Confederación Intersindical Galega

Comments by the
Confederación Intersindical Galega (CIG)
to the
33rd report
presented by the Spanish Government to the European Committee of Social Rights, in relation to the Kingdom of Spain's fulfilment of the European Social Charter (1961)

European Social Charter
Cycle XXII-2 (2021)
Period 01/01/2016 - 31/12/2019

The 33rd report (in French only) was submitted by the Spanish Government on 26/01/2021 and concerns the accepted provisions relating to Thematic Group 2, devoted to *"Health, social security and social protection"*, namely:

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

The reference period to be taken into account is from 01/01/2016 - 31/12/2019. The new indications from the European Commitee of Social Rights (ECSR), which calls for precise and concrete responses to questions asked, were also taken into consideration.

In fulfilment of what is established by the European Social Charter's Article 21, the Spanish Government sent a copy of its report to the most representative workers' organisations. The Confederación Intersindical Galega (Galician Unions' Confederation) presents the following observations, with regard to the thematic group of rights considered in the report.

The state of the matter: summary of situations of non-conformity in the Thematic Group 2 *"Health, social security and social protection"* on previous Conclusions XXI-2 (2017)

Situations of non-conformity:

Article 3§2 - *Right to safe and healthy working conditions - Enforcement of safety and health regulations*

- Measures taken to reduce the number of accidents at work are insufficient.

Article 12§1 – *Right to social security - Existence of a social security system*

- The level of unemployment benefits for unemployed without family responsibilities is inadequate.

Article 12§4 – *Right to social security - Social security of persons moving between states*

- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- The length of residence requirement (ten years) for entitlement to non-contributory old-age pension is excessive.

Article 13§1 – *Right to social and medical assistance - Adequate assistance for every person in need*

- Minimum income eligibility is subject to a length of residence requirement in the majority of Autonomous Communities;
- 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 not adequate.

Previous warning about the non-official version of the European Social Charter published by the Spanish Government

Our comments are preceded by this previous warning, which we also consider advisable to be known by the Committee because of its importance. The ratification by the Kingdom of Spain of the European Social Charter was made through an instrument of ratification of 29 April 1980, published in the Official Gazette *("Boletín Oficial del Estado"*) of 26 June 1980. As can be observed in the aforementioned Official Gazette, Spain has not published the official version of the European Social Charter, since the published text is only in Spanish, so we understand that it is the publication of an unofficial version. This justifies, from our point of view, the need to correct this legal-diplomatic mistake.

The only two official languages of the Council of Europe are English and French, therefore all official documents issued by the Council of Europe appear in both languages, as is the case with the European Social Charter. With this, we would like to point out that a correct ratification of the aforementioned Charter by the Spanish State demands that its official publication to be in the authentic versions (that is, in either or both of these two official languages) and not, as has been made, in a translation into Spanish (that is, in an unofficial version). The comparative study of what other States-members of the Council of Europe have done shows that the Spanish State has not acted correctly, for example, and unlike in Spain, Portugal has published in its *"Diário Oficial da República"* the authentic (or official) version in French of the European Social Charter (in addition to an unofficial version in Portuguese), Italy has published in

its *"Gazzetta Ufficiale della Repubblica"* only the authentic (or official) version in French, and France has published in its *"Journal officiel de la République"* the authentic (or official) version in French. In so doing, these States show scrupulous respect for the value legally required of authentic (or official) documents, and also avoid further problems of interpretation and application of the European Social Charter, derived from the internal use of a non-official version.

Although the Spanish publication (unofficial) of the European Social Charter in the Official Gazette has not been an obstacle to its quotation and application (even by the Spanish courts), it becomes necessary to warn of this legal-diplomatic error so that it can be corrected and not repeated in future ratifications. It must be remembered that the question of the language of official publication of the Charter can not be considered as a matter of domestic law (as indicated by the Spanish Government in its response to our allegations of 2017), but must be resolved in accordance with the Council of Europe's rules, so it seems important to us that the Committee expressly decides on the issue.

We therefore request the Committee to give its views on this concrete question.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring **the** effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. issue safety and health regulations;

Questions posed by the Committee

Comments to question a):

> "Please provide detailed information on the regulatory responses adopted to improve occupational safety and health in connection with known and also evolving or new situations (including as regards stress and harassment at work; work-related substance use and employer responsibility; strictly limiting and regulating electronic monitoring of workers; mandatory digital disconnection from the work environment during rest periods – also referred to as "digital detox"; health and safety in the digital and platform economy; etc.) and about regulatory responses to newly recognised forms of professional injury or illness (such as work-related self-harm or suicide; burn-out; alcohol or other substance use disorders; post-traumatic stress disorders (PTSD); injury and disability in the sports entertainment industry, including in cases when such injury and disability can take years or even decades to become apparent, for example in cases of difficult to detect damage to the brain; etc.)".

Stress and harassment at work

According to the Statistics of Work Accidents, during the year 2017, 618 people died while working or going to or returning from their workplace. An average of 1.7 deaths per day. The death rate has grown by 1.8%, according to data from the Ministry of Employment and Social Security.

Of the total of these deaths, almost a third (208), were caused by a “heart attack or stroke”. It is, in fact, the leading cause of death at work. Stress and work pressure greatly influence this type of death. And yet, prevention of this type of death continues to be the great neglected of prevention plans. Pathologies caused by stress or workplace harassment are not even recognized as an occupational disease by the State.

From our point of view, it is urgent to modify the Royal Decree that approves the table of occupational diseases in the Social Security system and establishes criteria for their notification and registration to add as occupational diseases stress and workplace harassment.

Electronic monitoring of workers

The private social life of the worker within companies cannot in any case be reduced to zero, the State having a positive obligation (obligation to do) to ensure that the private life of employees is respected within business organizations (Bărbulescu v. Romania case), the legislator having to comply with this positive obligation by setting the appropriate regulatory framework that determines the protection of the various interests at stake and, in the absence of legal regulation, it will be up to the national judicial bodies to ensure that the corporate adoption of measures to monitor correspondence and other communications is carried out with adequate and sufficient guarantees against abuses and arbitrariness.

Regarding labour regulations, the first thing that is noticed in a legal key is that, in the absence of regulation in the collective agreement or in internal regulations, the Spanish legal system lacks a norm that expressly contemplates and regulates the conflict of interest between worker and underlying employer to the situations that concern us, as happens, however, with the registry operated in the person of the worker, his locker and particular effects, which is regulated in detail in Art. 18 of the Workers' Statute. The regulation contained in art. 20.3 of the Workers' Statute is revealed, by itself, insufficient to avoid arbitrariness, the worker being subjected to the uncertainty of not knowing which aspects of his private life are known, recorded and preserved or transferred and treated, considering it as an institute very limited legal framework to satisfactorily respond to the new challenges posed by new control technologies.

