EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

2 May 2024

Case Document No. 1

***Confederación Sindical* ELA v. Spain**
Complaint No. 239/2024

COMPLAINT

Registered at the Secretariat on 12 March 2024

COLLECTIVE COMPLAINT BY ELA -EUSKAL SINDIKATUA TRADE UNION CONFEDERATION
V. SPAIN

This complaint is based on the violation of **Article 17.1a)** of the Revised European Social Charter, as well as of Articles **12.3, 16, 27.1, 30 and Article E**, due to the inadequacy of birth and childcare leave in single-parent families, which is limited to 16 weeks, while such leave extends to 32 weeks in two-parent families. This difference in treatment constitutes clear discrimination with a direct impact on the child under 12 months, who benefits from less time being cared for by the closest family member (with financial cover) during the first months of life under the public social security scheme. The mother is forced to choose whether to care for the child herself, without income, or to pay for the services of a third party to provide the care, putting the child and single parent at risk of poverty and social exclusion.

Bilbao, 11 March 2024

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1. LEGAL FRAMEWORK AND ADMISSIBILITY OF THE COLLECTIVE COMPLAINT

1.1. Subject Matter

The ELA Trade Union Confederation (Sindicato ELA) hereby addresses the European Committee of Social Rights (ECSR) through the collective complaints procedure mentioned in the Additional Protocol to the European Social Charter (ESCS), done at Strasbourg on 9 November 1995, to contest the unsatisfactory application by the Kingdom of Spain of **Article 17.1. a)** of the Charter, read in conjunction with Articles **12.3), 16, 27.1, 30 and Article E**, also in the light of the Appendix to the European Social Charter (Articles 17, 16 and Article E), which recognise the protection of children and the special protection of working mothers.

As a preliminary point, it is necessary to state that when we refer to two-parent families in comparison to single-parent families, both members of the two-parent family and the single mother are assumed to meet the requirements of Article 178 of the General Law on Social Security (L.G.S.S.) to receive childbirth and childcare benefits. In other words, they are affiliated and registered with Social Security, or in an equivalent situation, and have met the legally required contribution period for their age range (six months of contributions per parent in two-parent families, and twelve months of contributions for the sole parent in single-parent families).

Specifically, it is alleged that Article 48.4 of the Workers' Statute, amended by Royal Decree 6/2019 of 1 March on urgent measures to guarantee equal treatment and equal opportunities for women and men in matters of employment and occupation, published in the Official State Gazette of 7 March 2019 (Doc. No. 1), violates Articles 16 and 17.1.a) of the Charter by failing to ensure the best interests of children under 12 months of age in single-parent families compared to two-parent families, in line with the ECSR interpretation according to which 'child protection' is understood to mean a child should not face discrimination simply for being born into a single-parent family (a minority compared to two-parent families). Moreover, women heading such families should not face indirect discrimination, considering that 80% of these families are headed by women.

In lodging the collective complaint, the ELA Union seeks a declaration from the ECSR that not allowing single-parent families to take both birth leave and parental leave is inconsistent with Article 17.1.a) of the Charter, since less time is spent caring for a child born into a single-parent family solely because the child was born into a single-parent family and not a two-parent family. While a child born into a two-parent family is entitled to 26-32 weeks of care, a child born into a single-parent family is only entitled to 16 weeks of care.

1.2. APPLICABILITY OF THE REVISED EUROPEAN SOCIAL CHARTER AND THE 1995 ADDITIONAL PROTOCOL IN SPAIN

The Spanish State ratified the 1961 European Social Charter by means of the Instrument of 29 April 1980. Subsequently, on 23 October 2000, the Kingdom of Spain signed the Revised European Social Charter, done at Strasbourg on 3 May 1996.

The instrument of ratification was adopted on 29 April 2021, published in the Official State Gazette on 11 June 2021 and deposited on 17 May 2021, following acceptance of all of its 98 paragraphs. Pursuant to Article K.3 of the Charter, it entered into force on 1 July 2021.

Spain accepted the collective complaints procedure by a declaration issued at the time of ratification of the revised Charter on 19 May 2021. This procedure entered into force in relation to Spain on 1 July 2021. That instrument of ratification contains the following statement: *'In relation to Article D, paragraph 2, of Part IV of the European Social Charter (revised), Spain declares that it accepts the supervision of its obligations under this Charter following the procedure provided for in the Additional Protocol to the European Social Charter providing for a system of collective complaints, done at Strasbourg on 9 November 1995.'*

The Protocol has therefore been applied by Spain since 1 July 2021, the date of entry into force of the Revised European Social Charter. These considerations have already been assessed by the Committee in relation to Spain, in the Decision on Admissibility of 14 September 2022, in relation to Collective Complaint No. 207/2022, which states the following: *'3. The Committee observes that Spain accepted the collective complaints procedure by a declaration made at the time of ratification of the Revised Charter on 19 May 2021 and that this procedure entered into force in respect of Spain on 1 July 2021. In accordance with Article 4 of the Protocol, the complaint has been submitted in writing and concerns Article 24 of the Charter, a provision accepted by Spain when it ratified this treaty on 19 May 2021.*

Spain has been bound by this provision since the treaty entered into force in its territory on 1 July 2021.'

The complaint complies with Article 4 of the Protocol, since it is lodged in writing, refers to provisions of the revised Charter accepted by Spain, including, **primarily, Article 17 a)**, but also **Articles 12.3, 16, 27.1 and 30** and **Article E**. **Furthermore, the trade union** specifies how the said State Party has failed to ensure satisfactory implementation of these provisions, as set out in the reasoning detailed in this pleading under the heading Grounds of the complaint.

Spain has been bound by these provisions since 1 July 2021, the date of entry into force of the revised treaty, although the same provisions already existed in the initial version of the European Social Charter, done at Turin on 18 October 1961 with regard to Article 17 and to Articles 16 and 12.3. Furthermore, with regard to Article E, it is clear that the Committee had already developed its anti-discrimination case-law prior to the revised Charter, based on the principles of equality and non-discrimination derived from the Preamble to the 1961 Charter.

In any event, the other two provisions invoked, established as novel by the 1996 revised Charter (Articles 27.1 and 30), similarly to those already recognised in the 1961 Charter (Articles 17, 16 and 12.3), are, alone and in conjunction with Article E, relevant to the present case. Although the national legislation at issue was adopted prior to the entry into force of the revised Charter, its discriminatory application to the contested situations of violation, which have a collective or general impact nationwide, continues to have effects. It is therefore clear that the complaint must also be admitted *ratione temporis*.

It should be borne in mind that both Article 17 and the other provisions of the revised Social Charter forming the subject of this complaint have been accepted by Spain without reservation (Spain has accepted all the provisions of the amended text of the Charter). As a summary *ratione materiae* of the complaint, the substantive connection between Article 17 and Article 16 must be emphasised, since the right of children and young people to social, legal and economic protection would not be possible without social, legal and economic protection of the family. Moreover, the discriminatory situation at issue (which justifies the cross-cutting application of Article E in conjunction with all the substantive provisions invoked) gives rise to regressive coverage of the level of the social security scheme contrary to the progressiveness required by Article 12.3 of the Charter, as well as a violation of the

right of the working mothers concerned with family responsibilities to equal opportunities and equal treatment (Article 27) and of the single-parent families concerned to be protected against a situation of social exclusion or poverty (Article 30).

1.3. Standing of ELA Trade Union to lodge the collective complaint, and compliance with the Protocol

Article 1 of the Protocol confers the right to submit collective complaints, in subparagraph (c), on: *"representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint."*

The ELA trade union is described in Article 2 of its Statutes as follows: *'The aim of ELA is to unite and organise the workers of the Basque Country in order to achieve the best representation and the most effective defence of their rights, interests and aspirations in the workplace and in life...'.*

ELA lodges this collective complaint through its Executive Committee, which, in addition to being responsible for the ordinary management of the Confederation and the direction of confederal services is, according to its confederal Statutes, the *'competent body to decide on the lodging of complaints and appeals in administrative and judicial proceedings'*. ELA is also a trade union affiliated to the ETUC (European Trade Union Confederation).

Under Spanish law, the complainant ELA Trade Union Confederation (*Confederación Sindical* ELA) has the legal status of the most representative trade union, in accordance with Article 7.1 of Organic Law 11/1985 of 2 August 1985 on freedom of association, insofar as it enjoys in the Autonomous Community of the Basque Country a special status for having obtained over 15% of the staff delegates and workers' representatives on works councils, and within the corresponding bodies of the public administrations. It boasts no fewer than 1 500 representatives and is not federated or confederated with state trade union organisations.

The concept of 'representativeness' for the purposes of the collective complaints procedure for national trade unions and associations applies *mutatis mutandis*. The representativeness of trade unions is specific to the autonomous regions and does not have the same scope as the national concept of representativeness, as is the case for associations. Accordingly, it falls to the Committee to establish gradually the set of criteria to enable it to assess the representativeness of national organisations, taking into account, inter alia, their social purpose and policy area.

The criteria used by the Committee to assess the representativeness of a trade union for the purposes of the collective complaint procedure include:

- An overall assessment of the documents in the file.
- Whether a trade union represents the vast majority of the professionals in the sector of activity concerned.
- Whether the union is representative at the national level and can therefore negotiate collective agreements.
- Whether a trade union carries out, in the geographical area where it is established, activities in defence of the material and moral interests of the workers of a given sector, in which it has sufficient numbers, in conditions of independence with respect to the employment authorities.

It follows from the preceding paragraphs that, following the entry into force of the Revised European Social Charter, ELA TRADE UNION has standing to submit collective complaints in accordance with the European Social Charter.

The complaint is signed by the person who has the authority to act as the highest public representative of the ELA TRADE UNION, Mr Mitxel Lakuntza Vicario, holder of Identity card No. 44630379Y, in his capacity as General Secretary of the ELA TRADE UNION.

The complaint is also signed by the lawyers of the legal services, Ms. Zurine Quintana Diez, holder of Identity card No. 78897332H, member number 6379 of the Bizkaia Bar Association, on behalf of ELA TRADE UNION.

The complaint is addressed, in accordance with Article 5 of the Protocol, to the Secretary General of the Council of Europe through the Department of the European Social Charter, to be forwarded to the ECSR.

It is in the interest of this party that it be possible to use the Spanish language in the proceedings, especially in the submission of pleadings.

2. SUBJECT MATTER AT ISSUE AND RELEVANT FACTS: LEGISLATION APPLICABLE TO BIRTH LEAVE AND PARENTAL LEAVE AND REGULATION IN SPANISH LAW

2.1. Background to maternity leave/birth leave

With the establishment of democracy, maternity leave was restored in 1980 and extended to 14 weeks. Since 1989, a working mother has been entitled to 16 weeks of maternity leave/birth leave, including 6 uninterrupted weeks following childbirth, which are compulsory and must be taken on a full-time basis to ensure the protection of the mother's health, followed by 10 weeks for the care of the child.

2.2 Background to paternity leave/parental leave

Prior to 1980, the other parent was not entitled to any recognised leave for the birth of the child; since 1980, two days of paid leave have been granted. In 1989 paternity leave was extended from two to four days.

Organic Law 3/2007 of 22 March, with a view to achieving substantive gender equality, provided for paternity leave for the first time as a measure to support the reconciliation of work, family and private life, with 13 uninterrupted days of leave for birth, adoption or fostering. This leave can be extended in cases of multiple birth, adoption or fostering, by two additional days per child, starting from the second, and up to 20 days in the case of large families. To this leave was added the two days of leave recognised by the Workers' Statute in the case of childbirth, for a total of 15 days. Paternity leave of 13 days was paid by Social Security, and two days of paid time off was granted by the employer in the case of childbirth.

On 01/01/2017, paternity leave was extended to four weeks. On 05/07/2018, it was extended to 5 weeks, 4 weeks after the birth, and the last week could be taken separately at another time within 9 months of the birth.

2.3. Current regulation of birth leave and parental leave

2.3.1 Royal Decree-Law 6/2019 of 1 March on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation

In its Explanatory Memorandum, the aforementioned Royal Decree-Law 6/2019 states: *'In that regard, public authorities are required to adopt specific measures in favour of women when there are clear situations of de facto inequality with respect to men. Such measures, which shall be applicable for as long as such situations persist, shall be reasonable and proportionate in relation to the objective pursued in each case.*

Article 2 amends the consolidated text of the ***Workers' Statute, approved by Royal Legislative Decree 2/2015 of 23 October 2015****, and states, in summary, the following: to highlight the right of workers to the reconciliation of work, family and private life; to expressly provide for the right of workers to the remuneration corresponding to their work, while ensuring equal remuneration without discrimination. It should be noted that equal pay was already required by Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.'*

Article 2.18 adds a new thirteenth transitional provision, which reads as follows:

'Thirteenth transitional provision. Progressive application of Article 48 in the wording of Royal Decree-Law 6/2019 of 1 March on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation.

1. Paragraphs 4, 5 and 6 of Article 48, in the wording of Royal Decree-Law 6/2019, of 1 March 2019 on urgent measures to guarantee equal treatment and opportunities for women and men in employment and occupation, shall be implemented gradually in accordance with the following rules:

a) In the case of birth, the biological mother shall fully enjoy the suspension periods covered by Royal Decree-Law 6/2019 of 1 March 2019 as from its entry into force.

b) As from the entry into force of Royal Decree-Law 6/2019 of 1 March 2019, in the case of birth, the ***other parent shall have a total suspension period of eight weeks (2019),*** *of which the first two weeks must be taken immediately after the birth and without interruption.*

The biological mother may transfer a period of up to four weeks of her non-compulsory suspension period to the other parent. Enjoyment of this suspension period by the other parent, as well as that of the remaining six weeks, shall be in accordance with the provisions of Article 48.4.

2. *Pending full equivalence between the suspension periods enjoyed by both parents, and during the period of gradual implementation, the new system shall be applied with the following specific features:*

a) In the event of the death of the biological mother, irrespective of whether she is employed, the other parent shall be entitled to the full 16 weeks of suspension provided for the biological mother in accordance with Article 48.4.

b*) In the case of birth, the other parent may continue to use the maternity leave initially transferred by the biological mother even if, at the time the mother plans to return to work, she is temporarily unfit to do so.*

c*) In the event that one parent is not entitled to suspend his or her professional activity with entitlement to benefits in accordance with the rules governing such activity, the other parent shall be entitled to suspend his or her employment contract for the full 16 weeks, without any limitation of the transitional arrangements being applicable to him or her.'*

As can be seen from the title of the aforementioned Royal Decree-Law, its purpose is to implement measures to guarantee equal treatment and opportunities between women and men in employment and occupation. Therefore, based on the wording of the legal instrument, we must understand the purpose of this rule to be threefold:

- First and foremost, it must be the protection of children, and childhood in general.
- Secondly, it aims to introduce measures to ensure the equality of women - in this case, women in single-parent families, which are mostly headed by women, and of male parents as sole carers, if they are covered in the event of death - so that this does not affect their employment;
- Finally, it aims to provide an element of work-life balance.

The application of birth leave and parental leave is therefore directly linked to two interests at play: that of the mother and that of the child, whose protection is also the objective of the leave granted to the parent other than the biological mother, intended, according to the cited provision, to '*fulfil the care obligations laid down in Article 68 of the Civil Code*.'

