



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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Case Document No. 1

Unión General de Trabajadores (UGT) v. Spain
Complaint No. 243/2024

COMPLAINT

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UGT is a founding member of ETUC and ITUC

CONFEDERAL EXECUTIVE COMMITTEE

COLLECTIVE COMPLAINT

(COMPLAINT)

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SUBJECT MATTER

Collective Complaint lodged by UGT (Spain) on the grounds that the Spanish State has violated Article 31 of the Revised European Social Charter (RESC), both independently and in conjunction with Article 16 (protection of the family), Article 17 (protection of young people), Article 19 (protection of migrant workers) and Article 30 (protection against poverty), as well as Article E, as access to decent housing is not guaranteed for a significant portion of the Spanish working population, and still less so for particularly vulnerable groups (young people, low-income individuals and immigrants), in violation of the requirements of the RESC as interpreted by the consistent case law of the European Committee of Social Rights (ECSR).

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1. Subject matter of the collective complaint

1.- By means of this application, the General Union of Workers (UGT), established as a class-based trade union with centuries of history and holding the highest level of institutional representativeness across the State, **collectively requests** that the Spanish State (Kingdom of Spain) **be declared in violation of Article 31 of the Revised European Social Charter (RESC), which proclaims that ‘everyone has the right to housing’, both independently and in conjunction with:**

Article 16 (on the full protection of the family),

Article 17 (on the full protection of youth),

Article 19 (protection of migrant workers),

Article 30 (protection against poverty), and

Article E (non-discrimination).

The complaint asserts that, due to the scarcity of social housing and high prices in the private market, affordable access to decent or adequate housing is not guaranteed for a significant portion of the Spanish working population, a situation that is even more severe for vulnerable groups (such as young people, low-wage workers and migrants). This situation, both in fact and in law, is contrary to the requirements of the ECSR, according to the consistent case law of the European Committee of Social Rights (ECSR).

2.- Furthermore, to ensure the legal and social effectiveness of compliance with the mandates of the RESC, the complaint requests the ECSR to **require the Spanish State to design and implement immediate and effective policies to ensure real access to quality housing for the population in Spain. The aim would be to accelerate the elimination of housing shortages, ensuring affordable housing prices (for rent and/or purchase) for individuals and groups without sufficient resources.**

2. Legal framework of the Spanish State relating to the right to decent housing

2.1. The (devalued and ineffective) constitutional framework: access to housing as a guiding social principle of economic policy, but not as a subjective right effectively guaranteed to individuals

3.- Pursuant to Article 47 of the Spanish Constitution:

'All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the requisite conditions and establish the relevant rules to make that right effective, regulating land use in the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies.'

4.- This constitutional provision is set out in Chapter III of Title I of the Spanish Constitution, and it is therefore defined as a 'guiding principle of social and economic policy', rather than as a genuine fundamental social right endowed with the guarantee of a legally enforceable individual right. In this way, the Spanish Constitution establishes a clear distinction between the right to housing and other competing and conflicting economic rights, such as freedom to conduct business (Article 38 of Spanish Constitution) or the right to private property (Article 33 of the Spanish Constitution), which are indeed constitutional rights.

5.- From a more systematic perspective of the Spanish Constitution, in line with the complex and multidimensional nature of the social right to decent housing, it is possible- and necessary- to identify the link between the effectiveness of the 'right- merely a guiding principle' to housing and other constitutional rights, including fundamental ones, such as those related to:

- physical and moral integrity (Article 15 of the Spanish Constitution)

- respect for private and family life (Article 18 of the Spanish Constitution)

As well as other rights/guiding principles, such as:

- protection of the family (Article 39 of the Spanish Constitution)
- protection of health (Article 43 of the Spanish Constitution)
- promotion of conditions for the free and effective participation of young people in political, social, economic and cultural development (Article 48 of the Spanish Constitution)
- an adequate environment (Article 45 of the Spanish Constitution)
- a wage sufficient to satisfy one's own needs and those of one's family (Article 35 of the Spanish Constitution)

6.- It is a catalogue of rights, all of which are closely related to the values of quality of life - referred to in the preamble to the Constitution itself - and to development of the individual in society (Article 10.1 of the Spanish Constitution). Consequently, adequate housing is closely related to human dignity. This impact and interrelation are present in Spanish constitutional doctrine, influenced by the case law of the European Court of Human Rights (ECHR), although acceptance of this impact and intertwining tends to be more nominal than effective. The effect of this integration with fundamental rights and human dignity should be the effective guarantee of the right to housing as a limit on (and a social function of) the freedom to conduct business and the right to private property in the context of the housing sector. This should be viewed from a dual perspective: the social function they must fulfil and the general interest they must serve, respectively (Article 33.2-social function of private property, Article 38-freedom to conduct business, Article 128.1 and Article 131.1 of the Spanish Constitution- subjection of all national wealth to national and social interests).

7.- The dual background of this regulation therefore includes:

1) protecting the equality of the entire Spanish population (and those who live and work in Spain), throughout the country (Article 139.1 of the Spanish Constitution) in the terms of Article 14 of the Spanish Constitution, particularly disadvantaged persons and social groups (Articles 9.2 and 48 of the Spanish Constitution) and the legitimate interests of consumers and users, in accordance with Article 51.1 of the Spanish Constitution; and 2) protecting the real guarantee- not merely a formal or symbolic one- of human dignity, in itself and in its social manifestations.

8.- The reality, both legislative and practical, is very different, even the opposite, as will be demonstrated in this complaint. In this regard, Spanish constitutional doctrine recognises that these guiding principles, while not merely political programmes (in normative theory, although the practice is quite different, as will be shown in this complaint), do have normative value. They neither guarantee a core content which may be protected under the Constitution against public authorities and private individuals (Article 53 of the

Spanish Constitution), nor- still less- can they be considered a right enforceable in court. They also lack the guarantee of access to the remedy of an appeal for the protection of constitutional rights ('recurso de amparo') before the Constitutional Court (e.g. STC 105/2017, FJ 2, among many others). We are therefore dealing with a principle, not a right, and one with weak guarantees, strictly dependent on what is determined at any given time by the laws that regulate it, and on the specific policies established by the government of the day, at the latter's own discretion. This extreme discretionary nature of the constitutional legal configuration of the 'right to decent and adequate housing' will explain- although never justify, as will be argued later- the fact that Spain once had a robust social housing policy (1980s) but then, with the same Constitution, entered a prolonged period of practically no social housing, which continues to the present day.

9.- Where housing is concerned, the Spanish Constitution lacks effective legal mechanisms designed to prevent a state from going- by express decisions of successive governments- from having a high rate of social housing to being the EU country with the lowest rate of social housing (barely 2.5%). This has led to a very serious housing problem for the Spanish population in general, and the working population in particular. In summary, using the terminology of the European Committee of Social Rights (ECSR), Article 47 of the Spanish Constitution represents a typical case of a "symbolic" and "programmatic" right, lacking real and effective protection under the Constitution. It is left to the discretion of the housing policies of each current government, leading, as will be demonstrated below, to the complete "commodification" of the social right to housing.

10.- This constitutional configuration of housing, as a guiding principle of economic policy - minimalist from a socio-legal perspective but maximised from a legal-market perspective- openly contradicts the notion of social protection, which is based on human dignity rather than strict market freedom, as established by International Social Law on the matter, including Article 31 of the RESC and the case law of the ECSR. The ECSR consistently maintains that there cannot be merely formal or symbolic protection of human social rights, such as housing. Rather, protection must be effective, practised, real and therefore verifiable in the ordinary lives of the people affected, including both the employed- in many cases their salary is not enough for rent or to pay the mortgage necessary to purchase housing- and the unemployed.

11.- It is also very important to consider, given that Spain is made up of autonomous communities (Article 2 of the Spanish Constitution), the importance of the constitutional distribution of competences (Title VIII of the Spanish Constitution) in relation to housing as a guiding principle of social and economic policy. In accordance with Article 148.3 of the Constitution, all autonomous communities assume full competence in housing matters in their Statutes of Autonomy.

12.- This legal reality, which has significant political and practical implications, is a factor that adds complexity to the very serious, almost dramatic, housing problem for the population (working or general) in Spain. The Constitutional Court (TC) has reiterated that Article 47 of the Spanish Constitution (as it also states regarding other guiding principles, such as in Article 41 on social security) does not, in itself, constitute a title of competence, as it is 'neutral' in this respect, depending on the distribution of powers specifically set forth in the Constitution (Articles 148 and 149). Nor is it regional, as it can fall under various state or regional titles of competence, depending on the approach adopted and the regulatory instruments used by the legislature in each case. This complex division of competence arises from the various constitutional dimensions associated with housing, leading to additional difficulties that the public authorities as a whole- particularly the central government- must address effectively to meet their international obligations, which they currently fail to do.

13.- Indeed, unlike the autonomous communities, whose laws can formulate comprehensive regulatory and policy programmes on housing, the State must tailor its housing regulation and policy to its various competences (safeguarding basic equality, promoting development, etc.). This makes it necessary to modulate its action to avoid a conflict of competences and, therefore, blockages in the application of laws (which is now happening in practice, hence the strong tensions between the autonomous communities and the State in this area).¹ Consequently, all parties are required to co-ordinate their respective actions in such a way that they operate within a coherent, stable and secure legal framework that enforces the right established in Article 47 of the Spanish Constitution. This includes implementing the corresponding measures, actions, plans and programmes, ensuring the fundamental equality of all Spaniards, and of all individuals and groups- especially vulnerable ones (Article 9.2 Spanish Constitution)- in relation to this right.

14.- From this perspective, it is important to clarify two legal imperatives. On the one hand, while it is true that the duties imposed by Article 47 of the Spanish Constitution (promoting access to decent housing and preventing speculation – which is rampant in Spain) are incumbent on all public authorities, it is equally true that the State has a predominant responsibility to ensure access to housing under equal conditions (Article 149.1 of the Spanish Constitution, in relation to it Articles 9.2 and 10) as a critical factor for personal and social well-being. On the other hand, it is undeniable that the State is the entity obligated to ensure effective compliance with international commitments, such as those established by Article 31 of the RESC and the cluster of related provisions (other rights), as will be discussed here. In this regard, as the ECSR has reminded the Kingdom of Spain on multiple occasions- for example, in relation to the minimum income guarantee

¹ <https://noticiastrabajo.huffingtonpost.es/economia/vivienda-no-castigara-a-las-autonomias-que-no-apliquen-la-ley-de-vivienda-pero-premiara-a-las-que-si/>

(under Articles 12 and 13 of the ESC), the fact that non-conformity may be attributed more to regional laws and policies than to those of the State does not in any way excuse its direct duty to effectively ensure compliance.

In accordance with Article 96 of the Spanish Constitution, which states that international treaties are part of the domestic legal system, it is worth noting the commitments undertaken by the Kingdom of Spain under the European Social Charter and, specifically, for the purposes of this Complaint, Article 31, which requires the Kingdom of Spain:

‘Article 31. *Right to housing*

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.*

This is an Article which, as we will see throughout this document, is systematically violated by the respondent State and serves as the basis for the filing of this Collective Complaint by UGT.

2.2. The state legal framework: Law 12/2023 of May 24 on the Right to Housing, which is well-intentioned, but so far very unsuccessful

15.- Law 12/2023 of 24 May on the Right to Housing is the first national law on the right to housing since the approval of the Spanish Constitution. It has therefore taken no less than 46 years (almost two quarters of a century- the last quarter of the 20th century and the first quarter of the 21st century) for Spain to adopt a housing law. The purpose of this law is (Article 1):

- To regulate, within the competences of the State, the basic conditions that guarantee the right to equal and effective access to decent, adequate and affordable housing, *‘complying with... the international instruments ratified by Spain and respecting in all cases the competences of the autonomous communities...’* (Article 2 (a)).
- To ensure the exercise of the right to housing by regulating the basic content of the right to property (housing) in relation to its social function, which includes ‘the duty to allocate property to residential use as provided by law, according to territorial and urban planning instruments, as well as to maintain, conserve and rehabilitate housing, assigning public authorities the function of ensuring its... compliance, within their respective competences...’

- To strengthen the protection of access to ‘complete, objective, truthful, clear, understandable and accessible information in housing purchases and rental transactions’.
(transparency reporting obligations in the housing market).

16.- Among the ‘purposes’ of public housing policies that the recent law (Article 2) seeks to achieve, the following are particularly relevant to the subject matter of this collective complaint:

*‘f) To **promote** the development, management and maintenance of the public housing stock to ensure a significant and stable supply of decent and adequate housing for social groups with the greatest difficulties accessing housing on the market, through necessary investment in each budget year, and taking into account the characteristics and needs of all territorial areas affected by different growth or loss.’*

*‘h) To **encourage and promote the existence of sufficient and adequate rental housing at affordable prices**, with special attention to young people and households in situations of vulnerability or at risk of vulnerability, through effective mechanisms for regulating and using land, and by developing measures and instruments for programming and planning that address the real needs of applicants while fostering social and territorial cohesion.’*

*‘i) To **support the existence of social housing stock managed by third-sector entities**, complementing public housing stock and expanding the supply of accommodation and housing for vulnerable groups and households, with special attention to families, households, and units with dependent minors.’*

*‘l) To **eliminate any form of discrimination in access to and enjoyment of housing**, ensuring integration, inclusion and social and territorial cohesion in housing policy actions and measures.’*

*‘n) To **adopt measures to identify and prevent speculative hoarding, residential segregation, overcrowding, severe residential exclusion such as slum housing or homelessness, and the degradation of existing housing stock and its environment, to facilitate its residential function and improve quality of life.***

*‘ñ) To **ensure equality from the perspective of gender, age, ability and territorial considerations in all housing policies and actions at all levels and throughout all phases of planning, implementation and evaluation.***

*‘o) To **monitor and ensure the responsible use of sufficient public resources to achieve housing policy objectives by competent public administrations and to apply shared responsibility criteria for occupants in the management of public housing stock.***

'p) To prioritise attention and information for families, households and units with dependent minors who, due to poverty, social exclusion, or other forms of vulnerability, must receive special protection.'

's) To enhance the social economy, encouraging the participation of social and welfare organisations in the housing sector.'

17.- As can be seen, of the twenty ambitious goals outlined by this **newly enacted** law for **future** public housing policies in Spain, nearly half aim to provide a strong, unprecedented and unusual social dimension to these policies. However, they are presented in a very general way and always in terms of promotion or encouragement, without ever mentioning the need to 'guarantee them in a legally effective manner' or to allocate the necessary financial resources, except regarding the goal of eradicating discrimination (reinforced in Article 6 of the law, which also includes the prohibition of housing harassment, typically driven by speculative motives). On a general level, of particular note is the attempt to set out these goal-oriented criteria precisely, with the aim of providing greater clarity, as outlined in **Article 3** of the Law. It thus offers the following clarifications:

- *'c) **Decent and adequate housing**: housing which, due to its habitability conditions, energy efficiency and access to basic utility networks, meets residential needs **in affordable conditions in line with financial means**, constituting a home where individuals can live with dignity, safeguarding their privacy, and fostering personal full development and inclusion.*
- *'d) **Affordable conditions in line with financial means**: the conditions of sale or rental prices that avoid excessive financial strain on households, taking into account their net income and particular characteristics. This includes mortgage payments and rent, as well as basic expenses and utilities that the mortgaged owner or tenant is required to cover, **which should generally not exceed 30% of household income.**'*
- *'f) **Protected housing**: housing subject to a special regime intended for use as the primary residence for individuals with difficulties accessing the housing market, both in urban areas and in rural settings. For the purposes of this law, the following arrangements are established: social housing or limited-price housing.*

1. **Social housing**: publicly owned housing, intended for rental, transfer, or any other form of temporary tenancy subject to rent or sale restrictions, designated for individuals or households facing challenges accessing housing in the market. (...). Social housing may be managed directly by public administrations or dependent entities, by non-profit organisations with social purposes related to housing, or through public-private partnerships...