The guarantees of Art. 18 of the Workers' Statute are not applicable to the assumptions of control of the computer media provided to the workers for the execution of their labor benefit for the sake of the provisions of the Supreme

Court ruling of September 26, 2007, which understands that the assumption regulated by art. 18 of the Workers' Statute is completely different from that produced on the occasion of the control of computer media at work, considering these as property of the company, which provides them to the worker for the fulfillment of the labor benefit, its use is within the scope of the power of supervision of the employer regulated in art. 20.3 of the Workers' Statute and not by Art. 18 of the same legal body.

Mandatory digital disconnection

The digital revolution and the processes of automation and globalization have led to a phenomenon of permanent connectivity that is affecting all areas of human activity, including labor, where the boundaries between work time and rest are becoming increasingly diluted; what has caused that, after an interesting debate on the necessity of its regulation, recently it has been approved like a new right of the workers.

Thus, on December 7, 2018, the Organic Law on Protection of Personal Data and Guarantee of Digital Rights ("LOPDGDD") came into force, which, among other labor issues, legally recognizes (and for the first time in Spain) the called the right to digital disconnection in the field of employment (art. 88).

However, we must highlight both the absence of a definition of the right to disconnect and the lack of detail about its content, so that its practical application is conditioned to a development through collective bargaining that business organizations can block.

Ultimately, it is an incomplete regulation that raises several controversial questions: What will happen in the event of discrepancy by the workers' representatives regarding the measures adopted? What will happen if the company does not develop the internal policy that defines the modalities for exercising the right to disconnect? In conclusion, if there is no will of the employer, mere legal recognition is dead paper.

Health and safety in the digital and platform economy

Although in recent years there have been advances in the recognition of the employment relationship of platform workers, it is still common the provision of services as self-employed workers. This implies the non-application of the health and safety regulations at work, leaving the workers at the expense of their own risk prevention and not the company.

The recent appearance of platform work and its rapid expansion has led to insufficient documentation and few studies on these specific risks. This lack of information causes, on the one hand, that these risks are not known by the workers themselves, but also that these risks are not taken into account in the mandatory evaluations.

Among these specific risks we can point out the following:

- The technology used in the work on platforms allows an increase in the monitoring and control of the work, reducing the times of work and forcing the worker to increase the speed of work.
- The need for a permanent digital connection (smartphone or computer) to work can make it difficult to establish a clear separation between work and rest.
- Speed, poor driver rest —fatigue—, distractions at the wheel and poor vehicle conditions are the main factors that increase the risk of an accident while driving.
- The "virtualization" of platform work is preventing workers from having the possibility of establishing direct, physical and effective communication channels with other people, producing situations of loneliness and even lack of help.
- The under-representation of women at work on platforms, as well as the little protection received (isolation, existence of online reputation, precariousness) increases the chances of suffering sexual harassment.
- Historically, the low level of income and the uncertainty in obtaining it has been considered an enhancer of risks to the health and safety of the worker. Precarious work causes stress and is related to harmful lifestyles (alcoholism) and reduced quality of life.
- The algorithm "as boss" is capable of constant monitoring of work, adapting instructions and work times to the maximum capacities of a worker, causing physical and mental exhaustion. The algorithm also reduces the autonomy of these people to make decisions and may reduce the cognitive abilities of workers.

Teleworking

On 23 September 2020, the new Royal Decree-Law 28/2020, of 22 September, on distance work, was published in the Official Gazette, which includes the agreement signed the day before between the Spanish Ministry of Labor and the Social Economy, trade unions and employers in the so-called Social Dialogue Table. The rule, which will now be sent to the Spanish Congress for validation by the draft law, aims to overcome the wording of Article 13 of the Workers' Statute in the face of the new reality labor caused by the covid-19 pandemic, which led to a huge expansion of distance work. However, and paradoxically, people who are working as a result of the health crisis are excluded from the rule. The most notable points of the new standard are the following:

Limited and progressive application

The new decree-law will not apply, at least initially, to people who already telework as an exceptional measure arising from the pandemic (third transitional

provision). As long as the sanitary containment measures are not lifted, the rule applicable to these people will be the previous one, with the only exceptions that the company must take charge of means, equipment, tools and consumables and the necessary maintenance. It will not affect public employment, whether civil servants, statutory or employment staff, which will be governed by its specific regulations. In particular, the personnel of the public administrations is excluded from the scope of application of the decree-law in the second additional provision. For the rest of the working people, the affectation will be progressive and delayed. In accordance with its final provision 14, the decree-law enters into force on 13 October. In the event that there are previous telework agreements not linked to the situation of pandemic, these must be adapted to the new norm within three months of its entry into force (first transitional provision, paragraph 3). And if there is already a regulation on telework in the collective agreement, it will be maintained until it expires or, if it does not have an end date, for a year that can be extended to three (first transitional provision, paragraph 3).

Wide margin for fraud in the application of the rule

The rule defines regular distance work as that which occupies at least 30% of the working day for three months (Article 1). However, it excludes contracts with minors or internships or training, which must have a minimum of 50% of face-to-face activity. This threshold of 30% as a percentage of working hours to apply the new regulation has been adopted at the request of the employer and will give rise that many companies benefit from hybrid face-to-face and teleworking systems without having to apply the law in those aspects that contain some additional guarantees for remote work, such as those related to digital disconnection, data protection or occupational risk prevention. It is also foreseeable that these new guarantees will be tried to be defrauded by resorting to false self-employed workers.

Voluntary, express and reversible nature

The agreement to work remotely must be voluntary by both parties (Article 5.1), that is, neither of them can impose telework on the other. Refusal by a working person to accept it or difficulties in adapting to teleworking cannot be cause for dismissal for objective reasons, although the consequence of such illegal dismissal will be inadmissibility and not nullity (Article 5.2). In addition, the agreement of telework must be reversible (Article 5.3), so as to allow a return to the previous face-to-face situation.

The specific way in which such a return takes place will depend on collective bargaining, to which the decree-law refers in very relevant aspects, which will hinder its application at first due to lack of this necessary complement. The agreement for distance work must be formalized in writing and sent to the legal representation of workers and the employment office before the start of the activity (Article 6). In the event that teleworking has already taken place (and

this is not an exceptional situation deriving from the health crisis), the companies have three months to formalize and register the agreement (first transitional provision, paragraph 3).

The rule includes sanctions for companies that do not comply with this obligation (first final provision). The agreement for telework must contain (Article 7) data on the means necessary for the development of the activity, the possible costs and how to quantify the their compensation (for example, electricity or internet bills), their duration, timetable and availability rules, percentage of work at a distance and in person, the location of both places, the notice period to revoke the measure and return to face-to-face work, the means that the company will use to control the activity, the procedure in case of technical problems and the company's instructions on matters such as data protection or information security.

Rights in teleworking: continuity and lack of guarantees

As Article 13 of the Workers' Statute already did, the new decree-law provides that people who work remotely will have the same rights (Article 4) as those who work in person, both in wages, training, promotion, access and vote of their legal representation, non-discrimination and prevention of occupational hazards.

