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EUROPEAN SOCIAL CHARTER

Comments from the Spanish Trade Union Confederations COMISIONES OBRERAS (CCOO) and Union General de Trabajadores (UGT) on the

27th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF SPAIN

(Articles 7, 8, 16, 19 for the period 01/01/2010 – 31/12/2013)

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CYCLE XX-4 (2015)

EUROPEAN SOCIAL CHARTER

CYCLE XIX-4 (2011)

PERIOD 2010-2013

ALLEGATIONS OF THE UNION CONFEDERATIONS OF UNIÓN GENERAL DE TRABAJADORES (UGT) AND COMISIONES OBRERAS (CCOO) TO THE 27th NATIONAL REPORT PRESENTED BY THE SPANISH GOVERNMENT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS, IN RELATION TO SPAIN'S FULFILMENT OF THE EUROPEAN SOCIAL CHARTER

June 29, 2015

The Spanish Government has presented the 27th report, for **Cycle XIX-4 (2011)**, of the application control procedure regarding the European Social Charter of 1961 (ESC henceforth) and the Additional Protocol of May 5, 1988.

Specifically, this period involves analysing Group 4 regarding rights related to children, families and migrants, which comprises the following articles of the European Social Charter of 1961:

- Article 7: The right of children and young persons to protection
- Article 8: The right of employed women to protection
- Article 16: The right of the family to social, legal and economic protection
- Article 17: The right of children and young persons to social, legal and economic protection
- Article 19: The right of migrant workers and their families to protection and assistance

The reference period to be taken into account is from January 1, 2010, to December 31, 2013.

The Spanish Government, in application of Article 21 of the European Social Charter, ratified by Spain on May 6, 1980, in relation to the measures for putting the Charter's provisions into effect, presented its report on July 15, 2013.

In fulfilment of what is established by the ESC's Article 21, the Government sent a copy of its report to the Union Organisations on October 28, 2014.

The Union Confederations UNIÓN GENERAL DE TRABAJADORES (UGT) and COMISIONES OBRERAS (CCOO) present the following observations, with regard to the thematic group of rights considered in the report, in accordance with the following summary:

I. ON BREACH OF THE CHARTER'S ARTICLE 7 (RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION)

I.1 BREACH OF ARTICLE 7.1 AND 7.3 IN RELATION TO INSUFFICIENT MONITORING OF CHILD LABOUR AND ITS REPERCUSSION IN THE RIGHT TO EDUCATION.

I.2 BREACH OF ARTICLE 7.10: INCOMPLETE REGULATION IN THE PENAL CODE OF THE OBJECTIVES OF HUMAN TRAFFICKING WHEN IT AFFECTS MINORS, AND OF THE PREVENTATIVE MEASURES CONTEMPLATED IN THE COUNCIL OF EUROPE'S CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS.

I.3 BREACH OF ARTICLE 7:10: LACK OF AND/OR INSUFFICIENT PROTECTION FOR MINORS THAT ARE VICTIMS OF HUMAN TRAFFICKING AND FOR THE CHILDREN OF VICTIMS OF HUMAN TRAFFICKING, INCLUDING HEALTHCARE.

II. ON BREACH OF THE CHARTER'S ARTICLE 8 (RIGHT OF EMPLOYED WOMEN TO PROTECTION)

II. 1. BREACH OF ARTICLE 8.2 IN RELATION TO EMPLOYED WOMEN IN THE SPECIAL LABOUR RELATIONS OF DOMESTIC SERVICE AND SENIOR MANAGEMENT.

In relation to Spain's fulfilment of the rights included in Group 4, mentioned above, of the European Social Charter (ESC) of 1961 and the Additional Protocol of 1988, we Union Organisations would like to indicate that the report presented by the Government is an incomplete, partial and biased list; it omits particularly important data that shows that the policies and their implementation in the National Budget and in the modification of regulations have resulted, either directly or indirectly, in less protection for children, families, women and migrants in Spain.

In this regard, we cannot avoid highlighting the fact that, in relation to the regulations and plans that the Government points to in its report as guaranteeing the fulfilment of the group of analysed rights, we Union Organisations note that, in practice, they have the opposite effect, the violation of the articles analysed in this period; we therefore denounce the situation of Spain with regard to the obligations assumed by ratifying the European Social Charter.

We therefore address the Committee to point out the following breaches on the part of Spain.

I. ON THE BREACH OF THE CHARTER'S ARTICLE 7 (RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION)

We note that Spain has breached the Charter's Article 7, which guarantees the effective exercise of the right of children and young persons to protection in different aspects therein.

The said article establishes the following:

> ***Article 7.***
>
> ***The right of children and young persons to protection***
>
> *With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:*
>
> *1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;*
>
> *2. to provide that the minimum age of admission shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;*
>
> *3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;*
>
> *4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;*
>
> *5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;*
>
> *6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;*
>
> *7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;*
>
> *8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;*
>
> *9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;*
>
> *10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.*

We Union Organisations have noted the following breaches in relation to this article:

I.1 B OF ARTICLE 7.1 AND 7.3 IN RELATION TO INSUFFICIENT MONITORING OF CHILD LABOUR AND ITS REPERCUSSION IN THE RIGHT TO EDUCATION

According to the ECSR's interpretation, apart from the prohibition to employ under-15s (under-16s in the case of Spain) contemplated in Section 7.1 of the ESC, the combination of this section with Section 7.3 (*forbidding children who are still subject to compulsory education from being employed in such work as would deprive them of the full benefit of their education*) has the main objective of protecting the right to education of compulsory school-age children. However, in addition, the ECSR indicates that the prohibition of employing under-15s (under-16s in our legislation) should be understood to apply to all activity sectors, including agriculture, and to all workplaces, including work in family businesses, in domestic employment and all kinds of economic activity (employed workers, freelance workers, family care and other kinds), the only valid exceptions being those contemplated in Section 7.1.

