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EUROPEAN SOCIAL CHARTER

Comments by the Confederation syndicale de Comisiones Obreras (COO) and
Union general de trabajadores de Espana (UGT)
on the
31st National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF SPAIN

Articles 7, 8, 16, 17 and 19 of the
European Social Charter of 1961

for the period 01/01/2014 - 31/12/2017

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17 May 2019

CYCLE 2019

EUROPEAN SOCIAL CHARTER

COMMENTS OF THE COMISIONES OBRERAS TRADE UNION CONFEDERATION AND THE UNIÓN GENERAL DE TRABAJADORES DE ESPAÑA REGARDING THE 31ST NATIONAL REPORT SUBMITTED BY THE GOVERNMENT OF SPAIN TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS, ON COMPLIANCE WITH THE EUROPEAN SOCIAL CHARTER

Articles 7, 8, 16, 17 and 19 of the European Social Charter of 1961.

April 2019

Spain has submitted the 31st Report under the reporting system for the implementation of the European Social Charter of 1961 and the Additional Protocol of 5 May 1988.

Thematic Group 4, on the application of provisions regarding Children, Families and Migrants, is analysed in this period, comprising the following articles:

- Art. 7 (Right of children and young persons to protection).
- Art. 8 (Right of employed women to protection).
- Art. 16 (Right of the family to social, legal and economic protection).
- Art. 17 (Right of mothers and children to social and economic protection).
- Art. 19 (Right of migrant workers and their families to protection and assistance).

The reference period is from 1 January 2014 to 31 December 2017.

The COMISIONES OBRERAS Trade Union Confederation and the UNIÓN GENERAL DE TRABAJADORES DE ESPAÑA (CCOO and UGT) are the two most representative trade union organisations in Spain and are therefore considered under Spanish law to represent the interests of all workers affected by the rules originating in the European Social Charter as they are applied in Spain.

Our legitimacy to represent workers is recognised in our relationships with Spanish institutions and, moreover, given our status as nationwide trade union confederations, we also form part of international worker organisations which enjoy participatory status with the Council of Europe. Our legitimacy has also been recognised under the rules of the European Social Charter for the submission of comments regarding compliance with the Charter, and confers on us sufficient legal capacity to process those comments and to make the demands contained in this document.

To this end, our comments regarding the report to the European Committee of Social Rights are summarised below.

COMMENTS

The comments made below reflect incidences of non-compliance with obligations under the Charter and the Protocol detected in Spain and reported in this document by CCOO and UGT, without prejudice to the fact that they may be classified as such under other articles of the Charter and Protocol, as deemed most appropriate by the Committee.

I. ON NON-COMPLIANCE WITH ARTICLE 7. (Right of children and young persons to protection).

A) NON-COMPLIANCE BY SPAIN WITH THIS ARTICLE OBSERVED BY THE COMMITTEE -Conclusions XX-4 (2015)-:

Spain has failed to comply with this rule, and its substance, in certain matters, as described in CONCLUSIONS XX-4 (2015). It is, therefore, essential to reiterate that Spain is not in conformity with certain provisions. Since this non-compliance has already been detected, it remains to be determined by the Committee of Social Rights whether it persists, as well as reporting other new instances of non-compliance.

B) OBSERVATIONS ON THE GOVERNMENT REPORT:

Article 7.10 of the Charter

VIOLENCE TO CHILDREN

The framework for the protection of children from violence is clearly insufficient.

Despite repeated recommendations by international organisations, such as the United Nations Committee on the Rights of the Child, which called for Spain to enact a comprehensive law against violence to children similar to that passed against gender-based violence, such a law does not currently exist in Spain. This recommendation was repeated in 2018.

On 26 June 2014, the Plenary Session of the Congress of Deputies in the Spanish Parliament approved the creation of a sub-commission to study the problem of violence against children. The sub-commission produced 140 conclusions and proposals, yet not even this has, to date, resulted in a comprehensive law.

Today (2019), there is a "Draft Basic Law on the integrated protection of children and young persons from violence", which recognises what we report here regarding the situation in Spain. But, as it is a draft law, it is still far from being approved as an Act of Parliament, supposing that it might one day be so, and there has been no real will during the reference period covered in these comments to legislate to improve the situation.

The ratification by Spain of the conventions of the International Labour Organisation (ILO) enshrines in Spanish law the prohibition of work by children under the age of 16. Despite the Government therefore having the duty to ensure that such situations do not occur, this is not the case, as child labour continues to exist in Spain. The Government should, for example, run campaigns to prevent child labour, guarantee the right to education and to attend school, reinforce the social protection of minors and strengthen actions to enforce Spanish legislation and, therefore, strengthen the actions of the employment authorities: the Labour Inspectorate.

