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EUROPEAN SOCIAL CHARTER

NGO Comments on the
23rd National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF SPAIN

(Articles 7, 8, 16, 17 et 19
pour la période 01/01/2003 – 31/12/2009)

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EUROPEAN SOCIAL CHARTER

Written observations to the Social Committee on the Report submitted by the Spanish government on its implementation of Articles 7, 8, 16, 17 and 19 of the European Social Charter during the following period :

01/01/2003 – 31/12/2009.

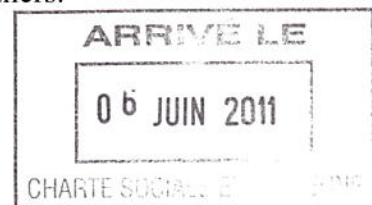
Submitted by *Profesionales por la Ética*
in cooperation with the *European Centre for Law and Justice*

Madrid. May 10th 2011

Profesionales por la Ética is a Spanish NGO, established in the beginning of 1990s. *Profesionales por la Ética* is an organization deeply involved in the field of the protection of human rights, which main aim is to promote ethical values in public life from an inter-professional perspective. *Profesionales por la Ética* advocates in particular the protection of social and economic dimension of Human Rights and Dignity.

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These observations have been elaborated in cooperation with Dr. Alessio Pecorario of the *European Centre for Law and Justice* (ECLJ). The ECLJ is an international, Non-Governmental Organization dedicated to the promotion and protection of human rights in Europe and worldwide. The ECLJ holds special Consultative Status before the United Nations/ECOSOC since 2007. The ECLJ engages legal, legislative, and cultural issues by implementing an effective strategy of advocacy, education, and litigation. The ECLJ advocates in particular the protection of religious freedoms and the dignity of the person and life with the European Court of Human Rights and the other mechanisms afforded by the United Nations, the Council of Europe, the European Parliament, the Organization for Security and Cooperation in Europe (OSCE), and others.



Written observations to the Social Committee on the Report submitted by the Spanish government on its implementation of Articles 7, 8, 16, 17 and 19 of the European Social Charter during the following period : 01/01/2003 – 31/12/2009.

Made by Profesionales por la Ética

1. Introduction.

As an NGO deeply involved in the field of the protection of human rights, Profesionales por la Ética wishes to bring to the attention of the European Committee of Social Right the fact that in Spain, after the introduction in 2007 of a set of compulsory and graded school subjects under the generic category of Education for Citizenship (EfC), the right of children and young persons to social, legal and economic protection, guaranteed by article 17 of the European Social Charter, is seriously and continuously violated. As we will show in our written observation, the introduction of the EfC has not only affected the Spanish education system from an ethical point of view, but it has also led to several formal complaints against text books and educational materials with high ideological content – Spanish parents have already submitted more than 55,000 complaints on the basis of conscientious objection – something that risks shaping itself into a real “legal war”, with the serious involvement of the international organization institutions.

In relation to the Council of Europe’s normative system, the EfC affects not only article 17 of the European Social Charter, but also article 2 of the 1st protocol to the European Convention on Human Rights, especially with reference to the rights of parents to educate their children according to their own convictions. Along with the European Centre for Law and Justice (ECLJ), we strongly affirm that parents have a primary role in the very essential matter of the education of their children, whereas the role of society has to be considered (ontologically) subsidiary.

2. Spanish Education for Citizenship.

In 2007, under the Zapatero government, the Spanish educational system established a new area of knowledge called “Education for Citizenship” (EFC), that introduces compulsory subjects at Primary and Secondary school. The core subjects of EfC have been designed (as the official curriculum admits) to shape the conscience of children, getting deep into their values and their personal and family privacy and, in many cases, conflicting with basic Christian values.

The EFC includes issues concerning sexual and emotional education and gender mainstreaming. Amongst others, some of the curricular objectives of EfC in secondary education read as follows (as set in the Royal Decree 1631/2006, of 29th of December): *“To identify and analyse the main ethical theories, to recognise the principal social and moral conflicts of contemporary society and to develop a critical attitude towards the different patterns passed on through the mass media”*

And in order to achieve these goals, *“it goes more deeply into the principles of both social and personal ethics and, amongst other contents, they are included those related to human relationships and emotional and affective education, the rights, duties and personal liberties that guarantee democratic regimes, ethical theories and human rights as the universal relating for human behaviour”*.

Being essential to include, *“an ethical reflection that starts in affective relationships with the closest social setting to contribute, through moral debate, to the building up of civic moral conscience”*.