The Spanish Government, in its report, apart from including data from the Work and Social Security Inspectorate (ITSS henceforth) with regards to its action in the case of minors, likewise responds to matters raised by the European Committee of Social Rights in relation to the ITSS' methods for monitoring the illegal employment of young workers within their own families or the illicit exercise of freelance activity, referring, in this latter case, to the ITSS' work and the low number of infringements detected.

However, ITSS data does not specify whether the infringements detected in the case of employed minors refer to the general prohibition of employing under 16s, to the employment of persons ages 16 to 18 in jobs for which they cannot be employed, to night work; neither is there any reference to the activity sectors or jobs in which the forbidden employment of children or young persons has been detected. Apart from this lack of specificity, or the inclusion of minority as a variable in other statistics, which prevents a real diagnosis of the situation of child labour in Spain, we should add that the ITSS does not have the material and human resources to verify working conditions and/or the existence of minors in all activities, businesses and workplaces, including family homes.

In this regard, we consider that the low number of infringements detected by the ITSS is due precisely to this lack of resources, and not to the inexistence of child labour (under-16s) or the employment of those under 18 and over 16 in jobs that they should not do. In sectors such as agriculture, with campaigns that still result in settlements of population and agricultural holdings far from population centres, the presence and work of complete family units is well

known and verifiable; such ones are employed and housed in unhealthy conditions in labour relations that are not those that are legally established.

On the other hand, the ITSS lacks the ability to act, on its own, when the workplace is a family home; this obviously contributes to the impossibility of verifying the fulfilment of the obligations established by the ESC, both in the case of minors working in domestic employment and in other activities, when the workplace coincides with a private home.

I.2 BREACH OF ARTICLE 7.10: INCOMPLETE REGULATION IN THE PENAL CODE OF THE OBJECTIVES OF HUMAN TRAFFICKING WHEN IT AFFECTS MINORS AND OF THE PREVENTATIVE MEASURES CONTEMPLATED IN THE COUNCIL OF EUROPE'S CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

The ECSR's interpretation of Article 7.10 includes minors that are victims of human trafficking with the objective of sexual, labour exploitation, organ trafficking, begging, "pickpockets" (literally from the ECSR's interpretation, which, in harmony with other international instruments, should be understood as exploitation for committing crimes. As can also be deduced from the ECSR's comment on minors that are victims of sexual exploitation, by pointing out that such ones should not be prosecuted for actions related to this type of exploitation). On the other hand, the Council of Europe's Convention No. 197 on action against trafficking in human beings, made in Warsaw in 2005, and therefore after the ESC, and ratified by Spain in 2009, points out that exploitation *"shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*

However, Spain's Penal Code, in Article 177B, does not contemplate trafficking in human beings with the objective of exploitation for carrying out illegal activities. On the other hand, and taking into account the fact that Spain ratified in 2009 the Council of Europe's Convention on actions against trafficking in human beings, the Penal Code does not penalise the demand for or use of the services (as the Convention's Article 19 recommends: *"Each party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services that are the object of exploitation"*) of trafficking victims, whether minors or not, and regardless of the type of exploitation to which they have been subjected. It only contemplates penalising the person that solicits, accepts or obtains in exchange for a payment or promise, sexual relations with a minor (Article 187); however, the Penal Code does not include the penalisation of those who knowingly use the services of a trafficking victim, regardless of the type of exploitation, not even in the case of victims that are minors.

This therefore breaches the ESC's Article 7.10, since our legislation does not include, among the types of exploitation of minors in the context of trafficking in human beings, exploitation for carrying out illegal activities nor does it penalise the demand for the services of trafficking victims that are minors.

I.3 BREACH OF ARTICLE 7.10: LACK OF AND/OR INSUFFICIENT PROTECTION FOR MINORS THAT ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS AND FOR TRAFFICKING VICTIMS' CHILDREN, INCLUDING HEALTHCARE

Spain's *"Comprehensive plan to fight against trafficking with the purpose of sexual exploitation"* was in effect for three years, 2009-2012; it has not been renewed nor supplemented by comprehensive plans regarding other types of exploitation, especially labour exploitation. This circumstance, along with the absence of political will in recognising, in our country, the existence of labour exploitation and the other objectives of trafficking, affects the protection of victims. Annually, subventions are organised for Non-Governmental Organisations with regard to *projects to care for women and girls that are the victims of trafficking for the purpose of sexual exploitation and for their under-age or disabled children*[1]. As a result, there only exist resources with accommodation and other services, or services without accommodation, for women, women with children and minors that are victims of trafficking for the purpose of sexual exploitation[2]. However, not even in the case of minors that are victims of trafficking for the purpose of sexual exploitation, is the protection sufficient. According to the 4th monitoring report of the Comprehensive Plan for fighting trafficking in human beings with the purpose of sexual exploitation[3], the resources available in 2012 with accommodation for victims were 49 in all of Spain, with 250 beds of which 18 were for minors. In that same year, a total of 21 under-age victims were recorded. What is more worrying is the fact that the number of under-age victims increased from 15 in 2011 to 21 in 2012. On the other hand, the accommodation resources, and therefore an important part of the protection, have to cover not only under-age trafficking victims but also adult victims and their children.

