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EUROPEAN SOCIAL CHARTER (REVISED)

Comments submitted by the

Confederación sindical de Comisiones Obreras (CCOO) and *Unión general de trabajadoras y trabajadores de España (UGT)* on the 1st National Report on the implementation of the European Social Charter (revised)

Report registered by the Secretariat

on 30 June 2023

CYCLE 2023

ALLEGATIONS BY "CONFEDERACIÓN SINDICAL DE COMISIONES OBRERAS" (CCOO) AND "UNIÓN GENERAL DE TRABAJADORAS Y TRABAJADORES DE ESPAÑA" (UGT) TO THE 35th NATIONAL REPORT SUBMITTED BY THE GOVERNMENT OF SPAIN TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS, IN RELATION TO THE FULFILMENT OF THE EUROPEAN SOCIAL CHARTER (ESC)

THEMATIC GROUP ON CHILDREN, FAMILIES AND MIGRANTS INCLUDED IN ARTICLES 7, 8, 16, 17 and 19 OF THE EUROPEAN SOCIAL CHARTER AND THE REVISED EUROPEAN CHARTER

June 2023

Spain has presented its 35th National Report, corresponding to the control procedure regarding the implementation of the European Social Charter of 1961 and the Additional Protocol of May 5th, 1988.

Specifically, this period involves analysing the **THEMATIC GROUP ON THE RIGHTS OF CHILDREN, FAMILIES AND MIGRANTS**, which comprises the following precepts of the **EUROPEAN SOCIAL CHARTER:**

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

The **SPANISH GOVERNMENT'S REPORT** analyses the matters that the European Committee of Social Rights **(ECSR) established in its Conclusions XXI-4 (2019),** which were considered to not conform or to require further information, in relation to the following articles of the ESC:

- **Matters of non-compliance:**
  - **Article 7§5, The right of children and young persons to protection: Fair pay.**
  - **Article 8§2, The right of employed women to protection of maternity: Illegality of dismissal during maternity leave.**
  - **Article 8§3, The right of employed women to protection of maternity: Time off for nursing mothers.**
  - **Article 16, The right of the family to social, legal and economic protection.**
  - **Article 19§4, The right of migrant workers and their families to protection and assistance: Equality regarding employment, right to organise and accommodation.**
  - **Article 19§6, The right of migrant workers and their families to protection and assistance: Family reunion.**
  - **Article 19§10, The right of migrant workers and their families to protection and assistance: Equal treatment for the self-employed.**

- **Matters that require further information in order to evaluate the situation:**
    - **Article 7§3, The right of children and young persons to protection: Prohibition of employment of children subject to compulsory education.**
    - **Article 7§9, The right of children and young persons to protection: Regular medical examination for workers under the age of 18.**
    - **Article 7§10, The right of children and young persons to protection: Special protection against dangers, particularly occupational dangers.**
    - **Article 17, The right of mothers and children to social and economic protection.**
    - **Article 19§2, The right of migrant workers and their families to protection and assistance: Measures and assistance during departure, journey and reception.**
    - **Article 19§3, The right of migrant workers and their families to protection and assistance: Co-operation between social services.**
    - **Article 19§9, The right of migrant workers and their families to protection and assistance: Transfer of earnings and savings.**

The 35th National Report likewise includes considerations on the implementation of the Revised European Social Charter **(RESC)** ratified by Spain in 2021, which means that **the report presents information regarding the following articles** of the aforementioned RESC:

- **Article 8§4, The right of employed women to protection of maternity: Regulation of night work.**
- **Article 8§5, The right of employed women to protection of maternity: Prohibition of dangerous work.**
- **Article 17§2, The right of children and young persons to social, legal and economic protection: Free primary and secondary education.**
- **Article 19§11, The right of migrant workers and their families to protection and assistance: Promotion and teaching of the national language.**
- **Article 19§12, The right of migrant workers and their families to protection and assistance: Promotion and teaching of the national language.**
- **Article 27 -*:* The right of workers with family responsibilities to equal opportunities and equal treatment.**
- **Article 31 -*:* The right to housing.**

The reference period established by the Committee formally ranges from January 1st, 2018, to December 31st, 2021.

Our trade union organisations, UGT and CCOO, have the greatest representation resulting from nationwide trade union elections. Consequently, we enjoy constitutional recognition for the promotion and defence of workers in Spain and abroad, being members of international organisations that have a participatory status with the Council of Europe. We are therefore legally empowered to submit the following Allegations to the European Council of Social Rights:

ALLEGATIONS

I.- ON THE FULFILMENT OF ARTICLE 7: THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION.

Article 7. The right of children and young persons to protection.

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

Fulfilment of Article 7§3: Prohibition of child labour.

3. To provide that persons who are still subject to compulsory education shall not be employed in such work that would deprive them of the full benefit of their education.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee requires information regarding the measures adopted by the authorities to detect child labour, including children that work in the informal economy. In this regard, information is required regarding the number of children that actually work, as well as the measures adopted to identify and monitor the sectors in which there are strong suspicions that children are working illegally.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

Article 6.1 of the Workers' Statute prohibits under-16s from working. However, its Section 4 allows, as an exception and with the authorisation of the labour authority, the participation of under-16s in public spectacles. Nonetheless, under no circumstances shall such authorisation be granted if this participation endangers the minor's health or his/her professional or personal development.

Likewise, hiring an underage worker may be a serious infringement of Section 4 in Article 8 of the Law on Infringements and Sanctions in the Social Order.

In Spain, the Organic Education Law ("LOE" in Spanish) stipulates that basic education is "compulsory and free for everyone" and that is comprises "ten years of schooling and is imparted, on a regular basis, from the age of six to sixteen."

Consequently, although Spanish legislation currently complies with the Charter theoretically, we believe that is does not comply in practice with the spirit that is promoted. This is so because the provided data, linked to detected labour infractions due to non-compliance with the legal prohibition regarding the minimum age to work in the period 2018-2021, is illusory and unreal.

The Government's National Report does not provide the information required by the Committee. In its report, the Government only provides information about the number of detected labour infringements due to non-compliance with the legal prohibition regarding the minimum age to work. This information is clearly insufficient.

Moreover, it is not accompanied by any other information revealing the national situation in this regard, especially in certain production sectors, environments (countryside/urban/suburban) or specific groups (immigrants), thereby enabling the adoption of suitable policies and initiatives to respect the minimum legal age to work.

In particular:

- No information is provided regarding the number of under-18s with a formal employment contract, not even the number of under-18s with an employment contract that provide services in the formal economy.
- No information is provided –not even a serious estimate– regarding the number of children that actually work, in both the formal and informal economy.

- There is no information about the measures adopted by the authorities to detect child labour, including children that work in the informal economy, as well as in those formal sectors to which the Labour Inspectorate might not have access, such as work in the family home.
- No information is provided regarding the measures adopted to identify and monitor the sectors where children are suspected of working illegally, which were mentioned in the CCOO and UGT's allegations to the 31st National Report submitted by the Government of Spain regarding the ECSR, such as the agricultural sector during agricultural campaigns or domestic work.

In contrast to the information provided by the National Report, we would like to highlight the following:

- According to the report prepared by the United Nations International Children's Emergency Fund (UNICEF) and the International Labour Organization (ILO), in 2020 in Europe, 3.8 million children aged 5 to 17 (henceforth referred to simply as children), 2.3%, were involved in child labour (access).
- According to the National Statistics Institute of Spain (INE in Spanish), in July that year (2020), Spain's population included 6,316,976 children (access).
- Extrapolating the figures indicated above, we can calculate that in 2020 more than 145,000 children were involved in child labour in Spain. Although this figure may be inexact, since the aforementioned percentage may vary nationwide, it exposes the figure provided by Spain that same year (16), since it is 9,062 times smaller than our calculation.
- According to the Active Population Survey (EPA in Spanish), carried out by INE in the fourth quarter of 2021, which ends this report's reference period, reflects a total of 563,700 Spanish homes without any income (access). This lack of income has, in fact, a perverse impact on children since poverty is considered the main reason behind child labour. Therefore, children often work due to the situation of poverty affecting their families.
- Although it is true that, according to a joint report by UNICEF, ILO, the Organisation for Economic Co-operation and Development (OECD), and the International Organization for Migration (IOM), there are no updated figures regarding forced labour or child labour in European supply chains (access), another UNICEF report maintained that, in the year 2000, 170,000 minors were working in Spain (access), a figure that exceeds the aforementioned calculation.

- UNICEF agrees with other NGOs that work on behalf of children, such as Save the Children and "Plataforma de Infancia," that existing figures regarding child labour "do not reflect reality since they only counted children enrolled in school, while high levels of child labour are found among children in marginalised populations that do not attend school and in the underground economy." (access)
- UNICEF also points out that "work inspectors are not authorised to intervene in cases of domestic service, family businesses, delinquency, sexual exploitation, and begging." (access) Likewise, according to the programme carried out by UGT in 2005 and 2006, *Sin tiempo para crecer* (Without time for growing up), "the time spent by some minors in the fields and as seasonal workers was excessive, and labour exploitation existed." (access)
- Human trafficking is one of the worst kinds of child labour. According to the Organisation for Security and Co-operation in Europe (OSCE), in 2008 there were "20,000 minors identified as victims of exploitation in Spain, who were forced to beg and steal, work in prostitution or without pay, in a kind of 21st-century slavery." (access)
- At the national level within the European Union's Member States, in 2020 Italy reported 127 infringements of child labour legislation (access). Although this figure is low in line with the logic established above, it is a number that is 5.31 times higher (after adjusting for population) than that reported by our country.

We believe that the poverty that exists in our different social strata could be giving rise to situations in which minors are working in what could considered collaborative tasks, or jobs to support the family. In some cases, this could be considered a kind of child exploitation that hinders their basic educational development.

In view of all the above, we would like to express our concern regarding possible situations of abandonment or even new kinds of child labour that are not being detected by the competent national authorities. We believe that the necessary and obligatory effort, in harmony with the Charter's spirit, is not being made to tackle this problem that worsens social inequality and exacerbates the economic and social vulnerability of low-income families.

Child labour is surely one of the most detestable kinds of labour exploitation. The institutional and regulatory framework must therefore incorporate elements to ensure the full effectiveness of the rights recognised by the Charter, linked to the age for entering the job market, and the characteristics of the work that can be established as an exception to this rule, linked to light work that does not endanger

children's health, morality, or education. The minimum age of fifteen does not exhaust the minors' need for protection, until they become of age, as shown in Art. 7.5 regarding fair pay.