CHILD LABOUR IN AGRICULTURE

In recent years, in the face of possible cases of child exploitation in some harvesting campaigns, UGT and CCOO have monitored working conditions in agriculture in order to detect and, where necessary, report the presence of minors at harvests, and the accommodation and schooling situation of children who accompany their parents.

As a result of this monitoring, we have repeatedly communicated to the competent Governments, of different political parties, of the need to establish awareness-raising campaigns to eradicate the use of children under the age of 16 in harvesting campaigns in the fields, to which the children normally accompany the rest of their family. We have detected and reported the presence of out-of-school children who accompany their parents to harvest the different crops produced in Spain.

We also highlighted the situation of boys and girls who live with their families in settlements which do not meet the minimum hygiene and sanitary standards for their development, and which are thoroughly unhealthy.

CHILD LABOUR IN DOMESTIC SERVICE

In 2017, the total number of under-19s employed in domestic service was 2,200 minors and young persons.

In 2018: 3,800 under-19s worked in domestic service, of whom 3,300 were female and 500 were male. Labour Force Survey, fourth quarter 2018 (Spanish National Statistics Institute, INE).

Table: INE

16 to 19 years	
Fourth quarter 2018	
Both sexes	
Homes with domestic employees; activities in homes producing goods and services for their own use	3.8
Male	
Homes with domestic employees; activities in homes producing goods and	0.5

16 to 19 years	
Fourth quarter 2018	
services for their own use	
Female	
Homes with domestic employees; activities in homes producing goods and services for their own use	3.3

Moreover, in legislative terms, UGT and CCOO believe that the special employment situation involved in domestic service in a family home (domestic work for private employers) infringes two sections of Article 7 of the European Social Charter.

The following articles are transcribed from Spanish Royal Decree 1620/2011, of 14 November, which regulates the special employment situation of domestic service in a family home. We believe that these articles do not protect the health and safety of domestic employees or meet working time requirements in the case of workers under the age of 18:

> *Article 7. Rights and duties:*
>
> *7.2: The employer shall ensure that the work of the domestic employee is performed under the appropriate health and safety conditions, to which end effective measures must be implemented, duly bearing in mind the specific nature of the domestic work. Serious infringement of these obligations shall be proper grounds for the resignation of the employee.*
>
> *Article 9. Working time:*
>
> *9.8: The limits laid down for persons under the age of 18 in the Workers´ Statute with respect to working time shall be applied:*
>
> *a) only eight hours of effective working time may be performed per day, with a rest period of thirty minutes for working days of over four and a half hours. If a worker under the age of 18 is employed by several employers, the hours worked for each employer shall be counted when calculating said eight hours per day;*
>
> *b) overtime and night work may not be worked, with night work being understood to mean between 22.00 h. at night and 06.00 h. in the morning;*
>
> *c) the rest period between working days shall be a minimum of twelve hours;*
>
> *d) the weekly rest period shall be a minimum of two consecutive days.*

The text of the article in the Workers´ Statute (Royal Legislative Decree 2/2015) on work by minors, which is quoted in the Government Report, reads as follows:

> *Article 6. Work by minors*

1. Work by minors under the age of 16 years is prohibited.

2. Workers under the age of 18 years shall not undertake night work or any activities or jobs for which limits on their hiring are established under the provisions of Law 31/1995, of 8 November (Chronological Legislative Digest RCL 1995, 3053), on the Prevention of Occupational Hazards, and in the applicable regulations.

3. Overtime by workers under the age of 18 years is prohibited.

4. The participation of minors under the age of 16 years in public entertainment shall only be authorised in exceptional cases by the labour authorities, provided that it does not suppose any danger to the health of the young person or to their professional and human development. The authorisation must be given in writing and for specific performances.

This article refers to Law 31/1995, on the Prevention of Occupational Hazards, whose scope of application excludes the special employment situation of domestic service in a family home:

Article 3. Scope of application

4. This Law is not applicable to the special employment situation of domestic service in a family home. Notwithstanding the foregoing, the head of the family home has the obligation to ensure that the work of the employee is performed under appropriate health and safety conditions.

As regards the protection of minors, the text of Article 27 of the Law on Prevention of Occupational Hazards reads as follows:

Article 27. Protection of minors

1. Before any young person under the age of 18 years begins work, and prior to any significant modification in his or her working conditions, the employer shall perform an assessment of the job to be undertaken by the young person in order to determine the nature, degree and duration of exposure to agents, processes or working conditions that may endanger the health or safety of the worker, in any activity which might involve a specific risk.

To this end, the assessment shall take especially into account the specific health and safety risks and the risk to the development of young persons resulting from their lack of experience, their immaturity when evaluating real or potential risks, and their still incomplete development.