The lack of an efficient and specific protection system for all victims of trafficking in human beings, regardless of their gender and the type of exploitation, and paying special attention to minors, is a dissuasive element for making accusations and hinders prevention and detection, not only of foreign victims without legal residence.

[1] http://www.boe.es/buscar/doc.php?id=BOE-A-2013-8237.

[2] http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/homel.htm

[3] http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm

In relation to trafficking with the purpose of labour exploitation, whether the victims are minors are not, the Work and Social Security Inspectorate (ITSS) does not include, in its annual programme, actions aimed at investigating these cases in those activity sectors in which illegal conduct is more frequent. On the other hand, after the Government promoted, with the participation of the Social Partners along with the Administration and other partners directly related to the fight against trafficking, a draft "Comprehensive Plan against trafficking in human beings with the purpose of labour exploitation," and whose work concluded in December 2010, the Plan has not been approved by the Cabinet, despite appeals on the part of the General Union of Workers (UGT).

Royal Decree Law 16/2012 ended the universality of public healthcare, directly excluding foreigners without legal residence; since then, they only have access to the casualty department *due to serious illness or an accident, regardless of its cause, until discharged, and to medical care during pregnancy, childbirth and postpartum*, and it also indirectly excludes, due to the requirements imposed, European Union foreigners (whether enrolled or not in the registry of foreigners) and non-European Union foreigners with legal residence. The R.D. Law's Article 1.3 points out that *foreigners under age 18 will receive healthcare in the same conditions as Spaniards*; Royal Decree 576/2013, in its fourth additional disposition (three), established that *the victims of trafficking in human beings whose temporary stay in Spain has been authorised during the reestablishment and reflection period, will receive healthcare, with the extension contemplated in the national health service's common basic range of healthcare services, regulated in Law 16/2003's Article 8B. Care, medical or otherwise, will also be provided to the victims of trafficking in human beings with special needs*. The common basic range only includes healthcare activities of prevention, diagnosis, treatment and rehabilitation that are carried out in healthcare or socio-healthcare centres, as well as emergency medical transport; however, it does not include pharmaceutical, orthotic or prosthetic care. The truth is, in the case of minors to whom the law grants the same degree of care as a social security beneficiary, or trafficking victims, although the latter have limitations with regard to healthcare, these exceptions do not mean that they have the same status as social security beneficiaries. Therefore, they do not have a healthcare card that certifies their right to care, and this has resulted, as mentioned in the report of the Council of Europe's Commissioner for Human Rights after his visit to Spain from June 3 to 7, 2013, in minors being denied healthcare; this situation has not changed, since there still exist situations of care being denied or of payment being required for care received in the casualty department or in other healthcare departments.

There is therefore proof of failure to provide due protection to minors that are victims of trafficking in human beings, or to the under-age children of such victims.

II. ON THE BREACH OF THE CHARTER'S ARTICLE 8 (RIGHT OF EMPLOYED WOMEN TO PROTECTION OF MATERNITY)

We consider that the Government has breached, in the reference period, the ESC's Article 8 regarding the protection of women.

> ***Article 8***
>
> ***The right of employed women to protection of maternity***
>
> *With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:*
>
> *1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;*
>
> *2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;*
>
> *3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.*
>
> *4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;*
>
> *5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature.*

We Union Organisations consider, with regard to the said article, that the following breaches exist:

II. 1. BREACH OF ARTICLE 8.2 IN RELATION TO EMPLOYED WOMEN IN THE SPECIAL LABOUR RELATIONS OF FAMILY DOMESTIC SERVICE AND SENIOR MANAGEMENT

Royal Decree 1620/2011, which regulates the special labour relations of family domestic service, modified the labour regulation of this activity and, among other aspects, included the application in relation to leaves of what is established in Article 37 of the Workers' Statute. However, the said Royal Decree, the result of a Social Dialogue Agreement, was the first step in progressively advancing towards matching female domestic workers' rights to those of other female workers. To that end, the Royal Decree, in its second additional disposition, established that: *"The Ministry of Work and Immigration will proceed, before December 31, 2012, after consulting the most representative employer and union organisations, to evaluate the impact on the*

employment and working conditions of family domestic personnel that may be derived from what is established in this royal decree.

The said evaluation will take into account the regulation of the wages established in this royal decree and, particularly, the cases of providing domestic services in which the salary is paid in kind. The evaluation will likewise take into account the provisions included in the thirty-ninth additional disposition of Law 27/2011, of August 1, on updating, adapting and modernising the Social Security system, on the integration of the Special System of Domestic Workers into the General Social Security System. The evaluation will likewise include, in accordance with what is stipulated in Article 20 of Organic Law 3/2007, of March 22, for the effective equality of women and men, the variable of gender in the statistics, surveys and data collection carried out.

2. In the month after this royal decree comes into force, the Ministry of Work and Immigration will proceed to set up a group of experts, made up of a maximum of six persons proposed by the Ministry and the most representative employer and union organisations, in order to prepare a report, before December 31, 2012, on the following matters:

1st. The feasibility of fully applying the system for cancelling the work contract in the common labour relationship established in the Workers' Statute to the special labour relationship of family domestic service, as well as the possibility of including employer revocation, understood as loss of confidence in the employee, in some of the common causes of cancelling the work contract established in Article 49 of the Workers' Statute.
2nd. The feasibility of establishing an unemployment benefit system, adapted to the peculiarities of the activity of family domestic service, which guarantees the principles of contributivity, solidarity and financial sustainability."