Royal Decree-Law 6/2019 amended Article 48.4 of the Workers' Statute (Royal Legislative Decree 2/2015 of 23 October, approving the consolidated text of the Law on the Workers' Statute) and articles 177-180 of the General Law on Social Security (Royal Legislative Decree 8/2015 of 30 October, approving the consolidated text of the General Law on Social Security) and Article 49.1 of Royal Legislative Decree 5/2015 of 30 October, approving the consolidated text of the Public Service Regulations Act.

2.3.2 Article 48.4 of the Workers' Statute

Article 48. 4. Suspension with right to return to same job

4. Birth, which includes actual childbirth and care of a child under the age of 12 months, shall suspend the biological mother's employment contract for 16 weeks, of which the first 6 weeks following childbirth must be taken on a full-time basis, in order to ensure the protection of the mother's health.

The birth suspends the employment contract of the parent other than the biological mother for 16 weeks, of which the first 6 weeks following the birth must be taken on a full-time basis, in order to fulfil the care obligations laid down in Article 68 of the Civil Code.

In cases of premature birth and in cases where, for any other reason, the newborn child must remain hospitalised after birth, the period of suspension may be calculated, at the request of the biological mother or the other parent, from the date of discharge from hospital. The six weeks following birth, during which time the biological mother's contract is compulsorily suspended, shall be excluded from this calculation.

In cases of premature birth with low birth weight and in other cases in which the newborn baby requires hospitalisation after birth for a period exceeding seven days due to some clinical condition, the period of suspension shall be extended by as many days as the baby is hospitalised, with a maximum of thirteen additional weeks, and under the terms to be set out in the regulations.

In the event of the death of a child, the suspension periods will not be reduced unless, once the six weeks of compulsory leave have elapsed, a request is made to return to work.

Once the first six weeks following childbirth have elapsed, the suspension of the contract of each of the parents, on the ground of care to be given to the child, may be shared according to the parents' wishes, in respect of periods of weekly leave to be taken cumulatively or interrupted and taken from the end of the compulsory suspension following childbirth until the child reaches the age of 12 months. However, the biological mother may exercise this right up to four weeks before the expected date of

childbirth. The employer must be notified at least 15 days in advance of each weekly period or of multiple weekly periods, as the case may be.

This is an individual right of the worker, and it cannot be transferred to the other parent.

Once the first six weeks following the childbirth have elapsed, the suspension of the work contract may be on a full-time or part-time basis, to be agreed between the company and the worker, and in accordance with the regulations.

The employee must give the company at least fifteen days' notice of the exercise of this right under the terms established, where applicable, in the collective bargaining agreements. Where both parents exercising this right work for the same employer, the employer's management may limit the simultaneous exercise of this right for justified and objective reasons, duly reasoned in writing.

For the purposes of this paragraph, the term biological mother also includes transgender pregnant persons'.

2.3.3 Articles 177 to 180 of the General Law on Social Security (L.G.S.S.)

Article 177. Protected situations

'For the purposes of the benefit for childbirth and childcare provided for in this section, birth, adoption, foster care and foster placement of a child are considered protected situations, in accordance with the Civil Code or the civil laws of the autonomous communities that refer to it, during the rest periods that are enjoyed for such situations, in accordance with the provisions of sections 4, 5 and 6 of Article 48 of the consolidated text of the Law on the Workers' Statute, and in Article 49.a), b) and c) of the consolidated text of the Law on the Basic Regulations Relating to Public Servants.'

Article 178. Beneficiaries

'1. Persons covered by this general scheme, whatever their sex, who take the leave referred to in the preceding article, shall be entitled to the allowance paid on the birth of the child in order to care for the child, provided that they satisfy the general condition laid down in Article 165(1) and the other conditions laid down by regulation, and that they have completed the following minimum contribution periods:

(a) If the worker is under 21 years of age on the date of the birth, or on the date of the administrative decision to place the child in a foster family or to grant custody for the purposes of adoption, or the judicial decision confirming the adoption, no minimum period of contribution is required.

(b) If the worker has reached the age of 21 and is under 26 years of age on the date of birth, or on the date of the administrative decision to place the child into foster care or to grant custody for the purposes of adoption, or the judicial decision confirming the adoption, the minimum contribution period required shall be 90 days during the seven years immediately preceding the start of the leave. The above-mentioned condition is deemed to be satisfied if, in the alternative, the person concerned can show that he or she has made contributions for 180 days during his or her working life prior to that date.

(c) If the worker is 26 years of age on the date of the birth, or on the date of the administrative decision to place the child into foster care or to grant custody for the purposes of adoption or the judicial decision confirming the adoption, the minimum contribution period required shall be ***180 days during the seven years immediately preceding the start of the leave****. That condition is deemed to be satisfied if, in the alternative, the person concerned can show that he or she has made contributions for 360 days during his or her working life prior to that date.*

2. In cases of birth, the age indicated in the previous paragraph will be the age reached by the person concerned at the time of the start of the leave, the date of childbirth being taken as the reference point for the purpose of verifying any required minimum contribution period.'

Article 179. Financial benefit

'1. The financial benefit for childbirth and childcare shall consist of an allowance equal to 100% of the corresponding calculation basis. To that end, as a general rule, the basis of assessment shall be the calculation basis for common contingencies for the month immediately preceding the month prior to the month in which the contingency arises, divided by the number of days to which this contribution refers.

For the purposes of the preceding paragraph, when the worker receives monthly remuneration and has been registered with the company for the whole calendar month, the corresponding calculation basis shall be divided by 30.'

(...)

Article 180. ***Loss or suspension of entitlement to the childbirth and childcare allowance***

'Entitlement to the allowance for the birth and care of a child may be denied, annulled or suspended if the beneficiary has acted fraudulently in order to obtain or retain the benefit, or if he/she is employed or self-employed during the corresponding periods of leave.'

2.3.4 Current situation regarding leave entitlements

As stated above, up to 2019 in Spain, when a child was born, the employed mother took maternity leave (16 weeks) and the father (second parent) took paternity leave of 13 days covered by Social Security.

With the publication of Royal Decree-Law 6/2019, the leave entitlements went from being referred to as maternity/paternity leave to **birth leave and parental leave,** making it clear that although the purpose of the legislative change is shared responsibility, the main legal right protected is that of the child.

Currently, the mother is still entitled to 16 weeks of birth leave, of which 6 uninterrupted weeks following the birth are mandatory to ensure the protection of the mother's health, followed by 10 weeks for the care of the child. The '*other parent*' is entitled to 16 weeks of parental leave, of which 6 uninterrupted weeks must be taken following the birth.

The law allows for exceptions in which a single parent may take both leaves, such as in the case of the death of the mother, as provided for in the Thirteenth Transitional Provision of the Workers' Statute and in Article 49.a) of the Basic Statute of Public Employees (EBEP).

Thirteenth Transitional Provision of Section 2.a) of the Workers' Statute.

'2. Pending full equivalence between the suspension periods enjoyed by both parents, and during the period of gradual implementation, the new system shall be applied with the following specific features:

(a) In the event of the death of the biological mother, irrespective of whether she was employed or not, the other parent shall be entitled to the full 16 weeks of suspension provided for the biological mother in accordance with Article 48.4.

Article 49.a) of the EBEP

'In any case, the following leave entitlements shall be granted with the corresponding minimum conditions:

a) Birth leave for the biological mother: for a period of sixteen weeks, of which the six weeks following childbirth are compulsory, uninterrupted leave. This leave shall be extended by two

additional weeks in the event of disability of the son or daughter and, for each son or daughter born after the second, in the event of multiple births, one week per parent.

However, in the event of the death of the mother, the other parent may take the entire or, where applicable, the remaining part of the leave ...'.

2.3.5 Situation after the recent reform and the interpretation of the Supreme Court

The fact that Spanish legislation does not expressly provide that a single parent may take both birth leave and parental leave has led single-parent families to bring claims against the National Social Security Institute (INSS) for denying them the parental leave allowance of the other parent.

The first case to reach the Supreme Court was brought by plaintiff ZURIÑE QUINTANA DIEZ, hereinafter ZQD, a single mother who brought an action on 17/12/2019 against the decision issued by the INSS relating to childbirth and childcare benefits in which she sought to exercise her right to take both the 16-week birth benefit (already taken) and the additional 8 weeks of parental leave (in 2019, only 8 weeks were granted to the other parent; this was extended to 12 weeks in 2020 and 16 weeks in 2021), with the legal and financial consequences arising from such a declaration.

In the judgment at first instance of Social Court No. 5 of Bilbao, Case 1015/2019, the court ruled: *'Dismissing the claim brought by ZQD against the INSS and the Tesoreria General de la Seguridad Social (Social Security General Fund - TGSS), I must and do hereby acquit the defendants of the claims made against them, confirming the administrative decision.'* The employee appealed against that judgment, requesting that she be granted the right to take the aforementioned 8 weeks' leave in addition to the 16 weeks' leave already taken for the birth of her daughter. **On 06/10/2020, the Social Chamber of the High Court of Justice of the Basque Country (Bilbao) (TSJPV) handed down a judgment** granting the worker's appeal, stating: *'The appeal lodged against the judgment handed down by Social Court No. 5 of Bilbao on 18/05/2020, case 1015/19, by Ms Maider XXX, attorney acting on behalf of Ms ZQD, is upheld. With the revocation of the previous judgment, her claim is granted, and her entitlement to an additional 8 weeks of childbirth and childcare benefits is confirmed. The National Institute of Social Security and the Social Security General Fund are ordered to comply with this declaration and to pay the corresponding benefit on the regulatory basis of XXX euros days, without costs.'* (Doc. No 2)

We have reproduced grounds of the judgment in their entirety. Grounds five, six and seven are of particular note:

'FIVE - It is undeniable that the benefit we are examining and the reform introduced in Article 48 of the Workers' Statute are aligned with three clear objectives: the protection of the child and childhood in general; the introduction of a measure for gender equality; and an element of work-life balance.

We will grant the appeal on the basis of the first consideration. Under the general umbrella of non-discrimination, if the benefit is denied to the beneficiary under the terms requested, there is a violation of the right to equality enshrined in the Convention on the Rights of the Child concluded by the General Assembly of the United Nations on 20 November 1989, since the affected child will clearly benefit from less attention, care and development in comparison to other children in a similar situation in a two-parent family. If we start from the unacceptable discrimination of the child on the basis of their own condition or the civil status or situation of their parent, by introducing a period of care and attention for the group of children in single-parent families, we are not only diminishing the care provided in two-parent families but also introducing a bias that hinders the child's development, as they benefit from less time and personal involvement on the part of the person considered to be the parent.

Therefore, since the Convention on the Rights of the Child is directly applicable, and insofar as the national legislation violates this equality, we are of the view that the requested benefit, of which the prerequisites are not questioned, is appropriate (we have already referred to the direct application of this regulation).

SIX - We have stated that there are other areas of convergence in the right to the claimed benefit, and hence we consider that the regulation introduces an important element of discrimination against women and the fundamentals of work-life balance. As we have assessed the benefit as set out in the preceding paragraphs, we will only point out those reasons we have identified that could be in violation of the Constitution, and on the basis of these, any possible cases of unconstitutionality.

SEVEN.- In conclusion, the majority of single-parent families are headed by women. When the work contract is suspended under Article 48, numbers 5 to 7 of the Workers' Statute, whether this concerns the male or other parent indirectly, the woman suffers harm. The time she devotes to the child is greater because she does not share this time, simultaneously or over time; time dedicated to training and professional promotion is also reduced; career advancement and personal development are diminished. The situation of women is further deteriorated and, despite appearances, a group is once again actually suffering prejudice rather than being favoured.

Equality between men and women has been sought, but a new gap has been introduced that places us not before the glass ceiling but before the sticky floor, and before a functionalist conception of equality, which ignores the fact that the various manifestations of equality occur within social habitats or structures. This is why single-parent households, and indirectly women, are discriminated against.

Furthermore, there is no justification for treating these single-parent households differently, as the marital status of the person is introduced as a fundamentally determining element of a de facto situation, such as being single, widowed, or in marital breakdown, as opposed to those in a marriage or union.

Lastly, there may be a justification for the disparate treatment of the various types of couples, but this cannot mean unequal treatment of families in respect of maternity, fostering, adoption or guardianship, since the choice of the single-parent household does not denote a different parent-child relationship determining the care and attention of the child, and their own rights.'

This Judgment was the subject of an appeal for the unification of precedent in the interests of the law before the Supreme Court by the exceptional procedure laid down in Article 219.3 of the LRJS by the Public Prosecutor's Office and the INSS. On 2 March 2023, **the Supreme Court handed down a Judgment overturning the Judgment of the High Court of Justice of the Basque Country (TSJPV) of 06/10/2020** (Coll. 941/2020), although the particular situation of the claimant ZQD was maintained. The main reason for upholding the appeal brought by the Public Prosecutor's Office is based on the premise that is for the legislature, and not the courts, to recognise the right of single parents to take different types of leave (Doc. No. 3). This position, however, **entails disregarding relevant international standards, including those set out in the Revised European Social Charter and in the case-law of the European Committee of Social Rights, as we argue in this collective complaint**. **Furthermore, it should be noted that the precedence and supra-legal nature of international treaties are laid down not only in the 1969 Vienna Convention on the Law of Treaties, but also in the Spanish Constitution (Article 96) and in Spanish Law 25/2014 of 27 November on Treaties and other International Agreements (Article 31)**. The said Judgment was clarified ex officio by an Order dated 11 January 2024 (Doc. nº 4), which added the text: '*The Court resolves to: Correct the material error in the operative part of Judgment No. 169/2023 of 2 March in RCUD 3972/2020, to which the following provision is to be added, while maintaining the pronouncements contained therein:*

[....]

6. To establish the following as case-law: 'With regard to the childbirth and childcare allowances, in the case of single-parent families, it is not appropriate to recognise a new benefit, different from the one already recognised, and coinciding with the one that would have corresponded to the other parent. Order the publication of this case-law in the Official State Gazette.'

We cannot ignore the fact that the Supreme Court's Judgment of 2/3/2023 was issued by a Plenary composed of only 8 of the 13 Judges that make up the Fourth Chamber (Social Chamber), and that, of these 8 Judges, 2 issued a dissenting opinion, with which we fully agree, in which, in summary, they indicate that the Supreme Court should have applied the case-law of '*integrated interpretation of social security benefits*' which is compatible with both the legislative and judicial function - and which is carried out in consideration of the best interests of the child - and, in other cases, with a gender perspective. This has been applied in other cases, such as surrogate motherhood, and it therefore recognises the entitlement of newborn children in a single-parent family to both birth leave and parental leave of the other parent. We therefore consider it appropriate to reproduce this dissenting opinion:

'FIRST. Preliminary.

1. *With the utmost respect and consideration for the judges who signed the judgment handed down in rcud 3972/2020, I express in this dissenting opinion the reasons for my disagreement with that judgment.*
2. *In my view, the Chamber should have dismissed the appeal and upheld the contested judgment, and I do not consider it necessary to state now whether the upholding of that judgment should have been in full or in part.*

   As the deliberations focused on whether the claimant was entitled to the birth and childcare benefit she was claiming, with the majority of the Chamber reaching the opinion that she was not, there was no debate as to whether, if she was entitled, that entitlement should be for the duration claimed or for a duration other than that claimed and recognised by the contested judgment.
3. *The reasons for my disagreement are primarily the two that I set out below.*

SECOND: The best interests of the child, which must be taken into account as a primary consideration.