Emergency social housing may also be considered social housing, aimed at addressing emergency situations by providing short-term, temporary housing solutions, universally available until a permanent alternative housing solution is provided for individuals and families who have lost or cannot access suitable housing, *regardless of their documentation or administrative status.*

2. **Protected housing with price limitations:** housing that is publicly or privately owned, excluding social or publicly funded housing, subject to rental price limits and other legal or regulatory requirements, intended to meet the permanent housing needs of individuals or households with difficulty accessing market-rate housing. Price-limited housing will be classified as such in accordance with the procedure established by the competent public administration.

*'g) **Incentivised affordable housing:** for the purposes of this law, this refers to privately owned housing, including properties owned by third-sector entities or social economy organisations, where the competent administration grants urban, fiscal or other types of benefits in exchange for designating them as primary residences under rental or other temporary tenancy arrangements for individuals whose income levels do not allow them to access market-rate housing. Public benefits assigned to these homes will be linked to usage restrictions, including time limits and maximum prices, as determined in each case by the competent administration.'*

- *'h) **Third-sector housing and accommodation stock:** properties owned or managed by non-profit organisations with social purposes related to housing, aimed at meeting the housing or accommodation needs of individuals or households in vulnerable situations or at risk of social exclusion, or providing affordable housing to broad segments of society.'*
- *'l) **Homelessness:** a life circumstance affecting individuals, families or households unable to sustain access to decent and adequate housing within a community environment. This situation forces those affected to reside on the streets or in other inadequate public spaces, utilise collective institutional housing alternatives provided by various public administrations or non-profit organisations, or live in unsuitable, temporary, inappropriate, overcrowded or unsafe housing...'*

18-. To advance the implementation of measures that make these goals effective, **Article 7** sets out what it calls '**guiding principles for guaranteeing the social function of housing**'. Accordingly:

'1.... Considering that housing fulfils a social function as it constitutes a resource to meet the basic accommodation needs of individuals, families and households, it is the responsibility of the competent public administrations to promote the necessary conditions to ensure the effective exercise of this right under affordable conditions, paying

special attention to families, households and cohabitation units with dependent minors, through the statute of rights and duties associated with housing, as provided in this law.

2. *To fulfil the requirements of the previous section regarding housing, public authorities, within their respective areas of competence, **must establish effective mechanisms to ensure** its proper protection, conservation, rehabilitation and improvement, as stipulated by this law and in accordance with existing housing legislation and regulations.'*

19.- Article 8 recognises, always under the strict framework of the law- thus, not as full subjective rights and still less as rights guaranteed effectively in each case- the following rights related to housing for every person in Spain:

*'a) **To enjoy decent and adequate housing, as defined in this law, whether in ownership, rental, use transfer, or any other legal regime of tenure.***

*b) **To access information held by public administrations regarding public housing programmes and their eligibility conditions in accessible formats for individuals with disabilities, as well as information on benefits, aid and public resources available to ensure access to housing for individuals and families in vulnerable situations.***

*c) **To request registration** in the registers of protected housing applicants established by the competent public administrations ... and in various programmes, benefits, aid and public resources for housing access, based on their social and economic situation, as well as their personal and family circumstances.*

*d) **To participate in public housing programmes** and access benefits, aid and *public housing resources under the terms and conditions established in the relevant regulations.'**

20.- Regarding the regulation of housing property rights and owner rights (Article 10.1), Article 10.2 adds public administration obligations to ensure the full exercise of housing property rights. To this end, it provides:

'2. (...) any measures provided by applicable legislation may be adopted and implemented, particularly the following:

a) Public aid and subsidies.

b) Tax incentives.

c) Direct management by... public authorities or their instrumental entities, or in collaboration with third parties, of public housing stock.

d) Collaboration with third-sector entities with social objectives related to housing to facilitate the management of public housing stock, as well as the management of their own social housing stock.

e) Encouraging private initiatives through agreements with housing owners for their transfer to competent public administrations or other arrangements to increase the supply of social or affordable rental housing.

f) Promoting intermediation actions in the rental housing market to facilitate effective occupancy’.

20.- The law continues to seek greater specificity, and Title II regulates public authorities’ actions in housing matters. Its basic structure is as follows:

Chapter I. **General principles of public policy in the housing sector**

- **Article 12. State policy in the housing sector..**

‘1. With the aim of promoting the effective exercise of the right of all private individuals to enjoy decent and adequate housing, and within its competences, the State shall carry out the necessary planning with corresponding funding to facilitate the effective exercise of the right to housing, with particular attention to groups, individuals and families facing greater access difficulties or at risk of residential exclusion, with special attention to families, households and cohabitation units with dependent minors.

3. The State’s policy in this area, within its competences, must prioritise assistance programmes for individuals, families and households in situations of significant social and economic vulnerability as identified by social services, and in housing emergencies due to eviction or foreclosure procedures affecting their primary residence. Measures should be promoted to ensure their proper relocation and access to decent and adequate housing, considering their social and economic vulnerability, as well as their personal and family circumstances, strengthening for this purpose mechanisms of co-operation with the relevant regional administrations.’

- **Article 13. Commitment to universal accessibility in the housing stock**
- **Article 14. Situations of particular vulnerability**

‘1. Housing policies shall take special account of individuals, families and households living in highly vulnerable and segregated settlements and neighbourhoods, both in urban and in rural areas...

2. To this end, the competent housing administrations may identify within their territorial scope areas requiring urban regeneration and renewal actions to eradicate substandard housing through integrated measures that prevent and address social and residential exclusion of the local population.

3. In a complementary manner, to combat homelessness, the competent administrations are responsible for programming specific measures to address it...’

- **Article 15. Right of access to housing and spatial and urban planning**

'1. To ensure the effectiveness of the basic conditions of equality in the exercise of the relevant rights established by this law, and within the framework provided by the consolidated text of the Land and Urban Rehabilitation Law approved by Royal Legislative Decree 7/2015 of 30 October, the following basic criteria are established in the area of spatial and urban planning:

a) To expand the supply of social or publicly funded housing, territorial and urban planning instruments:

1. **May establish** as a compatible use of public land the construction of public housing.
2. **May allocate** land for social or publicly funded housing as part of urban development activities outlined in the relevant instruments, as provided by spatial and urban planning legislation. (...)'

- **Article 16. Protected housing**

'1. Without prejudice to the conditions and requirements established by regional or municipal legislation and regulations, which will take precedence, protected housing shall be governed by the following principles: (...)'

2. The competent administrations may establish necessary mechanisms to achieve the conditions outlined in the previous section, which may be implemented through specific protocols and agreements with notaries and property registrars.'

- **Article 17. Incentivised affordable housing**

'1. To increase the supply of housing at prices appropriate to the economic situation of households in each territorial context, public authorities, within their respective competences, **may promote incentivised affordable housing**. Such housing will be subject, as a guideline and without prejudice to what is established in this respect by the competent administrations, to the following rules:

(...)'

- **Article 18. Declaration of stressed residential market areas**

'1. Competent housing administrations **may declare...** stressed residential market areas to guide public housing policy in territorial areas with a significant risk of insufficient housing supply for the population...

2. Without prejudice to the above, the declaration of stressed residential market areas shall be made by the competent administration in accordance with the following rules:

(Sufficient justification of imbalances, preparatory procedures, adequate public information, etc.).

3. *The declaration of a stressed residential market area requires the preparation of a report that justifies, through objective data, a significant risk of insufficient housing supply for the local population, including the dynamics of the formation of new households and affordability, due to the occurrence of one of the following circumstances:*

*a) The average cost burden of mortgage or rent payments, plus basic expenses and utilities, **exceeds 30% of the average household income.***

b) The purchase or rental price of housing has experienced, in the 5 years preceding the declaration, a cumulative growth rate at least three percentage points higher than the cumulative growth of the Consumer Price Index (CPI) of the corresponding autonomous community.'

On the basis of these procedural requirements, the declaration of a stressed residential market area will determine the drafting of '**specific plans**' for measures to correct the imbalances identified in housing access:

- A **mandatory plan** by the autonomous community administration affected by the stressed residential market area, including budget and timeline (Section 4).
- An **optional plan** by the State, respecting territorial diversity in both urban and rural areas, modifying or annexing the current state housing plan (Section 5), and enabling the State to:
 - Promote collaboration with competent administrations and the private sector to stimulate the supply of affordable housing in this area.
 - Design and adopt specific financing measures *to contain or reduce rental or purchase prices.*
 - Establish additional public measures or benefits under the current state housing plan, as provided therein.

Finally, the implementation of such plans:

*'may involve adopting measures within the Commission for Financial Co-ordination of Real Estate and Property Policy to increase the supply of social and incentivised affordable housing **in accordance with the second additional provision of this law** (regarding the priority of housing policy in State asset management).'*

According to the Third Additional Provision of the law, the criteria for identifying stressed residential market areas will be reviewed 3 years after the law's entry into force.

- **Article 19. Collaboration and provision of information by large property owners in stressed residential market areas**

'1. In line with the public interest service established in this law, large property owners are obligated to collaborate with the competent public authorities in housing matters. To this end, public administrations may require large property owners in stressed residential market areas to comply with their obligation to collaborate and provide information about the use and purpose of their properties in those areas. (...)

21.- CHAPTER II of the Law addresses: **Collaboration and co-operation between public administrations in the housing sector**

- Article 20. Collaboration between public administrations in housing matters
- Article 21. Bodies for co-operation in the area of housing and land
- Article 22. Inter-ministerial co-ordination

CHAPTER III State policy on housing

Article 23. State housing planning and programming

'1. The General State Administration shall contribute, in collaboration with other public administrations, to ensuring the right to decent and adequate housing through fiscal, economic, social, planning and programming instruments within its competences, considering economic, financial and social realities, and promoting territorial cohesion and the fight against depopulation.

To achieve this broad social and economic goal, state planning tools (Article 23.2 of the law):

'will support competent regional administrations in implementing housing policies which, after analysis and identification of needs, ensure the existence of an adequate and sufficient supply of affordable housing. These instruments must be properly budgeted.'

State planning and programming (General Administration of the State-AGE) **will foster and prioritise:**

'a) The rehabilitation and improvement of existing housing and the promotion of housing aimed at forming public housing stock.

b) The development of housing types tailored to social needs.

c) Adequate funding for programmes specifically targeting individuals and households facing the greatest difficulties in accessing housing, paying special attention to families, households and cohabitation units with dependent minors.'

- Article 24. State housing plans (multiyear) and urban and rural rehabilitation, regeneration and renewal

*'1. The primary instruments for state action in housing policy shall be state housing plans. These plans shall include multiyear planning and **may involve measures related to financing, taxation, regulation and the promotion of affordable housing availability through public-private partnerships to create affordable housing funds or other mechanisms** to improve housing stock quality and access. The instruments shall aim to improve the housing stock and its built environment and contribute to the achievement of the objectives of the plans.*

*2. State plans for housing, rehabilitation, regeneration, urban and rural regeneration and renewal shall consist of **programmes which prioritise the following actions:***

a) Encouraging the rational and efficient use of the housing stock.

(...)

c) Creating, expanding and managing public housing stock aimed at addressing the housing needs of socially and economically vulnerable individuals, families and households.

d) Building and rehabilitating homes under public protection schemes.

e) Promoting new housing and urban development models tailored to social needs, as well as facilitating public-protected housing access through financial tools that promote public-private mechanisms.

f) Ensuring access to housing for young people and providing adequate housing for individuals in situations of greater social vulnerability, such as homelessness or inadequate housing.'

It reiterates (reconfirming the highly redundant and programmatic nature of this law, which contains more circular or tautological mandates than effective ones) the emphasis on prioritising the promotion of housing for vulnerable groups in Section 5:

'State housing plans... will establish programmes to promote access to the right to decent and adequate housing for the most vulnerable individuals, families and households, with the aim of always providing an emergency housing solution in cases of loss, threat of loss, inadequate housing or lack of housing. Furthermore, they must include specific programmes to promote the availability of sufficient and adequate housing to address difficulties in housing access, particularly in areas declared as stressed residential markets...'

Additionally, this provision aligns with the constitutional and international objective of preventing and eradicating real estate speculation policies, which have been prevalent in Spain for over two decades:

'3. To prevent speculation, in addition to the limitations established in this law for protected housing, State plans may include measures within their programmes to socially redistribute the profit obtained, if applicable, from the sale of housing that received public aid for rehabilitation, regeneration or urban or rural renewal projects. Such measures must be implemented within the time limits set by the plans, either through the repayment of the aid or other measures established.'

- **Article 25. Public-private collaboration and affordable housing fund**

'1. The promotion of affordable housing through public-private partnerships to create an affordable housing fund may be implemented through joint mechanisms between public administrations and private housing management entities or third-sector organisations, helping to fulfil the social function of housing.

(...)

*3. The affordable housing fund aims to provide new tools for regional administrations to support public housing policies **by creating incentivised affordable housing or social housing stock**, particularly in areas where supply and demand imbalances occur in rental housing markets, helping to moderate prices. (...)*

4. Agreements with private housing management associations, third-sector entities or key operators will govern the fund, with the following objectives:

a) Providing support to vulnerable individuals and families, preventing evictions and establishing protocols for collaboration between public administrations and private housing managers.

b) Increasing the stock of social and affordable housing, especially in stressed residential market areas.

c) Promoting a commitment to allocate a minimum percentage of their stock to social or affordable housing. (...)'

- **Article 26. Housing Advisory Council**

'1. To ensure the participation of various social stakeholders in the development and implementation of housing policy, the Housing Advisory Council shall serve as a technical, advisory and consultative body under the Ministry of Transport, Mobility and Urban Agenda.

The Council **may include representatives** from the different ministerial departments with competences related to housing, **business associations, professional associations and associations, financial entities, associations of the third sector, the social economy and associations representing interests affected by the law.** The Council shall also be open to a range of professionals with expertise in housing, as well as from academia and research.

2. Regulations shall establish the creation of the Housing Advisory Council, defining its composition, attributions and functioning.²

22.- TITLE III of the law on housing regulates 'Public Housing Stock'. Thus:

- **Article 27. Concept, purpose and financing.** The public housing stock aims to ensure a functional housing market and support public administrations in making effective the right to adequate housing for those facing the greatest challenges in accessing housing, with special attention to young people and groups subject to greater vulnerability.

This public housing stock, 'specifically regulated by regional legislation' on housing:

'may consist, at a minimum, of:

- a) Publicly funded housing.
- b) Social and protected housing built on publicly owned land...
- c) Social housing acquired by public administrations through the exercise of rights of pre-emption and first refusal...
- d) Social housing acquired by public administrations as part of urban regeneration or renewal projects, including those integrated into real estate complexes, either free of charge as part of compliance with urban development obligations or in return for payment.
- e) Any other social housing acquired by public administrations with competence in housing matters, or housing ceded to them.

To facilitate the financing of the creation, extension, rehabilitation or improvement of public housing stock:

- a) 'Funds corresponding to rental contract deposits held in regional registers, pursuant to the Third Additional Provision of Law 29/1994 of November 24 on Urban Leases (*Ley de Arrendamientos Urbanos*), may be used, except for the

² It is striking that the Housing Advisory Council does not include trade union organisations, either in their role as representatives of the people working in construction or in their broader capacity representing workers accessing the housing market.

mandatory reserve for deposit guarantees, and by the administrations responsible for managing these deposits.'