Therefore, the spirit of the Social Dialogue Agreement was to progressive continue with the reforms. In this regard, and in reference to this three-party Commission that should have been set up in February 2012, and which has never been convened by the Government despite repeated requests by Union Organisations, one of the tasks that was entrusted to it by the Royal Decree was that of applying the system of common cancellation of the contract in the Workers' Statute and subsuming **revocation** (a specific contract-cancellation method) in some of the common causes for cancelling the work contract.

Royal Decree 1620/2011, Article 11.3: The contract may be cancelled during the time of the employer-revocation contract, which must be notified in writing to the domestic employee, stating in a clear and unequivocal manner the employer's decision to end the labour relationship for this reason.

The continuance of revocation as a way of cancelling the contract in family domestic service involves, in practice, a violation of what is established in the European Social Charter's Article 8.2; different courts, based on the doctrine of

the Supreme Court and the Constitutional Court[4] on non-application to employer revocation during the trial period of the objective rule regarding the nullity of dismissal in the case of pregnancy, *due to the different legal nature of the institutions of dismissal and contract cancellation in the trial period*, have sentenced, in the case of female domestic workers dismissed by the revocation method during maternity leave, that *the substantial differences between dismissal and revocation in the labour relationship of employees in family domestic service prevent the application of automatic or objective tutelage contemplated in Article 55.5 of the Workers' Statute[5].*

That is, in these cases, revocation during maternity leave or from the time that the employer is notified about the pregnancy, it is not void, since it is considered that revocation, the same as cancellation during the trial period, is not a dismissal, regardless of how long the worker has been employed for. The only possibility that the worker has is demonstrating that the revocation is based on gender-based discrimination, but she must present sufficient evidence in order to reverse the burden of proof. There is therefore a breach of the European Social Charter, which, however, could have been in the process of being solved if the Government had convened the three-party committee of experts contemplated in Royal Decree 1620/2011.

Social Security members	Total	Foreign members	% indicates that foreign membership SSHE of total foreign population to social security
2013 Total SEEH members	422,900	218,758	13.70 % of the foreign population , it is the SSHE
Women	401,200	202,570	27 % of foreign women members , what are the SSHE
Men	21,700	16,188	1.9% of foreign men affiliates, what are the SSHE

Source: own preparation based on "Afiliaciones medias del mes en alta laboral." Ministry of Employment and Social Security.

Foreign women make up 50.4% of female members of the Special System of Domestic Employees (SEEH), a profoundly feminised system; 94.8% of total members are women. According to these figures, more than 400,000 women, 5.3% of total female Social Security members, can be dismissed from the time they notify their employer about their pregnancy to the end of their maternity

[4] STC 173/2013 of October 10

STS of April 18, 2011 RJ 2011/5814

[5] TSJ Catalonia 6550/2014; TSJ Castile and Leon 01475/2012

leave, without this dismissal being considered illegal and therefore void, as in the case of other female workers.

Although it is true that this is the Courts' interpretation, it is also the case that the survival of revocation as a particular method of cancelling a domestic employment contract, and the lack of will to adapt it to the methods included in the Workers' Statute, results in a violation of the ESC's Article 8.2.

This is also the case of women working under the regulation of senior management staff (Royal Decree 1382/1985 that regulates the special labour relationship of senior management personnel[6]). In this labour relationship, there also exists the concept of revocation as a way of terminating the contact and, likewise, the courts[7] consider that revocation on the part of the employer is not comparable to dismissal as regards being rendered void in cases related to the ESC's Article 8.

II. 2. BREACH OF ARTICLE 8.3 DUE TO NOT GUARANTEEING SUFFICIENT TIME FOR CHILDREARING

In relation to this Section 3 of the Charter's Art. 8, there have been several problems of legal deterioration and deficiency in our country in recent years, which means that our current legislation cannot be considered as suitably fulfilling the content of the Charter's Art. 8.3.

First of all, we consider that a correct interpretation of the ESC's Art. 8.3 requires relating its content to Article 1 of the Additional Protocol of 1988, which recognises the right to equal opportunities and treatment in relation to employment and profession, without gender-based discrimination, while also establishing the commitment to adopt appropriate measures to guarantee its effective application; above all, to the first section of the Additional Protocol's Part I, which establishes a series of principles that are binding for the Parties when it comes to directing their policies, including the fact that *"all workers are entitled to equal opportunities and treatment in relation to employment and profession, without gender-based discriminations."* The Spanish Government itself believes this is so, since its report includes references to paternity leaves or the possibility of leaves linked to the reconciliation of work and family life being enjoyed by women and men; it interprets this article, not literally and therefore restricted to women, but with an extensive interpretation based on the first section, part I and the Additional Protocol's Article 1 and starting from the fact that guaranteeing the fulfilment of Article 8.3 requires a balanced and co-responsible distribution of childrearing between fathers and mothers, and

[6] http://www.boe.es/buscar/doc.php?id=BOE-A-1985-17006

[7] STJ Andalusia. Sentence No. 1293/2014

consequently, considering both mothers and fathers to be entitled to childrearing.

Maternity and paternity, and looking after children in relation to the compatibility of professional work, have a social dimension that cannot be relegated to women assuming this responsibility in the private sphere now that they have entered the job market. Women have to satisfy the same requirements as men in order to enter and remain in the job market, and they frequently have to face important obstacles unique to women, thereby breaking the traditional model of the sexist distribution of work, in which women were confined to the private-domestic sphere and to looking after the children and the other family members, so that today both paid and family work can and should be carried out equally by men and women.