1. *I believe, first of all, that in the case we had to resolve, it is possible to make an integrative interpretation of the applicable rules, based in particular on the best interests of the child, which must have primary consideration, as well as on the gender perspective with which this interpretation must be made, given that, in our case, it is a single-parent family in which the biological mother is the sole parent.*
2. *As I will outline in minimal detail below, our Constitution, the Charter of Fundamental Rights of the European Union, the United Nations Convention on the Rights of the Child, and our organic laws for the protection of children and minors, establish that the best interests of the child must have primary consideration, and it is even expressly stated in several cases that the best interests of the child, and their necessary primary consideration, are a right and that, in any case, the interpretative principle that must prevail.*

   And the relevant point is that several of these rules expressly mention the courts. (....)
3. *In short, I believe that it is possible to make an integrative interpretation of Articles 177 and related articles of the General Law on Social Security, and Article 48.4 of the Workers' Statute in the light of articles 39 of the Spanish Constitution; 24.2 EU Charter of*

Fundamental Rights; 3.1 of the Convention on the Rights of the Child; 2 of Organic Law 1/1996 on the Legal Protection of Children; and Article 3 of the Civil Code.

Moreover, I am of the view that such an integrative interpretation allows the conclusion to be drawn that, in the present case and without further details, the claimant was entitled to the benefit she is claiming.

THIRD: The precedents of the chamber based on the best interests of the child, and primary consideration thereof, as well as the gender perspective.

1. *The second reason for my disagreement with the ruling is that, in my opinion, the precedents of the Chamber on integrative interpretations of security benefits tied to causes of suspension of the employment contract, which I will also briefly mention, interpretations made in the best interests of the child, in some cases, and with a gender perspective, in others, should have also led in the present case to recognition of the benefit claimed by the claimant.*
2. *The ruling with which I disagree rightly notes the difference between the legislative function and the judicial function. It also rightly notes that social security is a statutory scheme. Both are undoubtedly true.*

   However, it seems to me that this is not incompatible with the integrative interpretation that I recommend, in the light of the norms I have mentioned, in a case where there is such a consolidated collection of legislative provisions that authorities - including the courts - should be compelled to regard the best interests of the child as a primary consideration.

   In any case, the Chamber has already relied on this integrative interpretation of applicable labour and social security rules on previous occasions to project them onto cases not expressly contemplated in these norms. Similarly, the Chamber has relied on such integrative interpretation precisely on the basis of the best interests of the child and the gender perspective.
3. *My disagreement with the ruling stems from a belief that this interpretation already relied upon by the chamber on previous occasions, which seem to have clear similarities with the present case, should have also been made here.*

   I was not convinced why in those other cases it was possible to perform this integrative interpretation, so as to apply social security benefits and grounds for suspension of the employment contract to cases not expressly provided for by legislation, while in the present case it is not possible to do the same.
4. *I will briefly mention the cases in which the Chamber has recognised entitlement to social security benefits and grounds for suspension in scenarios not expressly provided for in the applicable standards, as, in my view, should also have been done in the present case.*

   The ruling challenged in the present appeal expressly refers to these scenarios, specifically mentioning the Supreme Court Judgments of the Plenary 881/2016 of 25 October 2016 (rcud 3818/2015), and 953/2016 of 16 November 2016 (rcud 3146/2014), and Supreme Court Judgment 1005/2017 of 14 December 2017 (rcud 2859/2016).

   a) *Supreme Court Judgment 881/2016 of 25 October 2016 (rcud 3818/2015) grants the social security benefits requested in a case of 'surrogacy', because, although the legal and regulatory framework 'fails to consider these scenarios, it is not so narrow as to prevent their being interpreted in the sense most favourable to the constitutional objectives of child protection, regardless of his or her parent-child relationship, and of work-life balance.'*

It is particularly noteworthy that Supreme Court Judgment 881/2016 of 25 October 2016 (rcud 3818/2015) mentions that the absence of express regulation does not necessarily prevent the interpretation in favour of what is requested based on the constitutional objectives of child protection.

b) *Supreme Court Judgment 953/2016 of 16 November 2016 (rcud 3146/2014) also grants the maternity benefits requested in another case of 'surrogacy', performing an 'integrative' interpretation of the relevant norms, 'considered in the light of the ECHR ruling of 26 June 2014, in its application of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which invokes the best interests of the child, respect for which must guide any decision affecting them', as well as 'Article 14 and (Article) 39.2 of the Spanish Constitution, which provides that the public authorities shall ensure the integral protection of children.'*

It is important to highlight the integrative interpretation advocated by Supreme Court Judgment 953/2016 of 16 November 2016 (rcud 3146/2014), based on the best interests of the child and the comprehensive protection of children.'

c) *Finally, Supreme Court Judgment 1005/2017 of 14 December 2017 (rcud 2859/2016), summarises the case-law laid down by Supreme Court Judgments 881/2016 of 25 October 2016 (rcud 3818/2015), and 953/2016 of 16 November 2016 (rcud 3146/2014) as follows:*

'1) The rules on maternity protection must be interpreted in the light of the general principle of the best interests of the child, who is part of the family unit, with the parent(s) providing parental care and attention. This is in accordance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the mandate of Article 39 of the Spanish Constitution relating to the protection of the family and childhood. This principle should prevail and serve as a guide in the resolution of any interpretive doubts, and align with the social realities of the time in which they are applied, taking into account, fundamentally, the spirit and purpose of those rules «(Article 3.1 CC).

2) Suspension of the employment relationship and recognition of the maternity benefit constitute an ideal means of preserving the special relationship between the parent and the child during the period following the birth, and this situation must therefore be adequately protected in the same way as maternity, adoption and fostering, regardless of whether surrogacy is expressly listed among the situations provided for...'

It is worth highlighting that the judgment mentions that the best interests of the child and the protection of the family and children must prevail and serve as a guide in the resolution of any 'interpretive doubts'. The judgment also refers to the interpretive criteria of Article 3.1 CC and states that the situation of surrogacy must be protected, even if 'it is not expressly listed among the situations referred to.'

d) *The case-law of the aforementioned judgments has been reiterated in several subsequent judgments, including, among the most recent, Supreme Court Judgments 277/2018 of 13 March 2018 (rcud 2059/2016), and 347/2018 of 22 March 2018 (rcud 2770/2016). Although the issue it resolves is different, Supreme Court Judgment 997/2022 of 21 December 2012 (rcud 3763/2019) also mentions the rulings to which I have referred.*

5. *As mentioned above, I have not quite understood why in those other cases it was possible to perform this integrative interpretation, so as to apply social security benefits and grounds for*

suspension of the employment contract to cases not expressly provided for by legislation, while in the present case it is not possible to do the same.

Here lies my fundamental disagreement with the ruling.

6. *A final consideration on an interpretation with a gender perspective.*

Since the judgment of the Plenary of 21 December 2009 (rcud 201/2009), this Chamber has applied the criterion of interpretation with a gender perspective in, at a minimum, Supreme Court Judgments 864/2018 of 26 September 2018 (rcud 1352/2017); 778/2019 of 13 November 2019 (rcud 1352/2017); 778/2019 of 13 November 2019 (Coll. 75/2018); (...) 14 October 2020 (rcud 2753/2018); 645/2021 of 23 June 2021 (Coll. 161/2019); and 747/2022 of 20 September 2022 (rcud 3353/2019).

For the purposes of this appeal, what is noteworthy about the majority of the judgments cited above is that, by means of interpretation with a gender perspective, they extend the protection of the social security scheme, and the receipt of the corresponding benefits, to cases not expressly covered by social security legislation.

In effect, the judgments above have extended the protection of the social security scheme, without further details (...) Similar absence of express provision occurs in the present case.

But I believe that the conclusion should also be in favour of granting the benefit claimed by the person concerned, not only by virtue of the primordial attention to the best interests of the child, but also because the gender perspective reinforces such a conclusion.

In this scenario, the person concerned is a woman, the biological mother, and it is established that she is the sole parent.

The judgment - majority vote - does not contain any justification or reasoning as to why in the present case it departs from the case-law established by our own Chamber IV in the absence of an express legal provision, both in the aforementioned cases and in the present one.

In addition, the principle of gender mainstreaming obliges judges and courts to incorporate a gender perspective in the exercise of the jurisdictional power conferred by Article 117. 3 of the Spanish Constitution.

As we shall explain in Section 4 of this pleading, we are of the view that this Judgment violates the law as it fails to make an integrative interpretation of the rights at stake, taking into account the best interests of the child, discriminating not only against children on the basis of their parent-child relationship, their mother's marital status and even her profession, but also against their mothers on the basis of their gender. We share the dissenting opinion in its entirety.

It should be noted that the General Council of the Judiciary, which is the governing body of the Judiciary, has allowed single-parent judges to take both types of leave (Doc. No. 5), as has the Ministry of Social Rights in the case of a female civil servant (Doc. No. 6).

2.3.6 Arguments of the National Social Security Institute and the Public Prosecutor's Office against allowing single-parent families to take both birth leave and parental leave

In the four years that we have been filing claims in this respect, both at first instance and in the different appeals and challenges, we have heard arguments from the INSS and the Public Prosecutor's Office that should not even be considered. However, in order to avoid any party from being deprived of access to legal defence, and to prevent the Spanish Government from possibly invoking them in its response to our complaint, we are mentioning them here. Doc. nº 7 is the appeal lodged by the Public Prosecutor's Office against the Judgment of the Social Chamber of the High Court of Justice of the Basque Country (Bilbao), dated 06/10/2020 (rec sup. 941/2020)).

1) It is an individual and non-transferable right.

The current childbirth benefit is the result of an evolution that is inexorably moving towards an individual and non-transferable nature of the benefit, an evolution tending to favour shared responsibility that seeks to avoid a single member of the household, usually a woman, taking multiple entitlements. This is because this evolution is based on the assumption that most cases involve two-parent families, hence the explicit prohibition of transfer between parents to avoid the aforementioned case in which a single member of the household, usually the woman, uses multiple leave entitlements.

This aim is laudable, although not so in the particular case of single-parent families, since it ultimately leads to the undesirable prejudice and discrimination against the child, whose protection is the main purpose of the benefit in question.

It should be borne in mind that sharing, involvement and shared responsibility require two parents, and in single-parent families there is only one. We are therefore of the view that these entitlements should not be transferred where both parents are present. If there is only one parent, however, both leave entitlements should be granted to that person. In reality, therefore, we are not dealing with a transfer or assignment of rights. As stated in the RAE Spanish dictionary, *corresponsabilidad*, that is, co-responsibility, means 'shared responsibility', and sharing requires at least two people. In a single-parent family, there is only one person, a single parent, so it is not appropriate to speak of shared responsibility.

It is necessary to weigh shared responsibility against the law of equality. The disproportionate gender impact of rights linked to the work-life balance has prompted public authorities to integrate the gender perspective as a binding factor in the interpretation and application of the right claimed in the present case, in accordance with the mandate laid down in Article 4 of Organic Law 3/2007, projected in the interpretation and application of the right contained in Article 48.4 of the Workers' Statute in relation to articles 1, 9.2, 14 and 39 of the Spanish Constitution. Moreover, the right to equality and non-discrimination, as a human right, presupposes compliance with the principle of due diligence that requires the State, through all its branches (including the judiciary), to observe, protect and guarantee the effective fulfilment of this human right in order to achieve de facto, not de jure, equality.

Complementing the previous law, the recently approved Law 15/2022 of 12 July, comprehensive law for equal treatment and non-discrimination, recognises in its Article 2.1 the right of all persons to equal treatment and non-discrimination regardless of whether they are children or of full age. No one may be discriminated against on account of birth, conviction or opinion, age, sexual orientation or identity, gender expression, socio-economic status, or any other personal or social condition or circumstance.

It should be added that the '*best interests of the child*' is a basic principle to be applied in any measure or decision affecting children. Furthermore, it should be borne in mind that Section 1 of Article 2 of Organic Law 1/1996 of 15 January on the Legal Protection of Children, as amended by LO 8/2015 of 22 July 2015, expressly states that *'every child has the right to have their best interests assessed and considered as paramount in all actions and decisions concerning them, in both the public and private spheres. In the application of this law and other regulations that affect it, as well as in the measures concerning children adopted by public or private institutions, the Courts, or legislative bodies, the best interests of children shall prevail over any other legitimate interest that may apply.'* The following paragraphs add that, for the interpretation and application in each case of the '*best interests of the child*', criteria such as '*the protection of the child's right to life, survival and development and the satisfaction of his or her basic material, physical, educational, emotional and*

affective needs' should be considered, taking into account circumstances such as the child's age, the need to guarantee his or her equality and non-discrimination due to special vulnerability, with relevant characteristics or circumstances, such as the protection of a newborn in a single-parent family in the present case.

Consequently, in the context of a single-parent family, we must disregard this aim of shared responsibility when interpreting the rules, and the interests that are really protected must prevail, which are none other than the best interests of the child, to avoid such harm and discrimination.

This is precisely what the legislature does in the case of the **death of the biological mother**, in which the interests of the child prevail above all else (Thirteenth Transitional Provision and Article 49.1 of the EBEP). To this end, the legislation provides that the other parent is entitled to the full 16 weeks of suspension provided for the biological mother under Article 48.4 Workers' Statute (art 2.18, paragraph 2 a) Royal Decree-Law 6/2019 of 1 March), solely to ensure that the child is not deprived of the care that would have been received from the deceased parent.

This interpretation is fully transferable to the present case, since single-parent families and families in which the biological mother has died consist of one parent and the child, and the child deserves and needs the same protection and care.

Therefore, to consider that the sole purpose of Royal Decree-Law 6/2019 is shared responsibility, when in Spain today there are various family models, not all of which are two-parent families, discriminates against children born into a single-parent family and their mothers.

2) The INSS argues that the required contributions under the LGSS are not met.

All single-parent families that have requested to take both leave entitlements comply with the dual contribution requirement as demonstrated by the employment records. That is, they meet the minimum qualifying period required for each parent (180 days x 2 = 360 days - under Article 179 LGSS).

Consequently, this argument has no legal basis.

3) The INSS argues that single parents have 14 additional days, and up to 18 weeks in the case of multiple births.

Firstly, it is mixing up concepts, introducing into the debate the non-contributory benefit of 14 days provided for cases where an individual does not have access to childbirth and childcare benefits under Article 179 LGSS. Consequently, as a starting point, it should be borne in mind that families, whether single-parent or two-parent, that request both contributory childbirth and childcare benefits do not have access to the 14 days of non-contributory leave. That benefit is not the subject of these proceedings, nor can it be invoked to argue that single parents have a better entitlement or greater protection. Articles 181 and 182 of the LGSS set out the non-contributory benefit for cases where childbirth and childcare benefits cannot be granted. This argument therefore has no legal basis.

Secondly, with regard to the 18 weeks, the INSS once again departs from reality. A two-parent family with multiple births (or with a disabled child) will receive a total benefit of 34 weeks (17+17=34), while a single-parent family will receive only 18 weeks (16+2=18), which is 16 weeks less (34-18).