- b) 'Revenues derived from penalties imposed for failing to meet the social function of housing ownership, as well as proceeds from the management and, if applicable, sale of assets forming part of the public housing stock, must be allocated to the creation, expansion, rehabilitation or improvement of public housing stock...', as stipulated in applicable legislation and regulations.

- **Article 28. Guiding criteria for the management of public housing stock**

*'1. To manage public housing stock and for the fulfilment of its objectives, the public administrations responsible for housing matters and their associated or dependent entities **may**, in accordance with their applicable legislation and regulations, and without prejudice to the specific criteria established therein: (...).'*

- **Article 29. Purpose of public housing stock**

'1. Housing included in public housing stock is intended, as provided for in specific legislation and other applicable regulations, to ensure access to housing for individuals and households with the greatest difficulty in securing housing in the market due to their social and economic circumstances. Special attention is given to specific vulnerability factors, such as the presence of minors in the household or cohabitation unit, as well as the characteristics and particularities of the territorial area.'

'3. Public administrations responsible for housing must develop systems to evaluate compliance with the requirements of public housing stock, as established in applicable legislation and regulations, to ensure efficient use of public resources and shared responsibility by housing occupants.'

In the same context, the Second Additional Provision stands out, emphasising the priority of housing policy in State asset management.

23.- Title IV of the Law regulates: '**Measures for protection and transparency in housing purchase and rental transactions**'. It is divided into two chapters:

- **CHAPTER I. General framework of rights and basic information**

- **Article 30. Basic principles of rights, powers and responsibilities**
- **Article 31. Minimum information requirements for housing purchase and rental transactions**

- **CHAPTER II. Information and transparency in housing and land matters**

- **Article 32. Public housing stock**
- **Article 33. Investment in housing policy programmes**

'1. To guarantee transparency, the State shall set out in detail the annual budget allocated to various housing policy programmes, using collaboration tools with the competent administrations. This must differentiate, at a minimum, between the following spending areas:

a) Housing rental subsidies aimed at tenants.

b) Promotion of social or affordable rental housing.

c) Promotion of housing subject to some form of public protection schemes.

d) Rental intermediation programmes.

e) Aid for building rehabilitation, differentiating between aid that improves energy efficiency and that which promotes the use of renewable energies, and accessibility.

f) Urban regeneration or renewal programmes, specifying investment in settlements and neighbourhoods of high vulnerability, including relocation programmes.'

This public information must be published annually (in electronic format) and must specifically indicate *'the amounts within these programmes that have contributed to facilitating access to first-time housing for young people'*.

- **Article 34. Characterisation of the housing stock. Vacant or unoccupied properties**
- **Article 35. Housing demand characterisation** (data on all individuals registered for social housing and their socio-economic conditions)
- **Article 36. Public land available for housing** (duty to publish in detail the available land owned by the State and its dependent entities, with residential potential as per urban planning instruments)

24.- Finally, **beyond the enacting provisions of the law**, a catalogue of relevant provisions (additional, transitional, final) is included, some of which are highly significant for this collective complaint, as will be detailed below. In particular:

- **Second Transitional Provision. Targets related to housing stock for social policies**

*'1. Concerning the establishment of the objectives referred to in Article 27, if the regional administrations have not established timelines and specific goals **within 1 year of the law's entry into force, a general benchmark is set of reaching a minimum public housing stock for social policies equivalent to 20% of all households in municipalities declared stressed residential markets within 20 years.***

2. *In order to ensure compliance with the objectives of increasing the housing stock for social policies referred to in the previous section and to evaluate the adequate financing of the actions indicated in letter c) of Article 27.2, the competent regional administrations, in accordance with the provisions of their regulatory regulations, **must determine on an annual basis the amounts invested and progress made in achieving the aforementioned objectives.***

- **First Final Provision.** Price control measures for regulating housing rental agreements, through legal reforms introduced in Law 29/1994 of November 24 on Urban Leases (*Ley de Arrendamientos Urbanos*) (Article 10 - extension of contracts; Article 17 - specific and favourable rules for tenants in stressed residential market areas limiting the rent update rate; Additional Provision 11 - Reference index for the annual updating of housing rental agreements to prevent abusive rent increases, etc.)
- **Second Final Provision.** Tax incentives applicable to personal income tax for renting property for residential use (in force from January 2024). This consists of a descending scale of reductions in the calculation of income from immovable property based on location in stressed areas and rental characteristics.
- **Sixth Final Provision.** Extraordinary limitations on annual rent increases in housing rental agreements (specifically targeting the measures limiting the power of rent review by large property owners as outlined in Royal Decree-Law 6/2022, of 29 March, adopting urgent measures under the National Plan to respond to the economic and social consequences of the war in Ukraine).

2.3. **Regional frameworks for housing regulation: a policy framework that is more cyclical than structural, with orientations or objectives that are very different from, and even opposed to, the state framework**

25.- As already noted, in Spain, according to Article 148 (3) of the Spanish Constitution, spatial planning, urban planning and housing is a competence that can be assumed by the autonomous communities. All of Spain's autonomous communities have implemented this constitutional possibility, endorsed by the Tribunal Constitucional (Constitutional Court) (e.g. STC 43/2018 of 26 April). In fact, most regional housing laws were adopted either during the economic and financial crisis of the last decade or during the period of gradual recovery, also taking into account the challenging situation faced by many individuals and households during the pandemic crisis. The pandemic exacerbated the situation by not only highlighting the precariousness of many housing conditions but also

forcing numerous people and families to leave their homes, with no option to find other affordable housing.

26.- The Spanish housing law could therefore be considered ‘second-generation’, meaning it was approved while the first and even second housing laws of the respective autonomous communities were still in force. These laws, more a product of cyclical pressure than of a systematic and structural vision of housing as a fundamental social right (in line with international standards and contrasting with its diminished treatment as a mere principle in the Spanish Constitution), are limited to providing partial, and at times contradictory, responses to the most urgent social housing needs.

27.- Generally, these regional laws continue to emphasise that access to housing is a guiding principle of social and economic policy (without the statutory right to housing being able to alter this weakened legal nature). They do not establish housing as a subjective social right for individuals and families, as required by Article 31 of the RESC. Instead, they focus on the traditional vision of public support policies through subsidies for purchasing and/or renting. Although some laws do call for judicial protection of the right to quality housing with specific deadlines, they do so with a strict administrative focus linked to the approval of the Land and Housing Plan (*‘Plan de Suelo y Vivienda’*), which is committed to urban planning rather than specific social objectives (such as percentages of protected housing, rental caps, etc.). This is the case, for example, of Article 10, in relation to the Second Additional Provision of Law 1/2010 of March 8, regulating the right to housing in Andalusia, or Catalan Law 1/2022 of March 3, amending Law 18/2007, Law 24/2015 and Law 4/2007 to address the housing emergency, although the latter does incorporate some innovations regarding the expansion of mandatory cases of social rent.

28.- Other, recent regional laws, such as Law 3/2024 of June 28 on urban planning measures for the promotion of protected housing in the Community of Madrid, aim to amend the older Law 9/2001 of July 17 to *facilitate the emergence of new land to generate the necessary publicly-protected housing, focusing on increasing the supply of such housing, particularly for the most disadvantaged sectors, at affordable prices.* As can be seen, the objective behind the reform is to free up land and reduce or eliminate urban development burdens so that economic stakeholders in the real estate sector have access to more land and face fewer obligations, with the intention of improving the housing supply in the market and, through this policy of economic liberalisation, helping to meet the demand for affordable housing. However, there are no minimum commitments for budgetary funding, estimated growth rates for this type of housing or specific deadlines for implementation, which raises concerns that this may be little more than a statement of intent.

29.- Consequently, the policy on social housing remains subject to the political discretion of public entities and their affiliated companies tasked with promoting public rental housing at reasonable prices. The problem is widespread. Hence, there is a significant diversity of situations among the different autonomous communities, all of which generally recognise that Spain's public rental housing sector has experienced an entire lost decade: statistical records show that there has hardly ever been a lower volume of social housing construction.

30.- Additionally, regional laws reveal notable differences in addressing the balance between housing supply and the need for permanent residences in different zones within the same region, as well as concerning specific vulnerable groups, particularly young people. For instance, a critical issue such as stressed housing market zones is included in some regional laws but not in others, and where it is included, the approach varies significantly. As a result, the rights and responsibilities of property owners, as well as the rights (and basic duties) of housing seekers, differ across autonomous communities due to the varying limits and conditions imposed on the social use of housing.

31.- Ultimately, the current fragmented regional framework on housing has entrenched Spain's housing problem, despite the new law that was intended to streamline the sector and resolve the issues. The differing political orientations of the various autonomous communities are hindering the achievement of minimum necessary consensus, which in itself is an obstacle to the effectiveness of Law 12/2023. This issue is acknowledged and anticipated in the cited Second Transitional Provision. The national law assumes that regional laws and policies are aligned with its objectives and instruments; however, practical reality demonstrates otherwise, showing disagreement and divergence. It would therefore be necessary to activate the measures provided for in the law. As analysed, this could result in delaying the fulfilment of minimum legal objectives for as much as two decades, effectively losing an entire generation - a scenario incompatible with the guarantees of Article 31 of the RESC and related rights in the Charter, which will be examined below.

2.4. Spain's (liberal) land laws: national and regional frameworks

32. As an additional legal complexity, the complainant trade union would point out that this issue is also influenced by another regulatory area, relating to land use. Currently (although a reform had been planned for this year, it has been withdrawn for now due to the difficulty of achieving the necessary political and institutional consensus), at the national level, the governing regulation is Royal Legislative Decree 7/2015 of 30 October, approving the consolidated text of the Land and Urban Rehabilitation Law. Article 1 of the decree establishes that it regulates, for the entire national territory, the basic conditions that guarantee:

a) Equality in exercising constitutional rights and fulfilling constitutional duties related to land.

b) Sustainable, competitive and efficient urban development by promoting measures that lead to building rehabilitation, urban regeneration and renewal of existing urban areas when necessary *to ensure citizens' adequate quality of life and the effective right to decent and adequate housing.*

33. The right to access decent and adequate housing is also recognised within this regulatory framework, which is now somewhat outdated and in urgent need of revision. Its current provisions contain a significant number of obstacles to urban management, which also hinder the practical implementation of organisational projects aligned with the contemporary demands of Spanish society in general and certain groups in particular, aimed at meeting their needs for affordable access to decent and adequate housing. Administrative management difficulties are further exacerbated by the complex and lengthy judicial disputes that urban planning processes often generate, alongside the mismatches inherent in the context of distributed competences. These mismatches also highlight differences between the laws and land use policies of the autonomous communities and local entities.

3. On the admissibility of the collective complaint

3.1. State party against which the collective complaint is directed: Spain has accepted the collective complaint procedure

34.- The collective complaint is directed against the Kingdom of Spain. Like other states, such as Greece and Italy, which have faced similar judgments on the non-conformity of their regulations with the right to decent and adequate housing under Article 31 of the RESC, Spain has ratified the Revised European Social Charter. Ratification took effect on 1 July 2021, as per the Instrument of Ratification of the Revised European Social Charter, done at Strasbourg on 3 May 1996, and published in Official State Gazette (BOE) No. 139 of 11 June 2021.³ The RESC entered into force for Spain **on 1 July 2021**, in accordance with the provisions of its Part VI, Article K(2) and (3).

35.- Likewise, the collective complaints procedure also came into force for Spain on 1 July 2021, when the respective declaration to that effect provided for in Article D of the Revised ESC was issued. This declaration is set out in the ratification instrument filed on 17 May 2021 and published in the above-mentioned BOE. This is a matter that is not subject to dispute, as the supervisory body of the Charter, the ECSR, has already issued several Decisions on the Merits in response to various collective complaints submitted to

³ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-9719

the highest body overseeing compliance with the Charter system. The first of these complaints was submitted, notably, by the UGT (Decision on the Merits of 20 March 2024, Complaint No. 207/2022).

3.2. The complaint is thus admissible *ratione temporis* and *ratione materiae*

36.- The regulatory framework of the Spanish State concerning the right to housing, which this complaint alleges is contrary to Article 31 of the RESC, independently and in conjunction with other relevant articles of the Charter (described in Section 1 above and analysed substantively in Section 4 below), was adopted after 1 July 2021 (the date on which the RESC and the collective complaints procedure took effect in Spain). Therefore, it postdates the ratification of the RESC and the acceptance of the collective complaints procedure. In short, the Committee has full jurisdiction *ratione temporis* to hear this complaint. In this context, it is worth highlighting that Article 25 of the **Universal Declaration of Human Rights** recognises the right to housing as a basic right of every person.

37.- In connection with the above, the complaint concerns, on the one hand, the breach, independently, of Article 31 of the RESC, a provision which is fully accepted by Spain. On the other hand, the complaint seeks a conclusion of non-conformity in respect of other provisions closely related to Article 31, in particular:

- **Article 16** of the Charter, concerning the comprehensive protection of the family.
- **Article 17** of the Charter, concerning the full protection of young people- one of the groups with the least access to decent housing, due in part to higher rates of job insecurity, a key issue for unions.
- **Article 19**, which focuses on the protection of migrant workers, whether currently employed or not, formalised or not, in accordance with the broad concept of migrant worker recognised by the Spanish Constitutional Court, consistent with the European Court of Human Rights (ECHR) and the ECSR.
- **Article 30**, on protection against poverty. On this matter, as will be further developed below, there is a growing number of individuals who are employed but, nevertheless, cannot meet basic needs with their wages, such as those related to energy (in-work fuel poverty) and, as relevant to this complaint, housing poverty. Protection against poverty must cover all its forms, including housing poverty, even for employed individuals- typically in precarious conditions, though not always.
- **Article E**, as access to decent housing is not guaranteed for a significant portion of Spain's working population and, still less so, for particularly vulnerable groups.

38. All these provisions were accepted by Spain in its Instrument of Ratification- in fact, our country has accepted all the substantial provisions of the RESC, and it was the third country to have accepted its full content, along with France and Portugal. The complaint is therefore also admissible *ratione materiae*.

3.3. The trade union presenting the collective complaint is a class-based union: General Union of Workers (UGT)

39.- The General Union of Workers (UGT) is one of the most representative class-based trade unions in Spain. As a class-based union, it has a long history of advocating for workers' rights, not only in the sphere of labour and social policies but also in broader social policies, which are intrinsic to the social principle of the constitutional state under the rule of law that defines the Spanish State. Founded in the 19th century, UGT is a constitutionally significant social body, according to Articles 7 and 28 of the Spanish Constitution, in line with constitutional doctrine established in that regard, which recognises not only its nature as a contracting party (employment relationship) but also its social and institutional nature (STC 18/1984). This makes it a key player in social policies and a key social partner of public authorities. Housing, being a fundamental asset for the overall well-being of individuals, families and groups, directly affects both the employed population and the citizenry at large, as adequate and decent housing is a prerequisite for the realisation of other social and labour rights.

After the UGT's 43rd Confederal Congress (May 2021), approval was granted for it to change its name from '*Unión General de Trabajadores*' to '*Union General de Trabajadoras y Trabajadores de Espana* [gender-inclusive form of 'General Union of Workers']', while retaining its acronym, UGT. It is a member of the European Trade Union Confederation and is also affiliated with the International Trade Union Confederation. At its upcoming Confederal Congress (November 2024), one of the central themes of its proposals will focus precisely on ensuring the effective right of all people, workers or otherwise, to decent and adequate housing.

