. By this Decree the increase of pensions has been suspended for the year 2011. However, according to the report, as a solidarity measure, this amendment did not affect the lowest amounts of pensions with a view to avoiding that the most vulnerable groups are particularly affected. Aiming at reducing the public deficit, this Royal Decree contains a series of adjustment measures that strive to achieve the sustainability and the most equitable distribution of public funds. These measures do not concern the lowest benefits, which affect the most disadvantaged people.

The report states that the Law 39/2010 on the general budgets of the state for 2011 introduced amendments to the social security contributions. For non-contributory pensions, it introduced a pension supplement, fixed at € 525 per year for the retired justifying that they do not own a dwelling. Pensioners whose income from gainful occupation is less than € 6,923 per year will be entitled to financial supplements necessary to reach the minimum pension.

Royal Decree 1382/2008 provides for integration of the self-employed who are covered under the Special Agricultural Scheme of Social Security with the Special Social Security Scheme for Employees and the Self-Employed. This Royal Decree develops legislation with regard to social security contributions of the self-employed persons in the agricultural sector..

Royal Decree 3113/2009 clarifies the rules of the means-test, to ensure greater legal certainty for citizens regarding the determination of entitlement to and amount of non-contributory pensions through clear and precise regulations.

The Committee asks the next report to provide information modifications to other branches of social security which affect their personal coverage as well as the minimum levels of income-replacement benefits.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 12§3 of the 1961 Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4a)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The coordination of social security systems of the European Union Member States (EU) is governed by Regulation (EC) No. 883/2004 and by Regulation (EC) No. 987/2009 (these regulations apply also to Member States of the European Economic Area – EEA). Article 4 of Regulation (EC) No. 883/2004 explicitly provides for equality of treatment between nationals, on the one hand, and, on the other hand, nationals of other Member States, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors. Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 are extended by Regulation (EU) No. 1231/2010 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, as well as to members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State (Article 1). This concerns, inter alia, the situation of a third country national who has links only with a third country and a single Member State.

The Committee recalls that, in any event, under the Charter, EU States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

In its last conclusion, the Committee asked whether bilateral agreements with States Parties, that are not EU or EEA members, were envisaged with the following States: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Georgia, the Republic of Moldova and Turkey. Given that no such agreements have been concluded during the reference period, the Committee concludes that equal treatment with regard to the right to social security is not guaranteed to the nationals of all other States Parties with which there is no bilateral agreement.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child

concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. In its last conclusion, the Committee asked whether such agreements existed with the following States: Albania, Armenia, Georgia, Serbia, Russian Federation and Turkey, or whether they were planned and on what timescale. The report indicates that such an agreement exists with the Russian Federation since 1996 and is currently negotiated with Turkey. Given that no such agreement exist with the other above-mentioned States Parties, the Committee concludes that the situation is not in conformity on the ground that equal treatment with regard to access to family allowances in respect of nationals of all other States Parties is not guaranteed.

The Committee refers to its previous conclusion where it found that the ten-year residence requirement to benefit from old-age pensions was excessive. Given the absence of information in the present report, the Committee reiterates its conclusion of non-conformity.

Right to retain accrued benefits

The Committee points out that in its previous conclusions (Conclusions XVII-1, XVIII-1 and XIX-2) it considered the situation to be in conformity as far as the retention of accrued benefits was concerned. The present report confirms that there has been no change to this situation, therefore, it reiterates its conclusion of conformity.

Right to maintenance of accruing rights (Article 12§4b)

The Committee previously considered (Conclusions XVII-1, XVIII-1 and XIX-2) that the situation was in conformity with regard to the aggregation of insurance and employment periods. However, the Committee asks that the next report confirms whether nationals of States Parties that are not members of the EU or the EEA or bound by a bilateral agreement with Spain have a guaranteed right to accumulate periods of insurance and employment.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the length of residence requirement for entitlement to non-contributory old-age pensions is excessive.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

Social assistance in Spain falls under the exclusive competence of the 17 autonomous communities and the two autonomous municipalities; accordingly, each of these local entities has different social assistance systems mostly based on the one hand on a minimum income system and on the other hand on the provision of a social emergency financial support in exceptional cases, including where the person is not eligible to the minimum income.