It should also be noted that this was not the case from the outset, since initially only 17 weeks were granted in the case of multiple births. However, the managing body itself considered that, because a single-parent family experiences a multiple birth, the two additional weeks granted to two-parent families could not be forfeited. Therefore, on 31/7/2019 - after the Royal Decree-Law 6/2019 of

1 March - it issued Management statement 16/2019, recognising the current benefit (18 weeks) for single-parent families.

Ultimately, this recognition actually follows the Consultation of 31/7/2019, Management statement 16/2019, drawn up by the General Social Security Institute itself, which, contrary, to what has been argued in the present proceedings, rightly considers that the assignment or transfer of the benefits in the case of single-parent families, or allowing individuals to use multiple leave entitlements, is appropriate based on the following considerations:

'Article 48(4) refers to birth, and Article 48(5) to the other protected situations (adoption, foster care and adoption for the purpose of adoption, and fostering). Paragraph 6, which is the subject of this analysis, provides that the suspension 'of the employment contract' shall have an additional duration of two weeks in certain cases. These two weeks are then equitably divided between the two parents, with one week for each parent; but it is clear that such a division cannot occur when there is only one parent. Consequently, when the protected situation gives rise to the suspension of a single employment contract, this suspension 'of the employment contract' must have the additional duration of two weeks provided for in the provision, without the clause introducing the division between the two parents being applicable.

This interpretation, *endorsed by the Directorate General for Labour and by the Directorate General for the Regulation of Social Security, is justified by the need to maintain the additional period of two weeks in favour of the sole existing parent, given the absence of another parent - whether employed or not - who can provide such care; it can be inferred that it was not the intention of the legislature to deprive, in these cases, children or minors of a week of care to which they would have been entitled if there had been two parents or if the regulatory reform had not taken place* (...).'

This criterion of the managing body is correct, and not the one upheld in the present proceedings, contrary to its own acts and interpretation set out in the consultation of 31 July 2019 (management 16/2019) (Doc. nº 8).

It is incomprehensible and unjustified that the same managing body considers it discriminatory that single parents do not have the additional week in the case of multiple births/disabled children, which is only one week, and yet does not consider it discriminatory that the other parent is not granted 16 weeks for the birth of a child.

In short, although the regulation does not expressly provide that in the case of single-parent families, the additional week corresponding to each parent can be taken by the single parent of the family household, as a result of the aforementioned consultation of the managing body, it is currently recognised. It is difficult to fathom why the same criterion is not followed for the benefit under debate in the present proceedings.

4) The INSS, the Public Prosecutor's Office and the Supreme Court itself argue that legislation cannot be enacted, and especially in matters of Social Security.

We again disagree with the argument put forward by the managing body, since on previous occasions the Fourth Chamber of the Supreme Court (full court judgments of 25/10/2016 appeal 3818/15 of 16/11/2016 appeal 3146/14 and 14/12/2017 (appeal 2859/16), has held that rules regarding maternity protection must be interpreted in the light of the general principle of the best interests of the child, who is part of the family nucleus with the parent or parents providing parental care and attention in accordance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the mandate of Article 39 of the Spanish Constitution of the Spanish Constitution, relating to the protection of the family and children. This principle should prevail and serve as a guide in the resolution of any interpretive doubts, and align with the social

realities of the time in which they are applied, taking into account, fundamentally, the spirit and purpose of those rules. On this point, it should be noted that ECHR case-law has highlighted the parallels between Article 8 ECHR and Article 16 of the Social Charter (inter alia, Complaint No. 58/2009, *Centre on Housing Rights and Evictions v. Italy*, Decision on the merits of 25 June 2010, § 129). Additionally, as regards the protection of the family and childhood recognised in Article 39 of the Spanish Constitution, this parallel is complemented by Article 17 of the Social Charter.

5) It has been argued that granting both leave entitlements to a single-parent family would be detrimental to their careers and employment prospects.

This contention is unfounded. Firstly, when employers hire a woman, they do not know whether she is a single parent or not and should not ask her. Secondly, she may be married and then become divorced or widowed and thus become a single parent.

It should be noted that single-parent families represent a lower economic cost for companies, because although the INSS (not the company) pays for leave for birth and childcare, paid leave such as marriage, hospitalisation, illness and death of spouse and parents-in-law are paid by the company, and single-parent families do not have or take marriage leave or leave for hospitalisation, surgery or death of spouse, parents-in-law and brothers and sisters-in-law (on the side of the partner).

Finally, it must be remembered that hiring a replacement for an employee on parental leave is subsidised, making the cost to the company lower than if the mother were working.

6) Lastly, the managing body invokes the existence of aid for single-parent families.

This argument lacks regulatory support and, with due respect, is false and borders on demagoguery. Nonetheless, to ensure there is a response and to counter these arguments with reality, the following should be noted:

i) Regarding the cash benefit of 1 000 euros: this is a benefit for large families, single-parent families or families with a disability subject to an income criterion. Specifically, as stipulated in the State Budget Act, only family members with low incomes of less than 20 000 euros per year are entitled to it (https://www.seg-social.es/wps/portal/wss/internet/Trabajadores/PrestacionesPensionesTrabajadores/10967/85/097735#097735)

ii) With regard to personal income tax (IRPF) deductions, it should be pointed out that, contrary to what the INSS claims, single-parent families are harmed by the current tax system, although this issue is not under debate in this case. Although the benefit for childbirth and childcare is exempt from IRPF taxation, in a two-parent family, both parents will enjoy a 32-week tax-exempt benefit from 2021. This results not only in the absence of taxation on them, thereby increasing disposable income for families - but also in a break in tax progressivity. In contrast, the single-parent family is only exempt from the benefit for 16 weeks and must pay taxes on work income earned after returning to work, which is often soon. Thus, for an identical income figure, the single-parent family bears additional taxation on work income during the period in which the other parent in a two-parent family is entitled to this benefit (i.e. another 16 weeks) and will be fully affected by tax progressivity. Consequently, **the tax burden on the single-parent family is significantly higher compared to traditional families, which is clearly contrary to the social, legal and economic protection guaranteed by Article 16 of the Social Charter**.

Escenario	Modelo de familia	Salarios			Cuota IRPF (Mejor opción)	Tipo Medio por contribuyente (adulto)	Diferencia tipos: Monoparental-versus matrimonio
		Progenitor 1	Progenitor 2	Total			
1	Familia tradicional (matrimonio)	12.000	15.000	**27.000**	667,38	3,25%	
	Familia monoparental	27.000		**27.000**	3.510,00	15,36%	12,1%
2	Familia tradicional (matrimonio)	25.417	28.717	**54.134**	8.806,20	17,50%	
	Familia monoparental	54.134		**54.134**	12.684,72	25,36%	7,9%
3	Familia tradicional (matrimonio)	35.000	40.000	**75.000**	20.711,00	21,42%	
	Familia monoparental	75.000		**75.000**	21.273,50	30,02%	8,6%

iii) With regard to the 'social bonus for electricity, water, and gas' and 'school meal assistance', these are not automatic, are subject to income and threshold requirements and consider the number of household members (with the majority of beneficiaries being large two-parent families). For example, a two-parent family with one child, where each parent earns 20 000 euros gross, receives a total of 40 000 euros, which when divided by three (two parents and one offspring), results in an income of 13 333 euros. In contrast, for a single mother with one child earning 40 000 euros (the same as the two-parent family), the resulting income is 20 000 euros when divided by two (single parent and her offspring). Even earning 30 000 euros, a two-parent family receives benefits before the single-parent family (30 000 euros/ 2 (mother and child); the income is 15 000 euros higher than the two-parent family (13 333 euros).

As can be observed, all the arguments against single parents being granted a right that violates the right to protection of children lack regulatory support and are in many cases misleading and do not align with reality. Therefore, considering the core issue, **the reality is that denying single-parent families the right to take both birth leave and parental leave (from the other parent) violates the various cited provisions of the ESC. It directly discriminates against children simply because their mother does not conform to the two-parent hetero-patriarchal family model, and indirectly discriminates against women, since the majority of single-parent families are headed by a female parent.**

2.3.7 Failure of the Supreme Court to weigh up rights

As previously stated, in its Judgment of 2 March 2023, the Supreme Court upheld the appeal filed by the Public Prosecutor's Office, ruling that single-parent families do not have the right to take both birth leave and parental leave. The Court argued that the creation of rules falls within the purview of the legislature and that it is not the function of the Court to interpret and create a new right.

It is, to say the least, striking that despite the express obligation of the Public Prosecutor's Office to look after the best interests of the child (Article 10.2.b) of Organic Law 1/1996), it was this body that filed the aforementioned appeal in the interest of the law.

In this regard, we refer to the dissenting opinion in the Supreme Court Judgment of 2 March 2023, which questions why, in other cases relating to security benefits based on issues of gender, maternity or the interests of the child, an integrative interpretation was possible, but not in the present case.

Consequently, there is no obstacle whatsoever to recognising the benefit in question in accordance with the integrative interpretation of social security benefits, as the Courts have done on so many occasions in the aforementioned cases of surrogacy (*Supreme Court Judgment 881/2016 of 25 October 2016 (rcud 3818/2015).*

Similarly, it is worth noting that our legislation allows multiple leave entitlements to be taken in cases where the biological mother dies, allowing the other parent, and therefore the child, to benefit from 32 weeks of leave.

Additionally, comparing the lack of contribution from one parent in a two-parent family with the double contributions of a single mother has no basis in fact. The fact that the single parent is required to pay double contributions has nothing to do with the fact that one of the two parents in a two-parent family does not fulfil the contribution requirement. Moreover, despite this issue not being in dispute, in all the proceedings initiated by the parties, the worker meets the double contribution requirement.

Furthermore, the managing body, under the guise of the supposed free choice of the parent of the child, deems it acceptable that single-parent families departing from the two-parent family model are not only harmed and discriminated against, but that their children are, too. These children are being discriminated against and harmed by a decision that is beyond their control and which pre-dates their birth, denying them all the rights of care afforded to a child born into a two-parent family.

This argument, besides being contrary to the basic principles of a social and democratic state governed by the rule of law, violates the Spanish Constitution itself, specifically Articles 10.2 (constitutional mandate of interpretation in accordance with international human rights treaties) and 14 (non-discrimination) and 39 (economic, legal and social protection of the family and children).

The consequences of deciding to form a single-parent family should not affect the child, given that regardless of whether single parenthood is by choice, the nature of the family the child is part of is an independent matter beyond the child's control. Accordingly, it is unlawful to discriminate on the grounds of family composition under Article 17.1.a) of the ESC, read in conjunction with Articles 12.3), 16, 27.1, 30 and E of the same text, as well as Articles 10.2, art 14 and 39 of the Spanish Constitution and the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20/11/1989, ratified by Spain on 6/12/1990 and published in the Official State Gazette on 31/12/1990. This convention stipulates that Public Institutions, when adopting measures, shall consider primarily the best interests of the child, specifying stating the following in Articles 2, 3 and 26:

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'

'States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.'

Furthermore, Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination based on sex, birth and social origins; Article 23 states that equality between women and men must be ensured in all areas; and finally, Article 24.1 and 2 states that children shall have the right to such protection and care as is necessary for their well-being and that in all actions relating

to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

2.3.8 Situation following the Judgment of the Social Chamber of the Supreme Court of 2/03/2023 (rcud 3972/2020)

Despite the operative part of the Supreme Court judgment, we are faced with the following scenario that is so highly varied that it results in legal uncertainty and discrimination, clearly resulting in disadvantage and causing prejudice to single-parent families, which are the subject of this collective complaint (hence the need for the ECSR to issue a decision on the merits of our complaint to provide legal certainty and equality), specifically:

1) The right continues to be recognised for single mothers who are judges or magistrates, as well as other civil servants.

It should be added that certain single-parent families are granted the right to take both leave entitlements either due to the mother's position as a judge or her status as an employee of the Ministry of Social Affairs.

It is incongruous for the Supreme Court itself to deny all single-parent families the right to take both leave entitlements, except for female judges, which is allowed by the General Council of the Judiciary (C.G.P.J.). On 4 February 2021, the Permanent Commission of the C.G.P.J. adopted the agreement regarding the application and recognition of this right to take both leave entitlements for single-parent families, recognising this possibility following a consultation held by the High Court of Justice of Catalonia, where the single mother was assigned, based on the TSJPV judgment of 6 October 2020, and in application of Article 10.2 of the Spanish Constitution, in relation to articles 2 and 3 of the Convention on the Rights of the Child, Article 373 paragraphs 2, 6 and 7 of the Spanish Judiciary Act [Ley Orgánica del Poder Judicial, LOPJ] in relation to articles 49, c) of the EBEP, and articles 3 and 4 of the Civil Code.

This same argument is used in the Outcome of the Application for Review of 16/06/2021 of the Ministry of Social Rights and Agenda 2030, in which a single mother is recognised as having the right to take both childbirth and childcare leave.

There is currently no case-law from the Department of administrative cases of the Supreme Court; there are only judgments from the Supreme Court (High Courts of Justice in the Autonomous Communities), where double leave is being granted to female civil servants.

In line with the above, it is appropriate to refer to the judgment of the Department of administrative cases of the Madrid High Court of Justice, 8th Section, No. 306/2023 of 9 March), which, among others, concludes that *'although the spirit of the reform was non-discrimination between men and women in the enjoyment of maternity leave, this does not prevent the ultimate purpose from being the protection of the interests of the child and care after birth, which is precisely the cause for the leave. And it is precisely this overriding interest in the protection of the child that justifies and underpins the extension or recognition of the legal regulation to the situation of the single-parent family, despite the fact that it is not expressly provided for in the regulation, since it is the interest of the newborn child for whose care the leave referred to in the provision is intended. It is not a matter of extending the leave to those who are not covered by the regulation, but of extending it to those who have the status of parent but who, because they are single parents, cannot enjoy it jointly or successively with the other parent. Moreover, from the perspective of the interest and protection of the newborn child, the simultaneous enjoyment of the leave by both parents during the first six weeks doubles the attention and care given to the child in the case of two-parent families. By contrast, in the case of a*

single-parent family, during those first 6 weeks of the child's life, the leave and therefore the care of the child must be assumed solely by the biological mother. Therefore, the interest of the child dictates that the extension of the leave should cover the duration of the leave provided for the other parent who is not the biological mother of the child, without any deduction.' (Doc. No 9).

It should be borne in mind that despite falling under a different jurisdiction, the benefit for civil servants is also regulated in Royal Decree-Law 6/2019 of 1 March, on urgent measures to guarantee equal treatment and equal opportunities for women and men in matters of employment and occupation, with the same wording as for female employees and for labour staff (Article 49.a EBEP).

2) Subsequent to the Supreme Court Judgment of 02 March 2023, a **Judgment was issued by the Social Chamber of the High Court of Justice of Catalonia on 27 March 2023** (rec sup 7026/2022), dismissing the appeal lodged by the INSS and confirming the judgment of Social Court No. 19 of Barcelona **which granted the applicant the recognition of 16 additional weeks to those already recognised for the care of a minor child in a single-parent family**, based on the following legal arguments, which are fully transferable to the present case (Doc. No. 10):

'This decision is based on Community rules, which we feel are fully applicable and prevail over the ruling of the Plenary of the Supreme Court.

In this regard, the judgment in question states, 'This particular vulnerability and situation conducive to discrimination is also noted in recital 37 of Directive 2019/1158, which states that 'Notwithstanding the requirement to assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations, Member States are encouraged to assess whether conditions for access to, and the detailed arrangements for, exercising the right to paternity leave, carers' leave and flexible working arrangements should be adapted to particular needs, such as of those of single parents, adoptive parents, parents with a disability, parents of children with a disability or a long-term illness, or parents in particular circumstances, such as those related to multiple births and premature births.'