3.4. Standing of the UGT to lodge collective complaints before the ECSR as the most representative trade union at State level

40.- Consequently, the UGT has legal standing to lodge collective complaints under Article 1(c) of the Protocol. According to that rule, it is one of the organisations competent to submit complaints challenging the unsatisfactory application of the Revised ESC, as in this case in relation to Article 24. The UGT is one of the: '*c) representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.*'

As the Committee will easily appreciate, in addition to its representativeness, the UGT is competent and particularly qualified to report violations of the labour and social rights recognised in the European Social Charter (initially its original 1961 version, then in the 1988 Protocol, and now in its 1996 revised version). This has been demonstrated not only through its experience at the national level but also for years through the submission of observations to the Committee in the context of the reporting system.

41.- Ultimately, at the socio-economic and cultural core of this complaint or collective complaint lies an alternative model of sustainable development and decent work, which forms the basis of the 2030 Agenda, adopted by the [UN General Assembly in 2015](#). The Agenda sets out objectives such as eradicating poverty in all its forms and dimensions, combating inequality within countries, fostering sustained, inclusive and sustainable economic growth and promoting social inclusion. These objectives are interconnected and interdependent. There is no doubt that housing is a central pillar of social well-being and, therefore, a cornerstone of the social principle of the constitutional state at both the national and European levels. Housing serves as a home or dwelling for the free and full development of private and family life and is at the centre of various economic and social policies. It is a vital asset tied to an economic sector dedicated to its production, market availability and first-rate management. Ensuring an adequate foundation for its optimal economic growth and social impact cannot be detached from the responsibility of a class-based union such as the one submitting this complaint.

42.- Furthermore, as will be detailed in Section 4, among the most relevant facts **in this area is that half of the homeless individuals assisted by the Red Cross, for example, are employed**. Before becoming homeless, 66.1% of those surveyed by the NGO had been employed, with 25.5% of this group working in the informal economy, and **another 33.4% holding full-time contracts**.⁴ Consequently, a class-based union like UGT is directly affected by matters of such importance to the social welfare of the working class. The dire issue of the impossibility, or extreme difficulty, of acquiring decent housing in Spain is the result of the combined imbalances of two markets: the housing market, with exorbitantly high prices- increasingly so for rentals- and the labour market, characterised by persistent job insecurity, which prevents many people aged 30 to 45 from becoming homeowners or even renting a property.

43.- The UGT brings collective complaints through the organ that has that power under its statutes. Currently, the Secretary General of UGT is José María Álvarez Suárez, and the

⁴ REPORT. '**La discriminación y la vulnerabilidad social** de las personas en exclusión residencial' ('Discrimination and social vulnerability of people in residential exclusion') <https://www.epe.es/es/sociedad/20231128/trabajar-pobreza-personas-sin-hogar-empleo-precariedad-95137813>

Deputy Secretary General for Trade Union Policy is Fernando Luján de Frías, both of whom have signed the complaint.

In accordance with Article 4, this complaint is submitted in writing and pertains to several provisions of the Charter, **with a central focus on Article 31 of the RESC- the full exercise of the basic social human right to housing**, accepted by the respondent State, Spain. The following section will specify the extent to which this Party has not ensured satisfactory application of that provision and its body of provisions particularly concerned (see Section 4 below).

44.- This complaint has been addressed, in accordance with Article 5 of the Protocol on implementation, to the individual holding the position of Secretary General of the Committee, requesting that they take the appropriate steps as provided for in this article.

<p>4. On the merits of the collective complaint: grounds for the non-conformity of Spanish law with the right to adequate housing under Article 31 of the RESC</p>

45. Article 5 of the collective complaints Protocol requires the entity having standing to bring collective complaints to set out precisely and specifically why, in its view, the contested national law, in this case Spanish law, does not fulfil, or conflicts with, the requirements laid down in the RESC provision concerned, in this case Article 31 of the RESC (the right to access adequate housing on reasonably affordable terms for all individuals), both as a standalone provision (independent assessment) and in relation to other articles of the Charter, such as Articles 16, 17, 19, 30 and Article E (violation in conjunction with Article 31 of the RESC). In the following sections and pages, the legal arguments on which UGT bases its collective complaint will be set out in an orderly manner, with the aim of obtaining a favourable ruling from the ECSR after the complaint is admitted. Consequently, it is requested that a **violation of the right to housing** under Article 31 be declared.

4.1. Article 31 of the RESC and relevant ECSR case law

4.1.1. Fundamental principles of ECSR case law as read with Article 31 of the RESC

46.- As is well known, according to Article 31, “with a view to ensuring **the effective exercise of the right to housing**, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources’*

47.- According to the case law of the ECSR, this article not only recognises but effectively guarantees the right to adequate housing- not merely formally or symbolically, as is often the case in practice with Article 47 of the Spanish Constitution. The ECSR has been closely monitoring compliance by States Parties, requiring that guarantees of access to social housing be legally sound and reliable, not just programmatic, for the population in general, and in particular for the most vulnerable groups.

48.- Article 31 § 1 guarantees access to adequate accommodation in all cases, with decent basic services, without overcrowding. For this reason, in various cases, the ECSR has held that when the number of adequate accommodation places is insufficient or the conditions are inadequate (e.g. shelters, campsites, slums, etc.), a State Party is in violation of Article 31 § 1 of the RESC. Moreover, the ECSR has consistently held that the lack of access to a reasonably adequate number of social housing units and the failure of competent authorities to effectively enforce this requirement would violate not only § 1 but also § 3 of Article 31 (see 2003 Conclusions, Article 31 § 2, France, p. 225, Italy, p. 345, Slovenia, p. 557 and Sweden, p. 653).

49.- The Committee has reiterated that, under Article 31.1, adequate housing refers to housing that is safe from a health perspective- i.e. it must have all basic services (water, heating, waste disposal, sanitation facilities and electricity), be structurally sound, not overcrowded and provide secure tenure backed by law (see Conclusions 2003, Article 31, paragraph 1, France; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, Decision on the Merits of 5 December 2007, paragraph 76; and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the Merits of 20 October 2009, paragraph 43). In this regard, housing or accommodation consisting of slums, overcrowded centres, caravan dwellings, overcrowded campsites, etc. would not be regarded as safe and healthy.

50.- According to the ECSR, Article 31 § 2 requires both the existence of effective measures to facilitate access to housing- whether through ownership or affordable rental options- ensuring a reasonable balance between housing costs and people's income, both generally and especially for certain vulnerable groups (such as young people, ethnic and cultural minorities, immigrants, etc.), and the legal guarantee of continuity in the enjoyment of housing, accommodation or adequate housing solutions. Evictions or forced removals must be sufficiently justified and carried out in conditions that respect the dignity of those affected.

In addition, the ECSR has determined that alternative social housing must be guaranteed.

51. The ECSR also emphasises the need for the legislation of the State Party to ensure full transparency in the housing market, both private and public, including officially protected housing and social housing. The burden is on the State to demonstrate that it

has adequate criteria in place to inform individuals in need of social housing about available resources and opportunities for access. Full, or at least reasonable and appropriate, transparency in housing markets, including social housing, is a necessary condition to comply with Article 31 § 3 of the ECSR. However, it is not sufficient, as the State Party must also ensure the existence of adequate measures and opportunities, in line with the volume of need within the State, so that individuals in general - and particularly vulnerable groups - can gain sufficient access to social housing, as expressly required by Article 31 § 3.

52.- In sum, the settled case law of the ECSR (Decision on the Merits of 7 December 2005 in *ERRC v. Italy*, Collective Complaint 27/2004; *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint 27/2004; *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009)

‘(...) Under Article 31§3 it is incumbent on States Parties to adopt appropriate measures for the construction of housing, in particular social housing (see Conclusions 2003, Article 31§3, France, p. 232, Italy, p. 348, Slovenia, p. 561, and Sweden, p. 655). Furthermore, they must ensure access to social housing for disadvantaged groups...’ (young people, immigrants, ethnic minorities, etc.)

4.1.2. The special protection of the right to social housing for the most vulnerable groups, including as a requirement of Articles 16 and E of the Charter

53.- In line with the principle of protecting the most vulnerable groups, which underpins the recognition of the right to housing in the Charter as Europe’s Social Constitution, the Committee has established - both in its interpretation of Article 31 of the RESC independently and in connection with other provisions of the Charter (e.g. Article 16)- that the legal, social and economic protection of families encompasses providing adequate housing. This includes both affordable access to social housing (effective guarantees of access) and protection against abusive evictions (guarantees of continuity except for just cause for eviction). In this regard, with regard to the right to adequate housing under Article 16 of the Charter, see *European Roma Rights Centre v Greece*, Complaint 15/2003, Decision on the Merits, 8 December 2004, paragraphs 24 and 51).

54.- The ECSR, therefore, emphasises that the various provisions of the Charter, given their indivisible approach, require governments to promote access to adequate housing in an effective, measurable way- not merely programmatically, symbolically or through planning instruments that are not implemented in practice-, to work towards preventing homelessness and to guarantee access to social housing for all individuals, especially the most vulnerable. This is both a requirement for fulfilling the social right to housing itself and a means of avoiding unfavourable treatment of groups with greater difficulty accessing housing, whether due to economic vulnerability or to the risk of social

exclusion. For this reason, Article E prohibits discrimination, whether intentional or not, based, inter alia, on racial, social, national or cultural origin, among other factors.

55. Along the same lines, but in relation to Article 31 RESC, and not Article 16, the Decision on the Merits of 7 December 2005, *European Roma Rights Centre v. Italy* Complaint No. 27/2004 was delivered. In this case, the complaint against Italy concerned violations of Article 31 and Article E of the Revised European Social Charter with respect to the Roma community. Years later, the ECSR again found that Italy was violating the prohibition of discrimination under Article E by failing to introduce specific measures to protect the access of particularly vulnerable groups to social housing, ensuring their ability to obtain adequate accommodation (Decision on the Merits of 25 June 2010, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009). This case law applies to all situations involving the vulnerability of individuals and groups.

4.1.3. The ECSR guidelines for the reasonable implementation of the right to decent and affordable housing as a social right which is complex to realise in practice

56.- The Committee has stated that, under Article 31(1) of the Charter, States are required to adopt 'the legal and practical measures which are necessary and adequate to the goal of the effective protection' of the right to decent and affordable housing. When weighing the level of intensity of such a requirement, the ECSR notes that States have a reasonable margin of appreciation in determining the measures to be taken to ensure compliance with the Charter, in particular as regards 'the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources' (*European Roma and Travellers Forum - ERTF v. France*, Collective Complaint No. 64/2011, Decision on the Merits of 24 January 2012, §95). However, in assessing the fulfilment of these legal and social obligations, State Parties must 'be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected' (*ERTF v. France*, Collective Complaint No. 64/2011, op. cit., §96).

57.- In its legal and social reasoning, and with full awareness of the extremely complex nature of realising the right to decent and affordable housing for all individuals in a State Party- particularly for socio-economically vulnerable groups who face extreme difficulties or near-impossibility in terms of access, such as young people, immigrants, ethnic minorities, etc.- the ECSR, as the highest supervisory body of the Charter, has explicitly ruled on how States must act, through their housing laws and policies, so as to comply with their binding commitments under Article 31 of the ESC, especially paragraph 3. In this regard, the ECSR acknowledges that for a right as exceptionally complex and particularly costly to implement (in terms of time and budgets) as the right to decent housing, State Parties are required to adopt a set of effective measures to achieve the

Charter's objectives- in this case, under Article 31 of the RESC both independently and in conjunction with Articles 16, 17, and 30 (and Article E):

- a) *within 'a reasonable time'*
- b) *with 'measurable progress'*
- c) making *'maximum use of available resources'* (Decision on the Merits of 26 January 2021, Collective Complaint 173/2018, §113).

58.- As will be demonstrated in the relevant section below, in the opinion of the complainant trade union, none of these three requirements or conditions is met in the Spanish Law 12/2023 on Housing. The aforementioned Second Transitional Provision of the law shows that the Spanish legislation does recognise the need to provide guarantees for the effective long-term implementation of the right to housing. However, these guarantees are clearly inadequate in terms of the imperatives of Article 31 of the RESC, as interpreted by the ECSR.

4.2. The right to decent affordable housing as a precondition for the enjoyment of other fundamental rights of the Charter, according to the ECSR

4.2.1. The right to adequate housing as a paradigm of the indivisibility of the social rights of the Charter

59.- The interpretation of the right to access decent and affordable housing- including the obligation of public authorities in a State Party to offer serious and effective measures and opportunities for access to social housing- has enabled the ECSR to reaffirm its case law on the indivisibility of the rights of the Charter. This right is particularly linked to the conditions necessary for the existence of the right to human dignity for all individuals, under equal conditions, regardless of their economic or social circumstances, whether individual or collective. This is clearly reflected in the Decision on the Merits of 26 January 2021, Complaint No. 173/2018 (International Commission of Jurists and European Council for Refugees and Exiles v. Greece). In that Decision on the Merits, it refers to its case law according to which:

'...the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity' (para. 119, p. 62).

60.- This approach by the Charter's supervisory body reflects the political stance of the Committee of Ministers of the Council of Europe. In one of its key recommendations, the Committee reiterates that housing is part of basic human material needs and, therefore, must be addressed by State Parties as minimum guarantees:

‘the satisfaction of basic human material needs (as a minimum: food, clothing, shelter and basic medical care) is a requirement intrinsic to the dignity of every human being and constitutes the condition for the existence of all human beings and their well-being.’

It adds that this understanding of the basic conditions for a dignified existence of people must not remain at the level of programmatic acknowledgement but must be safeguarded with guarantees of effectiveness; they must be serious, reliable rights. Thus, it expressly affirms the need not only for the recognition of rights to its satisfaction but also for the establishment of a procedure guaranteeing their enforceability, both of which are indispensable conditions for the exercise of other fundamental rights (Recommendation of the Committee of Ministers to Member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship).

61.- In line with this perspective of the Charter and its supervisory body, this collective complaint emphasises not only the inconsistency of Spanish legislation and practice in housing matters with Article 31 of the RESC, independently, but also in relation to other provisions of the Charter, which have often been analysed jointly in the case law of the ECSR, both before and after 1996.

4.2.2. The right of access to social housing is also included in the right of the family to protection under Article 16 of the Charter and Article 30 of the RESC

62.- The Committee has consistently held, as noted above, that Article 16 of the Charter encompasses the right of the family to adequate housing in the context of safeguarding ‘the right of the family to social, legal and economic protection.’ It acknowledges that, on a systematic level, although Articles 16 and 31 differ in their personal and material scope, the concept of adequate housing in both provisions is identical. According to its case law, *a finding of a violation under Article E taken in conjunction with Article 31 amounts to a finding of a violation of Article E taken in conjunction with Article 16* (European Roma Rights Centre v Greece, Complaint 15/2003, Decision on the Merits, 8 December 2004, paragraphs 24 and 51; ERRC v. Bulgaria, Complaint No. 31/2005, Decision on the Merits, 18 October 2006, §17; and ERRC v. France, Complaint No. 51/2008, Decision on the Merits, 19 October 2009, §89). In summary, the ECSR finds that a violation of Article E in conjunction with Article 31 of the RESC also constitutes a violation in conjunction with Article 16.

63.- Similarly, in its Decision on the Merits of 19 October 2009, in the case of ERRC v. France, Complaint No. 51/2008, the Committee held that:

‘93. (...) living in a situation of social exclusion violates the dignity of human beings. ...Article 30 requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and

remove obstacles to access to fundamental rights. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by exclusion. This approach must link and integrate policies in a consistent way (Conclusions 2003, Article 30, France, p. 214).’