Its omission reveals an infringement of the Charter, from the following perspectives:

1. The statistical information about employment and working conditions is not disaggregated with regard to work carried out by minors, and does not indicate the sectors that are particularly susceptible to such activity.
2. The types of licit hiring of minors to carry out economic activities take place, above all, in the field of advertising and fashion. There are also activities carried out by the self-employed or, more exactly, by the activity of the family members that have custody of the minors, with advertising and the creation of social network content being an incipient sector.
3. Also, in the field of the informal economy, which most frequently involves such work carried out by minors, including activities that contribute to the family economy, such as the hospitality industry, agricultural work, manual work at home, in addition to kinds of exploitation that involve begging and criminal activities.
4. Statistical activities regarding employment and working conditions should include resources for detecting such situations, as the basis for understanding their impact and designing intervention policies for their elimination and full respect for minors' rights.
5. Neither is there an integration of the information available to the authorities in charge of Social Services and childcare, as well as Education Administrations and the Attorney General's Office, in relation to the work of the Social Security and Labour Inspectorate.
6. There is no mention of specific intervention plans to detect, monitor, and control situations of child labour by the Social Security and Labour Inspectorate.
7. There are no specific guarantees to ensure that the work carried out by minors is done in conditions that meet the requirements of light jobs or employment that does not hinder their education. In particular, there are no regulations that ensure compatibility with education, apart from the field of compulsory education and labour contracts for acquiring work experience.

   Apart from these cases, minors do not have a system of flexibility in the provision of services that enable them to combine work and academic studies, or be included, necessarily, in a training programme.

8. Neither does private commercial hiring –despite having an impact on the work carried out by minors – have these substantial requirements nor a control and supervision system that ensures the system of the activity is subject to preserving the minor's higher interest, including his/her right to education.

In view of all the above, we believe that, in relation to forbidding child labour, Spain does not comply with the Charter.

Fulfilment of del Article 7§5: Fair pay.

5. To recognise the right of young workers and apprentices to a fair wage or other appropriate allowances.

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with Article 7§5 of the Charter of 1961 due to the following:

- *The remuneration of young workers is not fair;*
- *It has not been established that the allowances paid to apprentices is appropriate.*

In addition to the reply to the conclusions, the following clarifications should be taken into account:

1. *The report should indicate the minimum and average net wages for the reference period in question. The net amount (i.e., after deducting taxes and social security contributions) is requested for a single worker.*
2. *The Committee has repeatedly requested information about the average and minimum net amounts nationwide received by apprentices at the beginning of their apprenticeship. The previous report (No. 31) did not contain the requested information. The Committee believes that, in the absence of such information, it has not been established that the allowances paid to apprenticeships are appropriate.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

The information provided by the Government is insufficient.

The information provided does not correspond to the requested information, with regard to both its content and its period of reference.

- The Government merely reports that, starting from 2021, the minimum wage of young workers and apprentices coincides with the (gross) Interprofessional Minimum Wage in proportion to the time of effective work; and it mentions the increase that the minimum wage has experienced in recent years.
- It also provides information regarding the average gross wage in Spain in 2020. This shows that the (gross) Interprofessional Minimum Wage in Spain in 2020 was approximately 50% of the gross average wage in Spain that same year.

However, no specific information whatsoever is provided about the remuneration of the group of young workers and apprentices, in order to analyse if it is fair and appropriate in practice:

- No information is provided regarding the average wages received by young workers (neither net nor gross)
- No information is provided regarding the average amounts received by apprentices at the beginning and end of their apprenticeship (neither net nor gross).

In short, it is not possible to analyse the national situation, especially when the regulations allow ample freedom to collective bargaining to establish the remuneration for training contracts; and, consequently, allow for lesser remuneration compared to adult workers in a similar post, with the only limit being that of the Interprofessional Minimum Wage; as was pointed out in the trade unions CCOO and UGT's Allegations to the 31st National Report submitted by the Government of Spain to the ECSR, with regard to the work experience contract, as follows: *"Art. 11.1 e) of the Workers' Statute allows collective bargaining to establish specific remuneration according to the type of contract used to hire the worker, rather than the work that is to be carried out. The sectorial agreement is not cited but rather it enables any agreement, including the company agreement, to lower the salary of these workers, who are also temporary ones, compared to the salary they should receive in accordance with their post and professional experience."*

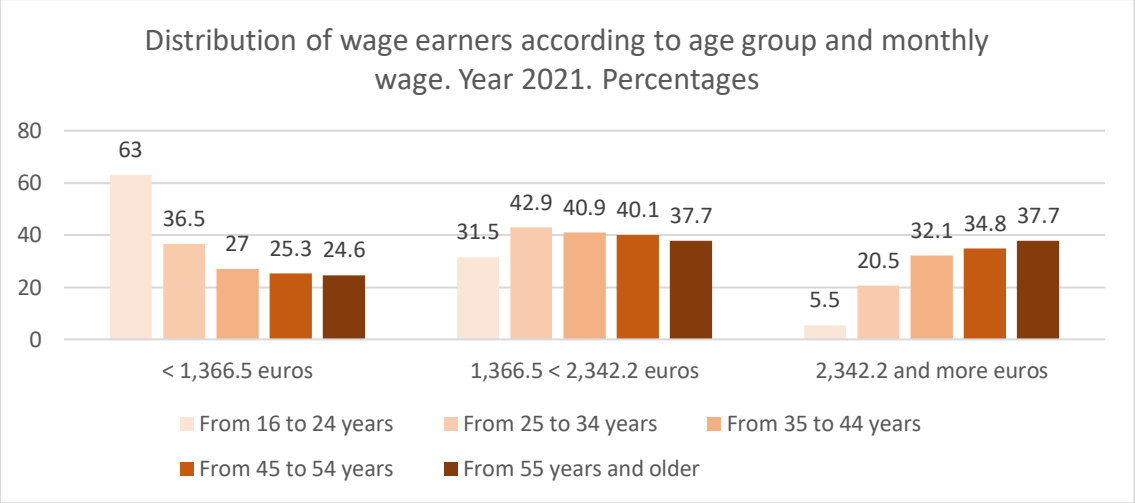
Likewise, the time of theoretical training in the company is not subject to remuneration, for any training contract, but only to the effective work carried out.

1. The Government does not provide information about minimum and net wages for work experience linked to training grants, which in many cases cover up actual labour relationships in abuse of the law.

1) General considerations on the insufficient remuneration of young people.

Analysing the specific matter of the remuneration of young people, we should begin by mentioning that, in 2019, the OECD pointed to Spain as the country that pays its young people the least, since half of working people aged 15 to 29 in Spain received "low wages," i.e., remuneration less than two thirds of the country's average wage (access).

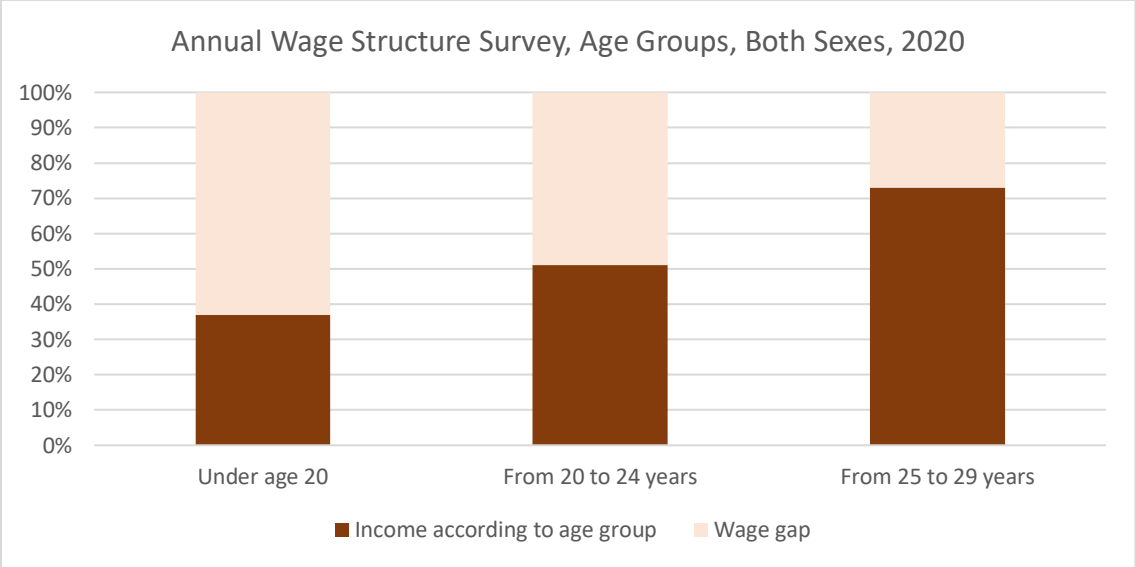
In national terms, the Active Population Survey shows that they account for the lowest wages of the working class, so much so that, in 2021, 63.0% of wage earners under 25 received a monthly gross wage of less than 1,366.5 euros, 35% less than the average way, which was 2,086.8 euros (access).



Source: Active Population Survey, 2021.

However, this data is even more discouraging when we break down the age groups ever further and see that, according to the Annual Wage Structure Survey (EAES in Spanish), prepared by INE, while the average gross annual income for a worker in 2020 was 25,165.51 euros, the age groups at the bottom received much less. Thus, workers under the age of 20 received -9,394.06 euros[1] (which amounts to 37% of the average wage), those aged 20 to 24 received 12,925.08 euros (which amounts to 51% of the average wage), and those from 25 to 29, 18,372.47 euros (which amounts to 73% of the average wage) (access).

[1] A "-" sign before the figure indicates that the number of samples lies between 100 and 500, which means that it is subject to great variability.



Source: Annual Wage Structure Survey, 2021.

This large wage gap experienced by young workers is compounded by other discouraging data provided by the 12th Report on the State of Poverty, which shows that 31.2% of young people in our country were in a situation of poverty and social exclusion in 2021 (access).

Although the increase in the Interprofessional Minimum Wage is good news, to the extent that is has a direct and positive impact "on 31.7% of young people aged 16 to 24, and on 19.2% on those aged 25 to 34" (access), indicating the way forward, all of this data merely shows that the wage of young people is far from being decent and fair.

2) Specific considerations regarding the regulatory framework 2018-2021.

a) Work experience contract.

Conclusions XI-1 (1991) for the Netherlands established a principle of proportionality and reasonableness between the remuneration of a young worker and that of an adult one. Conclusions 2002-Italy set, as a criterion of proportionality, a maximum reduction of 30% for workers ages 15 to 16; and 20% for workers from 16 to 18.

In the period 2018-2021, the regulatory framework of the remuneration for a temporary work experience contract, which was mainly signed by young people, for a maximum period of two years after finishing their studies, was established in Art. 11.1.e) as follows: *"The worker's remuneration shall be that which is established by the collective agreement for trainee workers, which cannot otherwise be less than sixty or seventy-five per cent during the first or second year of the contract,*

respectively, of the wage established by agreement for a worker carrying out the same or an equivalent job."

- The regulations leave ample room for flexibility in collective bargaining in order to establish the remuneration of workers with a work experience contract, setting as the only limit a minimum amounting to 60% of the remuneration established by agreement for a comparable worker doing the same job, during the first year of the contract, and 75% during the second year.

The ample room for flexibility in collective bargaining enabled the establishing of lower remuneration than a comparable adult worker; while the minimum limits were below the thresholds set in the Conclusions that interpret the ESC.

- On the other hand, the criterion of national regulations for establishing lower remuneration is unrelated to the one established by the Conclusions of the ESC. While in the latter the reason for reducing remuneration is age along with other parameters of reasonableness, in national regulations the reduction in remuneration is completely unrelated to age, to the extent that the reduction may be applied to workers over the age of 18.

b) Training and apprenticeship contract.