In all events, the employer shall inform the young persons and their parents or guardians who have been involved in the hiring, of the possible hazards and of all the measures taken for the protection of their health and safety, in accordance with the provisions of point b) of Article 7 of the Revised Text of the Law on the Workers´ Statute, approved under Royal Legislative Decree 1/1995,

of 24 March.

2. Taking into account the above factors, the Government shall establish the limits to the hiring of young persons under the age of 18 to perform work which involves specific hazards.

Lastly, the Law on the Infringement of Social Legislation and Penalties (Royal Legislative Decree 5/2000) provides as follows with respect to work by minors:

Article 8. Very serious infringements

The following are very serious infringements:

1. Failure to pay or repeated delay in the payment of the salary owed.

2. The assignment of workers under terms prohibited under current legislation.

3. The collective dismissal of workers or the application of measures to suspend employment contracts or reduce working time for economic, technical, organisational or production reasons or as a result of force majeure, without applying the procedures established in Articles 51 and 47 of the Workers´ Statute.

4. The infringement of regulations on work by minors under current employment legislation.

Article 13. Very serious infringements

The following are very serious infringements:

1. Failure to comply with specific rules on the protection of the health and safety of female employees during periods of pregnancy and early childcare.

2. Failure to comply with specific rules on the protection of the health and safety of minors.

We also refer to the text of the EU Charter of Fundamental Rights:

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

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

Article 32. Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

(Other articles of interest in the Charter of Fundamental Rights include Article 52, on the scope and interpretation of rights and principles guaranteed under the Charter, Article 53, on the level of protection, and Article 54, on the prohibition of the abuse of rights)

In view of the above, CCOO and UGT believe that, in domestic service in a family home, the health, safety and the physical, mental, intellectual and moral integrity of young persons is not guaranteed, as the Law on the Prevention of Occupational Hazards is not applicable to this work and, therefore, neither is the article which refers to work by minors.

Furthermore, Royal Decree 1620/2011 reproduces the provisions laid down in the Workers´ Statute with respect to work by minors, stipulating that they may not undertake night work or any other activity or job for which the Law on the Prevention of Occupational Hazards establishes limits on their hiring.

Since the Law on the Prevention of Occupational Hazards excludes the special employment situation of domestic service in the family home from its scope of application (whatever the age of the worker), it does not establish any limit whatsoever with respect to minors. There is no assessment of the risks which the job may present to young people, and the Law does not determine whether domestic service (including all of the household chores and care tasks that this could involve) may or may not be hazardous or inappropriate for young people. This, it should be noted, is incoherent and is a failure to comply with the EU Charter of Fundamental Rights and with Spanish civil law, in which the interest of the minor is of primary importance, but not, apparently, in this field of employment.

The Government has rejected resolutions and motions on the ratification of Convention 189 of the ILO on domestic employment in the Congress of Deputies of the Spanish Parliament and has indicated that it: “cannot ratify said Convention, since several of its articles are incompatible with our legislation”. This is not true:

> “Therefore, the consultation period having closed, Spanish legislation complies with the greater part of the basic requirements of the Convention, however there are articles which are incompatible with our legislation, specifically Articles 2, 4, 7, 9, 13 and 14, some of which are very significant. For example, Article 2, on the scope of application, where our legislation excludes the special employment situation of domestic service when the employer is not the head of a family household but a legal entity. It therefore considers that a normal employment

relationship exists under a legal regime which is more favourable to the worker. There are also differences in the other articles, also regarding regulations affecting persons between 16 and 18 years of age, such as Article 4, where our Royal Decree again expressly includes the limits established in the Workers´ Statute with respect to working time, contributing to greater legal certainty". *Response of the Government. Proceedings of the Congress of Deputies. Page 23, 10 October 2012*[1]

At this point, it should be recalled that the text of Convention 189 of the ILO, concerning decent work for domestic workers, stipulates:

Article 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

Convention 189 refers, then, to the Fundamental Conventions of the ILO, and specifically to Article 3.3 of Convention 138, on the minimum age, which states:

> *"Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity".*

Therefore, in our opinion, not only is there a failure to comply with the article of the European Social Charter analysed above, but also with Convention 138 of the ILO concerning the minimum age.

Furthermore, this failure to assess the health and safety conditions of the tasks performed within the special employment situation of domestic service in a family home also prevents any determination of whether there are any tasks for which the minimum working age should be higher, in accordance with Section 2 of Article 7 of the European Social Charter.

The only Spanish regulation that prohibits work by women and children (repealed only with respect to work by women) is the Decree of 26 July 1957, which, among other

[1] http://www.congreso.es/public_oficiales/L10/CONG/DS/CO/DSCD-10-CO-186.PDF#page=22

prohibited activities, includes some found in group XXI (health and cleaning services), but this group does not include domestic employment, which, according to the classification of activities in force in those years, was comprised exclusively of laundry and ironing services.