64.- The ECSR emphasises that the reference to the social rights enshrined in Article 30 should not be understood strictly or restrictively, but expansively. Therefore, the fight against the risk of residential exclusion, as part of social exclusion, gives special significance to the indivisibility of fundamental rights.

From this overall perspective, the right to housing, as a social right closely tied to equal civic and societal participation for all individuals in general- and particularly for those belonging to more vulnerable groups- represents, according to the ECSR, ‘a necessary dimension of social integration and inclusion and is, therefore, protected under Article 30.’

65.- In summary, access to affordable housing is a right that must be taken seriously (in the sense of Ronald Dworkin) by the State Party through its effective guarantee to every individual and household, regardless of their circumstances, and particularly so if they belong to especially vulnerable groups. In this regard, the above-mentioned Decision on the Merits of 26 January 2021, No. 173/2018 concluded:

‘[Greece does not provide adequate housing] as a means of securing the social, legal and economic protection of the family unit, in order to safeguard the well-being and the full development of the child as a member of the family’ (paragraph 177).

4.2.3. The effective guarantee of the social right to decent affordable housing under Article 31 of the RESC is also included in Article 7 (protection of minors) and Article 17 (comprehensive protection of young people)

66.- The Decision on the Merits of 26 January 2021, Complaint No. 173/2018, confirms that, according to the case law of the ECSR, the effective guarantee of the social right to housing (lodging, residence, dwelling) is also integrated into various other provisions of the Charter, particularly those relating to the special protection of groups requiring greater attention due to their heightened vulnerability, such as minors and young people (Articles 7 and 17 of the Charter). In such cases, the required protection is comprehensive (economic, social, legal), and must therefore include a socio-economic condition as decisive as the guarantee of adequate housing, which is essential to living a dignified life.

67.- As noted above and now emphasised, the Committee requires that equality of treatment in access to decent housing be guaranteed for various groups of vulnerable

individuals, **particularly low-income individuals** (with young people being especially prominent in this category), unemployed persons, single-parent households, children, and persons with disabilities, including those with mental health conditions (Conclusions of 2003, Article 31 §1, Italy). More recently, the ECSR has called on States to report on and include refugees (as part of international social protection) in this housing protection framework, recognising them as a vulnerable group within the scope of Article 31 §1 (Conclusions of 2019, Article 31 §1, Greece). More specifically, it includes minors (children) with visible and non-visible psychological vulnerabilities, such as those that may be experienced by the minors whose rights are the subject of this complaint, unaccompanied migrant minors, in a manner analogous to what it indicated for Greece (e.g. Merits Decision 26 January 2021, § 114).

68.- Under Article 31 § 2, the Committee reiterates that housing should be provided to homeless people as an emergency solution. Additionally, to ensure that the dignity of those housed is respected, such accommodation must meet health, safety and hygiene standards and, in particular, must be equipped with basic services such as access to water, heating and sufficient lighting. Another basic requirement is the safety of the immediate environment (*Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, § 62; *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 114/2015, § 174). States are therefore obliged to provide adequate accommodation for children who are unlawfully present on their territory while under their jurisdiction (*DCI v. the Netherlands*, Complaint No. 47/2008, §§ 47 and 64).

69.- With regard to individuals in an irregular situation within the territory of a State, since it cannot be required to provide alternative accommodation, eviction from shelters should be prohibited, as this would place the affected persons, particularly children, in a situation of extreme vulnerability, which is contrary to respect for their human dignity (*DCI v. the Netherlands*, Complaint No. 47/2008, *op. cit.*, §63; *FEANTSA v. The Netherlands*, Complaint No. 86/2012, *op. cit.*, §110). The Committee refers in this regard to its Statement of Interpretation of Article 31(2) (Conclusions 2015) and stresses that eviction from shelters without the provision of alternative accommodation must be prohibited.

70.- To give greater substance to this imperative of ensuring adequate housing throughout the duration of the stay of these groups of non-national foreign individuals in the territory of the State party, particularly those in need of special protection, such as unaccompanied minors, the ECSR refers once again to the standards of international humanitarian social law. The Committee notes that Article 31, paragraphs 1 to 3, of the Vienna Convention on the Law of Treaties requires that the terms of a treaty be read in their context and in the light of its object and purpose, as well as in harmony with other relevant and applicable norms of international law. In doing so, the Committee must consider Article 31 of the

Charter in the light of complementary international instruments and the authorised interpretations thereof, particularly the Convention on the Rights of the Child and the General Comments of the Committee on the Rights of the Child, when ruling on an alleged violation of any right of the Charter applicable to children (see *mutatis mutandis*, EUROCEF v. France, Complaint No. 114/2015, *op. cit.*, §54).

71.- In this regard, the Committee observes that Article 27, paragraph 1, of the Convention on the Rights of the Child recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in their 2017 Joint General Comment on the States' obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (§50), emphasised that States must take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents.

States parties should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families.

72.- The Committee also refers to the case law of the ECHR, according to which failure to provide migrant or asylum-seeking children (whether accompanied or not) with accommodation and adequate living conditions may constitute degrading treatment under Article 3 of the European Convention on Human Rights (ECHR Judgment of February 28, 2019, *Khan v. France*, §§ 74-95; ECHR Judgment February 28, 2019, *H.A. v. Greece*, §§ 116-122, among others).

73.- In the interest of procedural economy, regarding this case law of the ECSR, while it addresses separately the treatment of minors in relation to reception and accommodation on the Greek islands and the mainland, it concludes in both cases that there is a systematic lack of reception and age-appropriate accommodation centres, resulting in children living for extended periods in overcrowded and inadequate or substandard conditions in regional reception centres (often referred to as 'hotspots'). It therefore considers that the current state or practical situation in Greece, apart from the provisions formally laid down in its laws and regulations, violates Article 31 of the RESC in conjunction with Articles 7 and 17 of the Charter. To a large extent, given the insufficient number of available reception spaces, solutions originally conceived to address short-term or emergency needs end up becoming structural and fail to meet adequate standards of reception and habitability.

74.- Indeed, the ECSR notes a violation of Article 31(2) due to the inadequate accommodation of accompanied and unaccompanied migrant children on the islands, as well as regarding the accommodation of unaccompanied migrant children on the

mainland. Both violations relate to the lack of adequate accommodation for these children. The Committee notes that the obligations relating to the provision of accommodation under Article 17 are identical in substance to those set out in Article 31(2) (*DCI v. The Netherlands*, op. cit., §71; see, mutatis mutandis, *EUROCEF v. France*, op. cit., §§173-177). In this regard, the Committee has already found, in the context of the reporting procedure, that the situation in Greece does not comply with Article 17.1 of the Charter due to the inadequate and often unsafe accommodation of unaccompanied migrant children (Conclusions 2019, Greece).

75.- The Committee has also found a violation of Article 31(1) due to the housing situation of refugee and asylum-seeking children on the islands, as well as unaccompanied refugee and asylum-seeking children on the mainland (see paragraphs 136 and 146). It considers that the lack of adequate and lasting accommodation tailored to the needs and vulnerabilities of these children also falls within the scope of Article 17, insofar as States Parties must ensure adequate and lasting accommodation as part of care, assistance and protection appropriate to the age and best interests of the child. The accommodation of these children in reception centres or hotels, particularly if it involves long-term housing (i.e. weeks or even months) without age-appropriate services, cannot be considered to meet the best interests of the child and is contrary to the Charter (see, mutatis mutandis, *EUROCEF v. France*, op. cit., §§92, 97 and 100) (Decision on the Merits of 26 January 2021, Collective Complaint No. 173/2018, §§ 159-162).

76.- The ECSR accordingly considers that Article 17 guarantees the right of children, including children in an irregular migration situation and unaccompanied children, to receive care and assistance, including adequate accommodation (*FIDH v. France*, Complaint No. 14/2003, Decision on the Merits of 8 September 2004, §36; *DCI v. Belgium*, Complaint No. 69/2011, §82; *EUROCEF v. France*, Complaint No. 114/2015, §§83-94). Article 17 concerns the assistance to be provided by the State when the child is unaccompanied or if the parents are unable to provide such assistance. The implementation of Article 17(1)(b) is of particular importance. The Committee has held, referring to UNHCR's observations, that unaccompanied migrant children should be placed as quickly as possible in an appropriate reception structure and that their needs should be carefully assessed. Indeed, immediate assistance is essential and makes it possible to assess the material needs of young people in order to establish a support plan for the child. This assessment is often crucial for the effectiveness of the right to asylum (*DCI v. Belgium*, op. cit., §§80-81).

77.- Specifically, in the Greek case, the ECSR took note of the position of the European Trade Union Confederation (ETUC) in its observations on various international legal instruments, including the ILO Worst Forms of Child Labour Convention of 1999 (No. 182),

EU law and the case law of the ECHR in relation to the living conditions of unaccompanied migrant children (H.A. and Others v. Greece, Application No. 19951/16, Decision of 28 February 2019; Case Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia, Application No. 14165/16, Decision of 13 June 2019). While, in the first decision, the Court did not conclude that the living conditions in the Diavata reception centre (near Thessaloniki) constituted inhuman or degrading treatment, the ETUC considers that the ***Charter provides a much higher level of protection in several respects than Article 3 of the ECHR***. The ECSR specifically took note of these allegations and decisions and concluded, in the context of international humanitarian law, that in this case there was indeed a violation of Articles 7, 17 and 31 of the Charter.

78.- In summary, the ESC provides special protection to the most vulnerable social groups, including- and with particular priority- the right to housing for children, adolescents, young people and migrants. It is therefore logical that refugees are also included in this protection, although their inclusion has two particularly noteworthy features. On the one hand, they were not provided for in the original text but were included in the Appendix to the revised Charter, the current wording of 1996. On the other hand, their inclusion is presented as an extension to the ‘scope of the revised European Social Charter in terms of persons protected.’ The ECSR, aware of the situation faced by the Greek government, and of the situation Spain faces today, given the large influx of migrants on its shores, considers, as noted below:

‘the exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, because their specific needs and extreme vulnerability. As mentioned above, the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity (DCI v. the Netherlands, Complaint No. 47/2008, op. cit., §§47 and 64), in particular where the persons concerned are children.

4.2.4. The guarantee of the right to decent housing is also included within the right to protection for migrant workers in regular situations under Article 19 of the Charter

79.- Not only do certain particularly socio-economically vulnerable groups within the immigrant population, such as minors and young people - even those in irregular situations- enjoy express protection with regard to the right to adequate housing. In accordance with Article 19 of the Charter, migrant workers in legal or regular situations are also entitled to this right. This is explicitly provided for in paragraph 4.

80.- Accordingly, to ensure the effective exercise of the right of migrant workers and their families to receive protection and assistance in the territory of any other Party, the Parties undertake:

‘4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

a) remuneration and other employment and working conditions;

b) membership of trade unions...;

c) accommodation;

81. In accordance with the case law of the ECSR:

‘With regard to persons regularly resident or regularly working within the territory of the state party concerned, the Committee recalls that the temporary provision of shelter, however adequate, cannot be considered a lasting solution. These persons must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 within a reasonable time (FEANTSA v. the Netherlands, Complaint No. 86/2012, §109)’ (Decision on the Merits, 26 January 2021, International Commission of Jurists-ICJ- and European Council for Refugees and Exiles-ECRE- v. Greece, complaint n. 173/2018, §118).

<p>5. Analysis of national legislation with reference to the provisions and objectives laid down in Article 31 of the RESC, independently and in conjunction with Articles 17, 19, 30 and E of the Charter</p>

5.1. The absence of effective judicial review of the enforcement of the guarantees of a fundamental social right to decent and affordable housing

82.- As highlighted earlier, the case law of the ECSR not only requires the existence of a legal system that effectively guarantees the right to housing but also demands the implementation of ‘practical measures’ (policies and adequate resources) to make this right a reality in the everyday lives of people, particularly the most vulnerable groups.

Among these practical mechanisms, the Committee also includes the existence of oversight mechanisms operated by competent authorities, as well as mechanisms to enforce the fundamental social right to housing through judicial means, if necessary, always in the context of reasonableness established by the ECSR. However, one of the primary- and not insignificant- obstacles in Spanish law and practice to guaranteeing Article 31 of the RESC is the lack of effective judicial review. This is because housing is treated as a mere guiding principle of economic and social policy under Article 47 of the Spanish Constitution, subject to the discretion of political decisions.

83.- From this perspective, this collective complaint takes on particular significance, not only because of its novelty in Spain but also because of its broader implications. If it is upheld, as we argue and intend to demonstrate it should be, it would represent a historic legal milestone in our country, as it would shift housing policy away from being considered merely as a set of political decisions- subject to the availability of resources (public housing stock and fiscal investment in housing) freely decided by each competent government, whether state or regional. Instead, as per ECSR case law (entirely absent from our legal practice to date), it would recognise housing as a subjective social right with legal guarantees of practical effectiveness. This is without prejudice to the assumption, without a doubt, that it is a right that is complex and which much be implemented gradually. However, it would require its implementation to be subject to reasonable timeframes, objective measurement of progress and the allocation of a minimum level of resources to maximise the effectiveness of the right.

84.- In this regard, it should be noted that the collective complaints procedure should be viewed as having a quasi-judicial value because it allows for an adversarial assessment of compliance with, or infringement of, specific legal provisions of the Charter. This is particularly relevant here concerning Article 31 of the RESC, both independently and in conjunction with Articles 16, 7-17, 19, 30 and E of the Charter. Furthermore, this procedure serves as an instrument of good democratic governance (processes that inspire, inform, shape and monitor the quality of legislative and executive decisions) in a matter central to societal well-being. For a country like Spain, in the European context, housing is a fundamental issue.

85.- The undersigned union respectfully seeks to convince the ECSR, while recognising its autonomy and impartiality, that this is not just another collective complaint. Its approval would contribute decisively to a radical shift in the legal and practical regulation of the housing market in Spain. The housing market is currently entirely imbalanced⁵ and unable to adequately meet housing needs, especially social housing, for millions of people-

⁵ <https://www.lavanguardia.com/mediterranean/20240910/9928845/price-rental-room-madrid-expensive-spain-housing-fotocasa.html>

particularly young people-as well as thousands of others from vulnerable groups, such as unaccompanied migrant minors or migrant workers, for various reasons. Consequently, declaring this collective complaint admissible and, more importantly, approving it would represent a path towards progress- a tool for promoting democratic governance in housing through the role attributed to social partners, such as this class-based union, in guaranteeing and promoting effective social housing policies. These policies are currently non-existent or severely inadequate in Spain, for reasons that will be elaborated in detail below.

86. In Spain, as will be demonstrated through the legal and factual reasoning set out in this collective complaint, the housing crisis- both generally and particularly for certain vulnerable groups (such as young people and migrants)- is experienced in a particularly dramatic way in social terms. Housing has surged to become the second most significant issue in the country and is at the centre of political discourse, with promises of legal changes and practical policy reforms. However, as will be proven, the right to housing remains far from being guaranteed, with no certainty as to when this will be resolved. This highlights the systemic importance of this collective complaint.

5.2. Assessment of Spanish law and the (non-existent) affordable (social) housing policies up to summer 2023: a situation of total non-conformity with the commitments under the Charter

87.- The complainant union considers it appropriate, for reasons that will be elaborated upon, to distinguish between two legal periods when assessing the non-conformity of Spanish law and, of course, housing practices under Article 31 of the RESC: Before and after Law 12/2023 of 24 May.