In Conclusions II (1971), and the Observation interpreting Article 7.5, the apprenticeship should not last too long and the acquired skills should lead to gradual remuneration during the time of the contract. In Conclusions 2006-Portugal, it was considered that an apprentice's remuneration should amount to at least a third of an adult's initial wage at the beginning of his/her contract, and at least two thirds at the end of the apprenticeship.

Art. 11.2 g) of the Workers' Statue established the following regarding the remuneration of a training and apprenticeship contract, which can be signed by those under 25 and over 16: "*The remuneration of a worker hired for training, or an apprenticeship, shall be set in proportion to the time of effective work, in accordance with what is established in the collective agreement.*

In no case can the remuneration be less than the interprofessional minimum wage, in proportion to the time of effective work."

The rules left collective bargaining appreciable leeway to set remuneration, establishing as the only minimum limit the amount of the Interprofessional Minimum Wage. The legal regulation of the contract does not contemplate the remunerative nature of the training time in the company but only the time of effective work. Neither does it guarantee a system to gradually match wages (in terms of

proportionality), in accordance with the objectives attained or skills acquired at each moment, leaving all of this to the collective agreement.

The regulatory framework regarding interns in companies does not guarantee being remunerated in proportion to a comparable adult worker carrying out the same functions; and often contributes to covering up an abuse of the law in the case of such contracts.

3) Specific considerations regarding the current regulatory framework.

The country's current regulatory framework, in relation to apprenticeship contracts and contracts for entering the job market after leaving school, is contained in Art. 11 of the Workers' Statute, in accordance with the reform implemented by Royal Decree Law 32/2021, of December 28, which introduced: 1) a new alternating training contract, with the objective of combining remunerated work and the corresponding training processes, and 2) a new training contract to obtain work experience in line with the worker's academic level.

Specifically, the recent labour reform, which resulted from social dialogue between the most representative trade unions and employers' organisations and the government, and was introduced by means of Royal Decree Law 32/2021, of December 28th, concerning urgent measures for labour reform, a guarantee of job stability and the transformation of the job market, with the objective of putting into effect the right of young workers and apprentices to a fair wage or, where applicable, appropriate remuneration, establishes the following with regard to the training contracts regulated by Article 11 of the Workers' Statute –an alternating training contract (Art. 11.2 of the Workers' Statute) and a training contact to obtain professional experience in line with the worker's academic level (Art. 11.3 of the Workers' Statute): the requirement that in no case shall the remuneration for these contracts be less than the interprofessional minimum wage, in proportion to the time of effective work.

Even so, the Government must continue to make an effort, by means of dialogue and agreements, in the fight against precarious employment, and in favour of decent wages and social justice, especially in the case of the most vulnerable groups such as young people, avoiding poverty among workers and converging towards European wages.

a) Remuneration of the alternating training contract (apprentices).

The regulation of the remunerative system for the alternating training contract (apprentices), established in Art. 11.2. m) of the Workers' Statute, stipulates: *"The*

remuneration shall be established for these contracts in the applicable collective agreement. In the absence of a conventional measure, the remuneration cannot be less than sixty per cent the first year or seventy-five per cent the second, with regard to that which is set by agreement for the professional group and wage level corresponding to the functions carried out, in proportion to the time of effective work. In no case can the retribution be less than the interprofessional minimum wage, in proportion to the time of effective work."

The regulations give collective bargaining appreciable leeway in order to set the remuneration for the said contract, establishing as the only absolute limit the amount of the Interprofessional Minimum Wage, in proportion to the effective time of work; such that collective bargaining can set lower amounts compared to those of a comparable worker carrying out the same functions.

The regulations allow collective bargaining to establish wages, which must respect the criteria of appropriate remuneration established in the Charter. The guarantee of legal minimums is established in the absence of conventional measures. However, in the same way, individual hiring must be subject to the requirements of appropriate remuneration.

From this perspective, inspection programmes must be adopted to verify whether remuneration, in addition to respecting legal minimums and the agreement's requirements, respects the contents of the Charter, particularly during the second year, in accordance with the interpretation established in Conclusions 2006, Portugal, which establish as appropriate remuneration a third of an adult's initial salary at the beginning of the contract and at least two thirds of this salary at the end of the apprenticeship.

Moreover, such specific plans must ensure that a system of gradual wage matching is guaranteed, in accordance with the acquired training objectives, in relation to the acquired experience and practice, and not merely considering the time that has passed since hiring and only establishing two minimum remuneration levels. This requires plans to guarantee the principle of appropriate remuneration over and above legal and collective bargaining guarantees, ensuring gradual matching as professional skills are required.

b) Remuneration of the training contract for acquiring professional experience in line with the worker's academic level.

In relation to the remuneration of the training contract for acquiring professional experience in line with the worker's academic level, Art. 11.3. i) stipulates: *"Remuneration for the time of effective work shall be established in the collective agreement that applies in the company for these contracts or, in the absence of such,*

in that of the professional group and remuneration level corresponding to the functions carried out. In no case can the remuneration be less than the minimum remuneration established for the alternating training contract or the interprofessional minimum wage, in proportion to the time of effective work."

Appreciable leeway is granted to collective bargaining for setting remuneration, establishing as the minimum limit the remuneration of the alternating training contract. In this case, it is up to collective bargaining to ensure appropriate remuneration as established in the Charter. Specifically, this requires informative and control actions when the agreement does not ensure the ESC in accordance with the interpretation made by Conclusions XI-1 (1991) for the Netherlands, which establish the reasonableness and proportionality between the remuneration of a young worker and that of an adult one, and Conclusions 2002 Italy, which set the said proportionality as a maximum reduction of 30% for workers aged 15 to 16; and 20% for workers from 16 to 18.

In the absence of specific remuneration in the collective agreement, the remuneration of the comparable professional group and remuneration level is guaranteed.

c) Remuneration of people subject to a grant.

The precarious labour situation being experienced by a large number of young professionals in our country is nothing new since, even though grants can promote the transition between training and the job market, they are frequently abused due to the resulting reduction in labour costs and bonuses.

Although there is no official census of interns, it is calculated that in 2018 Spain had 1.4 trainees that did not receive any remuneration or pay any social security contributions, with only a very small percentage (70,000) of young trainees paying such contributions (access).

Spain is the country in the European Union in which qualified interns are the most common. It is also at the top of the list as regards poorly paid interns, since 70% maintain that the compensation they receive is "insufficient to cover the basic cost of living, such as paying the rent, food, etc." (access)

In theory, non-labour work experience is not work as such, since interns should not assume the same responsibilities as the regular personnel. However, interns are being used as a low-cost replacement for company workforces, leading to a vicious circle in which many companies do not hire young people unless they have previously been interns with very small wages.

In Spain, there also exists the undignified paradox of two out of every ten trainees being more than 30 years old (access) and only 0.8 of every ten interns with training contracts ending up staying in the company with a permanent contract (access).

With the objective of tackling these irregularities, at CCOO and UGT we are negotiating the approval of the Interns' Statute, which delimits the field of action of this type of contract, protecting the basic rights of young workers. In this regard, it is essential that the new regulations establish a maximum percentage of interns, no greater than 20% of the total workforce, and guarantee them the same labour rights as the rest of the company's workers, establishing a decent wage, respecting their corresponding breaks and holidays, and entitling them to receive unemployment benefits.

In view of all the above, we believe that in the matter of fair pay, Spain does not comply with the Charter.

Fulfilment of Article 7§9: Regular medical control.

9. To provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

In its Conclusions XXI-4 (2019), the Committee determines that it requires more information than that provided in the 31st National Report 31 in order to evaluate the situation:

1. *General legal framework, as well as the scope of possible reforms.*
2. *Adopted measures (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
3. *Pertinent figures, statistics, or any other relevant information.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

1. The Government does not mention Art. 27.1 of the Prevention of Labour Risks Law as the main legislation within the legal framework regarding medical examinations for under-18s.

   The said rule establishes, in general, compulsory medical examinations for under-18s in two cases: before starting to work and prior to any important change in their working conditions.

   After starting to work, and while the working conditions remain the same, periodical medical examinations are voluntary, in the same terms as the rest of the workers.

2. The Government does not inform about specific cases in which, due to special working conditions, being a minor may be a factor that increases the labour risk, thereby obliging medical examinations to be carried out regularly; or which involve greater frequency compared to the other workers.

3. The Government does not provide data regarding the measures adopted to implement the legal framework.

4. The Government does not provide statistical data regarding the number of workers under the age of 18 that are offered, or given, medical examinations when they start working, there are changes in their working conditions, or they are exposed to specific risks. We therefore cannot analyse the fulfilment of national regulations or compliance with the European Social Charter.

For all these reasons, we believe that, with regard to regular medical control, Spain does not comply with the Charter.

Fulfilment of Article 7§10: Occupational dangers.

10. To ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

In its Conclusions XXI-4 (2019), the Committee determines that it needs more information than that provided in the 31st National Report in order to evaluate the situation:

1. *General legal framework, as well as the scope of possible reforms.*
2. *Adopted measures (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
3. *Pertinent figures, statistics, or any other relevant information.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

1. The Government does not provide information about the general legal framework, which, in any case, proves to be deficient.

   Art. 27.2 of Law 31/1995, of November 8th, on the Prevention of Labour Risks establishes a mandate for the Government to set limits to the hiring of under-18s in jobs that involve specific risks. Almost 28 years after the approval of the Prevention of Labour Risks Law, the Government has not developed such limits, which are still in force, in accordance with the sole derogatory provision b) of Law 31/1995 on the Prevention of Labour Risk, and solely with regard to minors, the Decree of July 26th, 1957, on Industries and Jobs that are forbidden to women and minors due to their dangerous and unhealthy nature. The Decree of 1957 is now outdated as regards the characteristic labour risks of new techniques and production processes.

2. The Government provides no information about any legal stipulations that forbid under-18s from working due to the labour risks involved with regard to their health and safety.
3. The Government includes no information about the regulation of specific measures regarding the prevention of specific labour risks for minors.
4. The Government does not provide any information about measures adopted to implement the legal framework or any relevant statistics or data that enable an analysis of the real national situation.
5. The information provided by the Government is also insufficient in order to analyse the situation in the country, since it does not include data regarding the type and characteristics of inspection, or the type of infringement detected.
6. At the national level, the National Institute of Health and Safety at Work (INSST in Spanish), in its report on workplace accidents resulting in sick leave (ATJT in Spanish) for the period 2019-2021, presents similar results with a rate that is 50% higher than average for the 24 years and under age group (access).

7. The protection of minors and young people deserves special attention, especially with regard to occupational accidents since, as the data shows, they are more exposed and insufficiently protected.

We therefore believe that, in relation to occupational dangers, Spain does not comply with the Charter.

II.- ON THE FULFILMENT OF ARTICLE 8: THE RIGHT OF EMPLOYED WOMEN TO PROTECTION.

Article 8: The right of employed women to protection of maternity.

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

Fulfilment of Article 8§2: Illegality of dismissal during maternity leave.

Paragraph 2: To consider it unlawful as an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence.

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter's Article 8§2, since the reasons for dismissing a female worker during her pregnancy or maternity leave go beyond the permitted exceptions.