In this context, the States' growing concern about the continuous decrease in the birth rate in view of the phenomenon of women's massive incorporation into the job market and the consequent aging of the population, leads necessarily to having to consider taking care of family responsibilities as a matter that transcends the limits of people's, and particularly women's, private sphere; this is clearly one of the social problems that still have to be solved by States, in which their participation and co-responsibility will prove to be decisive.

In the light of these considerations, we understand that Spain's fulfilment of the Charter's Art. 8.3 includes important deficiencies, which have also worsened in recent years as a result of the Spanish Government's labour reforms and which are specified in the points highlighted below:

- ***Paternity leave***: Paternity leave in Spain is set at 13 days, plus two days due to childbirth contemplated in Art. 37.3 of the Workers' Statute. This leave is clearly disadvantaged compared to maternity leave, which lasts for 16 weeks, of which the six weeks after childbirth are a compulsory rest for the mother for health reasons.

  In 2009, with the objective of progressively matching the duration of paternity leave with that of maternity leave, in order to look after the children, the extension of paternity leave to four weeks was approved, although it has not had any effect since its date for coming into force has been delayed year after year since then. The extension of this leave has already been postponed six times and, therefore, there have been no changes during the period included in this report. The Government tries to justify this delay with the crisis situation. However, the truth is, since the crisis began, employment and birth rates have decreased, maternity

leaves have gone down from 362,752 in 2010 to 283,923 in 2013, and paternity leaves from 275,637 to 237,988 in the same period. Although expenditure related to these two leaves has decreased considerably during the crisis, and the Government has been speaking about economic recovery and the end of the crisis for many months, increasing paternity leave by only two weeks has become a non-extendible right despite what is stipulated by law, even ignoring the Ombudsman's request, asking the government not to postpone the extension's coming into force again. The Ombudsman likewise points out in his request to the Government that extending paternity leave is essential in order to attain the reconciliation of work and family life, and therefore effective equality between men and women.

Consequently, all of this amounts to a step backwards in the fulfilment of the principle of equality and non-discrimination due to gender, in the reconciliation of work and family life for male and female workers and in the right of children and parents to spend sufficient free time during childrearing, thereby breaching what is stipulated in the Charter's Art. 8.3 in relation to Article 1 of the Additional Protocol and section 1 of part 1.

- ***Reduction of work time to look after one's children***

The legal reform carried out by means of Law 3/2012, of July 6, in its final disposition 1st.2, which modifies Art. 37.5 of the Workers' Statute, radically reduces the right to reconciliation of work and family life, eliminating the possibility of enjoying the said reduction in whole days that the previous legal regulation enabled, so that today a reduction in work time to look after one's children can only be enjoyed on a daily basis, between an eighth and a half of the workday.

- ***Hourly specification and determination of the reduction in work time***

After the reform, the right to hourly specification and determination of the reduction in work time to look after one's children, contemplated in Section 5 of Art. 37 in the Workers' Statutes, which the previous legislation attributed to male and female workers without any limitations, introduced an important obstacle by establishing the possibility, by means of the collective agreement, of establishing criteria for hourly specification in the aforementioned reduction of work time, *"according to the production and organisational needs of businesses."* This limitation, although it is introduced by means of collective

agreements, has an important effect in practice since, after the labour reforms, the position of workers and their legal representatives has been greatly weakened in collective bargaining, in favour of greater supremacy for the position of businesses.

This also amounts to a step backwards in the right to reconciliation of work and family life for male and female workers, again limiting the guarantee referred to in Section 3 of ESC's Art. 8 in relation to the Additional Protocol's Article 1.

- ***Part-time contracts***

The reconciliation of work and family life has also worsened after the aforementioned reform, which establishes in this type of contracts the possibility, which was previously forbidden by law, of doing overtime whenever so required by the company, with the only limit being that the sum of all hours does not exceed full time, thereby turning, in a disguised way, a part-time contract into a full-time one in practice.

In activity sectors in which fraudulent abuse in relation to work time is common, e.g. in the hotel and catering business, the said reform has opened up the possibility of increasing such fraud; today, male and female workers do a large part of their work after hours and surpassing the legal limits, making such business practices hard to detect by the Work Inspectorate.

We should remember that, apart from the consequent inconveniences for reconciling work and family life, overtime does not contribute to the social security system with regard to unemployment benefits.

Part-time contracts, apart from mainly affecting women, who are the ones that experience the disadvantages of this type of contract, in salaries, in social security protection, etc., are being used by the Government as a measure, aimed at women, for promoting the reconciliation of work and family life, when the reality highlights the fact that part-time contracts are notoriously discriminatory for women; women are not the only ones responsible for looking after the children and the family, and this type of contract has the opposite effect on the reconciliation of male and female workers due to its fraudulent use, in favour of work-time flexibility for businesses.

- ***Work time and the right to adapting the workday***

  Law 3/2012, of July 6, on urgent measures for labour market reform, established the possibility of employers irregularly distributing up to 10% of work time, establishing the obligation of male or female workers being notified of the day and hour only five days in advance. Moreover, this obligation is not always fulfilled by employers.

  This results in even more cutbacks in rights and increases the difficulties for reconciling work and family life.

  On the other hand, the right to adapting the duration and distribution of work time (contemplated in Art. 34.8 of the Workers' Statute), whose exercise was limited to the legal vagueness of the disposition regulating it, linking its exercise to the conditions established by collective bargaining, whose development therein is practically inexistent, has been modified by this Law, adding that *"it will promote the use of the continuous workday, flexible hours or other ways of organising work and breaks to enable greater compatibility between workers' right to the reconciliation of work and family life and improving businesses' productivity."*

  In this way, this right becomes, apart from inexistent if not included in collective bargaining, which is what happens in practice, one that, after the reform, has more limitations, such as the method of adapting work time enabling the compatibility of the right to conciliation with improved productivity; this means that if a business' productivity does not improve, this right will not exist.