EfC also intends to evaluate student attitudes, invading the privacy of both the student and their family. For example, objective 1 for the subject matter in the first and third course of secondary education reads as follows: *“ To identify and reject, starting from the analysis of real or figured*

facts, the different discriminatory situations towards people of a different origin, gender, ideology, religion, affective or sexual orientation and others, respecting personal differences and showing independence of opinion. This opinion allows to check whether the students, facing a real or figured case or situation, are able to recognise the discrimination that, due to various reasons, are suffered by people in contemporary societies and whether they show independence of opinion, rejection of attitudes towards discrimination and respect for personal differences”.

Some statements made by government officials and authors of EFC textbooks reveal, better than everything else, what are, in essence, the real aims of the EFC as according to as follows:

- The aim of this subject is to take children’s education from their parents who are usually very reactionary and from deviationist priests.” (Fernando Savater, author of the Prologue in the textbook by Ed. Laberinto.)
- “It is necessary to bring up citizens who know their rights and duties and education regarding abortion is a major goal.” (Mercedes Cabrera, Ministry of Education, Dec. 3, 2008.)
- “Schools have to provide students with ethical and moral education. I cannot trust the moral education their parents give to them.” (José Antonio Marina, Author of one of the textbooks of Education for Citizenship, at a conference Teacher’s Institute of Juan de Avila (March 2008)
- “That is exactly what we intend to do: to form ideologically those students with less convictions.” (José Luis Pérez Iriarte, General Director of Education, Professional Formation and Education Innovation, in a meeting at the Ministry of Education with Professionals for Ethics on Jan. 17 2007.)

EFC makes specific reference to subjects of controversy and do not aim to do so in an objective manner. The inclusion of homosexual marriage as a type of family is one of the discussed themes in the textbooks. “*We fall in love with people no matter what sex.*” In addition to this compartmental agenda of the EFC, the political agenda is just as prevalent.

3. The social and legal conflict in Spain.

The above mentioned aims demonstrate the true purpose behind the implementation of the EFC: the indoctrination of children with a specific world view through the eradication of parental control over their children’s religious and moral formation.

The course's contents and method of grading have led to several formal complaints against text books and educational materials with high ideological content. Even before its introduction in the curriculum, the core subjects of EfC have been controversial, leading to social conflict. As a result of this conflict, every year more than a thousand students remain outside of class during EfC lessons in spite of the Education Administration's discrimination and threats of not obtaining a degree, against the education ruling itself. Several of these students have been standing in the corridors during EfC lessons with no attention on the part of the school and being, in some cases, even made look silly by their own teachers. Headmasters have suggested some parents to move their children to another school and even some institutions (CEAPA, for example) have claimed that parents who have objected should be prosecuted. A large number of students have been forced, even physically, to attend the lessons over the objections of conscience of their parents.

This bitter social conflict has inevitably changed into a legal one. Over 53,000 parents throughout Spain have objected to the new compulsory Education for Citizenship program passed by the Council of Europe. Nearly 55,000 parents have conscientiously objected to the participation of their children to this compulsory subject. Parents have formed more than 70 local and regional associations to support objectors and inform parents and society about EFC.

In many cases the objection was denied. This has led to legal procedures being pursued and to more than 2300 appeals presented to claim the rights of parents to object.

In February 2009 the Supreme Court rendered four verdicts which denied parents the right to object, though expressly warned of the risk of indoctrination that could arise from such school subjects. In October 2010 a regional Court, the Supreme Justice Tribunal of Andalucía, rendered a judgement which declared the text book by the editorial Mc Graw-Hill as “indoctrinatory”. Finally, the Supreme Justice Tribunal of Castilla y León (at Regional Court Level) highlighted that these subjects due to their "high ethical, moral and ideological weight, slide towards indoctrination, proselytism or manipulation of wills of students on moral issues on which there is no consensus in the Spanish society”.

To summarize, in nearly every case in the last three years, local and regional courts have pronounced sentences against the Government. These judgements have been appealed to the Spanish Constitutional Court. Notwithstanding the existence of the Spanish Supreme Court decision, many parents have continued to present conscientious objections to EfC and lodging new appealings and various Spanish courts (both local and regional) have issued almost 250 rulings favouring parents. The situation of controversy and public response surrounding Education for Citizenship, together with the serious discrimination and offensive situation suffered by students and their parents, led 305 plaintiffs (parents and their children) to lodge, on March 19th, a complaint of 105 cases from 17 different Spanish areas before the ECHR against the Kingdom of Spain for some violations of their rights contained in the European Convention on Human Rights (basically, right to privacy of the children, right of freedom of thought, conscience and religion, the right of parents to educate their children according to their own convictions, and the principle of non discrimination). Last June 26th, the attorneys for the domestic court decisions related to the plaintiffs were sent to the ECHR together with 54 new plaintiffs representing 18 cases and another 50 plaintiffs were sent in January 2011.