Based on the information provide in the 31st National Report, the Committee once again observes that it is still possible to dismiss a female worker during her maternity leave for other reasons, such as collective dismissals, even if the company has not stopped operating (Article 51 of the Workers' Statute).

In addition to the reply to this conclusion, the following clarifications should be taken into account:

- *The Committee requests specific examples of compensation granted in cases of the illegal dismissal of pregnant workers or women on maternity leave.*
- *It highlights that, if the requested information does not appear in the next report, there will be nothing to demonstrate that the situation in Spain complies with the Charter's Article 8§2. Meanwhile, its opinion on this matter is still pending.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

It should likewise be noted that, in effect, by virtue of Royal Decree Law 6/2019, of March 1st, concerning urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation, there has been an increase in the level of protection for women during pregnancy or during their maternity leave.

Specifically, in relation to disciplinary and objective dismissal, Articles 55.5.c) and 53.4 of the Workers' Statute have been modified to extend, from 9 to 12 months, the period during which a woman's dismissal shall be presumed to be null and void after returning from maternity leave.

And in relation to dismissal for objective reasons, Art. 53.4 establishes a reinforced criterion in order to consider dismissal justified in such situations by requiring that the company *"must sufficiently prove that the objective reason behind the dismissal specifically requires the termination of the corresponding worker's contract."*

However, the established protection does not involve recognising the right established in the Charter, in relation to forbidding dismissal during pregnancy or maternity leave.

Spanish legislation thereby incurs in a notable lack of protection, from at least the following points of view:

1. **Spanish legislation does not establish the prohibition to dismiss during a worker's absence due to pregnancy or during her maternity leave, thereby infringing the Charter's guarantee.**

The situation of pregnancy, or absence during maternity leave, means that the person is particularly vulnerable when it comes to reacting to corporate decisions to dismiss, above all when this requires beginning arbitration proceedings, and then filing a claim, within an overall period of twenty days from the time the dismissal takes

effect. This deadline applies even if no legal notification is given or the reasons for dismissal are unknown.

The obligation to have to undertake these proceeding under such conditions limits, in practice, the possibilities of defence, and it does not suffice to establish, as Spanish legislation does, a mere presumption that dismissal under such conditions shall be considered null and void, since it can enable the company to prove that there are reasons justifying the dismissal. However, this involves a mere presumption that does not have a practical impact since, in any case, it is up to the company to prove that there are reasons justifying the dismissal.

Moreover, a dismissal under such conditions generally involves abusive behaviour since, with the person absent from her job, she is not subject to the employer's control and can therefore only be accused in a contrived way of not fulfilling her labour duties.

Neither are the company's rights compromised due to the mere delay in the possibility of dismissal, once the labour relationship is reestablished after the maternity leave is over, in the case of matters that took place previously or even during the maternity leave.

Spanish legislation therefore does not comply with the Social Charter, in relation to protection against dismissal when absent due to maternity leave.

The Court of the Justice of the European Union (CJEU) (ECLI:EU:C:2018:99) (access), in reply to a prejudicial matter from the High Court of Justice of Catalonia, established a series of criteria regarding the interpretation of the subject being considered, the inclusion of a pregnant worker among those affected by collective dismissal, and highlighted the Spanish legislation's low level of protection towards female workers in relation to pregnancy and maternity.

Although the CJEU considered that including a pregnant worker in a collective dismissal for proven objective reasons, unrelated to her pregnancy, does not contravene European Union regulations, it also points out that the Directive to which it refers (Directive 92/85) "only contains minimum provisions; it by no means prevents Member States from guaranteeing greater protection for pregnant workers, once they have given birth or while nursing."

Although Spanish legislation regulates restorative tutelage regarding the dismissal of a pregnant worker (nullity of dismissal, compensation for damages, etc.), it does not contemplate a preventative tutelage (prohibition of dismissal). However, the ruling points out that Article 10.1 of Directive 92/85 prohibits Member States from dismissing pregnant workers *"except in exceptional cases not inherent to their*

condition that are permitted by the legislations" and that "the correct transposition of the mentioned article obliges Member States to establish this double protection."

2. **It does not establish the prohibition to dismiss because of pregnancy, or while absent due to maternity leave or childbirth.**

The legislation regulating dismissal contemplates such situations as a reason for declaring the dismissal to be null and void, in a procedural sense, i.e., in relation to the content that must be included in the ruling, if it is confirmed that the dismissal is a case of discrimination due to pregnancy or enjoying maternity leave.

This nullity is merely "procedural," in the sense that it only applies if the person revokes the dismissal, before the legal deadline, and the judicial authority decrees that the basic right has been infringed. However, outside the legal case, this corporate decision is not null and void. On the contrary, it is recognised as fully enforceable, the company is empowered to cancel the work contract, the person is excluded from her labour rights as a whole, including the right to remuneration, social security contributions no longer have to be paid, the person is denied access to the workplace, her trade union rights can no longer be exercised, even if she is a representative, and not even the Administration or Work Inspectorate is empowered to consider the corporate decision null and void until the judicial authority issues a ruling, which requires the interested party taking action before the legal deadline.

Therefore, the legal model regarding the dismissal of a pregnant worker does not fulfil the preventative function of legislation that forbids such dismissal and grants protection from the very moment that the company takes this unjust action. On the contrary, the prevalent system is one of exclusive legalisation, which grants full enforceability to the unjust decision, with full executive powers with regard to the worker and the labour authority.

3. **The difficulties to grant protection against the dismissal of a worker due to pregnancy or exercising her right to work-life balance, by requiring the worker to prove with regard to the company, before the lawsuit, the fact of being pregnant.**

Moreover, the judicial doctrine is very strict in the consideration of this cause for nullity. The Supreme Court made a restrictive interpretation of the said legislation, which, in its practical application, completely undermined it. It required that, in order to declare the dismissal null and void, the dismissed worker had to prove during the

lawsuit that the company knew that she was pregnant. This probative difficulty involved a restriction that was not contemplated in the law and obliged notifying information of personal nature, namely being pregnant. This interpretation was corrected by the Constitutional Court (SSTC 92/2008 and 124/2009), which pointed out that the requirement of such knowledge is not contemplated in the law and means depriving, in practice, women of a guarantee during their pregnancy.

However, later on, the Supreme Court, Social Section, established –Ruling of the Supreme Court, Social, of June 25th, Appeal for the Unification Doctrine No. 877/2017 (access)– that the pregnant worker cannot invoke pregnancy as a cause for nullity if she did not indicate, in the conciliation hearing, prior to the lawsuit, this circumstance, with the argument, which we do not agree with, that this would leave the company "defenceless."

It is inconsistent to speak about being defenceless due to finding out about the pregnancy in the "lawsuit" when the company has the entire case in which to exercise its right to defence, especially when the worker is not even entitled to know why she is being dismissed before it takes effect, when the dismissal is due to disciplinary reasons. And if it is due to objective reasons, the notice can be replaced by the payment of compensation equivalent to the salary of the omitted days (Art. 53.4, last paragraph of the Workers' Statute).

4. Information about compensation for dismissal due to pregnancy.

The Government's report does not provide information about the compensation due to the dismissal of workers during pregnancy.

In relation to the recognition of compensation due to dismissal derived from pregnancy, the lack of legal regulations leaves the matter open to legal interpretation. For example, the Ruling of the Madrid High Court of Justice of September 23rd, Appeal No.: 537/2022 (access), the same as the Ruling of June 23rd, 2020, Appeal for Reversal 352/2020 (access), declares that it was not necessary to pay any compensation to the worker dismissed on June 27th, 2019, during her pregnancy, even if declared null and void, since any damages would have to be proven. It reaffirms the doctrine of the same Court, which was laid down in the ruling of 22-02-2019, No. 126/2019, Record 608/2018.

It is true that the Supreme Court has rectified the criterion that discriminatory dismissal is only entitled to compensation if the victim proves effective damages, by considering that moral damages are always incurred and therefore compensation is due. However, the Supreme Court of Justice does not apply this doctrine to the dismissal of a pregnant worker when the nullity is due to the objective fact of the pregnancy, and the lack of proof regarding other justified reasons. The Court

interprets the labour legislation by declaring: *"In addition, in this case the dismissal was declared null and void in application of Article 55.5.b) of the Workers' Statute, i.e., due to being pregnant, which is a cause for objective nullity and therefore does not involve any infringement on the part of the employer."*

The legalisation of this matter, and the lack of legal criteria regarding the prohibition of dismissal during absences for pregnancy or childbirth, and regarding the amount of compensation to offset the damages, is a clear incentive for abusive dismissal practices, and a lack of incentive for exercising the legal tutelage, as in the case of the Ruling of the High Court of Justice of the Canary Islands, Social Section, in Santa Cruz de Tenerife, on December 16th, 2022, Appeal No.: 496/2022 (access), or the Ruling of the High Court of Justice of Catalonia on October 27, 2022, Appeal No.: 3244/2022 (access), which declares the dismissal to be null and void, but without compensation other than the wages that were not paid.

Consequently, we believe that in the matter of the illegality of dismissal during maternity leave, Spain does not comply with the Charter.

Fulfilment of Article 8§3: Time off for nursing mothers.

Paragraph 3: To provide that mothers that are nursing their infants shall be entitled to sufficient time off for this purpose.

A) CONCLUSIONS OF NON-COMPLIANCE OBSERVED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter's Article 8§3, since it has not been established that women employed in public service enjoy the right to paid breaks for nursing.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

Art. 37.4 of the Workers' Statute establishes a paid leave for taking care of an infant of a one-hour absence per day, which can be replaced by reducing the workday by half an hour or accumulated as whole workdays to be enjoyed until the infant reaches the age of 9 months.

The legal regulation establishes this right as an individual right of female workers that cannot be transferred to the other parent, adoptive parent, guardian, or foster parent.

Likewise, unpaid leave is contemplated when the infant is 9 to 12 months old when both parents, adoptive parents, guardians, or foster parents exercise this right to nursing with the same duration and system. When the type of leave is that of a reduced workday (by half an hour), the extension from 9 to 12 months entitles one of the parents, adoptive parents, guardians, or foster parents to receive a Social Security allowance (Art. 183 and following articles of the General Social Security Law).

Since this is an individual right, the legislation does not contemplate, should one of the parents, adoptive parent, guardians, or foster parents die, the surviving one enjoying an increase in the leave (as regards its daily duration) similar to that due to the deceased person to take care of the needs of the infant that they looked after alternatively, with remuneration, or without it and with the right to an allowance.

Neither does it establish the possibility of increasing the time of enjoyment in the case of single-parent families, thereby reducing the availability for taking care of the infant.

In the case of single-parent families, it also deprives them of the possibility of increasing the unpaid leave from the age of 9 to 12 months, and of accessing the corresponding allowance when the leave is enjoyed by reducing the workday by half an hour.

The ruling of the Supreme Court of March 2nd, 2023, Appeal 3972/2020 (access), rejects the idea that, in the case of single-parent families, in addition to receiving child allowance, and the corresponding leave, the sole parent that received this child and nursing allowance is also entitled to the allowance that would have corresponded to the other parent, if he/she had existed.