The Committee has previously repeatedly found since 1996 (Conclusions XIII-4, XIV-1, XV-1, XVI-1, XVII-1, XVIII-1, XIX-2) that the minimum income system in several autonomous communities does not comply with the Charter where eligibility for the minimum income is subject to a length of residence requirement – from six months to three years – and (Conclusions since 2000) where it is subject to a minimal age condition, excluding for example from assistance people younger than 25. In addition, the Committee found (since 2006, Conclusions XVIII-1 and XIX-2) that, contrary to the Charter, the duration of social assistance is limited in time. The report does not provide any new information in this regard, while the information provided to the Governmental Committee confirms the shortcomings already noted (Governmental Committee, Report concerning Conclusions XIX-2, Doc. T-SG(2011)2final, §§174, 175, 177, 182).

The Committee recalls that the domestic legal system cannot exempt a State Party from the international obligations it entered into on ratifying the Charter: even if under domestic law local or regional authorities are responsible for exercising a particular function, States Party to the Charter are still responsible, under their international obligations, to ensure that their responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the state (*European Roma Rights Centre* (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29; *International Federation of Human Rights* (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2010, §56). Accordingly, where social welfare services are decentralised, the Committee assesses the compliance with the Charter taking into account the effective application also by the local bodies. In this respect, although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment. The Committee considers indeed that, based on their strategic choices and priorities, the local entities (regions, provinces and/or municipalities) must nevertheless comply with Article 13 of the Charter (see, mutatis mutandis, *The Central Association of Carers in Finland* c. Finland, Complaint No. 70/2011, §§58-59). In the light of the information above, the Committee asks the next report to provide comprehensive and updated information on the social assistance benefits (minimum income and emergency financial support) in the different local entities, the eligibility criteria applied and the duration of the assistance provided. In the meantime, it maintains its previous conclusion of non-conformity both as regards the residence and the minimal age requirements as well as regards the fact that the minimum income is not paid for as long as the need persists.

The report does not provide any information on medical assistance. The Committee previously noted (Conclusions XIII-4 of 1996) that medical assistance was provided under the social security scheme in the form of non-contributory allowances. It notes from MISSOC that medical assistance covers all residents with insufficient means of subsistence. It asks the next report to provide comprehensive and updated information in this respect.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to the report the amount of minimum income for a single person varies according to regions from €300 in Murcia and Ceuta (the lowest) to €641.40 in Navarra and €658.5 in the Basque country (the highest) in 2011.
- Additional benefits: the report does not provide any information on any other benefits paid to a single person without resources. According to MISSOC, housing allowances amounting to €525 per year can be provided to beneficiaries of non-contributory old-age or invalidity pensions. The Committee notes that there is no indication that regular supplementary benefits apply to everybody in need and that their amount is adequate. It asks the next report to provide information in this respect;
- Medical assistance: see above;
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €521 per month in 2011.

The Committee recalls that, under Article 13§1 of the Charter, the assistance is considered to be appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a single person living alone is not manifestly below the poverty threshold. In the light of the above data, the Committee considers that in all autonomous communities and municipalities, except for the Basque country and Navarra communities, the level of social assistance paid to a single person is manifestly inadequate on the basis that the minimum assistance that can be obtained falls below the poverty threshold.

Right of appeal and legal aid

The Committee previously noted (Conclusion XVII-1 of 2006) that a right of appeal to the administrative courts existed in all autonomous communities. It asks the next report to confirm that the situation has not changed, that an effective right of appeal also applies to decisions concerning medical assistance, and to indicate whether free legal aid is available where necessary. In the meantime, it reserves its position on this point.

Personal scope

The Committee notes from the report that foreign residents are entitled to social and medical assistance, under the same conditions as Spanish nationals (Sections 12 and 14 of the Organic Law 4/2000 of 11 January 2000, as amended by the Organic Law 2/2009 of 11 December 2009). Furthermore, under the Law 12/2009 of 30 October 2009, asylum seekers and refugees are also entitled to social assistance. In this

respect, the Committee asks the next report to clarify the nature and extent of the services provided, whether the age and length of residence requirements also apply in these cases and what social assistance services are available to stateless persons.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the Charter on the grounds that, at least in some of the autonomous communities:

- minimum income eligibility is subject to a length of residence requirement;
- minimum income eligibility is subject to age requirements (25 years old);
- minimum income is not paid for as long as the need persists;
- the level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra).