However, the way in which they will exercise these rights remains unknown, as the Government did not consider it necessary to address in the decree-law the specific difficulties for the control of legality and trade union action involving a labor organization distributed at home. In relation to risk prevention, the area authorized for remote work (not the whole house) will be evaluated and if it is necessary to make a face-to-face visit, the worker must give his consent (article 16). , must comply with the entry and exit register, as well as in person (Article 14), and the company may implement systems to control the activity of the worker, respecting data protection and dignity (Article 22). Workers and distance workers will be entitled to a flexible schedule (Article 13), in accordance with the individual telework agreement and the collective agreement, and an availability schedule will be set, outside which the company will not be able to communicate or claim tasks, to ensure digital disconnection (Article 18). The company must take charge of all means of production necessary for the development of the activity (Article 11) and may not require the worker to use for work or install applications or programs on their personal devices (Article 17).

The right to payment or compensation of expenses must be the subject of specific regulation in the individual telework agreement itself or in the collective agreement (Article 12). It is important to emphasize that there are so many and so important matters in which the legal norm refers to collective bargaining (including the definition of jobs susceptible to teleworking, face-to-face minimums and expense compensation systems), that their practical application

it will be very committed until the agreements are updated as a necessary complement to a rule that at this time is re-revealed as incomplete, fragmentary and voluntarist.

Accidents *in itinere*

Accidents at work *in itinere* in Spain are defined in Article 156.2.a), of Royal Legislative Decree 8/2015, of 30 October, approving the consolidated text of the General Social Security Law, as “accidents suffered by the worker when going or returning from the place of work”. Its interpretation and application by the Supreme Court is very restrictive and does not conform to the social reality of the 21st century, in addition to rendering useless all measures to prevent accidents at work in itinere. The jurisprudential requirement — that is not legal — that the ends of the journey are precisely the “place of work” and the “domicile” of the worker determines that, in Spain, it is not an accident at work:

- The accident that occurs on the way home-kindergarten/school on the way to work or kindergarten/school-home after work on the way home, thereby preventing the conciliation of work and family life.

- The accident of several workers who agreed to travel in a private car (car sharing) to the same workplace, thus preventing the protection of the environment and energy saving.

- The accident occurred by a person who has two part-time jobs and moves from one part-time job to another part-time job, which, in addition to causing their lack of protection, is a cause of discrimination against women because they mostly have contracts. part-time work.

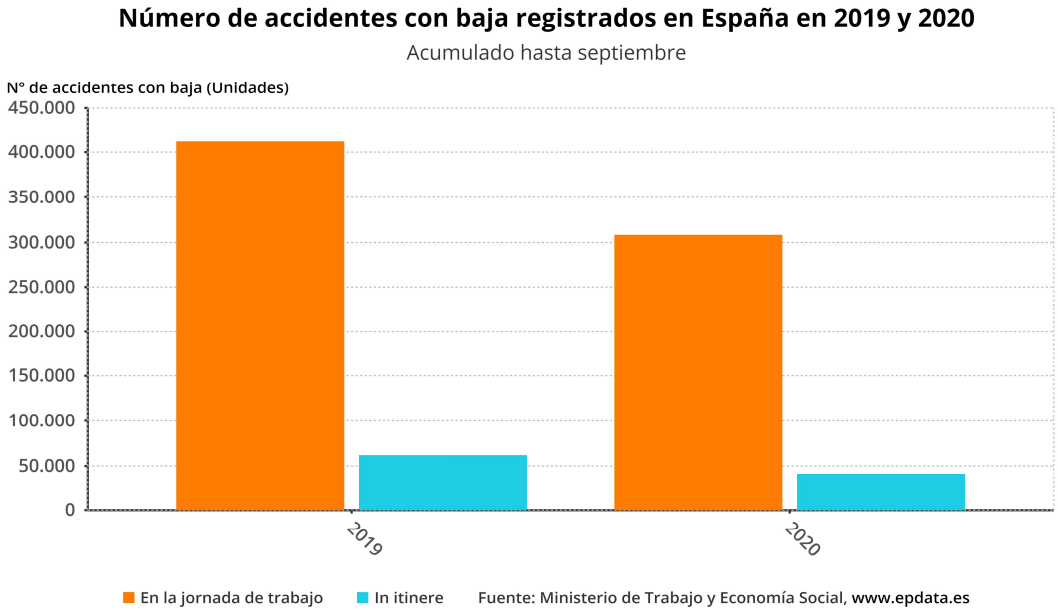
It is something exclusive to Spain. In the field of comparative law (mainly France, Germany and Italy), the extremes of the journey ("place of work" and "home") do not count. It is favored thus:

- The act of sharing a vehicle (it is considered *in itinere* the traffic accident occurred when picking up a co-worker at home, and then going to the company together), protecting the environment and reducing pollution.

- The conciliation of work and family life (it is considered *in itinere* the traffic accident that occurred when taking the children from kindergarten or school, and then go to work).

- The performance of two part-time jobs (it is *in itinere* the traffic accident occurred when going from a workplace to another workplace), protecting the people who perform it, who are mostly women.

Number of accidents with sick leave (in the workplace and in itinere):



Comments to question b):

> "With particular reference to COVID-19, provide specific information on the protection of frontline workers (health-care staff including ambulance crews and auxiliary staff; police and other first responders; police and military personnel involved in assistance and enforcement; staff in social-care facilities, for example for older people or children; prison and other custodial staff; mortuary services; and others involved in essential services, including transport and retail; etc.)".

A *sine qua non* condition for the confinement measures to be effective is that there are activities that continue to function. They are the so-called "essential services". Total confinement is not possible, because without the bakery or the supermarket or, even more important, the health centers - and their entire supply chain - it simply would not work.

The critical activities and operators of essential services are those not described in Royal Decree 463/2020, of March 14, which declares the state of alarm for the management of the health crisis situation caused by COVID-19 and its subsequent modifications.

Critical infrastructures (indicative list):

1. Financial and Tax System (banking entities, information, securities and investments).
2. Administration (basic services, facilities, information networks, main assets and monuments of the national heritage).
3. Water (reservoirs, storage, treatment and networks).

4. Food (production, storage and distribution).
5. Power plants and networks (production and distribution).
6. Facilities related to Outer Space.
7. Nuclear power plants (production, storage and transport of dangerous goods, nuclear, radiological materials, etc.).
8. Chemical Industry (production, storage and transport of dangerous goods, chemical materials, etc.).
9. Research: laboratories that, due to their idiosyncrasy, dispose of or produce critical or dangerous materials, substances or elements.
10. Health (health sector and infrastructure).
11. Information and Communication Technologies (ICT, whether they are critical infrastructures themselves, such as telecommunications networks, or provide information and communications services to other critical infrastructures)
12. Transport (airports, ports, intermodal facilities, railways and public transport networks, traffic control systems)

For most of them, PPE was lacking, especially at the beginning when contagion was most likely, from masks and gloves to gowns and glasses, whether in hospitals or in the central markets of each city. Infringing with this the current norms and the basic principles of prevention, included both in Law 31/1995, and in RD 664/1997, on biological risk. In addition, this situation of lack of protection implies an increased risk of contagion to other colleagues or clients, patients in the case of health workers. A situation that has led to the application of article 21 of the Occupational Risk Prevention Law, in which due to serious and imminent risk the worker can refuse to work. This has led to a serious ethical dilemma, as well as a legal one, regarding the care of patients who are or may be infected. The result of these failures, and even more serious the lack of anticipation and their preparation, has meant that around 25% of the cases have occurred in health personnel, according to the Instituto de Salud Carlos III.