88.- Before this date, due to the total absence of a national housing law, combined with the lack of social housing policies over the past 20 years- unlike the situation before the 1990s- the Kingdom of Spain was not only in total non-conformity in terms of its housing practices. It was also in a situation of complete non-conformity with respect to its regulatory frameworks, as they were completely devoid of the slightest social dimension, save for some exceptions and certain regional fiscal support measures for home purchases or rentals. **After this date,** although it is clear- based on the data (statistical evidence) that will be provided shortly- that the situation in practice remains exactly the same in terms of the failure to live up to the requirement of enforcing the right to housing under Article 31 of the RESC, the legislative framework has undergone significant change. As previously explained, a social dimension has now been incorporated. However, as will be discussed in detail below, the complainant union considers that the requirements of the Charter have yet to be adequately satisfied or complied with.

89.- There is a widespread social and institutional belief in Spain that buying or renting a home is practically a ‘mission impossible’ for millions of young people. A shortage of housing coincides with much greater difficulties in accessing housing than those faced by older generations. This practical impossibility for young people- who are most affected by job insecurity- to access adequate housing due to unaffordability is evidenced by at least four key statistics (statistical evidence) demonstrating non-conformity with this right. Namely:

- 1) Housing prices have been rising above average inflation since 2015, particularly in areas with higher populations and tourism, where young people migrate in search of job opportunities.
- 2) This price increase far outpaces wage growth. For instance, rental prices have increased at twice the rate of wages for young people, many of whom earn the minimum guaranteed interprofessional salary. While reforms agreed with the government have reduced youth unemployment (currently at 20%) and improved wages, their purchasing power has decreased due to the unresolved housing issue.

The *Observatorio de Emancipación* (an official agency) estimates a 3.3% reduction in purchasing power, while median rent- the figure achieved by dividing rentals into equal halves of higher and lower costs- was 0.5% higher in the first half of 2023 than the previous year.

- 3) Young people still face higher levels of unemployment, job instability and part-time work than older generations.
- 4) Additionally, the wealth gap between young people and older generations has widened ninefold. Those over 65 maintain their wealth thanks to home ownership (as Spain was traditionally a nation of homeowners 20 years ago), while the wealth of households aged 35–44 has plummeted.

90.- The practical effects of this highly stressed and unbalanced housing market are clear:

- **Two out of three young people aged 18 to 34 still live with or depend on their parents. The percentage has risen from 52% to 66% in 13 years.**
- **Only 16.3% of individuals aged 16 to 29 were independent in the first half of 2023, far below the 26% home-leaving, or emancipation, rate of 2008 and the EU average of 31.9%.⁶**

⁶ See last report of the [Observatorio de Emancipación of the Youth Council](https://www.cje.org/investigacion/#observatorio) (CJE) <https://www.cje.org/investigacion/#observatorio>

- **The average age of emancipation in Spain is 30.3 years, one of the five highest in Europe.** Only Croatia, Slovakia and Greece report worse figures. As a result, there is a significant mismatch between Spain's economic capacity (the fifth largest in the EU) and its allocation of resources for affordable housing for young people. For instance, in France or Germany, young people typically move out between the ages of 23 and 24, **meaning they gain independence 10 years earlier than Spaniards** (Eurostat data).⁷
- **The percentage of young people under the age of 29 who own a home is half of what it was in 2007. Buying a home will also not be a realistic option for many young people in the future. The first monthly mortgage payment represents 65.9% of a young person's salary,** and saving for a deposit would require EUR 53 796, equivalent to four and a half years of their income.
- **The median rent was EUR 944 per month in the first half of 2023, meaning that a young worker would have to allocate almost 94% of their salary to rent.**
- **Young people are increasingly forced to share housing** with individuals with whom they have no prior connection. However, renting a single room is not an affordable option under the terms of Article 31 of the RESC, as it costs EUR 375 per month, **equivalent to 37.3% of a young person's salary.** This exceeds the 30% income threshold for housing costs, which scientific evidence- and, for the future, Law 12/2023- defines as the maximum financial effort a person should allocate to housing.⁸
-
- **Nearly 1 in 2 households (49.4%) renting their homes are at risk of poverty, and 41% of them spend more than 40% of their disposable income on rent.** This far exceeds the maximum financial effort established by law (30%), according to the latest Living Conditions Survey by Spain's National Statistics Institute (INE).

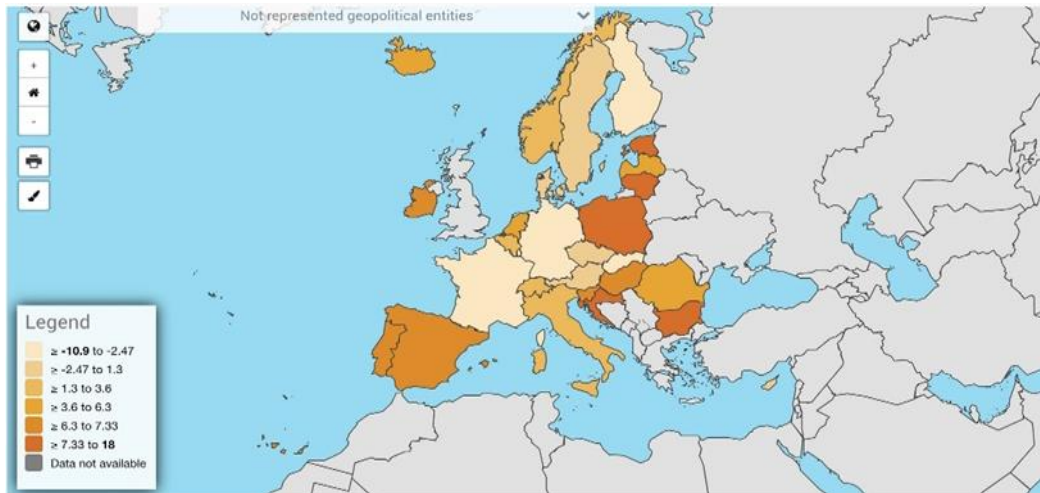
91.- Far from improving, the problem is worsening, even after the introduction of Law 12/2023. While housing prices in Eurozone countries and economies fell by 0.4%, Spain recorded a 6.4% increase in the first quarter of 2024 compared to the same period the previous year. In the context of Europe's housing market crisis, Spain ranks 9th, placing

⁷ <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230904-1>

⁸ <https://www.rtve.es/noticias/20240116/bajos-salarios-altos-alquileres-trabajos-precarios-barreras-jovenes-a-hora-independizarse/2470923.shtml>

it in the top 10 countries with the fastest-rising housing prices- very close to Malta (8th), Portugal (7th) and Hungary (6th), all with increases of around 7%.

Source: Eurostat⁹



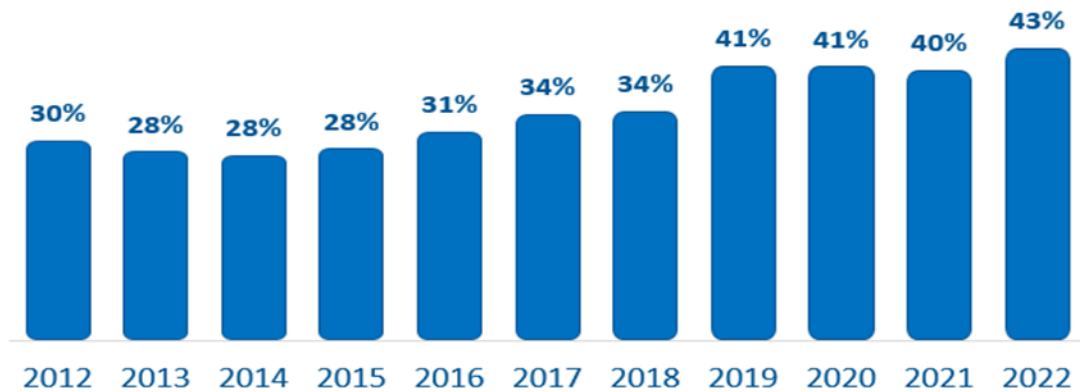
92.- Market and policy imbalances will persist in the coming years, despite Law 12/2023, as estimated by the Bank of Spain, since the demand for housing is growing at twice the rate of supply. The formation of households in Spain is double the rate of new housing construction, further driving prices upward and exacerbating difficulties in accessing housing. According to the bank's latest Financial Stability Report,¹⁰ housing prices in Spain have been rising continuously for 10 years, and in some cities, [they now exceed even the peaks](#) of the 2008 housing bubble (systemic crisis). This strong upward pressure not only creates serious social problems (social imbalances) but also threatens to lead to imbalances that could destabilise the economy and financial markets. The report notes that between January and September 2023, housing prices increased by 3.4%, while sales fell by 14%, and price growth is forecast to be even more intense in 2025.

93.- In Spain, the average person must spend 43% of their gross salary to pay their housing rent, compared to 40% in 2021. This is the highest figure in the last decade (see graph below). All national and international economic organisations agree that, in the near future (2025), the percentage of salary required is set to increase.¹¹

⁹ <https://www.businessinsider.es/mapa-drama-vivienda-espana-top-10-paises-donde-suba-precio-europa-1394299>

¹⁰ <https://www.bde.es/wbe/es/publicaciones/estabilidad-financiera-politica-macprudencial/informe-estabilidad-financiera/>

¹¹ <https://nosotros.infojobs.net/prensa/notas-prensa/los-espanoles-destinaron-el-43-de-su-salario-al-pago-del-alquiler-en-2022-la-cifra-mas-alta-de-la-ultima-decada#:~:text=El%20espa%C3%B1ol%20medio%20tuvo%20que%20dedicar%20el%2043%25,la%20vivienda%20de%20alquiler%20del%20C3%8Dndice%20Inmobiliario%20Fotocasa>



94.- These figures are confirmed by several studies, including those of the OECD.¹² Regardless of the statistical differences between various studies (although the variation is no more than 4 or 5 percentage points), it is absolutely certain that, according to economic theory, the maximum proportion of income that should be allocated to housing payments should not exceed 30%, otherwise it risks causing severe ‘economic stress.’ Consequently, in Spain, alongside the severe inequality between different regions- where several autonomous communities are far above this threshold and only a few are slightly below it- there is profound dissatisfaction with the right to housing. This is because the average financial effort far exceeds (by more than 10 percentage points) the salary threshold for housing payments, making access to affordable housing extremely difficult or even impossible. **It is important to note that this negative impact is significantly greater for young people. Given their lower salaries, this creates indirect age-based discrimination** (contrary to Article E of the Charter), as their personal financial effort to afford housing is considerably higher.

95.- The evident upward curve (rise) in housing prices (both rental and purchase) has a significant socio-economic impact on households, as it **strangles their ability to save. This market deficit and the inability of the legal framework to address it have led to a detrimental and radical socio-economic shift.** For many years, to rent was a strategy to save and eventually buy a house, but in the past decade, this has no longer been possible. **Renting** has become one of the main factors in eroding **households’ ability to save** in Spain. As a result, the housing issue, as mentioned, not only generates a notable problem of economic and financial stress (affecting psychological and social stability, according to the ILO), but this situation **also leads to deprivation of other basic goods beyond housing**, as it reduces the ability to access (consume) essential goods and services. Therefore, the ineffective application of Article 31 of the RESC in relation to the identified Articles 16 and 17 is evident, irrefutable, both legally and practically (socially).

¹² <https://web.archive.org/web/20230410210307/https://www.oecd.org/housing/data/affordable-housing-database/>

96.-The severe magnitude of the problem in Spain means that it also affects employed individuals. The inability to access adequate housing extends to people with jobs, expanding what is known as **in-work housing poverty** (similar to in-work fuel poverty), which refers to the deprivation of the right to affordable access to housing despite having a wage income. In some areas of Spain with large populations and intense tourism (e.g. the Balearic Islands), even salaries with a certain purchasing power are insufficient to access adequate housing. The data are patently clear.

97.- Indeed, the data show that the increase in the minimum guaranteed interprofessional salary - now EUR 1 134 per month over 14 payments - has displaced workers with the lowest salaries into the bracket of EUR 14 000 to EUR 15 000 annually. The latest [wage structure](#) survey of the National Statistics Institute (INS) reveals that, although the **average annual salary in 2022 was EUR 26 948.87** gross per worker (a 4.1% increase compared to the previous figure), the situation remains challenging. The Bank of Spain recommends spending no more than 35% of net income on housing, which means that, for those earning the average salary, the amount allocated to buying or renting should not exceed EUR 600 per month, whether for a mortgage or for rent. This amount would be almost halved when the most common salary is considered, making access to housing impossible for a significant portion of the working population. The situation is unsustainable for younger people, as shown by data from the last six months of 2023 provided by the Emancipation Observatory issued by the Youth Council of Spain. Renting - or buying - a home alone has become an impossible task for people under 30 living in the country. Given the current rental prices in Spain, young people need to allocate 92.1% of their net salary just to rent a home. If utility expenses are included, the cost exceeds 100% of their income.

The issue is particularly unsustainable in the coastal autonomous communities with the highest levels of tourism: the Balearic Islands, the Canary Islands and Catalonia, where the average rent for an entire property exceeds the full wage of young people and working people earning between the minimum wage and the average wage and the most common wage. To rent in these communities, these individuals would need to spend, on average, 122.6%, 121% and 112% of their salary, respectively. This underscores the need for salary increases while simultaneously limiting or preventing increases in housing costs.

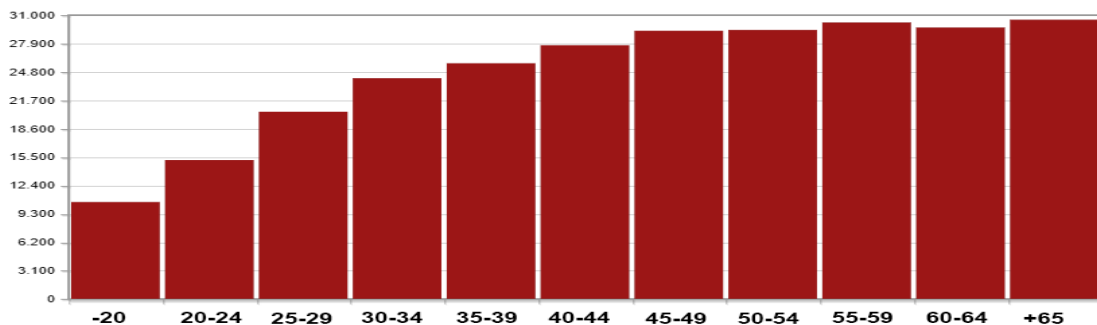
98.- This conclusion is confirmed by another relevant statistic indicating that half of the homeless individuals assisted by NGOs such as the Red Cross have a job. Before ending up on the streets, 66.1% of those surveyed by the organisation were employed, and although 25.5% of this group worked in the informal economy, **another 33.4% had full-**

time contracts.¹³ This represents a severe social shift, as homelessness has traditionally been associated with poverty due to unemployment. Official figures for homelessness in Spain have risen by 25 per cent in the last decade, reaching nearly 30 000 people. Associations add another 8 000 to 11 000 people who fall outside the system- **those who do not attend shelters, soup kitchens or social centres. Together, these figures add up to around 40 000 people experiencing homelessness.**

For the purposes of this collective complaint, the most significant aspect is the substantial percentage of homeless individuals assisted by the organisation who had been in an apparently normalised employment situation before falling into housing exclusion. This is a violation of Article 31 of the RESC, in conjunction with Article 30.

99.- While it is evident that the lack of access to adequate housing in Spain is a general or systemic issue, the greatest impact is felt by certain groups, such as young workers and immigrants. Once again, the deep wage segmentation in the Spanish labour market helps explain this, as young people and (legal) migrants (with regular status) are overrepresented in the lowest wage brackets, according to the above-mentioned official wage survey.