To this end, the judgment refers to the case-law of the CJEU and mentions the judgment of 16 September 2010 which held that the principle of equal treatment requires that comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified. This reasoning led the Court to indicate that this extension of leave entitlements, or permitting an individual to take multiple leave entitlements, could serve to compensate for the greater work-life reconciliation problems arising from a complex parent-child relationship situation such as that indicated... This analysis in the specific case leads us to conclude that the uniform application of Article 48 of the Workers' Statute without considering the peculiarities and specific needs of single-parent families introduces a difference in treatment with respect to a group that has greater difficulties in reconciling work and family life, without any objective justification whatsoever'.

The cited judgment further adds, 'if this purpose of suspension of contract were to be interpreted in a linear or uniform manner, as advocated by the INSS, focusing exclusively on the consideration that we are dealing with two independent rights, each corresponding to each parent, without any possibility of extension, or one individual taking multiple leave entitlements, in any case, would be clearly detrimental to the rights and purposes for which protection is sought, placing the children of single-parent families in a situation of lesser protection than those of two-parent families. This results from our legislation not having taken into consideration the different models of family organisation existing today, thereby giving rise to differential treatment contrary to Article 39.2 of

the Spanish Constitution.... The interpretation proposed by the INSS completely and utterly disregards this aspect, generating an unjustified difference in treatment, in violation of Articles 2 and 3 of the Convention on the Rights of the Child... it is not possible to treat children differently in terms of care and upbringing on the basis of the composition of the family of which they form part. This is obvious discriminatory treatment due to a circumstance or condition, not so much of the child, but of his or her mother.'

3) In the same vein, Ms Gloria Poyatos Matas, Magistrate of the Social Chamber of the High Court of Justice of the Canary Islands, expressed her views in her dissenting opinion to the Judgment handed down on 4 May 2023 (rec. supl. 559/2022). This judgment upheld the appeal filed by the INSS and revoked the plaintiff's right to both leave entitlements, considering that **the Supreme Court, in its judgment of 2 March 2023 (Rec. 3972/2020), had not adequately weighed the concurrent perspectives of gender and childhood, diverging from the integrative interpretation it had applied in the judgments of 25 October 2016 (rcud 3818/2015), of 16 November 2016 (Rec. 3146/2014) and of 14 December 2017 (Rec. 2859/2016). This overlooks the obligation to review compatibility that falls to the ordinary justice system, as stated by the Constitutional Court in its Judgments 140/2018, 63/2021 and 113/2021** in relation to the prohibition of decisions that prevent a pronouncement on the merits which, due to their rigorousness, excessive formalism or, any other reason, reveal a clear disproportion between the ends that those cases safeguard and the interests that they sacrifice, violating the requirements of the principle of proportionality in relation to the best interests of the child, and failing to apply the Convention on the Rights of the Child of 20 November 1989, ratified by Instrument of 30 November 1990 (Official State Gazette 31/12/1990). Furthermore, General Comment No. 18 (1989) of the Human Rights Committee of 10/11/1989 (International Covenant on Civil and Political Rights) or General Comment No. 16 and No. 20 of the International Covenant on Economic, Social and Cultural Rights (international principle of due diligence) have been overlooked, as have Articles 1, 2 f) and 5. a) of the CEDAW and its Recommendation No. 33, which impose much more specific obligations to prohibit any discrimination on the basis of sexual orientation and gender identity, regardless of marital status. It should be noted that 81% of single-parent families are headed by women. There is a clear gender impact, and Article 48.4 of the Workers' Statute grants different protection to children depending on whether they are born in two-parent or single-parent unions, to the clear detriment of the latter (impact of childhood). This results in a disproportionately harmful outcome in respect of gender, which, in international terms, constitutes indirect gender discrimination, paving the way towards the gender pay and pension gap. This is because it pushes working mothers to resort to other instruments which have an impact on wages and the job, such as leaves of absence, reduced working hours or part-time work in order to care for their children alone. It also mentions the inequality that has arisen between single-parent families in which the parent is a judge, who are entitled to both the benefits discussed, compared to single mothers from any other profession who are denied this right by the Supreme Court. Dissenting opinion, reproduced in full (Doc. nº 11).

2.4. Reality of single-parent families in Spain

2.4.1 Statistical data on the composition of single-parent families

According to the 2020 Continuous Household Survey (*Encuesta Continua de Hogares*, ECH) of the National Statistical Institute (Instituto Nacional de Estadística, INE), in Spain in 2020 (latest data

published to date) there were 1 944 800 single-parent households, of which 1 582 100 are headed by women and only 362 700 are headed by men. This means that over 87.10% of single-parent households are headed by a (single) adult woman, i.e. 8.7 (almost 9) out of 10 single-parent households are headed by women (Doc No 12, page 5).

2.4.2 Vulnerable population group status and risk of poverty in single-parent families

Likewise, that single-parent families are a group of greater vulnerability it is not a point at issue, as is stated for illustrative purposes in the explanatory memorandum of Royal Decree-Law 20/2020 of 29 May on the minimum living income benefit. That memorandum highlights the need for protection due to the high vulnerability of single-parent families and thus grants special protection to such families, emphasising in its explanatory memorandum: '*The minimum living income protects single-parent households in particular (...). It also provides stronger protection for children (...)*'.

In this regard, it is worth noting that in Spain and Europe, the risk of poverty for children and adolescents in single-parent households is much higher than in two-parent families. According to the conclusion of report of the High Commissioner against Child Poverty '*Madre no hay más que una: monoparentalidad, género y pobreza infantil' ('There is only one mother: single parenthood, gender and child poverty*'), presented in March 2021, households headed by women suffer a greater situation of vulnerability compared to other households with children and adolescents. It indicates that being a mother in a single-parent household entails additional difficulties in terms of parenting and in relation to the labour market (...) Doc. nº 13). In this sense, unemployment and part-time work affect single motherhood (single parent mother) and single fatherhood (single parent father) very differently. Single mothers perform part-time work at three times the rate of single fathers and are almost twice as likely to be in a situation of unemployment. This means that only 55% of them work full time, which is compounded by the gender discrimination women face in the labour market (feminised, lower-value areas of activity, wage gap, among others). Consequently, poverty particularly affects children living in single-parent households. The risk of poverty for children and adolescents in single-parent households is 20 points higher (47.3%) compared to the total population (27.4%). In contrast, in the case of single parenthood, the child poverty rate is 25%. Although certainly high, this figure is below the national average and considerably lower than that of single-parent households. In turn, 50.5% of single-parent households at risk of child poverty are concentrated in highly populated areas (Report of the Commissioner against Child Poverty and the Government of Spain 2021, Doc No. 14).

In the same vein, the latest edition of the 11th Single Parenthood and Employment Report of the Adecco Foundation for the year 2023 shows that almost all of the women surveyed (96.6%) report some degree of difficulty in making ends meet. Specifically, 68.3% encounter great difficulty making it to the end of the month; 18.3% do so with difficulty and 10% with some difficulty. The economic situation is critical, with 74.1% having cut essential expenses due to the economic difficulties posed by their employment situation, exacerbated by the inflationary process we are experiencing. According to the respondents, the most difficult expenses to cover are housing (rent or mortgage: 65.7%), utilities (58.3%), children's education (40.6%), food (33.2%) and clothing (20.3%) (Doc. No. 15).

Added to this combination of factors is the difficulty of reconciling childcare and working life, leading to a higher probability of low wages which, in the best-case scenario, will be the only source of income. The special circumstances these mothers face, as we have seen, have a direct impact on the well-being of their children.

According to a report by the global consultancy, McKinsey, although only 39% of work worldwide is carried out by women, statistics confirm that 54% of unemployment resulting from the global

COVID-19 epidemic concerns women (Doc. No. 16). In Spain, according to the 2022 State Women's Labour Market Report by the Spanish Public Employment Service (SEPE), 1.1 million men were unemployed, compared to 1.63 million women (Doc. No. 17).

Accordingly, practice shows that extreme poverty situations fall more frequently on female-headed households and, therefore, without public aid, their dependants will not have the same opportunities for education and social integration as other families, leading to the perpetuation of intergenerational poverty (Doc. nº 18, Single-parent families and risk of social exclusion. (IQUAL. *Revista de Género e Igualdad* [Gender and Equality Journal], 2018).

Thus, receiving a financial benefit for 32 weeks (birth and parental leave) or 16 weeks (birth) depending on the family structure represents a considerable financial difference. This difference impacts not only the time spent directly caring for the child but also the financial cover received, exponentially increasing the risk of these children being exposed to poverty.

3. RELEVANT DOMESTIC AND INTERNATIONAL LAW

The principle of the best interests of the child, in connection with the protection of the mother (relevant to the case at hand), has been recognised both in national legislation and in international regulations (in the Declaration on the Rights of the Child of 20 November 1959 (principle VII) and the Convention on the Elimination of All Forms of Discrimination against Women (Articles 5 b) and 16)).

Below, we set out the concept and scope of the principle of the best interests of the child, with relevance to the single-parent family forming the subject of this complaint, in relevant domestic and international law, as they serve as inspirational or interpretative parameters for the interpretation and application of the invoked provisions of the Revised ESC carried out by the European Committee of Social Rights.

3.1. Domestic law: Legislation and Case-law

In addition to what has already been outlined in Section 2 of this complaint, concerning Spanish domestic law, the concept of the best interests of the child has been addressed on countless occasions

by Spanish case-law in various rulings, such as the Supreme Court Judgment (Civil Chamber) 565/2009) of 31 July (appeal 5817/2009). Thus, as stated in the sixth ground for the decision, this orientation of our legislation responds to the constitutional and international recognition of the best interests of the child as a higher principle that must guide any decision in matters of child protection (Article 39 of the Spanish Constitution, International Conventions - New York, United Nations Convention on the Rights of the Child of 1989).

In this regard, it should be noted that Article 96 of the Spanish Constitution establishes that duly ratified international treaties, once officially published in Spain, will form part of the legal system, and that infringement of international treaties and conventions will be addressed in accordance with Article 94 of the same text.

Moreover, Article 31 of Law 25/2014 of 27 November on International Treaties and Agreements states that: '*The legal norms contained in international treaties validly concluded and published officially shall prevail over any other norm of the legal system in case of conflict with them, except for constitutional provisions*.

Article 10.2 of the Spanish Constitution states that: '*Legislation on the fundamental rights and the freedoms accorded by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Spain*'.

Article 39 of the Spanish Constitution provides:

'1. The public authorities shall ensure the social, economic and legal protection of the family.

2. The public authorities likewise shall ensure full protection of children, who shall be equal before the law, irrespective of their parentage, and of mothers, whatever their marital status. The law shall provide for the investigation of paternity.

3. Parents shall provide their children, whether born within or outside wedlock, with assistance of every kind while they are still under age and in other circumstances in which the law is applicable.

4. Children shall enjoy the protection afforded to them in international treaties which look after their rights.

Related to the previous articles, Article 14 of the Spanish Constitution stipulates that *'Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance'*.

Elaborating on the previous provisions, Organic Law 8/2015 of 20 July amending the system of protection for children and adolescents (hereinafter, Organic Law 8/2015), amended Organic Law 1/1996 of 15 January on the Legal Protection of children, which partially amended the Civil Code and the Civil Procedure Act (hereinafter, Organic Law 1/1996), to amend the heading of Chapter I of Title I and its Article 2 precisely to incorporate the expression of the '*best interests*' of the child.

The preamble to the aforementioned Organic Law 8/2015 states that the best interests of the child, in addition to being a 'substantive right', is a 'general principle of an interpretative nature', so that, if a legal provision can be interpreted in more than one way, '*the interpretation that best responds to the interests of the child must be chosen*'. Furthermore, Article 2 of Organic Law 1/1996, as amended by Organic Law 8/2015, provides that '*every child has the right to have their best interests assessed and considered as paramount in all actions and decisions concerning them, both in the public and private spheres. In the application of this law and other regulations that affect it, as well as in the measures concerning children adopted by public or private institutions, the Courts, or legislative bodies, the best interests of children shall prevail over any other legitimate interest that may apply*.'

It should be noted that the provision recognises the 'right' of the child to have his or her '*best interests*' assessed and considered as '*paramount*' in all actions and decisions concerning him or her, both in the public and private sphere. It should be noted, in particular, that in the application of Organic Law 1/1996 and in the measures concerning children adopted, among other institutions, by the '*courts*', the best interests of the child shall take precedence over '*any other competing legitimate interest*'.

Organic Law 1/1996 establishes in Article 10.2.b) among the obligations of the Public Prosecutor's Office the duty to protect the best interests of the child.

For its part, Article 3.1 of the Civil Code states that '*Rules shall be interpreted according to the actual meaning of their wording, in relation to the context, the historical and legislative background, and the social reality of the time in which they are to be applied, paying particular attention to the spirit and purpose of the rules*'.

Finally, Article 4.2 c) of the Workers' Statute establishes that women workers may not '*be discriminated against directly or indirectly when seeking employment or, once employed, for reasons of marital status, age within the limits set by this law, social status, religion or beliefs, political ideas, [...], as well as for reasons of sex, including unfavourable treatment of women or men for exercising the rights of reconciliation or shared responsibility for family and professional life*'.

For all these reasons, by virtue of the aforementioned Article 10.2 of the Spanish Constitution, it will be essential to take into consideration the European Social Charter for the correct interpretation of the fundamental rights and freedoms it recognises. Specifically, with regard to the subjects on which we are focusing our attention, it should be noted that Article 39.4 of the Spanish Constitution, aimed at protecting minors, also refers to international agreements that safeguard children's rights. To properly assess the contributions of the Social Charter to the benefit of children, we must therefore consider the other international treaties and agreements ratified by Spain that reference children and adolescents.

As we have indicated above, the Supreme Court has ruled on various occasions giving priority to the best interests of the child, and several judgments have adopted an integrative interpretation, either in matters of social security, gender, or the interests of the child (Supreme Court Judgment 953/2016 of 16 November 2016 (rcud 3146/2014) based on the best interests of the child and the full protection of the child; Supreme Court Judgment 1005/2017 of 14 December 2017 (rcud 2859/2016), thus summarises the case-law established by the Supreme Court Judgments 881/2016 of 25 October 2016 (rcud 3818/2015) and 953/2016 of 16 November 2016 (rcud 3146/2014), Supreme Court Judgments 277/2018 of 13 March 2018 (rcud 2059/2016), and 347/2018 of 22 March 2018 (rcud 2770/2016) 997/2022, 21 December 2012 (rcud 3763/2019), among others).

Particularly noteworthy is Supreme Court Judgment 881/2016, 25 October 2016 (rcud 3818/2015), which states that the absence of express regulation does not necessarily prevent a favourable interpretation of the request based on the constitutional objectives of protecting children. It relies on several reinforcing arguments: firstly, that 'despite its origins and name, the protection that Social Security provides for '*maternity' extends far beyond the leave associated with childbirth*', citing in its support the Supreme Court Judgments of 9 December 2002 (Rº 913/2002) and 5 May 2003 (Rº 2497/2002) and Supreme Court Judgment 15 September 2010 (Rº 2289/2009). Secondly, it is clear that such *benefits are also provided in cases where there is no childbirth* (adoption, foster care, etc.). Finally, Article 39 of the Spanish Constitution sets out various principles that must govern our interpretation of the laws in force (Article 53.3 of the Spanish Constitution): to ensure the *social protection of the family, the full protection of children and to safeguard the rights of children*'.