According to the ruling, child allowance is a contributory benefit whose beneficiaries are persons included in the General Social Security System, regardless of their gender, who enjoy the breaks contemplated in Article 48 of the Workers' Statute, as long as, in addition to being registered or in a legally similar situation, they satisfy the required period of contributions as determined in the disposition itself; moreover, the amount of the allowance depends on the interested party's contribution base (Article 179 of the General Social Security Law) and their subsistence during the period of the allowance is conditioned by not doing any other work for themselves or an employer (Article 180 of the General Social Security Law).

In view of all the above, we believe that in the matter of time off for nursing mothers, Spain does not comply with the Charter.

Fulfilment of Article 8§4: Regulation of the employment in night work of pregnant women, women who have recently given birth and women nursing their infants. (Revised European Social Charter)

4. To regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee requires the Government to describe the general legal framework, specifying the nature, reasons, and scope of any reforms.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

The information required by the Government is insufficient.

1. The Government merely refers to the legal framework that establishes limitations to night work for pregnant women, women after childbirth, or nursing mothers, for reasons of health and safety in the workplace (Article 26 of Law 31/1995 on the prevention of labour risks).
2. This is a right conditioned by the results of an evaluation of risks, such that, if the results of the evaluation reveal a health and safety risk, or a possible impact on the pregnancy or nursing of the aforementioned workers, the employer shall adopt the necessary measures to avoid exposure to the said risk, by adapting the conditions or time of the affected employee's work. These measures shall include, when necessary, not doing any night work or shiftwork.
3. No information is provided about adapting the workday to exclude night work when this is incompatible with nursing and taking care of children.
4. However, the most outstanding aspect is that no limitations to night work are established to protect maternity or paternity. The Government does not supply any information about the legal framework that regulates a female worker's night work for other purposes, such as combining work and family

life to facilitate childcare and nursing. In this regard, the national legislation does not establish any specific regulation. Art. 34.8 of the Workers' Statute entitles the worker to modify the distribution of the workday whenever necessary to ensure a work-life balance. Nonetheless, this right is subject to negotiation with the company, whose organisational and production needs have to be taken into account. Neither is any preference included, in relation to combining work and family life, that guarantees not being assigned night work or shiftwork.

In view of all the above, we believe that in the matter of regulating the employment in night work of pregnant women, women who have recently given birth, or women nursing their infants, Spain does not comply with the Charter.

Fulfilment of Article 8§5: (Revised European Social Charter) Prohibition of work that is unsuitable for maternity.

5. To prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee requires information indicating what measures (administrative dispositions, programmes, action plans, projects, etc.) have been adopted to implement the legal framework.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

Article 26 of Law 31/1995, of November 8th, concerning the Prevention of Labour Risks, establishes measures to protect maternity, when pregnant women or women who have recently given birth are exposed to agents, procedures, or working conditions that may have a negative impact on the health of the workers or the foetus, in any activity liable to involve a specific risk.

The last paragraph of Art. 4.1 of Royal Decree 39/1997, of January 17th, which approves the Regulation of Prevention Services, refers to the prohibition of activities

for pregnant or nursing workers that involve exposure to the risks established in Appendix VIII of the legislation, including exposure to ionising radiation or underground mining work.

Likewise, Appendix VII includes a series of risks that may have a negative impact on the health of pregnant workers or women during the period of natural nursing, of the foetus or the child during the period of natural nursing, which must be evaluated in each specific case.

The presence of such a risk shall trigger the protection mechanism contemplated in Art. 26 of Law 31/1995, of November 8th, concerning the Prevention of Labour Risks, with the objective of avoiding exposure by adapting the working conditions, changing job, and, in the absence of such, suspending the employment contract, with the worker being entitled to Social Security benefits.

However, the Government does not provide any information about the number of female workers that may have been exposed to such risks, in order to verify the degree of compliance with the national legislation on health and safety for women in the workplace, as well as to evaluate the appropriateness or effectiveness of the legal framework.

For all these reasons, we believe that in the matter of prohibiting work that is unsuitable for maternity, Spain does not comply with the Charter.

III.- ON THE FULFILMENT OF ARTICLE 16: THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION.

Article 16. The right of the family to social, legal and economic protection.

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

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with Article 16 of the Charter of 1961, since the level of family benefits is not adequate, amounting to an insignificant amount of additional income.

In addition to the reply to this conclusion, the following clarifications should be taken into account:

1. *In relation to the Comprehensive Family Support Plan 2015-2017, the 31st National Report specifies that a report on its implementation and final evaluation would be submitted to an inter-ministerial commission in 2018. Therefore, the Committee requests that this report include a final evaluation with regard to family mediation services.*
2. *In relation to the legislative framework in the field of gender-based violence (particularly Organic Law No. 1/2004 on comprehensive measures of protection against gender-based violence).*
3. *With regard to rulings related to domestic violence, the Committee requests that this report provide figures on the number of convictions for domestic violence against women, by the courts specialising in gender-based violence contemplated in Organic Law 1/2004, as well as the evolution of this data in recent years.*
4. *Family advice. One of the objectives of the Comprehensive Family Support Plan 2015-2017 was promoting the development of family advice services at the regional and local levels; the report explains that a summary on their implementation and final evaluation should be submitted to an interdepartmental commission in 2018. Therefore, the Committee requests that the report include this final evaluation.*
5. *Childcare structure. The Committee requests the report provide an update on balancing the supply and demand of childcare spaces, indicating the number of requests that were rejected due to a lack of such spaces.*
6. *Equal access to family benefits. The Committee requests that the report confirm that there are no conditions regarding the duration of residence for the citizens of Member States in order to access family benefits.*
7. *Level of family benefits. The Committee requests that the report provide updated information on the amount of such benefits. In its conclusion in 2019, the Committee believed that the previous situation of non-compliance with the Charter remained unchanged. Therefore, it repeated its conclusion of non-compliance, alleging that the level of family benefits is inadequate since it does not amount to a significant increase in income.*

8. *Measures in favour of vulnerable families. The Committee requests that the report provide information on the results of such measures with regard to single-parent families and Romany families in relation to housing (mortgage debts, evictions, and assistance for evicted persons, social rents, etc.).*

9. *Family accommodation. With regard to procedures related to protection against illegal eviction, such as alternatives to expulsion, reasonable notification period, access to legal assistance, and compensation in the case of illegal eviction, the Committee observed in its conclusions that the 31st National Report did not provide answers to all of these questions.*

   The Committee requests that the next report provide information about the results of these measures with regard to single-parent families and Romany families.

10. *Updated figures and data are required regarding:*

    a) *The number of expulsions actually carried out.*

    b) *Examples taken from national jurisprudence on the matter of whether the judicial control in this area includes a consideration of proportionality regarding the expulsion.*

    c) *Total number of social housing units that exist nationwide.*

    d) *Percentages of satisfied requests, as well as the average waiting time for obtaining such accommodation.*

    e) *Information on the existence of housing assistance for the most vulnerable families, particularly large families and single-parent families.*

11. *Likewise, the Committee requests information about the measures that were contemplated, and possibly adopted, in relation to the 2018-2021 National Housing Plan mentioned in the report.*

12. *It also requests information about the existence of housing assistance for the most vulnerable families, particularly large families and single-parent families.*

13. *With regard to access to housing for Romany families, the Committee previously requested (Conclusions XX-4 (2015)) information on the measures taken to permanently and completely eliminate marginal neighbourhoods and enable their residents to be relocated in legal housing, in order to improve the living conditions of Romanies. Since the 31st National Report does not provide information on this matter, it is expected to be included in the present one.*

14. *It requests that the report also include general information about the housing situation of refugee families, particularly after the initial reception period.*

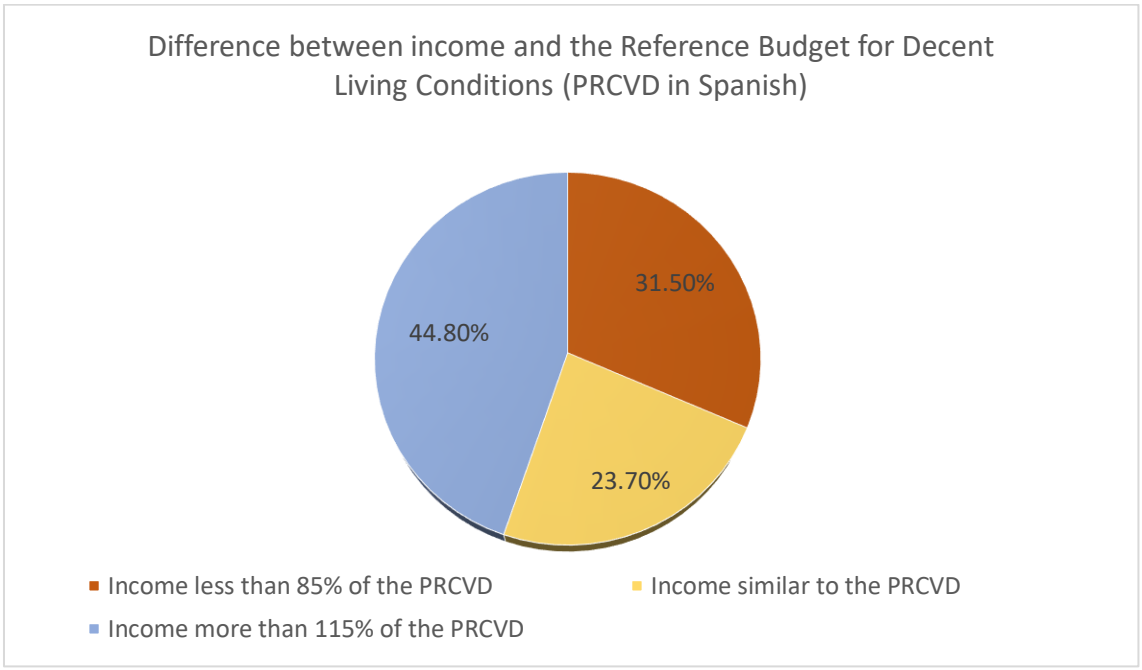
15. *It also requests specific information on the accommodation conditions for asylum seekers in temporary residence centres for immigrants.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

Spain, unlike most EU countries, has a weak social protection system for families and children, only investing 1.3% of GDP therein, which is well below the European average (2.4% of GDP), and even more so compared to the expenditure of countries such as Denmark (3.5% of GDP) (access). Likewise, we are the European Union country with the smallest percentage of social expenditure devoted to families –2.1%, which is four times less than the European average (8.5%) (access).

According to the latest Eurostat data, Spain is one of the countries in our area with the least monetary aid awarded to families, who only receive 1 out of every 18 euros that Spain devotes to social expenditure (access). In fact, in the *Best Countries Report* of 2022, Spain was ranked 16th as regards forming a family and bringing up children (access).

In relation to this discouraging data, a Cáritas report warns "that 31.5% of Spanish homes (six million families) have income that is well below what is required to live in decent conditions" (access), which is a figure that exceeds that of relative poverty (21.65%) (access) and the AROPE rate of 27.6% (access).



Source: Eurostat.