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

The Committee takes note of the information contained in the report submitted by Spain, as well as of the additional information provided in an addendum to the report, which refers to the relevant Constitutional provisions protecting equality of rights and forbidding discrimination.

In particular, Article 14 of the Constitution provides that "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance". Moreover, Article 9 of the Constitution enjoins the public authorities to promote conditions that ensure that the freedom and equality of individuals and of the groups that they form are real and effective; to remove obstacles that impede or hamper the fulfilment of such freedom and equality; and to facilitate the participation of all citizens in political, economic, cultural and social life. These principles have been developed in the Spanish legal system. Discrimination on various grounds is generally combated by the same regulations, and the grounds of unlawful discrimination normally specified are a person's origin, including racial or ethnic origin, sex, age, marital status, religion or beliefs, political opinion, sexual orientation, trade union membership, social condition or disability.

The Committee takes note of the information provided and asks the next report to confirm that no restrictions apply, also in practice, to the social and political rights of beneficiaries of social assistance.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 13§2 of the 1961 Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

Since 1988, a Joint Basic Social Services Plan sets the framework for the co-operation between the central administration and the autonomous communities in the field of social services, with the aim to ensure that basic social services, designed to combat social exclusion, prevent marginalisation and improve the quality of life, are available to the whole population. The report indicates in this respect that all municipalities with more than 20,000 inhabitants have the legal obligation to provide social services, which include inter alia information and guidance, specific prevention and social integration measures, home assistance and accommodation services. According to the report, the autonomous communities are setting up reference catalogues of social services, detailing the type of services provided as well as the procedures to ensure their quality; during the reference period, La Rioja, Aragon and Balear Islands had set up such a catalogue, while other communities were planning to do so.

All foreign nationals, irrespective of their administrative status, are entitled to basic social services and benefits and foreign residents are entitled to general, basic and special social benefits under the same conditions as Spanish nationals.

In 2010, there were 1 373 social services centres (they were 1 318 in 2008), 11 hostels, and 8 reception centres (including a special centre for minors and two special centres for women). The report gives details about their geographical distribution all over the country.The expenditure for social services increased from €1 115 821 462 in 2008 to €1 435 805 223 in 2010, with an increase of the expenditure for the provision of services and benefits (from 64.5% to 69.4%) and a decrease in the expenditure for staff (from 32.7% to 28%), while the rest of the expenditure concerned maintenance and investments.

The Committee takes note of the information provided and asks the next report to continue to provide updated information and to clarify whether services aimed at people without adequate resources or at risk of becoming so are provided free of charge.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 13§3 of the 1961 Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee noted in its previous conclusion (Conclusions 2009) that EU nationals holders of the so-called "European Health Card" are entitled to public health services and that all other foreigners, including those in irregular situation, are entitled to emergency medical treatment in the event of serious illness or accident. In addition, foreign nationals under 18 years of age, including those who are there unlawfully, are entitled to health care under the same conditions as Spanish nationals. The same applies to foreign women during pregnancy, delivery and the post-natal period. The Committee notes from another source (Fundamental Rights Agency – Migrants in an irregular situation: access to healthcare in 10 European Union Member States, October 2011) that foreigners, whether legally present or in an irregular situation, enjoy full access to all services provided by the national health system under the same conditions as nationals, provided that they register at the local civil registry (which requires showing a valid identity document and confirmation of residence/address) and get an individual health card, which also gives access to reductions to the cost of medicines.

As regards social assistance, the Committee previously noted that both legally present foreigners and migrants in irregular situation are entitled to emergency social assistance (food, shelter and clothing) in case of need and asked for additional details as to the nature and extent of the aid provided when unlawfully present individuals are given emergency assistance. In this respect, the report refers to several programmes of humanitarian aid, financed by the State and carried through specialised social organisations. In particular, the report refers to the centres for temporary shelter set up in the autonomous municipalities of Ceuta and Melilla, which provide social, health and psychological care.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 13§4 of the 1961 Charter.