Also striking is the lack of correspondence between the definition of essential workers for confinement and essential workers for vaccination. With improvised protections, anguish, and little knowledge of the danger that lay in wait, many workers served thousands of customers face-to-face, touched millions of boxes and products, and locked themselves in small spaces with strangers. Domestic caregivers for the elderly and children, supermarket cashiers, taxi drivers, truck drivers, farm and sea workers, kiosks or public defender lawyers were declared essential workers when the confinement was decreed. However, they have ceased to be considered essential workers in the Spanish Government's vaccination strategy, with their immunization according to their age group and not according to their professional activity.

2. to provide for the enforcement of such regulations by measures of supervision;

- **Situation of non-conformity in the Thematic Group 2 *"Health, social security and social protection"* on the previous Conclusions XXI-2 (2017): *"The Committee concludes that the situation of Spain is not in conformity with Article 3§2 of the 1961 Charter on the ground that measures taken to reduce the number of accidents at work are insufficient".***

We consider that Spain is **not in conformity** with Article 3**§**2 of the European Social Charter 1961.

A total of 780 workers died in an occupational accident in 2020, 13 more than in 2019, which implies an increase in relative values of 1.9%, according to data from the Ministry of Labor and Social Economy.

Evolution of people killed in work accidents between 1988 and 2020 in Spain:

Of these deaths, 595 occurred during the working day, 53 more than in 2019, representing a percentage increase of 9.8%. The 113 remaining fatal accidents registered were accidents 'in route' (those that occur on the way from home to work and vice versa), 40 less than in the same period last year (-26.1%).

Deaths in work accidents in Spain:

The data on fatal accidents includes the 21 recognized by Covid-19.

If the beginning of the 21st century started with a decrease in deaths at work, since 2012 the figures grew again. In part, because some criteria have changed in the way of registering these accidents. For example, since 2016, all deaths as a result of an accident at work after the date of the accident and up to one year began to be counted.

In addition, since January 1, 2019, the self-employed are obliged to contribute for professional contingencies of work-related accidents and occupational diseases and, therefore, they also enter the statistics. However, these changes do not explain this increase in occupational accidents in the last years.

For CIG, it is once again clear that occupational health and safety is taking a back seat in companies. Fewer accidents are taking place, but they are more serious, since the fatalities that occur during the working day increase.

The Government has to get involved and stop looking the other way before this social scourge, articulating a shock plan against workplace accidents immediately. The steady increase in deaths at work is highly concerning and must be urgently addressed.

It is necessary to reduce the incidence of psychosocial risks among the working population, since the first cause of death during the working day is heart attacks and strokes, pathologies associated with this type of occupational risk.

For CIG, it is essential to provide the Labor Inspectorate with greater resources, both human and material, to monitor and control compliance with the regulations on the prevention of occupational hazards. In the same way, it is necessary to provide more resources to the Specialized Prosecutor's Office in laboUr accidents to investigate and clarify responsibilities. We cannot allow these deaths to go unpunished.

Questions posed by the Committee

Comments to questions b) and c):

> "b) Please provide updated information on the organisation of the labour inspectorate, and on the trends in resources allocated to labour inspection services, including human resources. Information should also be provided on the number of health and safety inspection visits by the labour inspectorate and the proportion of workers and companies covered by the inspections as well as on the number of breaches to health and safety regulations and the nature and type of sanctions.
>
> c) Please indicate whether Inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors. If certain workplaces are excluded, please indicate what arrangements are in place to ensure the supervision of health and safety regulations in such premises."

Resources allocated to labour inspection services

According to the Report of the Labour and Social Security Inspectorate 2018, the staff of the Labor Inspectorate was exactly the same as ten years before.

	PROMEDIO ANUAL									
FUNCIONARIOS	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Inspectores	891	940	942	959	979	981	960	960	945	965
Subinspectores	907	917	924	912	899	861	840	837	844	901
TOTAL	1.798	1.857	1.866	1.871	1.878	1.842	1.800	1.797	1.789	1.866

We are going to offer some illustrative data of what this means in practical terms:

- In 2019, more than 22.5 million employment contracts were signed. Even above the number of employed persons (19.7 million in annual average

during that year). That is, 61,463 contracts per day taking into account weekends and holidays.

- The productive fabric is characterized by the small size of its companies. More than 90% are micro-SMEs. In total, more than 1.34 million are registered with Social Security.
- The Kingdom of Spain is one of the countries with the most self-employed workers in Europe: 16.5% of the workforce (50% more than Germany), many in a situation of illegality (the Labour Inspectorate has revealed 18,551 false self-employed workers).
- The Kingdom of Spain, like the rest of the planet, is ravaged by a pandemic that has forced the public powers to act forcefully by implementing certain social policies, such as the employment suspension files (ERTE), which necessarily require inspection work. Likewise, the Government approves new and necessary rules on equal pay between men and women or teleworking, but does not increase the number of inspectors who must enforce such regulations.
- The pandemic produces an explosion of teleworking, whose legality control is more complex than face-to-face. And it also leads to a serious economic crisis that causes unpaid wages to skyrocket.
- There is an authentic proliferation of digital platforms that are actually transport companies, as many courts have said, and that threaten to break traditional labour relations, turning the labour market into a purely commercial issue through false self-employed workers, a figure that goes far beyond the 'riders'.

As we have seen, in 2018 Spain had only 1,866 officials dedicated to Labour Inspection, of which 965 are inspectors and the rest are sub-inspectors. That is, a ratio of 12,057 contracts per official. It is the same staff as a decade ago, albeit with a difference. If in 2010 14.4 million contracts were signed, last year, as has been said, the public employment service offices sealed more than 22.5 million, which reveals the extent to which the labour market has become precarious.

The Inspectorate's shortage of means is evidenced by the fact that both the current and previous governments have decided to outsource a part of the service by hiring a consulting firm (Accenture) to not only collaborate in the inspection work, but also to carry out tasks of "organization and management" in the fight against fraud, which implies the privatization of an underfunded public service.

We also want to highlight the urgent need for IT professionals assistance in provincial Labour Inspectorate that ease the work of data processing and allow inspection officials to dedicate full time to their own functions.