This enormous, unanimous outcry against the EFC demonstrates that a fundamental problem exists with the program, and we wish to define it in the framework of the international case law and soft law.

4. The international case law on this subject

Article 17 of the European social Charter (paragraph 1, letter A) on the *right of children and young persons to social, legal and economic protection* clearly establishes that the rights of parents should be taken in account in regards to the education of their children.¹ These rights include the right to educate their children according to their own convictions as stated in the international legislation.²

¹ With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- I.
 - a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - b. to protect children and young persons against negligence, violence or exploitation;
 - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- II. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

² See, among others, Article 2 of Protocol 1 of the European Convention on Human Rights, Article 14.3 of the Charter of the Fundamental Rights of the European Union, Article 26.3 of the Universal Declaration of Human Rights, Article 18.4 of the International Covenant on Civil and Political Rights.

In some major principles of its well established case-law on the Article 2 of Protocol No. 1, the European Court of Human Rights (ECHR) has clearly enunciated that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in a neutral, objective, critical and pluralistic manner and that the State, especially when ethical matters are the subject of education, is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgement or misplaced proselytism.³

As showed from the above mentioned statements made by some government officials and authors of EFC textbooks, the true purpose behind the implementation of the EFC is the indoctrination of children with a specific worldview through the eradication of parental control over their children's religious and moral formation, something that clearly gives rise to a violation of both Article 17 of the European social Charter and of Article 2 of Protocol No. 1 of the European Convention on Human Rights. EFC is certainly not presented objectively and isolates points of view, especially from a Christian perspective. The Human Rights standards stress the obligation of the Spanish government to, at least, provide an exemption from the classes that parents find are contrary to their moral beliefs. The parents cannot stop the EFC but they do have a right to stop their children from being taught subjects that they do not approve of.⁴

5. The international soft law on this subject.

If we take in consideration the international soft law on the right of education, we reach the same conclusion on the illegitimacy of the EFC in regards to the Human Rights standards.

For example, the EFC was implemented under the guise of the Council of Europe Committee of Ministers' Recommendation 12/2002.⁵ The EFC was certainly an educational reform but it sharply departs from the guiding principles outlined in R12. The R12 contains recommendations that have not been implemented in the EFC and Spain has also incorporated content into EFC that is not mentioned in the R12. It has completely ignored the idea of familial education and actually aims to undermine it by stating "Schools have to provide students with ethical and moral education. I cannot trust the moral education their parents give them."

In addition, EFC violates the Toledo Principles and Human Rights Committee case law by intentionally not educating in a neutral and objective manner and by coercing students to adopt certain viewpoints.⁶ With the "Toledo Principles" the Organization for Security and Co-operation in Europe (OSCE) has issued a report that would "offer practical guidance for preparing curricula for

³ see, in particular, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 24-28, §§ 50 to 54; *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, pp. 16-18, §§ 36-37; and *Valsamis v. Greece*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2323-24, §§ 25-28, *Folgerø and Others v. Norway*, judgment of 29 June 2002, pp. 35-37, § 84.

⁴ The director of the European Centre for Law and Justice (ECLJ), Grégor Puppink, spoke before the Human Rights Council of the U.N. in Geneva on the 22nd September regarding the violation of international rights by the EFC, saying that Education for Citizenship violates internationally recognized rights. Dr. Puppink asked the Human Rights Council to urge the Spanish Government to reverse its position in the conflict against the parents. Freedom of conscience is a fundamental right protected by the European Convention on Human Rights and this right is being infringed by the EPC. The ECLJ recalled that the EFC has led to more than 53,000 parents to conscientiously object because the program violates the right of parents to educate their children according to their own convictions. He added that many of the complaints about this matter obtained favourable rulings in the courts.

⁵ See Recommendation Rec (2002) 12 of the Committee of Ministers to member states on education for democratic citizenship, Adopted by the Committee of Ministers on 16 October 2002 at the 812th meeting of the Ministers' Deputies

⁶ *Toledo guiding principles on teaching about Religions and Beliefs in public schools*, prepared by the Odihr advisory council of experts on freedom of religion or belief, 2007.

teaching about religions and beliefs, preferred procedures for assuring fairness in the development of curricula, and standards for how they should be implemented.” It is recognised that “*teaching about religions and beliefs is a major responsibility of schools, but the manner in which this teaching takes place should not undermine or ignore the role of families and religious or belief organizations in transmitting values to successive generations.*” The OSCE also made clear that “everyone has the right to hold to the pattern of thought, conscience or religion of their choice, free from any interference from the state under any circumstances. In consequence, no one must be subjected by the state to any form of coercion that would impair their freedom to have or to adopt a religion or belief of their choice or to change their religion or belief.”