Article 14 - The right to benefit from social services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee refers to its previous conclusions (Conclusions XVII-2 and XIX-2) for a description of the organisation of social services.

Effective and equal access

The report still does not contain any information about fees charged for social services. The Committee therefore concludes that the situation is not in conformity with Article 14§1 of the 1961 Charter on the ground that it has not been established that effective access to social services is guaranteed.

The Committee refers to its previous conclusions (Conclusions XVII-2) regarding equal access to social services.

Quality of services

The report still does not contain any information about the conditions which providers of social services must meet, therefore, the Committee repeats its conclusion of non-conformity.

The report is also silent on the supervisory procedures in place to ensure that the conditions are complied with in practice. Under these circumstances, the Committee is not able to assess the situation in Spain with regard to Article 14§1. It repeats its conclusion of non-conformity in this respect.

With regard to staffing levels in the social services, the report states that in 2010 there were 50 007 staff for 8 047 920 users. Consequently, there was one member of staff for approximately 160 users in 2010. The Committee requests that the next report indicate the total amount of expenditure on social services.

The Committee asks whether there is any legislation on personal data protection.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 14§1 of the 1961 Charter on the grounds that:

- it has not been established that effective access to social services is guaranteed;
- the conditions to be met by providers of social services are not clearly defined;
- it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist.

Article 14 - The right to benefit from social services

Paragraph 2 - Public participation in the establishment and maintenance of social services

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

The "new generation" of Social Service Laws of the Autonomous Communities adopted during the reference period guarantees citizens using the social services a right of participation.

The report refers to the following measures relating to the participation of voluntary organisations:

- the Social Welfare NGOs Council, which answers to the Ministry of Health, Social Services and Equality, is a body for the consultation of welfare organisations in the framing and execution of public social welfare policies;
- the annual call for applications for subsidies for co-operative and voluntary welfare programmes financed by personal income tax revenue. These subsidies may be requested by the Spanish Red Cross, welfare organisations or non-governmental organisations, provided that they are non-profit-making. Programmes financed in this way include the ones for children and families, women, elderly people and social integration;
- the annual call for applications for subsidies subject to the general rules on subsidies from the Ministry of Social Services and Equality. The main aim of these subsidies is to support associations and state foundations by financing their upkeep and functioning and hence to provide them with the necessary means to achieve their aims.

In its last conclusion, the Committee asked what means were available to monitor the actions of non-governmental organisations and other non-public service providers and how many such providers there were. Given the lack of information in the current report, the Committee concludes that the situation is not in conformity on the ground that it has not been established that there are means of monitoring the actions of non-governmental organisations and other non-public service providers.

The Committee also asked in its previous conclusion if effective and equal access to social services provided by non-state providers was guaranteed. In the absence of any reply to this question, the Committee concludes that the situation is not in conformity on the ground that it has not been established that there is equal and effective access to social services provided by non-state providers (i.e. non-governmental organisations and other non-public service providers).

The Committee asks for it to be stated in the next report if and how the state ensures that services managed by the private sector are effective and accessible to everyone on an equal footing, and at least without discrimination on the ground of gender, race, ethnic origin, religion, disability, age, sexual orientation or political opinion.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 14§2 of the 1961 Charter on the grounds that it has not been established that:

- that there are means of monitoring the actions of non-governmental organisations and other non-public service providers;

- that there is equal and effective access to social services provided by non-governmental organisations and other non-public service providers.

Article 4 of the 1988 Additional Protocol - Right of the elderly to social protection

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

Legislative framework

In its previous conclusions, the Committee asked whether non-discrimination legislation exists protecting elderly persons from discrimination on grounds of age. The previous report stated that protection is granted by the Constitution itself which stipulates in its Article 14 that Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance. The Committee observes that age does not figure explicitly among the grounds of prohibited discrimination.