The demographic winter that Spain will experience in the following years, with the largest increase in the dependency ratio in Europe, such that for every three working-age persons in 2050, there will be almost two over-65s (access), will amount to a large disproportion compared to the active population, obliging the implementation of drastic changes in our country's model of society.

Consequently, measures must be adopted to reverse this tendency and bring it in line with European objectives, such as the stalled Family Law, which corresponds to the obligation of transposing European Directive 2019/1158 on work-life balance but has not yet been integrated into national legislation.

We believe that this new regulation is essential as the fundamental core of socioeconomic protection for homes with the greatest difficulties for getting on in life, since it is essential to have a legal-political framework that establishes an adequate and sufficient level of family benefits, centring attention on the gender gap and all the added difficulties facing single-parent homes headed by a woman with dependent children.

1. Family benefits: from 2018–May 2020.

The Government does not provide information regarding the amount of money that is paid to the beneficiaries of family benefits.

In the period from 2018 to June 1st, 2020, Spain's legislative framework, specifically Art. 352.1 and following of the General Social Security Law, indicated a non-contributory benefit for dependent children under the age of 18, or older in the case of 65% and over disability.

Being entitled to this benefit required not exceeding a maximum income level.

Both the amount of the benefit and the maximum income level that cannot be exceeded in order to be a beneficiary were subject to annual revisions by the General State Budget Law.

In relation to the amount of the benefit, Art. 2 of Royal Decree Law 8/2019, of July 3rd, establishes: "The amount of Social Security family benefits, in the case of non-contributory ones, as well as the amount of the income limit in order to access such, regulated in Chapter 2 of Title VI of the consolidated text of the General Social Security Law, approved by Royal Legislative Decree 8/2015, of October 30th, shall be the following:

1. The amount of the allowance established in Article 353.1 shall be an annual total of 341 euros.
2. The income limit in order to be entitled to an allowance for a dependent child or minor, referred to in the first and second paragraphs of Article 352.1.c), is established as 12,313.00 euros per year, and in the case of large families, 18,532.00 euros, being increased by 3,002 euros for each dependent child from the fourth onwards, including the latter.
3. Without prejudice to the above, the amount of allowance established in Article 353.1 shall be an annual total of 588 euros, in cases in which the home's income is less, in accordance with the following scale:

MEMBERS OF THE HOME		INCOME INTERVAL	*TOTAL ANNUAL ALLOWANCE (EUROS)*
PERSONS > = 14 YEARS (M)	*PERSONS < 14 YEARS (N)*		
1	*1*	*4,679.99 or less*	*588 x H*
1	*2*	*5,759.99 or less*	*588 x H*
1	*3*	*6,839.99 or less*	*588 x H*
2	*1*	*6,479.99 or less*	*588 x H*
2	*2*	*7,559.99 or less*	*588 x H*
2	*3*	*8,639.99 or less*	*588 x H*
3	*1*	*8,279.99 or less*	*588 x H*
3	*2*	*9,359.99 or less*	*588 x H*
3	*3*	*10,439.99 or less*	*588 x H*
M	*N*	*3,599.99 + [(3,599.99 x 0.5 x (M-1)) + (3,599.99 x 0.3 x N)] or less*	*588 x H*

Beneficiaries:

H = dependent children under 18.

N = number of under-14s in the home.

M = number of persons aged 14 or older in the home.

The amount of the benefit per dependent child is not a significant level of income that can be considered adequate so as to comply with the ESC, as expressed in the Allegations by the CCOO and UGT trade unions to the 31st National Report submitted by the Government of Spain to the ECSR.

2. Family benefits: from June 2020–present.

It is true that no minimum period of residence in Spain is required –having legal residence is sufficient– in order to receive family benefits.

Royal Decree Law 20/2020, of May 29th, which establishes the minimum living wage, eliminated the benefit for under-18s and replaced it with one for minors with more than 33% disability, maintaining the right to a benefit for over-18s with more than 65% disability.

Nonetheless, Royal Decree Law 20/2020 creates a new non-contributory benefit as the Minimum Living Income, which guarantees a minimum income level higher than family benefits, which are, in any case, incompatible with the MLI.

Art. 7.1.a) of Royal Decree Law 20/2020 requires the following to be considered a beneficiary: *"a) Having legal and effective residence in Spain and having had it continuously, without interruption, for at least a year immediately before the date the application is submitted."*

The family benefit for under-18s is thereby eliminated, without guaranteeing any benefits for this group, until they fulfil a year of legal residence in Spain.

3. Protection against eviction.

Non-payment of rent in the case of rented accommodation has been occurring in families experiencing cases and circumstances of special economic vulnerability due to loss of employment, illness, or legal separation proceedings.

Protection regulations regarding situations of vulnerability have been approved in relation to the channels for suspending or delaying the return of the property to the owner, once the cancellation of the contract and the lack of proof of ownership has been legally recognised. Specifically, Royal Decree Law 20/2020, of December 27th, concerning measures to tackle the economic and social consequences of the war in Ukraine, extends the duration of the measures contemplated in Royal Decree Law 11/2020, of March 31, which adopts urgent complementary measures in the social and economic field in order to deal with COVID-19, which was modified and completed by Royal Decree Law 37/2020, of December 22nd, concerning urgent measures to deal with situations of social and economic vulnerability in the field of housing and in relation to transportation.

Specifically, it extends until June 30th, 2023, the suspension of eviction proceedings, in cases of non-payment of rent by vulnerable homes without any alternative accommodation that are subject to the Urban Rental Law (LAU in Spanish) of 1994; and by illegal occupants of property that are victims of gender-based violence, dependents or with dependents or minors under their care, and who are in a

situation of vulnerability. It requires that the property belong to individuals or legal entities that own more than ten properties. The landlords/landladies and owners of properties affected by the suspension of eviction proceedings shall be entitled to request, up to July 31st, 2023, compensation under certain circumstances.

Spanish legislation, specifically Art. 27.2 a) of Law 29/1994, of November 24th, concerning Urban Rental, enables the landlord/landlady to begin eviction proceedings from the time that he/she verifies non-payment of the first (total or partial) monthly payment. It does not take into account any rule of proportionality, or the consideration of previous fulfilments, even if long periods of the previous fulfilment of the obligations exist. Neither is the amount of damages incurred by the landlord/landlord considered, with the eviction being accepted even in situations of insignificant losses.

Neither is there any exception or delay established as regards initiating the eviction process in the case of vulnerable families.

The process of eviction due to non-payment of rent can result in the suspension of the proceedings after payment of the corresponding amounts, or in the implementation of the eviction, in accordance with Art. 22 of Law 1/2000, of January 7th, concerning Civil Procedure. In both cases, the tenant is sentenced to pay the legal costs, which may amount to more than the unpaid rent, especially with regard to the fees of the opposing party's fees, with a maximum limit being established as a third of the annual rent (Art. 394 Civil Procedure Law in relation to Article 251.9 Civil Procedure Law); in other words, just the fees of the opposing party's lawyer may involve expenses equivalent to four monthly rent payments, even if the proceedings were suspended and the rent paid without going to trial.

Such costs may worsen the situation of economic vulnerability.

4. **Insufficient measures for accompanying minors to medical appointments.**

Spanish legislation does not specify leave for accompanying children, minors in foster care, or other relatives that cannot take care of themselves to medical appointments, which hinders the care of children, minors, and relatives in need, as well as the work-life balance.

This was acknowledged by the Supreme Court, Social Section, in its Ruling of December 9th, 2020, Record 79/2019 (access). In particular, it considered that accompanying a child to the doctor's cannot be included in the leave mentioned in Art. 37.3 d) of the Workers' Statute, contemplated for fulfilling an inexcusable duty of

a public nature. According to the Supreme Court: *"The duties arising from family and care obligations –as a result of family relationships (ex-Art. 110 of the Civil Code or CC)– or the duty to provide food among relatives in a broad sense (ex-Art. 152 CC), to which we can link the activity generating the right to the leave under discussion, do not require a highly personal and irreplaceable attention on the part of those responsible for such, and they can hardly be considered as obligations of a public nature .On the contrary, they belong to the private and family sphere, and we are therefore dealing with a leave completely unrelated to the specific provision of Art. 37.3 d) Workers' Statute."*

The right to paid leave is therefore conditioned by what is established in the collective agreement.

Neither is there any type of legislation that considers such an absence to be justified, which leaves workers completely legally defenceless, when not covered by an agreement establishing such justification.

What has been corrected is the possibility of considering such absences, even if justified, as grounds for dismissal, since dismissal due to absenteeism has been revoked –Royal Decree Law 4/2020, of February 18th, revokes objective dismissal due to absences from the workplace established in Article 5 d) of the consolidated text of the Workers' Statute, approved by Royal Legislative Decree 2/2015, of October 23rd, and Law 1/2020, of July 15th, which ratifies it.

5. **Restrictions to widow's pension, in cases of separation or divorce, in the absence of a compensatory pension, regardless of the reasons why there is no compensatory pension.**

The consideration issued in the allegations to the Government's 31st National Report (2019) is repeated: the lack of protection for the non-working spouse, mainly women, in the case of dissolution of marriage, when she is completely excluded from her entitlements in the Social Security System during the lifetime of her ex-spouse, and can only receive a widow's pension if she had previously enjoyed a compensatory pension, regardless of the reasons why the latter pension had not been recognised, such as insufficient assets, the parties' lack of knowledge, or having agreed another compensation system such as not being liable to pay charges or the liquidation of assets.

Women are the main beneficiaries of widowhood pensions.

In the case of separation or divorce, the widow's pension depends on the surviving ex-spouse having been recognised as entitled to a compensatory pension at the

expense of the deceased. Art. 220 of the Consolidated Text of the General Social Security Law establishes the following as a requirement for accessing a widow's pension, in cases of separation, divorce, or marriage annulment:

Likewise, legally divorced or separated persons shall be required to have the compensatory pension that is referred to in Article 97 of the Civil Code and this shall be cancelled on the taxpayer's death. If the amount of the widow's pension is higher than that of the compensatory pension, the former shall be decreased to the amount of the latter.

This does not apply to victims of gender-based violence.

The compensatory pension is recognised in accordance with Art. 97 of the Civil Code, approved by the Royal Decree of July 24th, 1889, after the modifications implemented by Final Provision 1.25 of Law 15/2015, of July 2nd, Art. 1.9 of Law 15/2005, of July 8th, and Art. 1 of Law 30/1981, of July 7th.

The legislation is applied without taking into account the reasons why a compensatory pension or compensation had not been recognised in favour of the separated or divorced person, even if other compensation mechanisms had been agreed.

The amount of the Social Security benefit is set as equivalent to the amount of the compensatory pension recognised in the civil separation or divorce proceedings.

This is an especially serious matter, that is essential detriment to women, when they have devoted themselves to taking care of the family, and they are affected by a marriage crisis. This is the case despite the fact that, according to law, Social Security contributions are made by both spouses and should therefore entitle the ex-spouse to Social Security benefits in relation to any increases in the matrimonial assets carried out by the other spouse.

However, the non-working spouse is not entitled to any benefits, even if the marriage has been dissolved, and can only receive protection at the other spouse's expense, if a compensatory pension is established. However, if the other ex-spouse has insufficient assets, then she will have no protection whatsoever.

