

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).