As regards the protection of elderly persons from discrimination outside employment, the Committee recalls that Article 4 of the Additonal Protocol requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services. The European Older People's Platform and other sources point to the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) which leads the Committee to consider that an adequate legal framework is a fundamental measure to combat age discrimination in these areas

The Committee finds the situation is not in conformity with Article 4 of the Additional Protocol on the grounds that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

As regards assisted decision making the Committee recalls that Spanish law provides for traditional guardianship, tutorship, *de facto* guardianship and legal defence. However the Committee also asks for information as to whether consideration has been given to introducing procedures related to assisted decision making for the elderly. In this respect, the Committee refers to its statement of interpretation in the General Introduction.

Adequate resources

When assessing adequacy of resources of elderly persons under Article 4 of the Additional Protocol the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes in its Conclusions under Article 12 that in 2011 50% of the Eurostat median equivalised annual income stood at € 6 258 (€ 521 per month in 2011).

The minimum contributory pension for a single person stood at € 8 419 in 2011. The Committee finds under Article 12 that the level is adequate.

The Committee recalls that it noted in its previous Conclusion that there was a non contributory pension payable to those over 65 years of age who are not eligible for the contributory pension and whose income falls below a certain level. The Committee found no information on the level of this benefit nor on the additional benefits that persons in receipt of this may be entitled to. Although it noted under Article 13 that housing allowances amounting to € 525 per year can be provided to beneficiaries of non-contributory old-age or invalidity pensions. The Committee asks the next report to provide full details of the level of the non contributory pension as well as information on all additional benefits/ allowances a beneficary would be entitled to.

Prevention of elder abuse

The Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person'. It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organization (WHO) and the International Network of the Prevention of Elder abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundred thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are pinched or beaten, called names, threatened and insulted and sometimes they are raped or sexually abused otherwise.

The Committee wishes to know what the Government is doing to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures have been taken or are envisaged in this area.

Services and facilities

New legislation was adopted during the reference period on the promotion of personal autonomy and assistance for highly dependent persons La 39/2006 of 14 December. Reseach in 2008 indicated that 9% of those over 65 years of age had some type of diability. Elderly persons were often cared for by family members. The legislation referred to above defines three types of dependence and establishes evaluation mechanisms in order to ensure such persons receive the appropriate type of assistance. A wide range of assistance is available, including financial assistance , home help, home nursing, day and night care centres and tele assistance.. According to information in the report a total of 752,004 persons received services.

An allowance is also available for families caring for dependent elderly persons.

There may be a fee for the service depending on the resources of the client, the Committee asks for information available on average fees charged for the service.

It also asks whether there is a complaints procedure for complaining about services.

Health care

The Committee found no information on health care services for elderly persons in the report. It therefore requests the next report to provide updated information on the issue, including information on the proportion of the cost of medicines to be borne by elderly persons.

The Committee recalls the importance of establishing health care programmes and services (in particular primary health care services) specifically aimed at the elderly, as well as guidelines on health care for elderly persons. In particular, there should be mental health programmes for any psychological problems in respect of the elderly, adequate palliative care services and special training for individuals caring for elderly persons.

Housing and Institutional Care

The report provides information on new legislation adopted in 2007 which allows elderly persons (those over 65) to realise the equity on their homes, thereby securing cash from banks in return for giving the banks a lien on the property. This allows elderly persons resources for which to pay for care etc.

The Committee found no updated information in the report on housing for elderly person nor on institutional care. It requests that the next report to provide full information in this respect.

The Committee asks how these facilities are licensed and inspected, and whether procedures exist for complaining about the standard of care and services or about ill treatment in this type of institution. It also asks whether places available in institutional care match the demand. Furthermore, the Committee asks which is the competent authority or body responsible for the inspection of homes and residencies (both public and private). It recalls the importance of ensuring that any inspection system regarding the standards of care and services provided in institutions and residential facilities should be entirely independent of the body managing the facility.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol of the 1961 Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

Dissenting opinion by Lauri Leppik on Article 12§4: treatment of family allowances

The majority of the Committee has held in respect of a number of countries (Iceland, Luxembourg, Austria, Belgium, Cyprus, Estonia, Finland, Germany, Greece, Spain, Poland, Czech Republic, the Former Yugoslav Republic of Macedonia, Malta, Norway, Slovenia and Portugal) that equal treatment with regard to family allowances is not guaranteed to nationals of all other States Parties. I respectfully disagree with this conclusion on the grounds indicated below.