Entitlement to inspect workplaces

In accordance with Law 23/2015 of July 21, article 13, labour and social security inspectors have the status of public authority and are empowered to enter freely at any time and without notice into a workplace, establishment or place subject to inspection and to remain there. Howeber, if the center to be inspected is the home of a natural person, they must obtain their express consent or the corresponding judicial authorization.

Without underestimating the constitutional guarantees for the protection of the home, the current regulation causes a deficit of guarantees in the control of the work activity of domestic service personnel and people who telework, whose number has increased exponentially during the pandemic.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;

Questions posed by the Committee

Comments to question a):

> "a) Please provide overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.)."

As recognized in the report presented by the Government, the health statistics carried out in Spain do not take into account the ethnic variable. This falsely egalitarian practice prevents an answer to the questions posed by the Committee, although CIG considers that these are aspects of the utmost interest to analyze the compliance with the Charter.

The only information presented refers to the Roma people and it is self-reported data in a survey, not data provided by the health services. In any case, it seems that the health situation of this minority is worse than that of the general population, which would require specific remedial measures and actions.

The information offered in the Government's report is so scant that the Committee's request for information cannot be considered to have been answered.

Comments to question b):

> "b) Please also provide information about sexual and reproductive health-care services for women and girls (including access to abortion services) and include statistical information about early (underage or minor) motherhood, as well as child and maternal mortality. Provide also information on policies designed to remove as far as possible the causes for the anomalies observed (premature death; preventable infection by blood borne diseases; etc.)."

Also at this point, the information offered in the Government's report is so scant that the Committee's request for information cannot be considered to have been answered.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;

- **Situation of non-conformity in the Thematic Group 2 *"Health, social security and social protection"* on the previous Conclusions XXI-2 (2017): "*The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the 1961 Charter on the ground that the level of unemployment benefits for unemployed without family responsibilities is inadequate".***

Low benefits

According to Eurostat data, the median equivalised annual income was €15 015 in 2019, or €1 251 per month. The poverty level, defined as 50% of the median equivalised income, was €7 507 per annum, or €625 per month. 40% of the median equivalised income corresponded to €500 monthly.

Regarding contributory unemployment benefits ("prestación contributiva"), the minimum amounts in 2019 are the following:

- Beneficiary without children (80% IPREM +1/6): €501.98
- Beneficiary with children (107% IPREM +1/6): €671.40

Assistance-level unemployment benefits ("subsidio") remain below 40% of the median equivalised income

- Assistance-level benefits (80% IPREM): €430.27

We must also highlight the low amounts of the minimum sums of the following Social Security benefits (2019 data):

- Total permanent disability, derived from common illness, less than 60 years:
  - With a dependent spouse, 499.40 euros;
  - Without a spouse, 499.40;
  - With a non-dependent spouse, 495 euros.
- Orphanhood:
  - Per beneficiary: 207 euros.
  - Per beneficiary under 18 years of age and disabled to a degree equal to or greater than 65%: 407.30 euros.
- Pension in favor of relatives:
  - Per beneficiary: 207 euros.
  - If there is no pensioner widower or orphan:
    - A single beneficiary with 65 years: 500.20 euros.
    - A single beneficiary under 65 years: 471.5 euros.

We also want to highlight the enormous gender gap that persists in the pension system. By sex, the average pension for men in June 2021 was 1,253.99 euros; in the case of women, it amounted to 830.4 euros. The average pension for women only exceeds that of men in the case of the widow's pension (on average, women received 758.8 euros in June 2021 compared to 523.65 euros that men obtained). In the other types of pensions, men receive a higher amount on average.

Part time work and gender gap in the system of social security

There is a serious gender gap both in the aspect of non-discrimination on grounds of gender in determining the material scope of social security, and in access to protection and in the calculation of the benefit.

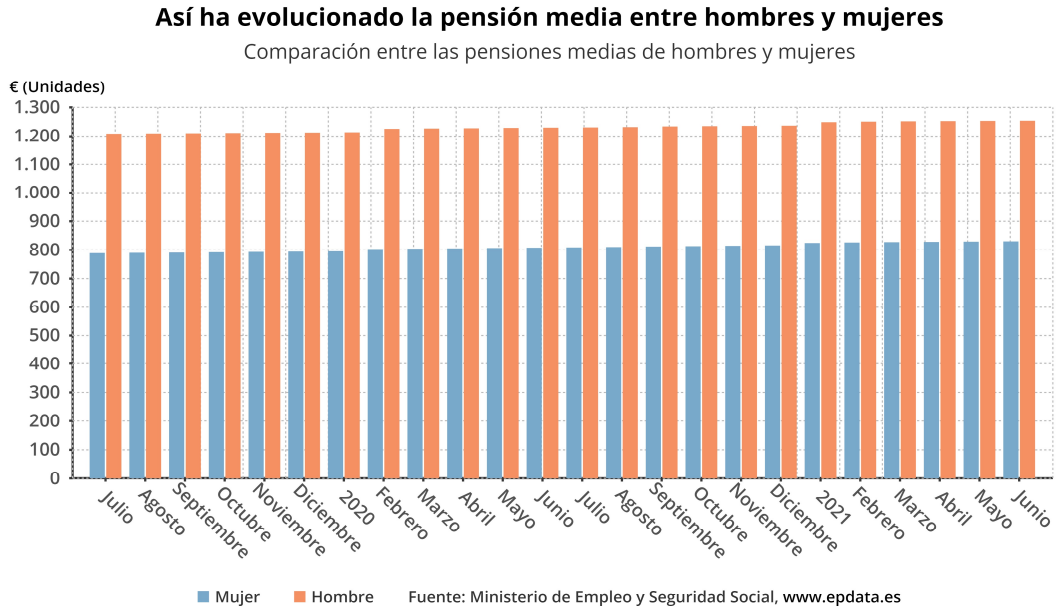
The contribution system for part-time work is regulated by Article 246.1 of Royal Legislative Decree 8/2015, of 30 October, approving the consolidated text of the General Social Security Law, according to which: *"The contribution base for Social Security and the contributions collected in conjunction with the contributions of that time will always be monthly and will be constituted by the remuneration actually received based on the hours worked, both ordinary and complementary"*.

This is a regulation that calls for greater effort to have access to protection (mainly retirement pension). The system required by Spanish social security regulations is different from the case of full-time workers, in which the day worked is considered a truly paid day. In the case of those who work part-time, the rule is not *a working day = a paid day*, but *a working hour = a paid hour*.

This rule is contrary to the principle of equality and non-discrimination on the grounds of gender. It is disproportionate because it calls for more contribution time to access a benefit, contrary to what happens when working full time. The amount of the benefit is proportional to the contribution, so no more sacrifices should be made to those who work part-time. The ECJ ruled in its ruling of 22 November 2012 (case C-385/11), condemning Spain, whose current regulation still does not adjust its legislation to the ruling of the Judgment, on the previously existing regulation, which established this calculation rule. The Spanish Constitutional Court itself in its Judgment 91/2019, of 3 July 2019 has ruled on this previous regulation, but the calculation rule the proportionality for the calculation.