The same interpretative basis is used in the Supreme Court Judgment 881/2016 of 16 November 2016 (rcud 3146/2014), based on the case-law of the First Chamber of the Supreme Court in the judgment of 6 February 2014 (Rº 245/2012), which states: '*The general best interests of the child clause contained in the legislation does not allow the judge to reach any outcome in its application. Rather, its application must be to interpret and apply the law and fill in its gaps, but not to contradict what is expressly provided for in the same*', granting the maternity benefits requested in another case of *'surrogacy*', carrying out an *'integrative*' interpretation of the rules considered, *'viewed in the light of the judgment of the ECHR of 26 June 2014, in its application of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which invokes the best interests of the child, respect for which must guide any decision affecting them*', as well as *'Article 14 and (Article) 39.2 of the Spanish Constitution, which provides that the public authorities shall ensure the full protection of children*'. This principle should be followed for the interpretation of the rules under consideration on maternity protection.

Finally, it is worth highlighting Supreme Court Judgment 1005/2017 of 14 December 2017 (rcud 2859/2016), which thus summarises the case-law contained in Supreme Court Judgments 881/2016 of 25 October 2016 2016 (rcud 3818/2015) and 953/2016 of 16 November 2016 (rcud 3146/2014):

'1) The rules on maternity protection must be interpreted in the light of the general principle of the best interests of the child who is integrated into the family nucleus with the parent or parents who provide parental care and attention, in accordance with the provisions of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the mandate of Article 39 of the Spanish Constitution, on the protection of the family and children, a concept that must prevail and serve as a guide for the solution of any interpretive doubt, as well as in accordance with the 'social reality of the time in which they are to be applied, taking into account fundamentally the spirit and purpose of the law' (Article 3.1 of the Civil Code).

3.2. International Sources

a) The United Nations

At the international level, many treaties have shown commendable concern for the well-being of children, not only international treaties specifically dedicated to children, such as the Declaration on the Rights of the Child of 20/11/1959, or the UN Convention on the Rights of the Child of 20/11/1989, but also general covenants, such as the Universal Declaration of Human Rights of 10/12/1948, or the International Covenant on Civil and Political Rights of 19/12/1966.

With regard to the UN Convention on the Rights of the Child, we will make specific references to the most relevant articles, specifically articles 2, 3, 6 and 12.

Thus, the best interests of the child is set out as a general clause in Article 3.1 of the Convention on the Rights of the Child:

"Article 3.1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

This provision is of a general nature and qualifies as a general principle of the Convention alongside non-discrimination (Article 2), the right to life, survival and development (Article 6) and the right of the child to be given due regard (Article 12), the right to benefit from social security (Article 26) and to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27).

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 6.2.

'States Parties shall ensure to the maximum extent possible the survival and development of the child'.

Article 26

1. 'States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.'

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Article 24.1 of the Universal Declaration of Human Rights provides that *'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.'*

Finally, mention should be made of ILO Convention No. 156 on Workers with family responsibilities of 1981, ratified by Spain on 11/9/1985, which establishes in its articles 3 and 4:

'Article 3 1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so

without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. (...)
Article 4. With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken -
a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
b) to take account of their needs in terms and conditions of employment and in social security.

B) European Union

European Union law and the case-law of the Court of Justice also call for equality and respect for human rights, including the rights of persons belonging to minorities. One of the European Union's obligations is to combat social exclusion and discrimination and promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child (Articles 2 and 3.3 of the Treaty on European Union, provisions contained in the explanatory memorandum of Royal Decree-Law 6/2019).

In accordance with Article 3.3 of the Treaty on European Union, '*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities*. *Those values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'* (Article 2). '*It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*.' (Article 3.3).

Concerning the definition of '*best interests of the child*', we should mention Article 12 of the Council of Europe European Convention on the Exercise of Children's Rights of 25/1/1996 (Official State Gazette 21/02/2015), which states that:

'1. Parties shall encourage, through bodies which perform, inter alia, the functions set out in paragraph 2, the promotion and the exercise of children's rights.
2. The functions are as follows:
a) to make proposals to strengthen the law relating to the exercise of children's rights;
b) to give opinions concerning draft legislation relating to the exercise of children's rights;
c) to provide general information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children;
d) to seek the views of children and provide them with relevant information.

In addition, Articles 21 and 23 of the *Charter of Fundamental Rights of the Union* (also included in the aforementioned Explanatory Memorandum) prohibit all discrimination, in particular on any ground such as sex, race, ethnic or social origin, belief, political or any other opinion, membership of a national minority, birth, and age, inter alia, making it possible to adopt specific advantages in favour of the under-represented sex. Articles 20, 24, 33 and 34 of the aforementioned Charter of Fundamental Rights of the European Union also apply.

Similarly, the European Parliament Resolution of 13/9/ 2016, on creating labour market conditions favourable for work-life balance, specifically paragraphs B, C, D, M and N, and general principles 7, 8 and 10, provides that States must ensure that 'relevant policies and measures take account of the increasing diversity of family relationships (…) ***to guarantee that a child is not discriminated against because of its parents' marital status or family constitution***.'

Likewise, we consider that limiting the right to both childbirth and childcare benefits in the case of single parents contradicts Directive 2019/1158 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, which states that the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status, in particular as concerns: the scope of the schemes [of social security] and the conditions of access thereto, ... the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits. It expressly states that the principle of equal treatment does not preclude provisions relating to the protection of women on the grounds of maternity. In this respect, the recent judgment of the Court of Justice of the European Union of 08 September 2019 (Case C 161/18) has been established.

4. GROUNDS OF THE COMPLAINT

4.1. Preliminary Issues: Scope ratione materiae and ratione personae of the Revised European Social Charter

We consider that in the present case, the criterion applied so far by the Spanish State regarding the taking of both birth leave and parental leave entitlements in a single-parent family, and the mother concerned, causes clear discrimination in comparison to children in two-parent households.

If we interpret the purpose of the whole regulatory framework covered by this complaint, it is clear that the care of a child with two fathers or two mothers, or a father and a mother, cannot enjoy better social protection than the care of a child under 12 months of age in a single-parent family. This implies clear discrimination relating to the benefits and obligations of the State, contradicting the spirit of both national and European regulations, in our case, especially the provisions invoked of the Revised European Social Charter.

We consider that the consequences that may derive from the decision to form a single-parent family should not affect the child, given that regardless of whether or not single parenthood is by choice, the nature of the child's family is an independent matter beyond the control of the child, who therefore cannot be harmed for that reason. It is contrary to law to discriminate on the grounds of birth, as well as on the grounds of family composition and/or marital status of the mother, in clear contravention of Article E of the ESC read in conjunction with Articles 27.1, 12, 16 and 17 of the same text.

Indeed, assuming the case of single-parent families that meet the double contribution requirement (360 days) compared to two-parent families where each parent complies with the 180-day contribution requirement, we consider that Spanish legislation discriminates against children under 12 months of age in single-parent families because of their family model and discriminates based on the sex or gender of their mother. Denying entitlement by the single mother to the birth leave and parental leave of the other parent entails:

1) Discrimination against children in single-parent families, who only have the right to 16 weeks of care, whereas children in two-parent families are entitled to 32 weeks of care. A lack of child protection for children in single-parent families, who are forced to attend daycare or other alternative care, as they have only 16 weeks, while those in two-parent families will get full care from their own parents up to 32 weeks. In our view, this is a violation of Articles 17 and 16 of the Revised ESC in relation to Article E.

2) Discrimination against the mother and the child on the basis of the marital status of the parent (single) and the composition of their family, in violation of Articles 16, 17, 12 and 30 of the ESC in relation to Article E.
3) Discrimination between men and women, a wage gap and greater precariousness for women who are single mothers, who make up the vast majority of single-parent families. These single mothers must assume 16 weeks earlier than those in two-parent families the costs of caring for their children while working, which also harms their career development and reduces their income, in violation of articles 12.3), 27.1, 30 of the ESC.

As we will detail below, all legal practitioners have the obligation to interpret and apply the rules in the most favourable way to the child, analysing the context in which the child is found in order to take the most appropriate decision, adapting the law to the social reality of the moment, even prioritising, if necessary, the best interests of the specific child over a binding rule, correcting its effects.

Thus, the law's development in recent decades stems from a broader social and ideological context marked by the changing social perception of childhood and by a new sensitivity towards the values of the person in general, and of the person in their childhood and youth phases in particular. Therefore, the policies adopted by a State must place the child at the centre and specifically adapt to their needs.

Mention of the family is reiterated throughout the text. In Part I, paragraph 4 prescribes the right of workers to a remuneration such as will afford and their families a decent standard of living. Point 16 of this part focuses in particular on the right of the family, as the fundamental unit of society, to adequate social, legal and economic protection to achieve its full development. The aforementioned paragraph 17 of Part I is also based on the family relationship between mother and child.

From a joint reading of the above-mentioned provisions, we conclude that the Social Charter protects the nuclear family, consisting of parents and children, regardless of whether the bond between the parents is based on marriage, and protects the single-parent family on equal terms.

It should be noted that paragraph 17 recognises the right of mother and child to protection *'irrespective of marital status and family relationships*'.

Beyond the possibly changing concept of the family in line with social evolution, it is important to note here that, in any case, family protection seems ultimately geared towards the well-being of the minor, of children who are born and grow up within the family unit. This is corroborated, in addition to the aforementioned paragraph 17, by point 8 of Part I, which offers special protection for female workers in the event of maternity.

Therefore, although the best interests of the child is the ultimate good and the legal good to be protected, the legislation of the Spanish State and the interpretation of the Supreme Court lead to children in single-parent families being discriminated against with less time of care with financial cover solely because of their family composition, which is a violation of the rights in the Revised ESC.

In this spirit, from a broad interpretation, we can affirm that the generality of the provisions and articles of the Social Charter - geared, as its Preamble states, towards the enjoyment of social rights, the improvement of the standard of living and the promotion of well-being - (must be assumed) to be ultimately in the interests of the minor, especially when he or she is part of a vulnerable family unit such as the one in question (headed by single parent).

In Part I of the Revised ESC, the parties undertake to establish the conditions in which the rights

and principles set out therein can become effective, among which is that 'Children and young persons have the right to appropriate social, legal and economic protection' (paragraph 17), a principle undoubtedly based on family ties**.** This provision highlights the Charter's concern that States should provide special protection to young children because of their particular vulnerability, for whom Contracting States should not only ensure that they are protected against physical and moral hazards (paragraph 7), but also provide them with adequate economic and social protection. Such economic and social protection, interpreted in accordance with the Preamble to the Charter, must be linked to the promotion of economic and social progress for all, the enjoyment of social rights without discrimination on grounds of sex, political opinion (marital status), national or social origin and the improvement of the standard of living and social well-being. Thus, despite the declaratory value of Part I of the Charter, it does not allow signatory states to adopt legislative or administrative measures that run counter to these objectives.

This section is expounded in Article 17 of Part II of the Charter, which states that to guarantee the effective exercise of the right of mothers and children to social, legal and economic protection, the Contracting Parties *'will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services*'.

References to the family are thus reiterated throughout the Revised ESC. In Part One, paragraph 4 prescribes the right of workers to a remuneration such as will afford them and their families a decent standard of living. Paragraph 8 provides for special protection for female workers in the event of maternity. Point 16 of Part I focuses in particular on the right of the family, as the fundamental unit of society, to adequate social, legal and economic protection to achieve its full development. The aforementioned paragraph 17 of Part I is also based on the family relationship between mother and child.

From a joint reading of the above-mentioned provisions, we conclude that the Revised ESC protects the nuclear family, consisting of parents and children, regardless of whether the bond between the parents is based on marriage, and protects the single-parent family on equal terms. As noted above, paragraph 17 recognises the right of mother and child to protection *'irrespective of marital status and family relationships*'. Therefore, beyond the traditional family, understood as the two-parent family (two adults and their offspring), the ESC envisages a broader interpretation of family groups, similar to that which the case-law has been providing with respect to the Spanish legal system: '*the family shall exist wherever there is a prior matrimonial or child-parent relationship, even if it has no connection with the marital status or has its origin in an unlawful act*'. The lack of definition of the term '*family*' also favours a sociological interpretation, anchored in reality, in the sense that the transformations that the conception of this institution undergoes with social evolution will have to be taken into account when applying the Charter, the ultimate aim of which in any case is the protection of the well-being of the minor, of the children who are born into and grow up within the household, whether two-parent or single-parent. This is corroborated, in addition to the aforementioned paragraph 17, by point 8 of Part I, which offers special protection for female workers in the event of maternity.

The specifications of these social policy objectives of the signatory states in Part II of the Charter are of particular interest. According to paragraph 16 of the Charter: "*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*."

It should be emphasised that Article 16 of the ECS is at the core of the Charter's protection as one

of the seven provisions that form the essential minimum block, which means that the right of the family to social, legal and economic protection is of the utmost importance.

Article 17 of Part II shows concern to ensure the effective exercise of the right of children and adolescents to grow up in an environment that fosters the full development of their personality and their physical and mental capacities. The signatory States undertake, in accordance with the first paragraph of Article 17, to adopt all necessary measures to *"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."* In accordance with the interpretation provided by the Appendix to the revised Charter, this Article 17 refers to minors under the age of eighteen, indicating that the ESC adopts the definition of a child used in the United Nations Convention on the Rights of the Child of 20 November 1989.

The Appendix to the Charter contains not only the interpretation to be given to some of its provisions, but also the specification of its subjective scope concerning certain categories of protected persons, such as single-parent families).

It follows from the above that the scope of Article 16 of the ESC is not limited to families founded on marital or de facto unions, accepting any situation defined as a family by the national legislature. In Spain, a household is recognised as a unit comprising a single parent and one or more children (in Article 182.3 b) of the General Law on Social Security [LGSS]).

Consequently, in accordance with the aforementioned Article 16, the right to a family must be respected and guaranteed regardless of the family model in question, including the right of newborn children to be cared for the same length of time. Otherwise, these rights would be violated by prioritising one model over another, infringing on the right to equality of children born into single-parent families, and failing to fulfil the commitment of the public authorities with regard to children's rights.

With this in mind, we now turn to the specific arguments supporting our claim that the substantive provisions invoked (Articles 17, 16, 12.3, 27.1 and 30 of the Revised ESC) have been violated, both on their own and in conjunction with Article E.

4.2. Violation of Article 17 of the Revised ESC alone and in conjunction with Article E

Article 17. ***The right of children and young persons to social, legal and economic protection***

"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:*

1.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."

Appendix to the European Social Charter (Revised) Article 17

"It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific

provisions provided by the Charter, particularly Article 7. This does not imply an obligation to provide compulsory education up to the above-mentioned age."

Article E: Non-Discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, ***association with a national minority, birth or other status****.*

Appendix to the European Social Charter (Revised), Article E

"A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory."

According to ECSR case-law, "the Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children - that is persons aged under 18"*(Defence for Children International v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2008, §§ 25-26). The ECSR has also held that the Charter "enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based" (*Association for the Protection of All Children (APPROACH) Ltd. v. Belgium*, Complaint No. 98/2017, decision on the merits of 20 January 2015, § 48).

In the light of Article 17 of the Revised ESC, alone and in conjunction with Article E, in the interpretation given by the ECSR, it is clear that Spanish law inflicts discriminatory treatment on children under 12 months of age in single-parent families.

It is an undisputed fact that children must not be discriminated against because of the decision on the family model adopted by their parents, especially when the child is a newborn, which is the most vulnerable stage of his or her life. This means that this best interest must be assessed, granting equal legal protection that makes it possible to achieve the objective pursued, which is their care and integration into the family, regardless of whether it is a single-parent or two-parent household.