6. Exclusion of part-time contract from access to partial retirement.

We repeat the consideration in relation to the Government's 31st National Report, in the sense that, although part-time contracts mainly involve women, and are designed to facilitate the work-life balance, the truth is that they are excluded from partial retirement, regardless of any contributions made by the working person. This is a difference in treatment that limits adequate family protection.

In accordance with what is stipulated in Art. 215.2 of the General Social Security Law, the right to partial retirement is solely reserved for full-time workers, with part-time workers being excluded from such, due to the type of contract they have at a certain moment in their working life, regardless of their contributions to the Social Security System.

We therefore believe that in the matter of the family's right to social, legal, and economic protection, Spain does not comply with the Charter.

IV.- ON THE FULFILMENT OF ARTICLE 17: THE RIGHT OF MOTHERS AND CHILDREN TO SOCIAL AND ECONOMIC PROTECTION.

Article 17 (Revised European Social Charter): The right of children and young persons to social, legal and economic protection.

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

Fulfilment of Article 17§2: Free primary and secondary education. Reduction of school absenteeism and leaving school early in compulsory education.

2. To provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

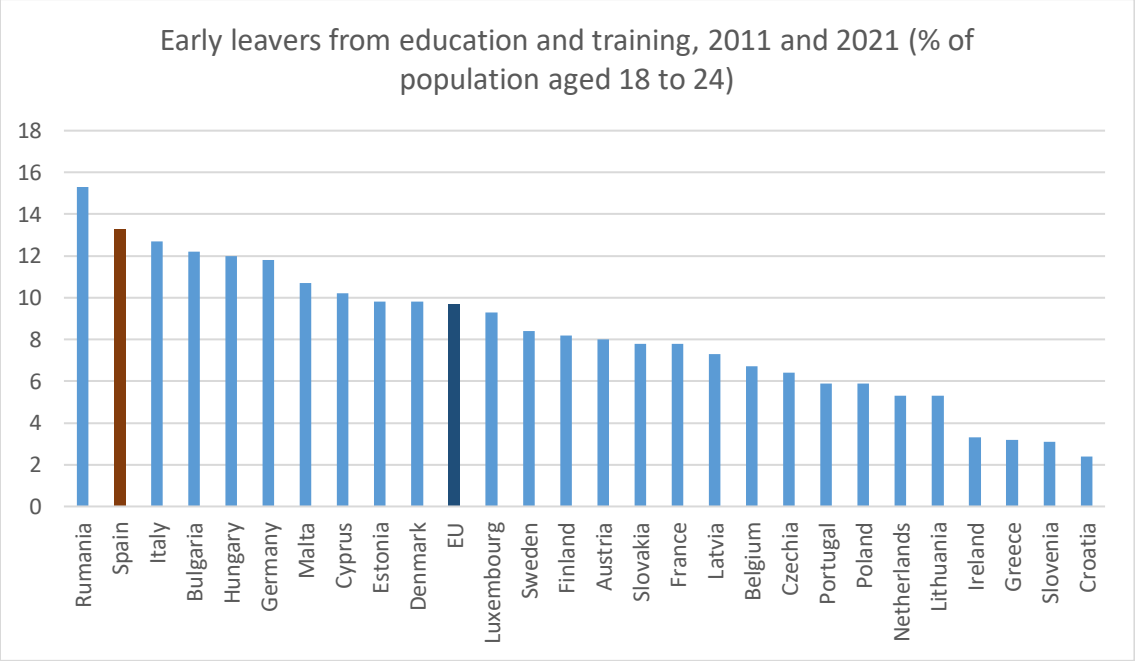
The Committee requires information regarding:

1. *Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*

2. *Indicate the measures (administrative requirements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
3. *Provide figures, statistics, or any other pertinent information, particularly with regard to the number of children that do not complete their compulsory education and leave school without any qualifications, and measures to tackle absenteeism.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

According to Eurostat, in 2021, an average of 9.7% of the EU's young people aged 18 to 24 left education and training early. In the EU's Member States, the countries with the lowest proportion of young people leaving school early were Croatia, Slovenia, Greece, and Ireland, where the proportion was less than 5%, while the highest percentages were recorded in Rumania (15.3%), followed by Spain (access).



Source: Eurostat.

The global proportion of people that leave education and training early decreased in the EU by 3.5% between 2011 and 2021, with the greatest decreases being observed in Portugal (-17.1%) and Spain (-13%), which is largely due to the implementation of measures designed to tackle this challenge: the Organic Law Modifying the Organic Education Law (LOMLOE in Spanish), the Vocational Training Law, and the Recovery, Transformation, and Resilience Plan.

However, we believe that, in order to continue dealing with school absenteeism and leaving school early, as required by the Charter, apart from merely assigning economic resources, we must continue to increase the measures promoting equity in the education system, stressing the commitment required by all the parties involved.

We therefore believe that in the matter of imparting free primary and secondary education, and reducing school absenteeism and leaving school early, Spain does not comply with the Charter.

V.- ON THE FULFILMENT OF ARTICLE 19: THE RIGHT TO MIGRANT WORKERS AND THEIR FAMILIES TO PROTECTION AND ASSISTANCE.

Article 19: The right of migrant workers and their families to protection and assistance.

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

Fulfilment of Art. 19§2: Departure, journey and reception of migrant workers and their families.

2. To adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

In its Conclusions XXI-4 (2019), the Committee indicates that it requires more information than what is provided in the 31st National Report in order to evaluate the situation:

1. *Reception. The information required regarding the application of Royal Decree 702/2013 in relation to migrant workers and their families' access to the healthcare cards, especially on arrival, required to enjoy the services of the National Health System was not provided.*
2. *The journey: The obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" refers to migrant workers and their families that travel, whether collectively or as part of a public or private system, with a view to collective hiring.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We consider the need for providing information, as requested by the Committee.

Fulfilment of Article 19§3: Co-operation between social services.

3. To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

In its Conclusions XXI-4 (2019), the Committee determines that it requires more information than that provided in the 31st National Report in order to evaluate the situation.

Although it believes that the legal framework adopted in Spain fulfils the requirements of the Charter of 1961's Article 19§3, it would like to receive examples of co-operation between the Autonomous Regions and the most important emigration and immigration countries, particularly in relation to what services are involved and what is the type and nature of the contacts and exchanges of information.

The Commission indicates that the report does not deal with the matter of Spanish workers living in other Member States and repeats its request for information about whether any aid is offered to Spanish workers abroad who may have difficulties in labour, social security, or family matters.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We consider the need for providing information, as requested by the Committee.

Fulfilment of Article 19§4: Equality in respect of employment, trade unions rights and accommodation.

4. To secure for such workers lawfully within their territories, insofar as such matters as 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 working conditions;

b) member of trade unions and enjoyment of the benefits of collective bargaining;

c) accommodation.

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter of 1961's Article 19§4 since it has not been established that the lack of discrimination, in law and in practice, is guaranteed as regards the enjoyment by foreign workers of the advantages provided by collective agreements.

In addition to the reply to this conclusion, the following clarifications should be taken into account:

1. Policies for integrating immigrants. The Committee points out that, according to data regarding Spain published in the Migrant Integration Policy Index (MIPEX 2015), the laws against discrimination and equality policies implemented in this country are below average. It asks the Spanish authorities to react to this observation in the following report.

2. Membership of trade unions and enjoyment of the benefits provided by collective agreements. Since 2011 (Conclusions XIX-4), the Committee has been requesting information regarding the lack of discrimination, de iure and de facto, with regards to the enjoyment by foreign workers of the advantages provided by collective agreements. The Committee requires new information

regarding these questions in order to establish whether the situation complies with the Charter.

It likewise requires information about the legal status of workers posted abroad, which was not dealt with in the 31st National Report.

3. Housing. The Committee pointed out back in 2015 (Conclusions XX-4 (2015)) that long-term foreign residents were entitled to housing provided by the State, in the same conditions as nationals. However, the trade unions indicated that this provision to receive state housing subsidies excluded foreigners without long-term residency. The Committee has asked Spanish authorities to respond to these comments and does so again.

4. Jurisdictional monitoring and control. In addition to the lack of discrimination on the basis of the law, it is necessary to demonstrate that specific measures have been taken in this regard. In order to prevent discrimination in practice, the Member States must establish monitoring procedures or entities charged with compiling information. Also, that it is possible to lodge an appeal with an independent authority against the Administration's decisions. Since the 31st National Report does not deal with this point, the Committee asks that it be included in the present report.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We repeat the need for providing the information required by the Committee. We likewise believe that in regard to equal employment conditions, Spain does not comply with the Charter.

Although it is true that international, European, and national legislation protects migrants from discrimination, which is even included transversally in the Agenda 2030 and in most Sustainable Development Goals, their socioeconomic inclusion is still pending in our country.

The labour improvements experienced by migrants have proved to be almost inexistent, even though they account for 15% of the resident population. This is highlighted in a study by La Caixa Foundation, according to which foreign youths have wage rises that are considerably smaller than those of nationals (access). Likewise, the differences in wage tendencies are greater among those with a higher educational level, with foreign university graduates receiving just a 0.07% increase over five years, while national youths received a ninefold increase during the same period.

In general terms, the ILO indicates that migrant workers are more likely to have a precarious job, since 27% of them have a temporary contract. It also highlights the worrying wage gap experienced by migrants, which has increased in many high-income countries and is at 13% worldwide, while Spain's wage gap has increased to 28.3% (access).

Statistics show that a wage gap for the same job mainly affects Latin Americans since, according the National Statistics Institute, they earn 40% less on overage compared to the rest of workers, amounting to 9,081 euros less in wages per year (access).

The appearing trade union organisations are explicitly responsible for unfailingly defending the right to equality and full social integration and the protection of labour rights for all workers, especially in the case of the most vulnerable groups, and particularly foreigners.

We therefore guarantee that the Collective Agreements signed by our organisations do not contain any discrimination as regards the enjoyment on the part of foreign workers of the advantages provided by such agreements and, where applicable, we take action to revoke anything to the contrary, if subscribed to by other organisations.

Having said that, we do believe that it is necessary to design career paths that improve people's lives and guarantee decent employment and fair pay, by means of legal and political reforms that tackle the increasing precariousness of employment, preventing a person's origin from conditioning their salary, and including larger sanctions against such social discrimination.

We therefore consider that in the matter of equality in employment, trade union rights, and accommodation, Spain does not comply with the Charter.

Fulfilment of Article 19*§6*: Family reunification.

6. To facilitate as far as possible the reunion of the family of foreign workers permitted to establish themselves in the country;

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter of 1961's Article 19§6 since:

1. social welfare benefits are excluded from the calculation of a worker's income for the purposes of family reunification;

2. it has not been established that the requirement that the migrant must have suitable accommodation in order to bring their family, or that the language or health restrictions are not so restrictive so as to prevent family reunification.

Finally, the Committee again asks whether it is possible to decide to expel the family members of a migrant worker that has lost their right to residency and, if so, under what conditions.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We agree with the non-compliance observed by the Committee, without the considerations of the governmental report changing such.

Fulfilment of Article 19§9: Transfer of income.

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

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

In its Conclusions XXI-4 (2019) the Committee declares that it needs more information than that provided in the 31st National Report in order to evaluate the situation.