Gross average income in Spain (by age)



¹³ REPORT. 'La discriminación y la vulnerabilidad social de las personas en exclusión residencial' ('Discrimination and social vulnerability of people in residential exclusion') <https://www.epe.es/es/sociedad/20231128/trabajar-pobreza-personas-sin-hogar-empleo-precariedad-95137813>

Source: [Encuesta de Estructura Salarial \(Wage Structure Survey\) INE \(National Statistics Institute\)](#) (2022 data [latest data published]; 2023 data to be published in June 2025).¹⁴

100.- These figures fully explain why, as mentioned earlier, the rate of home ownership among younger households has halved (to 35%, down from 70% at the beginning of the century). This trend is highlighted in the latest issue of [Cuadernos de Información Económica](#), a publication by Funcas, which analyses the persistent problems of housing accessibility- a critical factor for sustainable economic and social development.¹⁵ As a result, **the gap has significantly increased between those** who have realistic prospects of owning adequate housing and those who do not even have effective expectations of purchasing a home, **with age (and also national origin) being highly influential factors**. The aggravating factor here is the fact, as also noted earlier, that the rental market- having doubled from 10% to 20% over the past decade- is not a realistic alternative due to the extremely high rental prices, with no social housing alternatives available for the majority of people who need them.

101.- In this area, the Bank of Spain also reports a decrease in debt levels among young people, as they are unable to purchase housing (semi-annual financial situation report, Bank of Spain). Three decades ago, debt was heavily concentrated in households where the head of the family was under 45 years old. These households accounted for up to 80% of the total mortgage credit granted for first homes. **Today, those under 35 account for only 6% of the debt related to home purchases, compared to nearly 40% at the beginning of the century.** This confirms the decline in savings capacity.

102.- The stark and socially dramatic nature of these data, reflecting the extreme imbalance in Spain's housing market in terms of satisfying the right outlined in Article 31 of the RESC (both independently and in conjunction with Articles 17 and E of the Charter), cannot, even minimally, be addressed by the government policies implemented in Spain so far regarding social housing and affordable prices. The social housing stock in Spain barely **covers 1.6 per cent of the 18.6 million households in the country – 700 per cent less than in European countries** comparable to Spain in terms of the size of their economies. This is expressly acknowledged by the Spanish government in the preamble to Law 12/2023, which notes:

*'According to the latest estimates from the Housing and Land Observatory of the Ministry of Transport, Mobility and Urban Agenda, it can be noted that in Spain there is a social housing stock, defined exclusively as publicly owned rental housing, **of approximately 290 000 units**. Of these, around 180 000 are owned by the autonomous communities and dependent entities, while 110 000 are owned by municipalities and*

¹⁴ <https://www.enterat.com/actualidad/salario-medio-espana.php>

¹⁵ <https://www.funcas.es/prensa/el-dificil-acceso-a-la-vivienda-un-problema-persistente-que-incrementa-la-desigualdad-social/>

dependent entities. This stock of 290 000 social housing units barely covers 1.6% of the 18.6 million households in Spain, which contrasts with the significantly higher percentages - exceeding 15% - recorded in some of the main countries in Europe, such as France, the United Kingdom, Sweden, the Netherlands, Austria or Denmark, considering the total social housing stock'.

103.- The legislature itself links this extreme insufficiency of public housing stock directly to the **practical results described above:**

'the extraordinary difficulties faced by large segments of the population in obtaining housing that meets their needs and suits their economic capacities. Such is the case, for instance, of young people who must delay leaving home due to difficulties entering the labour market and accessing housing. (...) Special consideration should also be given to people who have lost their homes as a result of the economic crisis or the health crisis caused by the pandemic; single-parent households, which are on the rise; elderly people, especially women with low incomes; homeless people, and all those groups who cannot meet their housing needs under market conditions.'

104.- In this situation of extreme failure to ensure the right to housing, caused by deeply rooted imbalances in the Spanish housing market, and with neither the legal framework-whether national or regional- nor the derived policies offering any practical remedy, the legislature acknowledges the contribution of other economic and institutional factors. It concedes the following- because it is true:

'These circumstances have been compounded in the past by the sale of part of the public housing stock in certain parts of Spain to investment funds, further reducing the already scarce social housing stock in our country.'

105.- Consequently, the overwhelming statistical evidence provided in the arguments above, together with the current legislature's explicit and unequivocal acknowledgement, mean that we must acknowledge Spain's flagrant non-conformity with the obligation to safeguard the right to housing under Article 31 of the RESC. Until July 2021, Spain had not ratified this article, which partly explains the legislative indifference and the absence of public housing policies, particularly in relation to social housing. This non-conformity with Article 31 also extends to Articles 16 (protection of the family), 17 (protection of young people), 30 (right to prevention and eradication of poverty) and E (prohibition of all forms of discrimination, including indirect discrimination based on age or nationality). There is no doubt about this extreme non-conformity, as it is clearly stated in the Official State Gazette publishing Law 12/2023, the preamble to which mentions this fact.

- 5.3. **Assessment of Spanish law and practice regarding the right to housing since the adoption of Law 12/2023:**
current practice remains in total non-conformity with the Charter, and the

new law is notably insufficient in ensuring effectiveness. Not only are its guarantees significantly delayed over time, but their fulfilment is also uncertain

106.- As has been demonstrated, it is absolutely clear and the subject of unanimous consensus that Spain failed to meet its international commitments, particularly under the RESC, in the area of housing, up to the enactment of Law 12/2023. The current Spanish legislature officially recognises this in the preamble to the law, as has been shown. Therefore, due assessment of compliance with the Charter, as sought by this collective complaint, would then shift to determining whether the current legal framework (regulatory guarantees of effectiveness) and practice (practical guarantees, as additionally required by the ECSR) meet the relevant requirements of the Charter, as interpreted by the ECSR (as detailed in Section 4 of this Collective Complaint).

107.- In this regard, it is evident- and therefore we will not reiterate what has already been detailed- that the practical situation remains equally unsatisfactory and, therefore, in non-conformity with the requirements of the Charter (Articles 31 of the RESC in conjunction with Articles 16, 17, 30, and E), as was the case before the enactment of the law. A year after the approval of the law, it is clear that the imbalances in the housing market and the lack of access faced by a significant portion of the Spanish population, especially the youngest, to decent housing (whether for purchase or for rent) not only persist in their dramatic dimensions but, according to estimates from national and international economic bodies and social organisations, are expected to continue growing in the near future. Therefore, given that ECSR case law requires practical guarantees for safeguarding the rights, the non-conformity is manifest.

108.- However, one cannot ignore- and the trade union lodging this complaint does not intend to do so- the fact that Law 12/2023 of May 24 marks a complete change of direction in addressing this deeply deficient situation for the near future. To this end, we are particularly committed to increasing public housing stock in order to facilitate accessibility for citizens.

109.- The law establishes several mechanisms to increase the future availability of social housing, which is currently meagre, as acknowledged in its preamble. For instance, it will allow land designated for public use to also be classified as suitable for public housing, promoting the release of land for social housing purposes (e.g. compliance with the obligation outlined in Article 18(1)(b) of the consolidated text of the Land and Urban Rehabilitation Law). Additionally, within protected housing, the law facilitates the promotion of price-limited housing (housing subject to administrative price restrictions for sale and/or rent for a specified period) so that it can be tailored to the demand and needs of households in the respective regions. This type of housing may be developed on land reserved for housing under any form of public protection (Article 20(1)(b) of the

same Land Law), in which case it must retain this designation permanently as long as the use of that land is maintained.

110.- Along the same lines of promoting protected housing, whether social or price-limited, Law 12/2023 stipulates that protected housing cannot generally be redesignated, thereby preventing speculation. However, it allows for certain exceptions (e.g. housing developed on land without urban planning restrictions requiring such designation or housing not receiving public subsidies for its development). In such cases, regional regulations must justify these exceptions, but the minimum qualification period for such housing must not be less than thirty years. The law also aims to expand the stock of social housing by leveraging urban development and construction on publicly owned land, with a strong emphasis on public-private partnerships. Furthermore, the public housing stock will include social housing acquired by public administrations in specific legal circumstances (e.g. through pre-emption rights) or in cases of mortgage foreclosure or transfer in lieu of payment for housing involving vulnerable or socially excluded groups. It will also include any other social housing acquired by or ceded to public administrations with competences in housing matters, provided the housing can serve the purposes of the public housing stock.

111.- In this way, the law aims to prevent the recurrence of inappropriate sales of public housing stock by creating a separate asset pool, where revenues will always be allocated to the creation, expansion, rehabilitation or improvement of public housing stock. Additionally, revenues from fines imposed for non-compliance with the social function of home ownership will be used for this expansion. Similarly, proceeds from the sale of assets within the public housing stock will be allocated as earmarked resources to fund public housing policies, in accordance with the terms and conditions established by regulation.

112.- The new law also emphasises the creation of a new concept or mechanism to facilitate housing access in the near future: incentivised affordable housing. This aims to complement protected housing as a mechanism to effectively increase the supply of affordably-priced housing.

113.- This is considered to be privately owned housing, including properties owned by third-sector entities or social economy organisations, where the competent administration grants urban, fiscal or other types of benefits in exchange for designating them as primary residences under rental or other temporary tenancy arrangements for individuals whose income levels do not allow them to access market-rate housing. The objective is to involve all public, private and third-sector stakeholders in finding solutions to housing supply issues and to direct the existing housing stock towards this goal. Public benefits granted to such housing are tied to usage limitations, in terms both of time and of maximum prices, as determined by the competent administration in each case.

114.- To improve the efficiency of future housing policies at both the state and regional levels, through specific plans designed for this purpose, the law introduces the designation of **stressed housing market areas**. Competent housing administrations may declare these areas as such when there is a significant risk of insufficient housing supply for the population, making access to housing on affordable conditions difficult. The main effect of declaring such stressed areas is the drafting of a specific regional plan (and optionally a state-level plan) proposing necessary measures to correct the imbalances observed. In these especially deficient areas, the law (First Final Provision) provides for an exceptional and time-limited mechanism that can intervene in the market to alleviate stressed market conditions and grant the competent administrations the necessary time to address supply deficits or correct deficiencies with other housing policies. For example, this amends Law 29/1994 on Urban Leases, introducing an extraordinary annual extension, for a maximum of 3 years, under the same terms and conditions of the existing contract. For new rental contracts in these areas involving previously rented housing, rental price limits are proposed in stressed housing market zones. These provisions seem to be more in line with the imperatives of Article 31.2 of the RESC.

115.- Additionally, following recommendations from the Spanish Ombudsman, which partially align with the standards set by the ECSR under Article 31 of the RESC, the law seeks to improve legal transparency and the flow of information in future housing markets, particularly regarding social housing and stressed housing areas.

116.- However, while acknowledging the potential advances or progress that the effective implementation of these provisions could bring about in terms of improving the currently deficient fulfilment of the right to affordable housing under Article 31 of the RESC, the complainant union considers that the law continues to present significant shortcomings in ensuring the effective achievement of the goals of Article 31 of the RESC, both independently and in conjunction with Articles 16, 17, 30 and E of the Charter. There are a number of reasons for this, which we shall now set out briefly, albeit illustratively.

117.- First, it is important to note, as already emphasised when presenting the legal framework (Section 2), that **most of the law's provisions are structured as discretionary for public administrations**, rather than being strictly mandatory. This approach respects the constitutional distribution of powers in this area. As a result, the achievement of the objectives of ensuring effective access to decent housing for the entire population, especially the most vulnerable groups, is framed more as a desirable shared goal than as a guaranteed outcome. Consequently, the law has more of a programmatic than binding character. Evidence of this is that **the law itself contemplates the possibility that, a year after its approval**, the primary mechanisms outlined in the law to achieve widespread housing affordability- especially for young people- **may not yet be operational**.

118.- Indeed, the aforementioned **Second Transitional Provision (targets related to housing stock for social policies)** stipulates:

*'1. Concerning the establishment of the objectives referred to in Article 27 [public housing stock], if the regional administrations **have not established timelines and specific goals within 1 year of the law's entry into force**, a general benchmark is set of reaching a minimum public housing stock for social policies equivalent to 20% of all households in municipalities declared stressed residential markets within 20 years.'*

Unfortunately, the predicted non-compliance with the legal commitments set forth in the State law- the only one that outlines a future programme for advancing social housing policy- is now a reality, as the government itself has recently stated. As a result, the government is attempting to introduce measures such as economic incentives (increased financial transfers to the autonomous communities) or penalties (reduction of financial resources) to encourage compliance. However, this does not guarantee effective compliance, as it ultimately depends on the political decisions of each regional government.

119. Secondly, to avoid an impasse caused by political divergences in each territory, the law sets out a 'commitment' to achieve a minimum percentage of social housing. However, this commitment **is expressed only in programmatic terms**, as it is referred to as a mere 'commitment' rather than a legal obligation, as required by Article 31 of the RESC, both independently and in conjunction with Articles 16 and 17 of the Charter. Moreover, the timeline for achieving this goal is excessively long, namely 20 years. This period implies that the Spanish government acknowledges it will fail to address the many housing needs in Spain for an entire generation, as demonstrated earlier. The law effectively concedes that a whole generation of young people will be lost in terms of access to housing within a reasonable timeframe. Thus, the union filing this complaint considers that a timeline of **20 years is not reasonable**, as required by the ECSR, when it comes to making meaningful progress towards fulfilling the population's right to housing, especially for young people. While the construction of social housing does require some time and is not immediate, **it is evident that these objectives should be set for shorter timeframes, such as 5 to 10 years at most**. The current law is therefore in violation of Article 31 of the RESC.

120.- Thirdly, we believe that the current law violates the mandates of the Charter regarding effective and reasonable guarantees of access to adequate housing at affordable prices, including social housing alternatives (not just price-limited housing in private or semi-private arrangements). **This is because the percentage of planned social housing is insufficient to meet the existing demand and is not spread across all regions**. Instead, it applies only to certain areas officially designated as 'stressed housing market zones.' But for such a designation to take place, a decision by the regional self-government

is required, which is by no means guaranteed by law. Once again, it depends strictly on the political will of each region. The State Party, Spain, therefore neither guarantees that these objectives will be adequate nor that they will be implemented equitably across all regions and population groups. Consequently, Article 31 of the RESC, as interpreted by the ECSR, is not complied with for this reason either.

121.- Fourthly, the law also fails to establish precise mechanisms to verify, as required by the ECSR, progress in housing accessibility for the entire population, particularly for the most vulnerable groups, such as young people, who are currently largely excluded from this right. The law does not introduce objective, reliable and mandatory mechanisms to measure such progress. Although the law provides for certain new mechanisms for participatory institutional and social management of these policies- **where, notably, trade unions are excluded while business associations are included, which we believe could contradict Article 22 of the Charter - it fails to establish intermediate criteria for compliance or guarantees for effectively monitoring progress.** Once again, it ultimately leaves these decisions to the political discretion of territorial and state authorities at any given moment.