In the present case, we find a difference in treatment between newborn children in a two-parent family and a single-parent family. While children in two-parent families are entitled to be cared for for 32 weeks, 16 weeks per parent, children in single-parent families are only entitled to be cared for by their single parent for 16 weeks. We note that we start out from the assumption that the single parent (mostly women) meets the so-called double contribution requirement, i.e. the 180 days required for the mother and the 180 days required for the father.

Royal Decree-Law 6/2019, which amended Article 48.4 of the Workers' Statute and Article 49 of the EBEP, is based on a situation where both parents contribute to care, granting 16 weeks per parent to be taken before the child reaches the age of 12 months, either cumulatively or interrupted. It follows from this legal regulation that, adding together all the time corresponding to both parents and starting from the initial period of six uninterrupted weeks of simultaneous and compulsory leave immediately after the birth, the special care of the newborn can be extended to 32 weeks, whether continuous or intermittent. However, conversely, when the child is born into a single-parent family and there is only one parent, the protection provided by the provision for the care of the newborn only extends to the 16 weeks corresponding to the sole parent, leaving out the additional 16 weeks of the other parent.

If we start from the unacceptable discrimination of the child on the basis of their own condition or the civil status or situation of their parent, by introducing a period of care and attention for the group of children in single-parent families, we are not only diminishing the care in relation to that

provided in two-parent families but also introducing a bias that hinders the child's development, as they benefit from less time and personal involvement on the part of their single parent.

In this sense, we must also bear in mind that the type of upbringing is a fundamental influence on child development. Infancy/early childhood is the period during which interactions with parents lay the foundation for the development of trust, which is an essential element for children to 'know' that they can safely explore environments and learn from those explorations.

A key requirement for optimal child development is secure attachment to a trusted caregiver, with constant care, support and affection in the early stages of life. An infant develops the capacity for emotional control before its first birthday and a sense of 'attachment' to its caregivers during the first year. This 'attachment' is the extent to which the baby develops trust that the caregiver will respond quickly and appropriately, thus providing a sense of security. If the level of trust is high, the 'attachment' is described as 'secure'. Babies and young children with secure attachment use the emotional and physical security it provides as a base from which to explore things and people in the environment.

Equality as a value, as a Principle and as a Fundamental Right should be the tool for interpreting birth and care leave for children under the age of 12 months. The purpose of the rule, which is laudable and aimed at promoting fairness, if interpreted in a strict and inflexible manner, in fact generates discrimination that lacks objective and reasonable justification, as required by the case-law of the ECSR. In particular, according to the settled case-law of the ECSR, 'a measure is discriminatory under Article E of the Charter if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim pursued' *(European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40). The ECSR also considers that 'while States Parties enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law, it is ultimately for the Committee to decide whether the difference lies within this margin' *(Confédération française démocratique du travail* (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, §§ 37-39 and 41; ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §82). In the light of the above-mentioned jurisprudential criteria of the ECHR, it must be concluded that there is a violation of Article 17 of the Revised ESC, both on its own and in conjunction with Article E.

4.3. Violation of Article 16 of the Revised ESC alone and in conjunction with Article E

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.*

Appendix to the Revised European Social Charter Article 16.

The protection granted by this provision is understood to cover ***single-parent families****.*

The perspective of childhood obliges Spain to prioritise the best interests of the child in accordance with Article 17.1.a) of the Revised ESC, in relation to the United Nations Convention on the Rights of the Child and Spanish domestic legislation (Article 2 of Organic Law 1/1996 of 15 January on the Legal Protection of Children). However, in the case at hand, this perspective is

intertwined with the economic, social and legal protection of the family set out in Article 16 of the Revised ESC. Naturally, it is in the best interests of the child for those who care for the child to dedicate the recommended amount of time for the child's development. In current Spanish society, this has been established as 32 weeks as a general rule (16 weeks per parent). Therefore, in order to achieve the goal of ensuring that those who care for the child can dedicate the time recommended for the child's development, it is necessary, in the case of single-parent families where the head of household works, to have longer leave than the one granted individually.

In the light of the case-law of the ESCR, 'under Article 16 of the Charter, the family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development. With a view to ensuring the necessary conditions for the full development of the family, States undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, tax arrangements, provision of family housing, benefits for the newly married and other appropriate measures' (Union for Child Welfare *(CUCW) v. Finland*, Complaint No. 139/2016, decision on the merits of 11 September 2019, §109. See also, previously, *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §133).

In this regard, Article 16 of the Charter requires that children under the age of 12 months may not be subjected to discriminatory treatment on the basis of the family structure into which they are born (or part of). Therefore, we consider that the rules on maternity protection, including those relating to childbirth and childcare benefits, must be enacted and interpreted in the light of the general principle of the best interests of the child, who is integrated into the family nucleus with the parent(s) providing parental care and attention, in accordance with Article 16 of the ESC (intertwined, as mentioned, with Article 17 of the ESC) as well as Article 8.1 and .2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In fact, this intertwining is also derived from the mandate of Article 39 of the Spanish Constitution relating to the protection of the family and children. This article should prevail and serve as a guide for the solution of any interpretative doubt, while considering the social reality of the time in which the rules are to be applied, and taking into account fundamentally the spirit and purpose of the article. Indeed, Article 39 of the Spanish Constitution must be interpreted in the light of Articles 16 and 17 of the European Social Charter, and also in a manner consistent with Article 10.2 of the Spanish Constitution.

However, Article 2.12 of Royal Decree-Law 6/2019 of 1 March allocates less care time (16 weeks) to newborn children belonging to a single-parent family compared to those in a two-parent family, who are allocated 32 weeks of care for their children. This regulation, if interpreted strictly and to the letter (without taking into account the rest of the legal system in which it is embedded and, in our case, the standards of the European Social Charter), discriminates against children under 12 months with a single parent as opposed to those with two parents, which is contrary to the best interests of the former.

From this perspective, it is clear that we are faced with discrimination against the mother and the child on account of the marital status of the parent (single) and their family composition. Indeed, even today, in the Spanish legal system, the concept of the 'family' model is still based on the two-parent family model as if it were the only one. This has perverse consequences, especially when the public policies and measures adopted are based exclusively on the traditional two-parent family, as this leads to multiple forms of discrimination against those who have opted, for example, for the single-parent family. It is especially contrary to the best interests of the children in these households. The current legislation in Spain is thus based on the two-parent concept of the family, consisting of

the biological mother and the other parent, and the legal regulation fails to consider the particular situation of single-parent families, who are offered a shorter duration of the rights it grants. Therefore, respecting and guaranteeing the right to the family on the basis of the principle of equality implies that it is the responsibility of sensitive social protection schemes to support the various types of families without prioritising one model over another.

If an adequate and updated interpretation of this constitutional paragraph is made, it should be understood in a broad sense and, consequently, it should be understood that children under 12 months of age in single-parent families should also have access to the regulations governing childbirth and childcare benefits so that these children are not discriminated against in comparison with children under 12 months of age in two-parent families.

In short, we consider that children under the age of 12 months have the right to equal social protection and that Spanish legislation should not offer different treatment in terms of care and upbringing based on the parent-child relationship and the composition of the family of which they are part. Therefore, we consider that in the case in question, a child with a single parent is discriminated against both in terms of care time and financially because of their parent-child relationship and the marital status of the mother. This difference in treatment is contrary to Article 17 of the Revised ESC *(above*) and Article 16 on their own and in conjunction with Article E, since children born into a single-parent family are left without the social, legal and economic protection set out in Articles 16 and 17. Article E is also violated due to the discrimination these children suffer in comparison with children born into two-parent families. Moreover, as will be argued later, this also leads to the social exclusion of these single-parent families, contrary to Article 30 of the Revised ESC.

In addition, there is a great inconsistency in the fact that the Supreme Court does not allow single mothers to take double leave, while the General Council of the Judiciary (CGPJ) does allow single-parent families headed by judges to take multiple leave entitlements. Thus, the governing body of the Spanish Judiciary recognises the right of single parents (single-parent families) in its organisation to take parental leave entitlements that would have corresponded to the other parent in the case of a two-parent family under Article 177 of the General Law on Social Security, where the requirements of Article 178 of the same text are met. For this, it refers to the constitutional mandate of Article 10.2 of the Spanish Constitution, in relation to articles 2 and 3 of the Convention on the Rights of the Child, Article 373 sections 2, 6 and 7 of the Spanish Judiciary Act in relation to the provisions of articles 49, c) of the EBEP, and articles 3 and 4 of the Civil Code, relying on the Judgment of the TSJPV of 6/10/2020 which was annulled by the Supreme Court in the Judgment of 2 March 2023.

In turn, the General Council of the Judiciary (CGPJ) itself considers that the Universal Declaration of Human Rights and the international treaties and agreements ratified by Spain are directly applicable in the interpretation of rules relating to the fundamental rights and freedoms recognised by the Constitution. It points out that in this case, therefore, the Convention on the Rights of the Child, which prohibits discrimination against children, regardless of their status or that of their parents, and provides for the obligation of public administrations to ensure the best interests of the child, is applicable. It also notes that the Civil Code allows for the analogous application of rules when, in the absence of provisions in a given case, the provisions of a similar case with which the same reason is found to apply are applied.

The General Council of the Judiciary indicates that the benefit of the child, his or her best interests, is the purpose of the exception that the law envisages when it allows the transfer of the leave to the other parent in cases of death of the biological mother. It emphasises that the loss of the biological

mother should not limit the total time that the two parents could have devoted to the child if each of them had taken their respective leave consecutively.

The judges' governing body concludes that, similarly, in the case under analysis, the best interests of the child cannot be affected or limited by the fact of belonging to a single-parent family and having only one legal parent. It asserts that denying the judge's request would violate the child's right to non-discrimination by preventing them from benefiting from the same amount of direct care and attention they would have had they been born into a two-parent family.

Similarly, the Ministry of Social Rights and Agenda 2030 stated that not allowing both leave entitlements to be taken in single-parent families was clear discrimination.

From the foregoing it can be concluded that, in a single-parent family, if the biological mother is a civil servant in the General Council of the Judiciary or in the Ministry of Social Services and Agenda 2030, the child under 12 months will be entitled to be cared for with financial cover by their sole parent for 32 weeks. This implies discrimination against children with a single parent who is employed, in violation of the prohibition of discrimination provided for in Article E of the Revised ESC in conjunction with Articles 17 and 16 thereof, as well as in Article 12.3 *(infra*). Indeed, the factual circumstances mentioned are similar and comparable, without any objective and reasonable circumstance to differentiate the other children in single-parent families who are the subject of this complaint.

4.4. Violation of Article 12.3 of the Revised European Social Charter, alone and in conjunction with Article E

Article 12 – The right to social security

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

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

With regard to this provision, the ECSR has noted that 'Article 12§3 requires States to improve their social security scheme. The expansion of schemes, protection against new risks or increase of benefit rates are examples of improvement' (Statement of interpretation on Article 12, Conclusions 2009). 'A restrictive development in the social security system is not automatically in violation of Article 12§3' (Statement of interpretation on Article 12, Conclusions XVI-1). 'However, as the Committee had previously held, any restrictive developments should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. In any event, any changes to a social security system must nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive (Statement of interpretation on Article 12, Conclusions XVI-1)' (*Finnish Society of Social Rights v. Finland*, Complaint No. 172/2018, decision on the merits of 14 September 2022, §67-68).

In the light of that case-law, it is evident that depriving a single mother of the right to take both birth leave and parental leave constitutes a lack of social, legal and economic protection for children under 12 months of age in single-parent families. These children are discriminated against on the basis of their mother's marital status in comparison with children born into a two-parent family. Neither the Spanish legislature nor the Supreme Court has applied an inclusive interpretation of Article 48(4) of the Workers' Statute in their rulings. Rather, they have adopted a stance which fails

to consider the specific needs of children and their sole parent, despite Spain's commitment to strive to progressively raise the level of the social security scheme as imposed by Article 12.3 of the ESC.

The suspension of contract referred to in the aforementioned legal provision cannot diminish the right of children under twelve months of age to be cared for by their attachment figures for the same period of time as those born into a two-parent household. In so doing, the Spanish legislation at issue not only violates, as argued *above*, Articles 17.1.a) and 16 of the Revised ESC, in isolation and in conjunction with Article E, but also Article E thereof in conjunction with Article 12.3 thereof, as it is a discriminatory measure contrary to the principle of equality. Additionally, Spain has not deemed it necessary to change its social benefits regime for the care of newborn children in a single-parent household.

The above also contradicts the national provisions established in Article 39.2 of the Spanish Constitution in relation to Article 14 of the same legal text, as it entails unequal treatment in terms of time spent caring for children in single-parent families, as well as for these family realities and the women who head them (82%). These women need measures for reconciliation between work and family life to address the situations of discrimination they face and the risk of precariousness in which they are placed.

Therefore, we consider that not granting this right to a single-parent family, and those who form part of this household, despite the mother meeting the requirements set out in Article 178 of the General Law on Social Security (being registered with the Social Security and complying with the required contribution period), represents discrimination by failing to introduce measures for reconciliation between work and family life in the current wording of Article 48.4 of the Workers' Statute, recently reformed by Royal Decree-Law 6/2019 of 1 March on urgent measures to guarantee equal treatment and equal opportunities for women and men in matters of employment and occupation (hereinafter Royal Decree-Law 6/2019 of 1 March). This constitutes a violation of the best interests of the child in relation to time of care with financial cover by the sole parent for 32 weeks in the first year of life, contrary to Article E of the Revised ESC in conjunction with Article 12.3, insofar as it raises the level of the social security scheme only for two-parent families, discriminating against the single-parent families in question.

Indeed, in connection with what has been demonstrated in the previous points, the care of the child cannot be carried out if the States parties do not adopt measures in the field of employment and social security that take into account the needs of workers with family responsibilities on an equal footing, regardless of the marital status of the mother. Specifically, if the single parent is not allowed to add parental leave to birth leave, we consider Spain to be in breach of Article 12.3) of the Revised ESC by not recognising the right of a single-parent working mother to enjoy the same number of weeks as a two-parent family. And, for the same reasons, as will be set out in the following allegation, Spain is in breach of Article 27.1.a and b of the Revised ESC.

4.5. **Violation of Article 27 of the Revised ESC, alone and in conjunction with Article E**

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

"*With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:*

1. to take appropriate measures:

a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b) to take account of their needs in terms of conditions of employment and social security."

Concerning the protection of the family and children and non-discrimination, the ECSR decision on the merits of 11 September 2019 resolved Collective Complaint No 139/2016 [*Central Union for Child well-being (CUCW) v. Finland*], where the complainant organisation alleged that the new legislation on maternity, paternity and parental leave, depending on the municipality in which one lives, discriminated against unemployed parents and their children. Consequently, Finland violated Articles 16, 17, 27 and E of the Revised ESC. The ECSR found a violation of Article E (non-discrimination) in relation to Articles 16 and 17.1.a) (protection of the family and children, respectively), as well as Article 27.1.c) of the Revised ESC (reconciliation of work and family life), by restricting access to free daycare services to the detriment of the most vulnerable families or those with higher social burdens (with unemployed parents or parents on maternity, paternity or parental leave) and in an asymmetrical manner depending on the municipality of residence. We consider that in the present case, by analogy, the same criterion should be applied by the ECSR, taking into account the vulnerability of single-parent families.