In short, Spain requires part-time workers, mostly women, compared to full-time workers, a proportionately longer contribution period to access, where appropriate, a contributory retirement pension in an amount proportionally reduced to part-time of his journey.

Comparison between the average pensions of men and women:



As a result of the above, the pensions that women receive are lower than the pensions that men receive, so that women are doubly harmed: because they have low pensions and because they have lower pensions than men.

The "sustainability factor" as a penalization of living longer

The aging of the population has been used as a means to question, with a clear economic intention, the viability of the social security system and make changes, for years, that tighten access to certain benefits and reduce their

amount, which in the case of Galicia they are really low because the salaries, determinants of the contribution bases, are also low. The introduction of the so-called "sustainability factor" by Article 211 of the General Law on Social Security is a clear example of this: a means of calculating the initial retirement pension and trying to adjust the pension that will be charged to life expectancy, so that the lengthening of life expectancy causes a decrease in the pension that is fixed at the time of retirement.

As in can be seen, living longer is penalized, so it is a problem that there are many older people and that they live many years. Logically, behind all this there are, as has been indicated, very clear economic interests that seek to encourage private pension plans and funds (as the public social security system does not work, our protection when we are older will depend on our ability to savings and investment in private means of protection).

It has been argued that the social security system has financial problems and does not have the capacity to ensure the payment of pensions, but hiding that such problems, in fact, are not its payment, but its income. As always, social security has been used to lower economic costs for companies (another example of loss socialization), they are not in hypothetical situations of "crisis" of the company (for example, the current regulation of layoffs for economic, technical, organizational and production allows companies with profits to lay off), but also by encouraging the hiring of people by reducing the company's social security costs (contributions to business contributions), so that the lack of sufficient income then determines problems with payment of benefits. The labour measures approved because of COVID-19 go in the same direction of making social security assume business costs that do not correspond to it (again, in the case of certain bonuses), but its negative consequences are aggravated by the fact that labour legislation has been reformed regressively in recent years. As can be seen, social security is a victim of labour legislation designed more in the interests of employers than the people who work.

The truth is that all this is reversible, because the problems of social security are solved with measures to strengthen the sustainability of public pensions, emphasizing here three very specific, in addition to those other own labour protection.

First, it is necessary to expand the protective action of social security with new benefits. Contributory social security (which is financed with contributions), in addition to offering protection to classic situations of need (unemployment, incapacity for work and retirement, among others), should expand its scope, protecting new situations very typical of the century. XXI, as is the case with dependency. Contributing for dependency (including the loss of autonomy due to age, listed in another section) would solve many situations of need, would increase (and much) contributory income of social security, given that there would be many more real contributors than people beneficiaries of the new contingency, allowing in the medium term that the surplus contributions could

be used to feed a reserve fund, not necessarily specific to the unit. Here, the models to consider would be German and, to a lesser extent, French.

Secondly, from the point of view of complementary social security, the regulation and administration of the private pension plan of the General State Administration can be frankly improved. And this, because its current private management (a private capitalist society) deters the expansion of the plan in question; and also because the patrimonial income generated by the administration of this plan goes on to thicken the profits of this capitalist society. It seems logical and natural that this plan should be managed by a public entity with a recognized track record and experience and that such benefits should be part of the social security assets. And this example should also serve to ensure that all pension plans and funds, even those negotiated under collective bargaining, are publicly managed by this entity and not by private entities in very different ways in its ownership.

And last but not least, another way of sustainably financing contributory pensions (especially retirement pensions) could be to force capitalist societies without business activity (but with large profits, given their multimillion-euro wealth capacity) to contribute to social security. Today, these companies, very pampered from an economic and legal point of view, do not do so because the General Social Security Act excludes from the system the partners of such companies (Article 306), which is why this law should be amended in its cited article 306) so that such partners, always with benefits, are affiliated and contributing to the social security system through the self-employed scheme, without prejudice to those other changes in its content (in its article 305) that require contributions equally to capitalist societies themselves.

Therefore, we consider that Spain is **not in conformity** with Article 12§1 of the European Social Charter 1961.

2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3. to endeavour to raise progressively the system of social security to a higher level;

Questions posed by the Committee

Comments to question a):

> "a) Please provide information on social security coverage and its modalities provided to persons employed or whose work is managed through digital platforms (e.g. cycle delivery services)."

With all due respect, we understand that the report issued by the Government of Spain does not respond to the question posed. The data it offers is generic and refers to the social security system as a whole, without attending to the peculiarities of the personnel of the digital platforms.

Spain has the highest volume of people in Europe working through digital platforms, with around 2.6% of the workforce, for whom work on digital platforms is their main form of employment. However, by broadening the focus to include everyone who sporadically participates in platform work, the figure rises to 18%.

On September 25, 2020, the Supreme Court of Spain issued a ruling unifying the doctrine of the Spanish judicial bodies, considering that a Glovo rider (one of the main digital platforms) had an employment relationship, not a commercial one. Therefore, the labor and social security regulations, especially the Workers' Statute, should be applied integrally.

In our opinion, this is the correct way to approach the problem: the consideration of platform workers as employees and the lifting of the veil that disguises their professional relationship as a commercial one.

Recently has been approved the Royal Decree-Law 9/2021, of 11 May (following the agreement in the framework of the so-called social dialogue with UGT, CCOO, CEOE and CEPYME), with the purpose stated in its title of "guaranteeing labour rights of the people dedicated to the distribution in the field of digital platforms".

However, prominent academics, such as Adrián Todolí, have criticized this new law, for establishing a "specific presumption of employment relationship" for riders more complicated to apply than the "general presumption" of Article 8.1 of the Workers' Statute that it has already allowed the Supreme Court to establish a very favourable doctrine on the matter.

Given the simplicity of the general presumption, the new additional provision 23rd seems to demand many more requirements:

a) activities of distribution or distribution;
b) the employer must exercise management powers directly or implicitly through a digital platform;
c) an algorithm must be used to manage the service or to determine working conditions.

Why opting for the complex normative technique of presumption, rather than simply declaring riders included in the scope of the Workers' Statute? Undoubtedly, this is a formula that again creates legal uncertainty about the type of professional relationship of platform employees and will provoke new

litigation on a matter that seemed to have been resolved in favour of workers' rights.

Comments to question c):

> "c) Please provide information on any impact of the COVID-19 crisis on social security coverage and on any specific measures taken to compensate or alleviate possible negative impact".

COVID-19 has shown the lack of protection for the elderly, especially those who lose their autonomy due to their age. This situation is not only related to the issue of residential centres created for their care and a deliberate lack of public places to justify a private offer of various types in their form of ownership (investment funds, insurers, construction companies and health companies, among others entities) that has seen an opportunity to do business with the situation of need in which older people find themselves. Indeed, thinking about a greater supply of public places in such centres will not be the solution, because the problem has a larger dimension and is related precisely to the lack of adaptation of society to its aging.