These modifications harmonise with the line followed by the current Government as regards limiting and cutting back on male and female workers' right to the reconciliation of work and family life, making its exercise more difficult or impossible, which is why we believe that it is a breach of what is stipulated by the Charter's Art. 8.3.

II. 3. BREACH OF ARTICLE 8.4 b) IN RELATION TO THE PROTECTION OF EMPLOYED WOMEN'S HEALTH IN FAMILY DOMESTIC SERVICE.

In relation to pregnant women, protection during breastfeeding, but also, in general, to guaranteeing the health and safety of all women, it should be pointed out that Law 31/1995 on the Prevention of Labour Risks, in Article 3.4, points out that the special labour relationship of family domestic service is not included in the law's field of application.

Law 31/1995 has the objective (Article 2.1) of *promoting the health and safety of employed women by applying the measures and carrying out the activities required for preventing work-related risks. To that end, this Law establishes the general principles regarding the prevention of professional risks for protecting health and security, the elimination or decrease of work-related risks, information, consultation, the balanced participation and training of workers in relation to prevention, in the terms indicated in this disposition*. To that end, and taking into account the fact that the Law previously established the obligation of evaluating risks in the workplace, it devotes Article 26 to the protection of maternity, with regard to pregnant women and/or those who recently gave birth, being likewise applicable to breastfeeding women, with the objective of detecting situations of risk for their health or safety or affecting their pregnancy or breastfeeding, derived from workplace agents, procedures or conditions.

To the extent that the labour relationship of family domestic service is excluded from Law 31/1995's field of application, there is a violation of Article 8.4.b), since there does not exist a determination of tasks, agents or situations of domestic work that may not be suitable for women, especially pregnant women and/or those who recently gave birth or are breastfeeding, due to the dangerous, laborious or unhealthy nature of such.

III. ON THE BREACH OF THE CHARTER'S ARTICLE 16 (RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION)

We have noted that Spain has breached, in the reference period, the Charter's Article 16.

> ***Article 16***
>
> ***The right of the family to social, legal and economic protection***
>
> *With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.*

We Union Organisations, taking into account the ECSR's application of this article, denounce the following breaches:

III.1. BREACH OF ARTICLE 16 DUE TO THE PROGRESSIVE REDUCTION OR DISAPPEARANCE OF BENEFITS CONDITIONING FAMILY PROTECTION

In the period under analysis, the Government, despite the urgent need for reinforcing the system of Social Services, especially in relation to the Joint Plan for Basic Social Benefits of Social Services, successively reduced the different

National Budgets with very important cutbacks; specifically, from 49.288 million euros in 2012 to almost 30.006 million euros in 2013, which amounts to a 39.12% decrease in only one year. In relation to the family, credits aimed at childhood and family care decreased, from 2011 to 2013, by 46.35%; specifically, 4.32212 million euros were assigned to families and non-profit institutions for carrying out their programmes.

Spain, despite its traditional defence of the family, has the worst system of family protection in Europe, worsened by the government's repeated application of tax instruments that are highly regressive and exclusionary. It is necessary to compensate, by means of direct benefits, the greater cost of having dependent children and facilitate the reconciliation of work and family life.

We should not overlook the needs of the families of or with elderly ones, and must guarantee comprehensive protection of senior citizens in the different areas of their life, especially by means of decent pensions and appropriate protection of their health, as well as comprehensive protection, of appropriate intensity, for persons in a situation of dependency, whose policies are experiencing, year after year, an important decrease in their budget, as well as reduced benefit intensity.

The cutbacks made to the law on the protection of personal autonomy and care for situations of dependency, by means of Royal Decree Law 20/2012, regarding measures for guaranteeing budget stability and promoting competitiveness, amount to a breach of the law and a breaking of the system, since all the measures adopted involve economic cutbacks in order to reduce public deficit, without guaranteeing at any moment the right to promotion of personal autonomy and care for persons in a situation of dependency. In addition to the cutbacks that had already been made to the Law on Dependency, the modification of the calendar of the law's progressive application, which amounted to paralysing the law and delaying access to the system in the case of moderate dependents with grade 1 level 2, we have to add the important modifications made, such as: changing the criteria for informal carers, revising the economic benefits for care in the family circle with a 15% reduction in benefits, eliminating the retrospective nature of benefits for informal carers, establishing an 8-year period for paying retroactive benefits for those beneficiaries that have not yet received their benefits, increasing co-payment on the part of beneficiaries, reducing the General State Administration's minimum contribution, reducing the intensity of benefits by more than 15% and eliminating the level agreed between the General State Administration and the Autonomous Regions.

These elements lead us to point to the breach of the ESC's Article 16, in view of the lack of promotion of the family's legal, social and economic protection, and the reduction and/or disappearance of social benefits aimed at attaining the indispensable living conditions for the family's full development.

II.2. BREACH OF ARTICLE 16, WITH THE PROGRESSIVE DECREASE IN EDUCATION GRANTS AND ALLOWANCES, WHICH AFFECTS FAMILIES' ECONOMIC AND SOCIAL PROTECTION.

Taking into account the ECSR's interpretation of family benefits and other types of economic support for families, Spain has violated this article in the period being analysed in this report; we have witnessed the progressive decrease in benefits and allowances that are essential for guaranteeing the family's full development, and whose disappearance has a direct impact on the family economy, harms its social protection and affects the development of minors and their right to education in equal and fair conditions.