Finally, without providing an exemption from the classes that parents find are contrary to their moral beliefs, EFC fails to meet the obligation arising from communication number 1155/2003 of the United Nations Human Rights Committee, which states that 'on the basis of written notification from parents, pupils shall be exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life'.

6. Conclusions: Recommendations.

This overt and unashamed attempt of the Spanish government to strip parents of their rights and indoctrinate school children has caused uproar throughout Spain.

In spite of fact that many of the complaints about this matter obtained favourable rulings in the internal courts and in in breach of the international Human Rights standards, Spanish parents are now forced to send their children to school knowing that they will receive an education that contradicts their core principles and therefore violates freedom of education, conscience, thought and religion.

As a result of the monitoring system provided by the European Committee of Social Right, States make changes to their legislation and/or practice in order to bring the situation into line with the European Social Charter. Since it is provided, for in both European and International law, that parents have the right to have their children receive an education in conformity with their moral beliefs and religious convictions, we urge the Committee to declare that the EFC forcefully invades and violates the fundamental rights of parents to the education of their children, protected by both Article 17 of the European social Charter and of Article 2 of Protocol No. 1. Along with the European Centre for Law and Justice (ECLJ), we strongly affirm that parents have a primary role in the very essential matter of the education of their children, whereas the role of society has to be considered (ontologically) subsidiary, because, as stated by the above-mentioned OSCE Toledo Principles, “*teaching about religions and beliefs is a major responsibility of schools, but the manner in which this teaching takes place should not undermine or ignore the role of families and religious or belief organizations in transmitting values to successive generations.*”

The Spanish government has implemented EFC in such a way as to coerce students into adopting certain viewpoints and develop specific behaviours. It does not attempt to teach in a neutral, objective manner but instead presents highly controversial issues in a way that interferes in the privacy of the students and their families. EFC should not be a mandatory subject. If, however, it remains as a compulsory school subject, Spain must provide an option for parents to conscientiously object to their children taking part in these classes.

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Re: Written observations on the Report submitted by the Spanish government on its implementation of Articles 7, 8, 16, 17 and 19 of the European Social Charter during the following period: 01/01/2003 – 31/12/2009.

State against which the complaint is directed: Spain

Dear Sirs,

Profesionales por la Ética, in cooperation with the *European Centre for Law and Justice*, wishes to submit to the attention of the European Committee of Social Right Written observations on the Report submitted by the Spanish government on its implementation of Articles 7 (*The right of children and young persons to protection*), 8 (*The right of employed women to protection of maternity*), 16 (*The right of the family to social, legal and economic protection*), 17 (*The right of children and young persons to social, legal and economic protection*) and 19 (*The right of migrant workers and their families to protection and assistance*) of the European Social Charter during the following period: 01/01/2003 – 31/12/2009.

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The subject matter of our complaint is the introduction in Spain in 2007 of a set of compulsory and graded school subjects under the generic category of Education for Citizenship (EfC). The core subjects of EfC have been designed (as the official curriculum admits) to shape the conscience of children, getting deep into their values and their personal and family privacy and, in many cases, conflicting with basic moral values, on sensitive matters such as abortion, same-sex union and so on. These subjects are compulsory and it is



not previewed an alternative teaching. A large number of students have been forced, even physically, to attend the lessons over the objections of conscience of their parents.

EfC, ignoring the idea of familial education, represents a massive departure from the provisions of the Council of Europe Committee of Ministers' Recommendation to member states on education for democratic citizenship, adopted on 16 October 2002. Similarly, by intentionally not educating in a neutral and objective manner and by coercing students to adopt certain viewpoints, EFC violates Toledo guiding principles on teaching about Religions and Beliefs in public schools, prepared by the ODIHR advisory council of experts on freedom of religion or belief in 2007.

The introduction of the EfC has not only affected the Spanish education system from an ethical point of view, but it has also led to several formal complaints against text books and educational materials with high ideological content. EfC subjects pursue an explicit aim of indoctrination of children with a specific worldview through the eradication of parental control over their children's religious and moral formation. More than 55,000 Spanish parents have already objected to the participation of their children to these lessons – something that will probably generate a deep involvement of international organization institutions in Europe.

Indication of the provisions of the Charter violated: since the introduction of EfC subjects, the right of children and young persons to social, legal and economic protection, guaranteed by article 17 of the European Social Charter, is seriously and continuously violated, as well as article 2 of the 1st protocol to the *European Convention on Human Rights*, especially with reference to the rights of parents to educate their children according to their own convictions.

Leonor Tamayo, as responsible of the international area of Profesionales por la Ética, I am entitled to represent the organisation lodging the complaint:

Name and contact details of the organisation submitting the complaint

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