The demographic transition to societies with very elderly populations is an evidence. The World Health Organization (WHO) states that populations around the world are aging rapidly. In Spain, according to the National Statistics Institute (projection of the resident population by age groups 2018-2033), the population of eighty years and over, which was 2,877,511 people in 2018, will reach in the year 2033 the number of 3,705,538 people, and the centenarian population (one hundred years or more) would go from 11,248 people in 2018 to 46,365 people in the year 2033. And in Galicia, according to the Galician Institute of Statistics (short-term population projections 2018-2033) our population of eighty years and more will reach, from 237,218 people in 2018, to 249,366 people in 2033, which in the case of the centenarian population would go from 1,109 people in 2018 to 4,196 people in 2033.

The negative data of demographic aging (in essence, changes in the structure of the population due to the increase in the proportion of people in the elderly groups and a decrease in the fertility rate, including in Galicia the impact of emigration) should not hide the positive data of the increase of the life expectancy rate. The aging of the population due to increased life expectancy means living longer. And in addition, it confirms that the social protection policies of the Welfare State, so questioned from the fundamentalist and economicist values of the market, had a lot to do.

We can take advantage of the opportunities offered by this greater longevity. Yes, by planning the scope of your opportunities. Being predictable, we know that this demographic transition will take place and we can plan it to make the most of it. In any case, the benefit of these opportunities depends in particular on health, so that if people live those additional years in good health, their ability

to do what they value will be hardly different from that of a younger person. But, if those additional years are characterized by a decrease in physical and mental capacity, the consequences for the elderly and for society as a whole will be negative.

But to achieve this goal, according to the WHO, we must have a sustainable and equitable system of long-term care or attention (that is, through a set of activities carried out by others so that older people who have had a significant and permanent loss of intrinsic capacity, or are at risk of having it, may maintain a level of functional capacity in accordance with their basic rights, fundamental freedoms and human dignity). And this is because the elderly - even with functional impairment - continue to have a life project and have the right and deserve the freedom to make their constant aspirations of well-being, fullness and respect a reality; because families cannot meet the needs of older people with a large loss of capacity on their own (nor would it be sustainable or equitable); and because, in the 21st century, all countries must have a comprehensive system of long-term care that can be provided at home, in communities, or in institutions. This system offers, among other benefits: allowing care-dependent seniors to continue to do the things they appreciate and live with dignity; freeing women to engage in what is important to them; create jobs; reduce inappropriate use of acute care services; and helping families not to fall into poverty or incur catastrophic expenses.

Apart from the WHO guidelines, the Council of Europe's action is exemplary (by intensity), but also pioneering (compared to European Union law, with regard to the loss of autonomy due to old age). Its European Social Charter is the first international standard that specifically protects the elderly, enshrining its protection as a fundamental right, which implies a new and progressive conception of what the lives of these people should be and which requires states to lead the way. Coherent action is taken in the different areas covered through appropriate measures to promote, maintain and improve the health and well-being of the elderly. Such measures may consist of services in the community that allow older people to live as long as possible in their homes, as well as sufficient and adequate residential services for those who can no longer or do not wish to do so, which must always be affordable, covering, if necessary, the corresponding expenses.

The Kingdom of Spain is neither on the list of states with good practices of the Council of Europe (in which Germany and France are), nor does it fulfill its duties as a member of this international organization, according to the European Committee of Social Rights. It is incumbent on us, in addition to suffocating with the austerity of cuts and the priority of “financial stability” and to carry out regressive reforms of our social security protection (especially, retirement pensions). It is intolerable because the model of social protection due to dependence on Law 39/2006, of 14 December, does not serve to meet the long-term care or attention needs of our elderly people. In addition to its structural lack of funding, it has provoked a whole economic dynamic in which

older people are only interested as a source of resources. And not only because this rule - whose benefits were of progressive implementation - was suspended sine die to meet the objectives of public deficit, but also because its benefits are not part of our social security system to be typical of social assistance (which only covers indigent dependents). Therefore, it should improve the social security protection system of the elderly. Specific legislation should be adopted to adapt society to its aging, as has been done in other nearby states (Germany and France, in particular), where the care or attention needs of the elderly are considered a specific situation of need. covered by social security (a new contingency due to a new social risk), its benefits being financed with social security contributions, in the same way as the remaining and classic social security benefits (accident at work, unemployment, common illness or old age). It is a question of doing the same in Spain, consecrating this protection as a true subjective right through its inclusion in the Spanish Social Security System, because —considering the current applicable legal regime— it is the only one that guarantees a comprehensive system of public and quality long-term care or attention.

It would be a new social security benefit (with a contributory and a non-contributory modality) to always ensure the protection of all the elderly who need long-term care or attention, but also an investment with multiplier effects for being a valuable source of income. for social security via contributions and taxes that the state collects (and then contributes to the social security budget), by involving more social security and welfare and by creating numerous anti-globalization jobs (or *non délocalisables*, in the words of French legislation), directly and indirectly linked to the protection of the elderly (and with it, more people contributing to the system as workers), as has been shown in Germany (one and a half million jobs, of which half a million remain to be filled) .

The adaptation of society to its aging means that the elderly are the center and not the periphery of the structure by age groups of the population and that the attention to their needs are cross-cutting criteria of action of public authorities and prevent, here too, the existence of initiatives business people who only act for profit. The consideration of the loss of autonomy due to age as a further benefit of social security system solves a situation of need for protection of the elderly, creates new direct and indirect jobs that can not be relocated (at least three direct by each person to be cared for), provides higher income in social security coffers to the extent that its funding would be for contributions and helps to fix population in geographical areas affected by the abandonment of the place and emigration.

4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of

social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

- **Situation of non-conformity in the Thematic Group 2 *"Health, social security and social protection"* on the previous Conclusions XXI-2 (2017): *"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 access to family allowances is not guaranteed to nationals of all other States Parties; • the length of residence requirement (ten years) for entitlement to noncontributory old-age pension is excessive"*.**

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. The situation is the same in the current period:

- During the reference period, no agreements have neither been concluded nor planned with Azerbaijan, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia" and Georgia. 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.

- 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. During the reference period, no new bilateral agreements were concluded with Albania, Armenia, Georgia, Serbia, Russian Federation and Turkey. 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.

In its previous Conclusions XX-2 (2017), the Committee declared that the length of residence requirement (ten years) for entitlement to noncontributory old-age pension is excessive. As the Spanish Government acknowledges in its last report, this requirement is currently maintained.

Therefore, the situation remains not in conformity with Article 12§4 of 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 (ten years) for entitlement to non-contributory oldage pensions is excessive.