In 2010, 61,799,930 euros were spent on Compensatory Education, with the principle of guaranteeing quality education with fairness and the objective of offsetting inequalities in education due to social, economic, cultural, geographic or ethnic inequalities, and which especially targeted students and their families with difficulties for accessing ordinary schooling in the system. The 2013 budget was reduced to 53,257,600 euros (13.8% less).

On the other hand, the section of grants and allowances, which in 2010 had a budget of 1,395,017,680 euros, of which 98,199,980 was allocated to subsidies for buying textbooks, was reduced in 2013 to a total budget of 1,222,166,111 (12.3% less). However, the worst aspect of this section of grants and allowances is the substantial change in how the money is used; the principle of equality, the objective that all families could keep their children in the education system, both at non-university and university level, regardless of their economic capacity, has been replaced by grants linked to academic performance and results, which, as has been pointed out in many studies, are directly related to the socioeconomic capacity of families, thereby penalising and conditioning the future of students from families that, for some reason or another, are in a worse socioeconomic situation. By way of example, the section of subsidies for buying textbooks, something that is absolutely essential in all educational stages, amounted to 20 million euros in 2013, a decrease of more than 79% compared to the budget in 2010.

The education policy, and its application to the budgets allocated to help students access and remain in the educational system, at both university and non-university level, clearly breaches the ESC's Article 16, to the extent that it has a direct effect on the protection of the family and prevents its full development.

III. 3. BREACH OF ARTICLE 16 IN RELATION TO THE LIMITED ACCESS TO BENEFITS LINKED TO EDUCATION IN THE CASE OF FAMILIES FROM EUROPEAN UNION COUNTRIES

Taking into account the ECSR's interpretation regarding family benefits and other types of economic support for families, Spain violates this article in

relation to families with foreign minors from European Union countries or the relatives of European Union residents. Organic Law 4/2000 on rights and freedoms of foreigners in Spain and their social integration, which applies to citizens of non-European Union countries, establishes in its Article 9 that *"foreigners under 16 are entitled, both by right and by duty, to education, which includes access to basic, free and compulsory education. Foreigners under 18 are also entitled to post-compulsory education. This right includes obtaining the corresponding academic qualification and access to the public system and subsidies in the same conditions as Spaniards."* This text is the result of a Sentence delivered by the Constitutional Court in 2007, which declared unconstitutional the inclusion of the term "resident" in the case of post-compulsory education and, therefore, the requirement that under-18s had to be legal residents in order to access this type of education, qualifications, grants and subsidies. The Constitutional Court indicated that nobody can be denied the right to education, and that grants, subsidies and qualifications form part of such.

However, in relation to the general grants for students in post-compulsory education, some under-18s from European Union Countries or relatives of European Union residents are prevented from accessing grants and subsidies, with the socioeconomic impact that this has on the families to which they belong.

The Resolution of August 13, 2013, from the State Secretariat for Education, Vocational Training and Universities, which presented general grants for the 2013-2014 academic course, includes the following requirements for beneficiaries: *"Having Spanish nationality or that of a European Union Member State. In the case of European Union citizens or their relatives, beneficiaries of the right to free movement and residence, they are required to be permanent residents or to certify that they are employed or self-employed workers. In the case of non-European Union foreigners, what is stipulated in the regulations on the rights and freedoms of foreigners in Spain and their social integration will apply. The mentioned requirements must be satisfied as of December 31, 2012."* This therefore excludes all those minors from European Union countries who, although enrolled in the registry of foreigners, are not permanent residents (5 years of registration) and all those who are not employed or self-employed workers (an impossible requirement for a 16-year-old minor and a difficult one for someone over 16 and under 18) and, of course, since they are not beneficiaries of the right to residence, this excludes all those who are not enrolled in the registry of foreigners since, for example, their parents do not satisfy the requirements included in *Royal Decree 240/2007 on entry, free movement and residence in Spain of citizens of European Union Member States and of other states parties to the Agreement on the European Economic Area* in the text added to its Article 7 by *Royal Decree Law 16/2007 on urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its services*. There is therefore no guarantee of

equality in the access to education, which affects families with minors from other European Union Member States; the impossibility of accessing grants and subsidies has a direct effect on families and limits, in this case due to their nationality, the socioeconomic protection of this group of families.

In this regard, it is worth highlighting the fact that of all the foreign students registered in non-university education, Rumania is the second nationality with 98,908 students (13% of total foreign students) after Morocco (165,217, 21.7%). 81.1% of students from other European Union Member States are registered in public educational institutions. Education statistics related to grants and subsidies do not include the variable of nationality; it is therefore not possible to determine the effect that this exclusion in the continuation of studies beyond compulsory education has had on the group of minors from other European Union Member States.

IV. ON THE BREACH OF THE CHARTER'S ARTICLE 19. RIGHT OF MIGRANT WORKERS AND THEIR FAMILIES TO PROTECTION AND ASSISTANCE

In relation to the protection of migrant workers, we point out the violation of different aspects of Article 19.

> ***Article 19***
>
> ***The right of migrant workers and their families to protection and assistance***
>
> *With a view to ensuring the affective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:*
>
> *1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;*
>
> *2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;*
>
> *3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;*
>
> *4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:*
>
> *a) remuneration and other employment and working conditions;*
>
> *b) membership of trade unions and enjoyment of the benefits of collective bargaining;*

c) accommodation.

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons.