Although the previous report confirmed that migrants are entitled to transfer their income and savings, without limitations to any country, the interpretation of Article 19§9 (Conclusions 2011) asserts that the right to transfer earnings and savings includes the right of migrant workers to transfer personal property.

It asked whether there were any restrictions in this regard. Since the report does reply to this matter, the Committee repeats its question and points out that, if the next report does not provide complete information in this regard, there will be nothing to demonstrate that the situation complies with the Charter on this.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We repeat the need for providing information as required by the Committee.

Fulfilment of Article 19§10: Equal treatment for self-employed workers.

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

A) CONCLUSIONS OF NON-COMPLIANCE AND REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee concludes that the situation in Spain does not comply with the Charter's Article 19§10, since the reasons for non-compliance apply by virtue of Article 19, paragraphs 4 and 6, also to self-employed migrant workers.

In addition to the reply to this conclusion, the following clarifications should be taken into account:

- Based on the information contained in the 31st National Report, the Committee observes that there continues to be a lack of discrimination between migrant workers and self-employed migrant workers; a conclusion of non-compliance of any of Article 19's other paragraphs normally leads to a conclusion of non-compliance from the point of view of this paragraph because the reasons for non-compliance also apply to self-employed workers. This is so where there is no discrimination or difference in the treatment.

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We point to the considerations of Articles 19.4 and 19.6.

Fulfilment of Article 19§11 (Revised European Social Charter). Teaching of the national language.

11. To promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee believes that the Government should provide information about the following aspects:

1. *Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*
2. *Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
3. *Provide pertinent figures, statistics, or factual information, especially regarding the treatment of migrants, about their being taught the national language of the receiving state.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We point to the need for providing information, as required by the Committee.

Fulfilment of Article 19§12 (Revised European Social Charter): Teaching of the national language.

12. To promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue of the children of the migrant worker.

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee believes that the Government must provide information regarding these aspects:

1. *Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*
2. *Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
3. *Provide pertinent figures, statistics, or factual information, especially regarding how migrants learning their parents' mother tongue are treated.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We point to the need for providing information, as required by the Committee.

VI.- ON THE FULFILMENT OF ARTICLE 27 (REVISED EUROPEAN SOCIAL CHARTER): THE RIGHT OF WORKERS WITH FAMILY RESPONSIBILITIES TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT.

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

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

1. ***To adopt appropriate measures:***
    a. ***to enable workers with family responsibilities to access and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;***
    b. ***to take into account their needs in terms of conditions of employment and social security;***
    c. ***to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;***
2. ***to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of the child, the duration and conditions of which should be determined by national legislation, collective agreements of practice;***

3. ***to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.***

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

1. *Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*
2. *Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
3. *Provide pertinent figures, statistics, or other relevant information, if applicable.*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We point to the need for providing information, as required by the Committee.

According to the latest Eurostat data, there is a 13% wage gap between men and women in the European Union in relation to salary/hour (amounting to the non-payment of 47 days' wages), and a 9.4% one in the case of Spain (34 days' wages) (access). According to this data, our country ranks eight as regards the lowest wage gap in Europe. However, it is still unacceptably high.

At the European level, the principle of equal remuneration between men and women for the same work is enshrined in Article 157 of the Treaty on the Functioning of the European Union (TFEU), while its Article 153 enables the Union to act in the broadest scope of equal opportunities and equal treatment in relation to employment. Therefore, CCOO and UGT urge the EU's institutions to reinforce European regulation regarding pay transparency, such as the adoption of the Pay Transparency Directive, which empowers women workers so that the value of their work –currently undervalued– is reevaluated.

At the national level, it is essential that companies comply with the regulation contained in Royal Decree 902/2020 on equal pay between women and men, which enables women workers to ascertain the wage gap that exists in workplaces, with the objective of correcting existing cases of discrimination and eliminating them by means of pay records, which are compulsory in our country's companies, regardless of their size, as well as wage audits that have to negotiated as part of equality plans

(access). However, to comply with this, it is essential that the Labour Inspectorate deal with the wage discrimination experienced by women in companies.

We therefore believe that on the matter of the right of workers with family responsibilities to equal opportunities and equal treatment, Spain does not comply with the Charter.

VII.- ON THE FULFILMENT OF ARTICLE 31: THE RIGHT TO HOUSING.

Article 31 (Revised Social European Charter): The right to housing.

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take the 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;***

A) REQUESTS FOR ADDITIONAL INFORMATION REQUIRED BY THE COMMITTEE. Conclusions XXI-4 (2019):

The Committee requires the following information:

1. *Describe the general legal framework. Specify the nature, reasons, and scope of any reforms.*
2. *Indicate the measures (administrative arrangements, programmes, action plans, projects, etc.) adopted to implement the legal framework.*
3. *Provide pertinent figures, statistics, or other relevant information with a view to:*
    a. *demonstrating access to adequate housing, including the duration of the waiting period.*
    b. *the number of homeless persons, emergency and long-term measures for homeless persons, as well as evictions.*
    c. *the construction of public housing and housing subsidies (number of applicants and beneficiaries, criteria to be satisfied to benefit from the subsidy).*

B) THE TRADE UNION ORGANISATIONS' CONSIDERATIONS REGARDING THE GOVERNMENT'S REPORT.

We point to the need for providing information, as required by the Committee.

Spain is "one of the States that has received the most complaints and guilty verdicts, at least in the Committee on the Rights of Children and in the Committee on Economic, Social and Cultural rights. Specifically, in the case of the latter, out of a total of 138 reports issued, 135 correspond to Spain." (access)

In relation to the Committee's reports, this is the 7th condemnation of Spain for infringing the right to adequate housing, included in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ratified by Spain in 1977), urging Spain to ensure that its legislation and its application comply with the acquired obligations and reminding it of its obligation to prevent infringements of this right.

In this regard, it is interesting to highlight the following data regarding access to housing in Spain compiled by Amnesty International (access):

1. *Availability: Spain's public housing represents only 1.6% of total housing, while the standard in neighbouring European Union countries is more than 15%. According to the latest census in 2011, there are 3.4 million empty homes. Between 2009 and 2018, public expenditure for accessing housing and promoting construction decreased by more than 70%.*
2. *Affordability: Since 2016, rented housing has increased by 41% on average. Thirty-seven per cent of the population lives in rented housing, devoting more than 40% of their income to housing expenses. The average age persons that rent shared property has increased to 34 years old.*
3. *Evictions: Although the pandemic has stopped some evictions thanks to the Royal Decree on urgent measures to tackle situations of vulnerability (extended until the end of 2022), in 2021 there were more than 41,000 evictions, which is 40% more than in 2020. Since 2013, there have been more than 500,000 evictions.*
4. *Situations of special vulnerability. Twenty-seven point eight per cent of the Spanish population is at risk of poverty or social exclusion. This figure increases to 54.3% in the case of single-parent families, more than 80% of which are headed by women. Eighteen point eight per cent of workers receive the minimum wage or less.*
5. *Young people and housing: One out of every three young persons are exposed to poverty and exclusion. Only 15.6% of young people leave their parents' home and the only feasible alternative for one out of every three young*

persons is shared rentals. The average cost of rented housing amounts to € 848, while a young person could only afford a rent payment of € 320 without becoming overindebted.

6. *Women and housing: The risk of poverty or social exclusion is 6% greater for women compared to men, with the former also having the worst labour conditions. Moreover, most single-parent homes are headed by women (81%), more than half of which are at risk of poverty or social exclusion.*

In relation to the State Housing Bill that is being processed, Balakrishnan Rajagopal, Special Rapporteur on the right to adequate housing as a component of the right to adequate housing, and Olivier De Schutter, Special Rapporteur on extreme poverty and human rights, have sent a letter to the Spanish Government in which they warn that the Law does not sufficiently guarantee, in a real and effective way, the right to housing.

Although the rapporteurs praise the Government's effort to develop a necessary Law, even if with many years of delay, their letter lists the areas that must be improved (access):

- The right to housing must be enshrined in the law as a human right:
    - "The bill does not enshrine the right to adequate housing as a human right for everyone but rather its Article 8 only refers to the citizens' right to housing… The right to housing bill should be adapted to Articles 11 and 2 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Spain's own legislation, including the Comprehensive Law for Equal Treatment and Non-Discrimination, which prohibits in its articles 1, 2, 3, and 20 any discrimination in housing regardless of nationality or any other reason."
- Equal treatment and non-discrimination:
    - "… we believe that the law should be strengthened, especially in reference to the prohibition contained in the Comprehensive Law of Equal Treatment and Non-Discrimination, which recognised «everyone's right to equal treatment and non-discrimination, regardless of their nationality, whether they are minors or of age, or if they have legal residence or not.»"
- Protection of vulnerable groups.
    - "… we propose additional provisions to protect certain vulnerable groups that find it especially difficult to access adequate housing, including persons with disability, old people, women, children and

adolescents; victims of sexual and gender-based violence and human trafficking, persons living on the street, refugees and migrants, and persons released from prison or detention."

- Justiciability of the human right to adequate housing.
    - "… the bill should include provisions to ensure that people have better access to effective appeals before administrative, legal, and non-legal bodies, if the State or private actors infringe their rights. This includes ensuring that people and families without sufficient resources to acquire housing have the subjective right to adequate housing; in the form of public housing and subsidised housing or in the form of social benefits enabling such access."
- Protection for vulnerable persons against evictions.
    - "The bill… does not completely comply with the international standards of human rights governing evictions and the CESCR's decisions regarding evictions in Spain. We therefore propose additional modifications in Spain's Civil Procedure Law to ensure that the courts undertake an analysis of proportionality between the objective pursued by the eviction and its impact on the evicted persons. Moreover, it should include a provision according to which evictions can only be carried out against persons in situations of vulnerability after they have been offered alternative housing that complies with the basic standards of suitability contained in the ICESCR's General Observation No. 7."
- Establishing clear objectives to progressively increase the very limited number of social homes.
    - "We propose that the bill comply with the human rights obligation of progressively exercising the right to adequate housing, specifying quantifiable objectives that guarantee a minimum number of social homes in areas where people in a situation of vulnerability live... the bill should determine an annual percentage increase in the very limited number of social homes that is currently available in Spain… and establish a calendar for attaining this objective."
- Improving the system of rental suppression to cover all rented housing in stressed markets.

We therefor believe that in the matter of the right to housing, Spain does not comply with the Charter.

REQUEST.

In view of all the above,

"CONFEDERACIÓN SINDICAL DE COMISIONES OBRERAS" and "UNIÓN GENERAL DE TRABAJADORAS Y TRABAJADORES DE ESPAÑA" submit to the European Committee of Social Rights the aforementioned Allegations to the 35th National Report presented by the Government of Spain, highlighting:

- **The repeated infringements on the part of the Spanish Government**
- **The insufficient information provided by the Spanish Government, in relation to the aspects indicated in all sections giving rise to this report.**
- **Non-compliance of the European Social Charter in the indicated aspects in each of the above sections, and of all the articles to which these Allegations refer.**
- **And the need for adopting the necessary measures to ensure the labour and social rights guaranteed by the said instruments.**