Therefore, we consider that Spain is **not in conformity** with Article 12§4 of the European Social Charter 1961.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

✎ **Situation of non-conformity in the Thematic Group 2 *"Health, social security and social protection"* on the previous Conclusions XXI-2 (2017): *"The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the 1961 Charter on the grounds that: • minimum income eligibility is subject to a length of residence requirement in the majority of Autonomous Communities; • 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 not adequate."***

In its previous Conclusions XX-2 (2014 and 2017), the Committee concluded that the situation in Spain is not in conformity with Article 13§1 of the Charter on the following grounds and it has not changed during the current period:

- Minimum income eligibility is subject to a length of residence requirement: the government recognizes that this requirement is still present in all the Autonomous Communities, and that most of them establish it in 12 months of residence.

- Minimum income eligibility is subject to age requirements (25 years old). The government admits that the majority of the Autonomous Communities, 15 in total (Andalusia, Asturias, Balearic Islands, Castile-La Mancha, Castilla y León, Catalonia, Ceuta, Galicia, Madrid, Melilla,

Murcia, Navarra, La Rioja and Comunidad Valenciana), set the minimum age in 25 years.

- Minimum income is not paid for as long as the need persists. The government admits most of the Autonomous Communities establish limits to the duration of the benefit: generally, 12 months.

- The level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra). The government has not justified any changes during the current period.

The Government does not justify in its report that this situation has changed in the reference period, but understands that the situation in Spain becomes in accordance with the Charter due to the approval of the so-called "minimum vital income" created by the Royal Decree-Law 20/2020, of May 29. It is a public policy of the Spanish State that, according to its Art. 1, aims to prevent the risk of poverty and social exclusion of people in a situation of economic vulnerability due to not having sufficient resources to cover their basic needs.

The minimum vital income is configured as a subjective right to an economic benefit that can be granted to the person in their own name (one-person household) or as a representative of the coexistence unit. Except in exceptional cases, the coexistence unit is constituted by all the people residing in the same domicile and joined together by marital bond, as a de facto couple or by bond up to the second degree of consanguinity, affinity, adoption, and other people with whom who live together by virtue of custody for the purposes of adoption or permanent foster care (art. 6).

RDL 20/2020 differentiates the beneficiary (art. 4) from the holder (art. 5) of the minimum vital income, since they will not always be coincident figures. In other words, the holder may be the sole beneficiary of the minimum vital income, when he or she lives in a one-person household, or be the representative of a group of beneficiaries of which the coexistence unit forms part.

Since it is not a universal measure, but rather a measure aimed at those living in extreme poverty, paying them an economic benefit that is objectively and quantitatively insufficient to lift them out of poverty, such as Eurostat and the National Institute of Statistics (INE) define this indicator, RDL 20/2020 proceeds to define the group of people who, after justifying their extreme poverty to the State, will be beneficiaries of the minimum vital income.

Regarding age, when a person is part of a coexistence unit, there is no restriction for them to be a beneficiary of income (art. 4.1.a). But the situation is different if you live alone or, even if you live with other people, do not integrate a unit of coexistence with them. The original wording of art. 4.1.b and 5.2, as a general rule, excluded from the list of holders and beneficiaries those under 23 years of age, as well as those aged 65 and over. Such exclusion could be

contrary to art. 14 of the Spanish Constitution, which prohibits age as a reason for discrimination.

In the case of the exclusion of those over 65 years of age, it seems to be initially justified by the fact that Social Security has another measure specifically directed at the collective referral, the non-contributory retirement pension, to which people over 65 are entitled years that show insufficient resources (art. 369.1 of the General Law of Social Security - LGSS). This would be reasonable if a person's transition from minimum vital income to retirement pension were automatic, but this is not always the case. Probably aware of this situation, the Government of Spain modified art. 4.1.b and 5.2 of RDL 20/2020 through RDL 30/2020, to provide that people 65 years of age or older will be excluded from the list of beneficiaries or holders of the minimum vital income only in cases in which they are already beneficiaries of the retirement pension.

However, the group made up of people between 18 and 23 years of age who are not integrated into a coexistence unit remains excluded from the coverage of the minimum vital income. Given the lack of motivation, and that there is no state benefit destined for this specific segment, it is difficult to infer the reasons for such restriction to people who have already reached the greatest age.

The situation is especially serious for ex-ward young people who are forced to leave juvenile centers when they turn 18 and do not have a family to integrate into or their own means of subsistence, a situation that is general in this group.

It should be noted that RDL 20/2020 is not in harmony with the European Committee of Social Rights, which, through its Conclusions XXI-2 (2017), considered that Spain does not comply with art. 13.1 of Part II of the aforementioned treaty, among other reasons, due to the fact that the country's income guarantee policies, including those of the Autonomous Communities, exclude those under 25 years of age.

In addition, even if it was admissible to exclude some of the people over 18 from the possible beneficiaries and holders, it would still be necessary to analyze the reason for the legal choice of the 23-year-old line, and not 22, 24 or any other, which no case could be random.

There are other aspects of the minimum vital income, pointed out by the academic María Dalli[1] in a recent article, that violate relative or absolutely the European Social Charter:

- **Universal character: relative non-compliance.** In principle, the minimum vital income is universal in nature, although the one-year residency requirements, age as well as the requirement to have

[1] Dalli, M. (2021) .El ingreso mínimo vital y el derecho a la asistencia social de la Carta Social Europea.Lex Social: Revista De Derechos Sociales,11(1), 208-242. https://www.upo.es/revistas/index.php/lex_social/article/view/5506/4716

contributed for one year and to have lived independently for three years (for single people under 30 years of age) can pose obstacles.

- **Age: total non-compliance.** The minimum age required to access the minimum vital income is 23 years old, and emancipated minors must have dependent children, so access is not guaranteed to young people who do not meet the exceptions provided (victims of violence). gender, trafficking or asylum).

- **Amount: relative non-compliance.** Taking into account the average net annual income in Spain in 2018, this was € 11,412; 50% of this amount is € 5,706. The amount of the IMV for a single person is € 5,332. Taking these data into account, the income should reach approximately € 5,700, but updated data and data from coinciding years will have to be compared. A priori, we could consider that the amount of the IMV is not clearly below the poverty threshold, however it does not reach the threshold.

- **Sanctions: total non-compliance.** Emergency aid is not foreseen in the event of the imposition of a sanction, so that the beneficiary is not deprived of his means of subsistence.

- **Emergency assistance: total non-compliance.** Basic social assistance is not recognized for the immigrant population without legal residence.

Therefore, we consider that Spain is **not in conformity** with Article 12§1 of the European Social Charter 1961.

In view of the foregoing, the Galician Unions' Confederation (CIG) submits these allegations to the European Committee of Social Rights, highlighting:

- **The reiteration of infringements by the Spanish Government.**
- **The insufficient information provided by the Spanish Government, in relation to the indicated aspects, in all the sections giving rise to this report.**
- **The non-compliance with the European Social Charter in the aspects mentioned in each of the above sections and in all the articles to which these allegations refer.**

And requesting the adoption of the necessary measures, in order to ensure the labour and social rights guaranteed by the said instruments.

Santiago de Compostela, 29 June 2021