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

We Union Organisations note the following breaches, in relation to the immigrant or emigrant population in general, regardless of whether the country of origin or host country is a State Party to the European Social Charter:

IV.1. BREACH OF ARTICLE 19 IN RELATION TO HEALTHCARE

According to the ECSR's interpretation, migrants that are not legal residents, and their children, have rights, especially in relation to healthcare. The ECSR considers that limiting healthcare for migrants that are not legal residents and minors to life-threatening situations is a violation of the European Social Charter; the Council of Europe applies an extensive interpretation of Article 17.

In this regard, *Royal Decree Law 16/2012 on urgent measures for guaranteeing the sustainability of the National Health System and improving the quality and safety of its services*, and the regulations thereof, (especially *Royal Decree 1192/2012 that regulates beneficiary status in relation to healthcare in Spain, paid for by public funds, by means of the National Health System*), constitutes a violation of the Charter's Article 19, not only because it excludes migrants without legal residence from public healthcare, but also because it hinders the access of foreigners with legal residence to healthcare:

- Article 1.2.3 of Royal Decree Law 16/2012: *"foreigners that are unregistered or unauthorised residents in Spain will receive the following types of healthcare: a) emergency care due to serious illness or accident, regardless of its cause, until discharged b) care during pregnancy, childbirth and postpartum. In all cases, foreigners under 18 will receive healthcare in the same conditions as Spaniards."* This article therefore excludes foreigners without legal residence from standard healthcare. On the other hand, the Royal Decree created, apart from linking healthcare

with the fact of being enrolled in the social security system or being a beneficiary of unemployment benefits or a pension, a differentiation between the various types of healthcare. The Government, by means of Royal Decree 576/2013, established the possibility of signing a special healthcare agreement, among others for illegal immigrants, at a price of 60 euros per month for under-65s and 157 euros per month for over-65s. However, apart from the price, this agreement only provides access to the basic range of healthcare services (see comment on the Charter's Article 7.11). Therefore, foreigners that are not legal residents do not have access to medication, not even if they subscribe to the Special Agreement. This modification has endangered and already cost the lives of several immigrants. Matters of special concern are the situation of the chronically ill, the refusal to treat immigrants in the casualty department or the intention of charging them for this care, the non-entitlement to a healthcare card, which makes it impossible to monitor their clinical records…

- Royal Decree 1192/2012, which regulates beneficiary status in relation to healthcare in Spain, requires foreigners with legal residence that are not employed or self-employed workers enrolled in the social security system, or having similar status, or pensioners or registered job seekers who no longer receive unemployment benefits, to present, in order to be recognised as healthcare beneficiaries, among other requirements, a certificate from the last State in which they resided before coming to Spain and not to have more than 100,000 euros of income, according to the income tax return they presented in the said state (in particular and with regard to certain states, this document is not easy to obtain).

Consequently, Spain has violated the ESC in relation to providing healthcare to immigrants, due to what is established in the regulations and in practice, since Royal Decree Law 16/2012 came into force, by excluding migrants that are not legal residents, but also certain groups of foreigners that are legal residents or even European Union citizens, from healthcare or only permitting access to emergency healthcare.

IV.2. BREACH OF ARTICLE 19.2 IN THE CASE OF EMIGRATION ABROAD AND THE OBLIGATION OF PROVIDING NECESSARY MEDICAL CARE.

The National Budget Law 22/2013, published on December 26, 2013, incorporated a new Additional Disposition (65th.2) to the revised text of the General Social Security Law as follows: *In relation to maintaining the right to healthcare that requires residence in Spain, it will be understood that the beneficiary of such care has his or her usual residence in Spain even when he or she has enjoyed stays abroad, as long as these do not exceed 90 days per*

calendar year. This involves, regardless of the nationality of the emigrant that leaves Spain, the loss of beneficiary status after three months abroad, resulting, in the case of an ensured person. On the other hand, and in the context of the European Union, losing beneficiary status with regard to healthcare in the country of origin, results in lack of attention or a healthcare deficit in the host country.

IV.3. BREACH OF ARTICLE 19.4.c) BY ESTABLISHING A REQUIREMENT OF TEMPORARY RESIDENCE IN ORDER TO ACCESS PUBLIC HOUSING ALLOWANCES.

According to the ECSR's interpretation, all migrants with legal residence are entitled to access to housing in the same conditions as nationals, including access to public allowances. The ECSR specifically indicates that any requirement related to a prior time of residence is contrary to the European Social Charter, and that no distinction can be made between temporary residents or long-term residents. However, Spain's regulations violate this article and the ECSR's interpretation.

Article 13 of Organic Law 4/2000 on rights and freedoms of foreigners in Spain and their social integration establishes that *foreign residents are entitled to access public systems of housing allowances in the terms established by law and the competent Administrations. In any case, long-term foreign residents are entitled to such allowances in the same conditions as Spaniards.*

This disposition enables, in fact, the exclusion, in public allowances from State, Regional or Local Administrations, of foreigners without long-term residence authorisation, even when they satisfy all the requirements that apply to Spanish nationals wanting to access such allowances. Consequently, foreigners with legal residence do not have the same rights as Spanish nationals, which amounts to a violation of the European Social Charter's Article 19.4.c).

AND IN VIEW OF ALL OF THE ABOVE, we Union Confederations of the Unión General de Trabajadores (UGT) and Comisiones Obreras (CCOO) submit to the European Committee of Social Rights the above allegations regarding Group 4 of rights, being interested in the verification of the breaching of the European Social Charter and the Additional Protocol, based on the merits described herein, and in the adoption of the measures required to ensure the labour and social rights guaranteed by such instruments.

In Madrid, on June 29 of two thousand and fifteen.