Under the established case law of the Committee under Article 12§1, family benefits must cover a significant percentage of the population. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement: means-test, etc. (Conclusions XVI-1 (2002), Statement of Interpretation on Article 12).

Similarly, under Article 16, states are required to ensure the economic protection of the family by means of family or child benefits, available either universally or subject to a means-test, while the amount of benefits must constitute an adequate income supplement for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

This is to mean that under relevant provisions of the Charter – Article 12§1 and Article 16 – the Contracting Parties are under an obligation to pay child benefits in respect of resident children. The only limitation the Committee has accepted, is exclusion from the scope of application of child benefits the well-off families subject to a means-test.

In my consideration, from the human rights perspective this is also to imply that it is not acceptable to limit the payment of child benefits to economically active persons only, as this could deny access to child benefits for some of the most vulnerable groups of children, e.g. children of non-working single parents.

If all States duly respect their obligations under Articles 12§1 and 16, all children would and should enjoy the right to child benefits in the country where they reside. This would comply with the function of the child benefits to compensate for the costs of maintenance, care and education of children. Such costs occur in the country where the child actually resides. On the other hand, failure to ensure child benefits unilaterally and universally to all resident children (subject to a possible means-test) shall constitute a violation of both Articles 12§1 and 16.

In its case law under Article 12§4 the Committee holds that “the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix.” However, it has further argued that "as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.“Furthermore, the Committee has then concluded that states, which have made the payment of family allowances subject to the child’s residence in the territory of the country, have failed to respect their obligations under Article 12§4 as they have not succeeded in concluding bilateral or multilateral agreements with those states which have based the payment of

family allowances on employment status of the parent. In my consideration, such an argumentation is faulty for many reasons.

Firstly, the majority's position is contradictory. While stating on one hand that "the requirement for the child concerned to reside on the territory of the State concerned is compatible with Article 12§4 and with its Appendix", and noting that "whoever the beneficiary may be under the social security scheme – the worker or the child"it then goes on to place an additional procedural obligation on those states which do apply the child residence requirement.

Secondly, as noted above, if indeed all States duly respect their obligations under Article 12§1 and/or 16, all children would enjoy the right to child benefits in the country where they reside without any discrimination on grounds of nationality. However, if any of the States fails to observe its obligations under Article 12§1 and/or 16, this cannot lead to a transfer of the said obligations to another State Party under Article 12§4. Paradoxically, that would be the consequence of majority's current interpretation of Article 12§4 of the Charter.

Thirdly, while claiming that "equal treatment with regard to family allowances is not guaranteed to nationals of all other States Parties", the majority has failed to point out which are the groups in similar or comparable situations. Along the interpretation of the European Court of Human Rights, individuals and groups in similar situations should receive similar treatment and not be treated less favourably simply because of a particular protected characteristic, whereas individuals and groups who are in different situations should receive different treatment to the extent that this is needed to allow them to enjoy particular opportunities on the same basis as others. To argue that there has been a breach of the principle of equal treatment, the Committee should be able to:

- identify which are the specific groups in similar situations;
- indicate that there has been an unfavourable treatment due to a particular protected characteristic.

In the instant case, the Committee has neither identified the groups in similar situations nor pointed out the unfavourable treatment of those groups on the protected ground.

In view of the latter and with reference to the residence criteria, I hold that children residing in the same country are in a similar situation, while children residing in different countries are to be considered in different situations.

Furthermore, the principle of equal treatment enshrined in Article 12§4 of the Charter cannot be construed to imply that in respect of some categories of children the legislation of two or more States is to be applicable (whereas that would be the inevitable consequence of majority's emphasis on unilateral measures). On the opposite, such an interpretation would attempt to legitimize differential treatment of children based on employment status and employment juristiction of their parents, which cannot be grounded in the Charter.

Finally, as an academic person, I can accept other coherent approaches which are different from mine. However, in the instant case the position of the Committee is not coherent and not reasonably substantiated.