Indeed, according to the same substantive decision of 11 September 2019, 'Article 27 guarantees the right to equal opportunities and treatment for men and women workers with family responsibilities and between such workers and other workers. (...) Therefore, the notion of equality is inherent in the very recognition of this right and accordingly, it is combined with the specific prohibition on discrimination enshrined in Article E of the Charter. (...) The Committee considers that the examination of the complaint under Article 27 is in substance analogous to the examination conducted above with regard to Article E read in conjunction with Article 17§1a) and it sees no reason to depart from its previous conclusion' (§§ 93-94).

The principle of equality that must govern in this case is established in the Spanish Constitution and reinforced by Article 27.1 of the Revised ESC and Article E of the same text, ratified by Spain. Specifically, the legal certainty and equality enshrined in Articles 9.2 and 14 of the Spanish Constitution advocate not only for formal equality but also for material equality, ensuring that equal situations are treated equally and unequal situations are treated differently to eliminate inequality, especially when it concerns a minor, who is particularly vulnerable due to age and physical conditions.

In this case, the focus of equality is not solely on the mother as the sole parent, but also on the right of her child to be cared for for 32 weeks by her most direct relatives (in this case, only her mother). This child has less access to protection during the first months of life compared to another child with two parents, which implies de facto discrimination against the child under 12 months for belonging to a single-parent family if we only consider the literal wording of the rule.

Discrimination by failure to take account of differences occurs when single-parent families are given the same treatment as two-parent families despite having needs that are different. Assigning the mother the same amount of leave (16 weeks in the case of childbirth) whether she is part of a two-parent or single-parent household ignores the differences between these two realities, which require differentiated treatment to eliminate all direct and indirect discrimination that women face when reconciling work and family life, as intended by both national and international regulations.

From this perspective, it is necessary to underline that single-parent families are not excluded from the right to take both leave entitlements because of not meeting the objective requirement of double

contributions (360 days), but rather because they are not two-parent families. This constitutes a perverse requirement contrary to freedom and non-discrimination based on marital status or family composition, since if there is no other parent, the child will not have the right to be cared for for 32 weeks.

Additionally, the reduction in care time with financial cover for children under 12 months of age in single-parent families violates the right to reconcile family and professional life as set out in Article 27.1 of the ESC, by applying different care times for children depending on the family model and the profession of their mother. We underline that single-parent female judges are allowed to take both leave entitlements, which constitutes discrimination prohibited by Article E of the ESC.

In particular, we consider that denying single-parent families the right to take both birth leave and parental leave is a violation of Article 27.1 of the ESC in relation to Article E.

Limiting the right to take both birth leave and parental leave in the case of single parents who are not judges or ministry staff contradicts the provisions invoked herein relating to the progressive implementation of the principle of equal treatment for men and women in matters of social security. This principle means that that there shall be no discrimination on grounds of sex, directly or indirectly, especially on account of marital or family status, in particular as concerns the scope of the schemes and conditions of access, the obligation to contribute, the calculation of contributions and benefits, including increases for dependants, and the conditions governing the duration and retention of entitlement to benefits. It expressly states that the principle of equal treatment does not preclude provisions relating to the protection of women on the grounds of maternity. In this respect, the Judgment of the Court of Justice of the European Union dated 08/09/2019 (Case C 161/18) supports this principle.

Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the General Assembly in 1979 and ratified by Spain in 1984, established the 'Committee on the Elimination of Discrimination against Women', which examines the progress made by the different States Parties. Article 11.1 of CEDAW provides that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights. Article 11.2 states that, in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities'.

In this context, we are of the view that it is necessary to further specify the violation of Article E of the Revised ESC in combination with Article 27, since there is direct gender discrimination a) and indirect gender discrimination b):

(a) Direct gender discrimination

In 2020, 98.98% of two-parent families in Spain were composed of a woman and a man.

Suspension with the right to return to same job as set forth in Article 48.4 of the Workers' Statute, which limits parental leave to the other parent, violates the rights of newborns by discriminating against them for having a single parent. The mother, too, faces discrimination. As the only adult in the household, she benefits from less time to care for her child during their first year of life, and less financial capacity to provide such care. It is worth recalling that if the mother dies, the other parent (usually a male) will have the right to both leave entitlements (13th Additional Provision of the Workers' Statute and Article 49. a) of the EBEP). Therefore, this is an exceptional case where there

is only one parent, and the law already provides that the 'other parent' is entitled to the full 16 weeks of suspension. The benefit of the child, his or her best interests, is the purpose of the exception that the law envisages when it allows the leave to be transferred to the other parent if the biological mother dies. Our legal system establishes that the death of the biological mother should not limit the total time that the two parents could have devoted to the child if each had taken their leave consecutively. This means that the legislature considered that the existence of a single parent requires different regulation, and devised its legislation accordingly.

Bearing in mind that in two-parent families the other parent is usually a man, and it is an uncontested fact that no man dies during childbirth, the law allows single-parent families headed by a man to opt for this right to combined benefits. This regulation provides that if the mother dies during childbirth, the father can enjoy the 16 weeks of the first parent's benefit in addition to his own. The result is that minors in single-parent families headed by a man are cared for and receive benefits for a full 32 weeks. This constitutes direct discrimination against women, the only ones who can give birth and potentially die after childbirth, yet cannot receive both benefit entitlements, contrary to Article E of the ESC and Article 27.1.b) of the same legal text.

(b) Indirect gender discrimination

Along the same lines, the majority of single-parent families are headed by women.

According to the INE, of the 1 944 800 single-parent households, 286 900 are headed by single persons, and 1 057 700 are comprised of a woman with one child. Only 251 100 households have a single male parent and one child. This means that over 87% of single-parent households composed of one adult and one child are headed by women, i.e. 8.7 (almost 9) out of 10 single-parent households are headed by women.

However, the new wording of Article 48 of the Workers' Statute does not take into account that in 8 out of 10 single-parent families, the woman is the sole parent. Denying this family model the possibility of taking both birth leave and childcare leave constitutes indirect discrimination against women. Not taking this into consideration makes it difficult to claim that the measures set out in Royal Decree-Law 6/2019 promote equal opportunities for women, as stated in its title and explanatory memorandum.

Denying female parents who head single-parent families the possibility to combine entitlements to care for newborn infants undoubtedly contributes to the economic disparity that female-headed households are more likely to face given that women and men have not yet achieved full equality in the labour market. This inequality increases when the woman in question falls into one of the groups that, *a priori*, have fewer job opportunities, in violation of Article 27.1.b) of the ESC, which requires that the needs of female workers be taken into account.

4.6. Violation of Article 30 of the Revised ESC, alone and in conjunction with Article E

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b) to review these measures with a view to their adaptation if necessary.

According to the case-law of the ECSR, "Under Article 30 of the Charter, Governments are required to introduce measures which take account of the multidimensional nature of poverty and exclusion and, in particular, to target specifically the most vulnerable groups" (Conclusions 2007, Belgium, Article 30, as well as *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, decision on the merits of 21 March 2012, §203).

Although the Law states that it is an individual and non-transferable right, it does so in the context of a two-parent family and in the interests of shared responsibility. However, to invoke this argument when there is only one parent (the mother), denying children in single-parent families a 32-week period of care with financial cover from their only parent significantly disadvantages the single-parent child, who benefits from less time being cared for by their most direct relative than the child in the two-parent family, exponentially increasing the risk of poverty for these children, contrary to Article 30.a) of the ESC.

At the same time, it should be noted that the female demographic is most frequently involved in family care tasks, which has repercussions on the continuity, duration or dedication of their professional activity. This is reflected in their monthly income, causing the well-known gender gap in salaries and pensions. Consequently, their dependants do not have the same opportunities for education and social integration as those in other families, leading to the perpetuation of intergenerational poverty.

From this perspective, the contested Spanish legislation on birth benefits is not in line with the European Social Charter, insofar as it drives single-parent families, mainly headed by women, into poverty and social exclusion, in violation of Article 30 of the Revised ESC, both on its own and in conjunction with Article E.

In the same vein, the benefit for childbirth and childcare is exempt from personal income tax; the two-parent family in which both parents will be able to enjoy a 32-week allowance (from 2021) is exempt from taxation. This results not only in the absence of taxation on them, thereby increasing disposable income for families - but also in a break in tax progressivity. On the other hand, for the single-parent family, the exempted earned income will only correspond to 16 weeks. Thus, for an identical income figure, the single-parent family bears additional taxation on work income during the period in which the second parent in a two-parent family is entitled to this benefit (i.e. another 16 weeks) and will be fully affected by tax progressivity. The tax burden on the single-parent family as opposed to the traditional family model is significantly higher, thus accentuating the precariousness of the single-parent family subject of this complaint. This creates a disparity in treatment between analogous situations that lacks any objective and reasonable justification and any relationship of proportionality, resulting in clear discrimination.

5. REQUEST TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

For all the above reasons,

THE ELA TRADE UNION CONFEDERATION REQUESTS THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS
to find that this **Collective Complaint** against the Kingdom of Spain has been duly lodged in accordance with the legal formalities, and to;

1. **DECLARE** this collective complaint admissible for the purposes of bringing proceedings in accordance with the procedure laid down in the 1995 Protocol.

2. **AGREE** that this complaint should be dealt with on a preferential or priority basis, pursuant to Rule 26 of the Committee's Rules of Procedure and in view of the seriousness of the alleged violations (e.g. *Centre on Housing Rights and Evictions (COHRE) v. France*, decision on admissibility of 25 January 2011), given the vulnerability of individuals in the single-parent families concerned (including the risk of poverty and social exclusion in the light of Article 30 of the Revised ESCR, *supra*).

3. **DECLARE** that failure to recognise the right of single-parent families to take the 16-week birth leave and the additional 16-week parental leave is not in conformity with Article 17.1.a) of the European Social Charter, nor with its Articles 16, 12.3, 27.1 and 30, considered on their own and in conjunction with Article E, as it clearly discriminates against children born into single parent families and their mothers.

4. **DECLARE** that the Kingdom of Spain has failed to ensure proper implementation of the provisions contained in the Revised European Social Charter by which it is bound, resulting in the violation of the provisions mentioned to the detriment of the single-parent families that are the subject of this collective complaint.

5. **ADOPT** all measures provided for in the Revised ESC and related legislation to ensure that the Spanish State rectifies this violation of the right to an additional 16 weeks of parental leave for single-parent families, by adopting measures for adequate protection for children born into single-parent families, ensuring that they enjoy the same 32 weeks as children in two-parent families.

6. **ADOPT** such further rulings and measures as may be favourable and legally appropriate to protect the right to be cared for with financial benefit for 32 weeks for children born into single-parent families in the light of the invoked provisions of the Revised ESC and the case-law of the ECSR as set out in this complaint.

Done at Bilbao, for Strasbourg, 11 March 2024.

FIRST ADDITIONAL PLEADING: The following documentation is attached.

Doc	Content
1	Royal Decree-Law 6/2019 of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation
2	Judgment of the Social Chamber of the High Court of Justice of the Basque Country (TSJPV) of 06/10/2020 (rec sup. 941/2020)
3	Judgment of the Social Chamber of the Supreme Court of 2/03/2023 (rcud 3972/2020), dissenting opinion
4	Clarification of the Judgment of the Social Chamber of the Supreme Court of 2/03/2023 (rcud 3972/2020) dated 11/3/2024.
5	Resolutions adopted by the Permanent Commission of the CGPJ on 04/02/2021, authorising the granting of both leave entitlements to a Magistrate who is the sole parent (consultation 1.3-23, page 15) and CGPJ press release on the matter (consultation 1.3-23).
6	Resolution of the Ministry of Social Rights granting the internal appeal on taking both leave entitlements (birth and care of children under 12 months) of 16/06/2021.
7	Appeal for the Unification of precedent brought by the Public Prosecutor's Office against the Judgment of the Social Chamber of the TSJPV dated 06/10/2020 (rec sup. 941/2020).
8	INSS Opinion 16/2019 on the equalisation of single-parent families with disabled children.
9	Judgment of the Administrative Chamber of the High Court of Justice of Madrid of 9/3/2023 (Judgment 306/2023)
10	Judgment of the Social Chamber of the High Court of Justice of Catalonia 27/3/2023 (rec sup 7026/2022).
11	Judgment of the Social Chamber of the High Court of Justice of the Canary Islands of 4/5/2023 (rec sup 559/2022) (dissenting opinion of Gloria Poyatos).
12	Continua de Hogares, ECH) Year 2020 of the National Statistics Institute (INE), page 5.
13	*Madre no hay más que una: monoparentalidad, género y pobreza infantil* ('There is only one mother: single parenthood, gender and child poverty'), a report produced by the Commissioner against Child Poverty and the Spanish Government.
14	*Geografía de la pobreza infantil en España* ('Geography of Child Poverty in Spain'), a report produced by the Commissioner against Child Poverty and the Government of Spain, July 2021.
15	11th Report on Single Parenthood and Employment of the Adecco Foundation.
16	Reports on the situation of single-parent families in Spain and the situation of children.
17	*Informe del Mercado de Trabajo de las Mujeres Estatal* 2022 ('State Women's Labour Market Report 2022') prepared by SEPE.
18	*Familia monomarental y riesgo de exclusión social.*('Single parent family and risk of social exclusion'). (IQUAL. Revista de Género e Igualdad, 2018, 1 123-144 ISSN. 2603-851X)

SECOND ADDITIONAL PLEADING: This Collective Complaint is supported by the MADRES SOLTERAS POR ELECCIÓN ['Single Mothers by Choice'] association.

This Association has been fighting for the rights of single mothers in general since 2007, and, in the last 4 years, fighting for their right to take both birth and childcare leave as provided for children in two-parent families.

Its president is Ms Miriam Tormo Aguilar.

The Association was created in 2007 and aims to (Article 4):

1. *PROMOTE in society a consensual and unified single-parent family definition for the entire State in co-ordination with other entities, starting from those families with only one parent.*
2. *RAISE awareness of the single-parent family by choice in society so that it is accepted as a responsible choice that has been made freely and voluntarily.*
3. *BE A SUPPORT GROUP with a common denominator that serves as an exchange of experiences and information for all women who wish to enter motherhood alone.*
4. *IMPLEMENT all those projects that benefit and help our families.*
5. *CO-ORDINATE and achieve actions with other similar associations and entities.*
6. *LOBBY the relevant public and/or private bodies to address the specific needs of our type of family, be they social, educational, health, fiscal or other.*
7. *PROMOTE equal opportunities between women and men, as well as the participation and presence of women in political, economic, cultural and social life.*
8. *PROMOTE the protection and rights of children, especially with regard to the consequences of the disregard of the single-parent family model.*
9. *PARTICIPATE in all institutional forums and working groups where the rights of single-parent families are debated.*
10. *Any other lawful purpose which directly or indirectly contributes to the achievement of the above aims of the Association and which the General Assembly agrees to undertake*.

The association also expresses its intention to intervene in the proceedings as *'amicus curiae*' or 'intervener', in accordance with Article 32 A of the Rules of Procedure of the ECSR, represented by Ms Virginia Castillo Rodríguez, member number 86 744 of the Madrid Bar Association,

At the place and on the date indicated above.

MITXEL LAKUNTZA ZURINE QUINTANA
(Secretary General of the ELA Trade Union Confederation) (Legal Adviser)

MIRIAM TORMO VIRGINIA CASTILLO
(President, MSPE) (Legal Adviser)