122.- Fifthly, the complainant union considers that the case law of the ECSR continues to be clearly violated in relation to Article 31 of the RESC and the body of provisions presented here regarding the right to housing (Articles 16, 17, 30 and E). This is due to the lack of a guarantee to maximise, to the greatest extent possible, the necessary resources to take serious, credible, objective and measurable steps towards the effective fulfilment of that right, as required by the ECSR (Decision on the Merits of 26 January 2021, Complaint 173/2018). Indeed, the Second Transitional Provision, paragraph 2, provides: '**2.** In order to ensure compliance with the objectives of increasing the housing stock for social policies referred to in the previous section and to evaluate the adequate financing of the actions indicated in letter c) of Article 27.2, the competent regional administrations, in accordance with the provisions of their regulatory regulations, *must determine on an annual basis the amounts invested and progress made in achieving the aforementioned objectives.*'

Furthermore, Article 27.2, referenced therein, provides: '**2.** *To ensure the financing of.. public housing stock, funds corresponding to the deposits of rental contract guarantees deposited in the respective regional registries, as provided for in the Third Additional Provision of Law 29/1994 of November 24 on Urban Leases, **may** be used..'*

123.- As the ECSR will see, once again, discretionary mechanisms are established, alongside clearly insufficient financing measures. The reference to using rental deposit funds is marginal or residual when it comes to financing an objective as costly as ensuring an adequate stock of social housing. These measures are not guaranteed by the State and are entirely subject to the discretionary political will of regional self-governments.

Moreover, the legal provision merely requires **some form of legal-budgetary transparency** regarding allocated funds and progress. **However, it does not set minimum achievable goals within intermediate timeframes (before the 20-year deadline), nor does it establish the legal consequences of failing to make adequate progress** towards that objective.

124.- A clear demonstration of this lack of reliable mechanisms in the new law to provide even a minimal guarantee of compliance is the fact that, at the time this collective complaint is being submitted, **the government has opened a debate on what to do in the light of the current and updated evidence** of non-compliance by regional governments with the law's objectives. Worse still, this non-compliance is predicted to persist, at least in the near future, due to existing political disputes and the extreme conditionality of the law, which depends entirely on the political will of each regional self-government. Consequently, the reality - not just the legislation - shows that the new law does not provide the necessary and required legal guarantees of effectiveness, as mandated by the Charter, to achieve the laudable and positive objectives set forth in it. These objectives aim to fulfil the right to housing for the general population, and particularly for the most vulnerable groups, such as young people.

125.- Furthermore, the complainant union considers that this legislative deficiency in Spain has been further exposed by the recent declaration of unconstitutionality of several provisions of the Catalan housing law.¹⁶ For instance, the amendment of Article 5.2(f) of Law 18/2007 on the right to housing was annulled. This article established as a breach of the social function of housing ownership the failure to comply with the obligation to offer a proposal for social rent before filing a judicial claim, as required by Law 24/2015. This was ruled unconstitutional due to a violation of Article 149.1.6 of the Spanish Constitution (distribution of competences in the Spanish Autonomous State).

The ruling also found similar violations in:

- Part of Article 12, which adds the First Additional Provision to Law 24/2015, specifically concerning Sections 1 and 2. These sections extended the obligation to offer a proposal for social rent before filing certain judicial claims to any executive action stemming from the enforcement of mortgage debt claims and to certain eviction claims. They also provided for the suspension of proceedings already initiated where no evidence of a social rent proposal had been submitted.

- The Transitional Provision, which extended the obligation to offer social rent to proceedings initiated before the entry into force of the law. **As we can see, this situation**

¹⁶https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2024_098/NOTA%20INFORMATIVA%20Nº%2098-2024.pdf

generates a profound contradiction with Article 31.2 of the RESC, as interpreted by the ECSR.

126.- This situation of contradictions, legal uncertainties and legislative deficiencies in Spain regarding housing is even more serious if we consider another recent fact: the only autonomous community that has so far activated the stressed housing market zones mechanism, introduced by Law 12/2023, has managed to reduce rental prices in those areas by 5%. **However, this has simultaneously caused a reduction in supply of more than 17%.** This reduction in the already limited supply is due to the **diversion of nearly 2 out of every 10 available properties from the rental market to more speculative and profitable alternatives, such as seasonal rentals (tourism or professional rentals).** This leakage is due, once again, to the legal loophole in Spanish legislation in this area, given that it was not possible to regulate this deficiency due to the lack of the necessary parliamentary majority. Once again, the pressing reality of Spain's poor housing market for social needs exposes and lays bare critical loopholes, if not outright contradictions, in the legal system. These issues demand correction in the light of the system's non-conformity with the European Social Charter.

127.- In summary, it is clear from the reasoning above that Spain suffers from a severe housing affordability deficit, particularly for certain groups, such as young people, which, instead of improving under the new law, has worsened due to the soaring increase in prices far exceeding wage growth. This has eroded savings capacity and made it more difficult to acquire essential, costly goods such as housing. This socio-economic scenario has been accompanied by a significant regression in social housing policies, with the absence of useful and adequate regulatory frameworks- at both the state and regional levels- allowing Spain's social housing stock to decline from above the European average in the 1980s to being almost entirely depleted from the mid-1990s to the present day. **Spain ranks twelfth in the European Union in terms of available public housing relative to the population, with less than one such housing unit per 100 inhabitants.** In contrast, the Netherlands (12), Austria (10), Denmark (9.5), Sweden (8), the UK and France **exceed the average (4).**¹⁷

128.- The 2009-2012 State Housing Plan was the last to include a guarantee of credit financing for the construction of protected housing. The financial crisis led to the disappearance of the official credit programme (*Crédito Oficial*), and the crisis of the Savings Banks (*Cajas de Ahorros*), which had until then had financed protected housing, brought this measure to a halt. The three subsequent plans discarded this measure from the outset. At the same time, the level of housing expenditure in the national budget was reduced in the same period. Housing expenditure increased slightly in the 2022 and 2023 budgets thanks to funds from the Next Generation EU programme. However, the social

¹⁷ <https://www.newtral.es/vivienda-publica-espana/20230419/>

outcome, as officially recognised in the preamble to the law, is absolutely insufficient, making Spain's non-conformity with the requirements of the European Social Charter unequivocal. A key point that the complainant union considers necessary to bring to the attention of the ECSR is that the vast majority of housing plans have been justified not by the number of households for which the housing was intended (the social function under Article 31 of the RESC), but rather as a way to stimulate the construction sector.

129.- That said, as outlined above, while the new law appears to aim for a return to state-level plans focused on social housing, even promising to open a financing line of over 4 billion euros through the Official Credit Institute (ICO) to expand the social housing stock by approximately 43 000 homes, these objectives are excessively programmatic and lack the necessary legal guarantees to make the right to housing effective. In addition to being notably insufficient, these plans depend on regional policies that continue to resist this model. There are no guarantees of reasonable deadlines, no intermediate monitoring measures to track progress and no secured funding, leaving their implementation at the mercy of discretionary budgetary decisions, which are often very difficult to implement (as evidenced by the lack of state budgets in the last 2 years). Data from [Eurostat](#) show that Spain devoted 0.2% of its Gross Domestic Product in 2021 to housing development, compared to 0.4% in countries such as Bulgaria, France and Norway.¹⁸ In short, **the ineffectiveness of the laws in this area in Spain is alarming, and this is in stark contrast to the imperatives of reliability and practicality required by the Charter and the ECSR.**

5.4. The situation of migrant workers, especially seasonal workers, in various parts of Spain is in non-conformity with Article 19 of the Charter

130.- Migrant workers generally face greater difficulties in accessing decent housing because they are part of a group, like young people, which is particularly vulnerable. This is primarily due to precarious employment conditions and other factors of social exclusion, even when they have regular migration status. In certain cases, particularly among seasonal migrant workers, they are driven into slum conditions. For example, this can be observed in the settlements of seasonal workers in the agricultural fields of Almería and Huelva (Andalusia), where there are significant deficiencies (lack of hygiene and cleanliness, electricity, water, and provisional substandard housing made of pallets and plastic persisting for years). These substandard living conditions affect thousands of seasonal workers, although there is no precise figure given the opacity of public information. This situation is contrary to Article 17.4(c) of the Charter, according to the case law of the ECSR, as stated above.

131.- The lack of access to basic necessities, such as housing, has been highlighted in various studies and reports by human rights associations, as well as by the UN.¹⁹ The UN

¹⁸ <https://economistasfrentealacrisis.com/un-repaso-a-40-anos-de-politica-estatal-de-vivienda-1981-2022/>

¹⁹ https://www.eldiario.es/andalucia/asentamientos-temporeros-almeria-huelva_1_7823292.html

Special Rapporteur on Poverty has called on Spain to improve the poor conditions of seasonal workers, particularly women working in the red fruit sector in Huelva. The precarious situation of this workforce was personally observed by the signatories of this complaint during a visit to Ibiza, where we witnessed a group of migrant workers living in tents without access to basic utilities due to the high cost of housing in the Balearic Islands. This issue is faced by the entire working population that is required to relocate to these highly stressed areas, which prevents them from obtaining housing, under any system, that meets minimum standards of dignity. As a result, in certain cases, non-conformity with Articles 31 and 30, in relation to Article 19 of the Charter, occurs in conjunction with Article E, due to discrimination based on gender and national origin.

132.- Although there have been some programmes²⁰ in Spain to promote the rehousing of these people in more dignified conditions of habitability, they have all failed so far given the lack of a clear regulatory framework and a structural plan to address the need for adequate housing in a comprehensive and effective manner.

5.5. Need for a declaration of non-conformity due to the lack of conventionality review and the downgrading of policies to discretionary measures

133.- The trade union filing this collective complaint deems it necessary to emphasise before the ECSR, always with due respect for its impartiality, the great significance of its ruling as the highest body for ensuring compliance with the Charter in this matter. In Spain, given the absence of practical regulation of the right to housing already demonstrated, due to this right having the character of a mere guiding constitutional principle and its excessive programmatic nature and political conditionality, there is no real possibility of judicial control of conformity with the mandates of the Charter in respect of the right to housing through a review of compatibility under Article 96 of the Spanish Constitution. This approach has never been attempted in Spain, nor are there reasonable expectations that it will be in the future, unless there is an explicit declaration by the ECSR of non-conformity of Spanish law and practice with Article 31 of the RESC, as indicated here- both independently and in conjunction with Articles 7, 16, 17, 19, 30 and E. Therefore, the importance of such decisions on the merits lies in introducing a strictly justiciable character to these obligations, even under conditions of reasonableness and complexity. This would strengthen the position of the ECSR within the multilevel legal guarantee system for social rights in Spain, which remains uncertain due to the novelty of this quasi-judicial collective complaints procedure.

²⁰ <https://www.publico.es/sociedad/descarrila-primer-plan-realojo-almeria-acabar-chabolas-habitan-cientos-migrantes.html>

134.- The complainant trade union is aware that a pronouncement of jurisdictional value such as the one sought from the ECSR cannot replace or be a substitute for any legislative or housing policy action. However, it considers that a social right as relevant to a dignified life as housing cannot be reduced to mere political will, without due observation of international legal commitments. These require action that is reasonable in terms of intensity and time, as the ECSR has consistently argued. For this reason, a decision on the merits declaring that Spain is not adequately complying with its obligations regarding the right to housing, especially for the most vulnerable groups, would be a decisive additional element in activating democratic processes. It would ensure compliance with the legal framework established under the Charter, which has been set out and substantiated in the preceding pages.

The European Court of Human Rights (ECHR) recently issued a ruling along these lines in its 9 April 2024 judgment in the case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland, addressing another highly complex right in terms of justiciability: environmental protection, both in itself and, above all, in relation to rights such as health and the quality of private life (Article 8). States cannot abandon their positive obligations or the requirement to achieve measurable results in meeting their social objectives, despite having a broad margin of discretion regarding the specific measures to be implemented. However, once such measures are established, they must be carried out effectively and cannot be left to mere political will, leaving the most vulnerable individuals and groups defenceless (in the above-mentioned case, older women, but also adolescents and young people).

135. In the view of UGT, this requires that the ECSR include in its decision the obligation for the Kingdom of Spain to respect the European Social Charter and the decisions of its Monitoring Body, as required by Article 96 of the Spanish Constitution. Such a ruling would eliminate any doubt regarding Spain's commitment to complying with this international human rights treaty on social rights, ensuring that there is no resistance to adhering to the decisions on the merits that resolve collective complaints.

136. A position that denies the binding and mandatory nature of the ECSR's decisions is unacceptable and clearly contrary both to the letter and to the spirit of the ESC and to ECSR case law. Consequently, the complainant union considers it essential - not just appropriate - for the ECSR to reiterate and clarify for the Spanish government the legally binding nature of its decisions, be they Conclusions or, more importantly, Decisions on the Merits. This is particularly relevant in this case to prevent any obstruction of the effectiveness of a potential favourable decision by the ECSR at the conclusion of this collective complaint, which seeks recognition of the right of every person to housing as enshrined in Article 31 of the Charter.

137. For this reason, the complainant trade union also considers it appropriate to highlight that, under Spanish law, international treaties ratified by Spain take precedence over national laws, as explicitly stated in Article 96 of the Spanish Constitution and Article 31 of Law 25/2014 of November 27, on Treaties and Other International Agreements. The latter reads as follows:

Article 31. Precedence of treaties.

The legal norms contained in international treaties validly concluded and published officially shall take precedence over any other norm of national legislation in the event of conflict with them, except for constitutional provisions

In particular, it is necessary to point out at this point that the RESC is '*legally binding and the decisions of the ECSR are binding on the Kingdom of Spain*'. This statement, while shared by the complainant union, originates from the report issued by the State Secretariat for Justice of the Government of Spain on 17 December 2020. This report was produced when the Council of State assessed the ratification by the Kingdom of Spain of the Additional Protocol to the European Social Charter. In fact, this criterion meant that the ratification of the Additional Protocol required prior authorisation from the Spanish Parliament (*Cortes Generales*).²¹

6. Conclusions and claim

138. In the light of the overwhelming statistical evidence presented above and the legal and economic arguments outlined in the previous pages, the complainant union considers it established that Spain is currently in an extreme situation of failure to safeguard the right to housing under Article 31 of the ESC. This failure is due to the transformation of housing into a purely speculative market commodity, rather than a fundamental necessity for all individuals in general and for vulnerable groups in particular. **This systemic contradiction can only be adequately addressed through a system of guarantees of effective access to a subjective right to housing.** However, Spanish legislation, which in the last year has attempted to move in this direction, is far from being able to meet this demand satisfactorily, and is far from upholding its commitment to the European Social Charter.

139.- To restore Spain's duty of compliance, the UGT requests that the ECSR:

- 1) **Accept this Collective Complaint and declare it admissible so that it may be processed in accordance with the procedure laid down in the Protocol of 1995, with a view to issuing a decision on the merits.**

²¹ This report is included in the Report of the Council of State Report, which can be viewed at the following link: <https://www.boe.es/buscar/doc.php?id=CE-D-2021-486>

- 2) Declare Spanish housing legislation and practice to be contrary to or inconsistent with Article 31 of the RESC, both independently and in conjunction with:
- Article 16 (protection of the family),
 - Article 17 (protection of young people),
 - Article 19 (protection of migrant workers),
 - Article 30 (right to protection against poverty) and
 - Article E (prohibition of discrimination),
- on the grounds that the effective right to adequate and dignified housing is not guaranteed, particularly for the most vulnerable groups, including young people, unaccompanied migrant minors, and migrant workers.
- 3) Adopt all measures provided for within the RESC system to urge the Spanish State to correct this identified violation of the right to adequate protection and to ensure that corrective measures are implemented within a reasonable timeframe. We emphasise that a 20-year timeframe, as set out in Spanish law, is neither reasonable nor even properly guaranteed, as it lacks measurable intermediate objectives.

Finally, we request that Spanish be used as the language of this procedure, particularly for all written documents.

Madrid- Strasbourg, 17 October 2024



José María Álvarez Suárez



Fernando Luján de Frias