2. A higher minimum age to be set for admission into work in certain occupations considered dangerous and unhealthy.

With respect to data gathered by the Labour Inspectorate and the Social Security authorities (page 23 *& ff* of the Government Report) and, again, in relation to domestic service in a family home, it should be noted that the Labour inspectorate cannot monitor the conditions under which the work of minors (or adults) takes place in private homes, due to the constitutional protection of the home under the right to privacy guaranteed under Article 18 of the Spanish Constitution.

Therefore, the lack of legal protection and the fact that the regulation of this activity is not adapted to the content of the European Social Charter, inspections cannot offer any information which might help to judge whether certain activities undertaken within the framework of domestic employment may require the raising of the minimum age, which currently stands at 16 years.

PEOPLE TRAFFICKING

With respect to this article, on page 13 of its report, addressing the matter of child trafficking, the Government states that the Government Delegation for Gender-based Violence, which is attached to the office of the State Secretariat for Social Services and Equality of the Ministry of Health, Social Services and Equality, has powers to promote, coordinate and advise on measures taken against different types of gender-based violence to women.

Within this framework of powers and with respect to minors, it undertakes specific actions with children, victims of gender-based violence and people trafficking for the purposes of sexual exploitation.

But the Government neglects to clarify that these specific actions on trafficked children are only applied in the case of trafficking for sexual exploitation, and provided that the minors are female. The actions, therefore, exclude all boys trafficked, whatever the purpose, and girls trafficked for non-sexual purposes.

According to a Ministry of the Interior report which compiled data on people trafficking for the years 2013 to 2017, in 2017, 3 girls and 4 boys were victims of trafficking for employment purposes and 3 girls for forced marriages. [2]

In fact, the only current Plan addressing people trafficking is the Integrated Plan to Combat the Trafficking of Women and Girls for the purposes of sexual exploitation.

[2] http://www.interior.gob.es/documents/10180/6744515/Balance+2013-2017+de+Trata+de+Seres+Humanos+en+Espa%C3%B1a.pdf/1fa3bec6-4f1d-4d65-a6a8-5a6ac84c6b81

And the only subsidies granted annually to fund attention services for the victims of trafficking cover only cases of women and girls who are victims of trafficking for the purposes of sexual exploitation. In fact, of the housing resources funded in this way, practically none admits men who are victims of trafficking and few admit boys trafficked for any purpose, including sexual purposes.[3]

PROTECTION OF MINORS IN SITUATIONS OF VIOLENCE AND MISTREATMENT.

It is essential to reinforce the protection afforded to children and adolescents, especially those who are under-age, facing situations of violence and mistreatment. We therefore welcome the "Draft Basic Law on the Integrated Protection of Children and Young Persons from Violence", drafted by the Government, but it is still far from providing a solution to this problem and, in the current political situation in Spain, it is unlikely to be enacted in the immediate future.

Among actions and measures to combat violence to women and children is the "National Strategy to Eradicate Violence to Women 2013-2016". It is a significant instrument but it makes no reference to and does not develop the Pact of State against Gender-based Violence signed by all the political parties on 28 September 2017.

Axis 4 of this Pact of State is to "strengthen assistance to and the protection of minors", and includes up to 21 specific measures aimed at improving the protection offered to the children of victims of gender-based violence.

This is, however, insufficient, and while it is necessary to strengthen the assistance and protection given to minors, what is needed, and what does not appear in the aforementioned documents, is:

- To guarantee benefits to all children who have been orphaned by gender-based violence through the express recognition (for the purpose of generating the right to an orphan's pension) that the mother who was a victim of gender-based violence should be considered to be currently registered or in an equivalent situation in the Social Security system; and to apply an increase of up to 70% in the contribution base if the mother meets the minimum contribution requirements, when the income of the cohabiting family unit is below 75% of the Minimum Wage.

- To establish mechanisms to ensure the immediate availability of orphan's pensions to which the children of victims of gender-based violence are entitled, together with the increase foreseen in the First Additional Provision of Basic Law 1/2004, of 28 December, on Integrated Protective Measures against Gender-based Violence, with sufficient guarantees that their expenses will be covered, without prejudice to the provisions of subsequent judicial decisions.

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[3] http://www.violenciagenero.igualdad.mpr.gob.es/otrasFormas/trata/normativaProtocolo/planIntegral/home.htm
http://www.violenciagenero.igualdad.mpr.gob.es/otrasFormas/trata/subvenciones/home.htm

- To take the necessary measures to ensure that shared custody is never allowed in cases of gender-based violence in the circumstances foreseen under Article 92.7 of Spanish Civil Law, and cannot be ordered, even provisionally, if criminal proceedings are under way for gender-based violence and a restraining order is in place. Article 92.7 of Spanish Civil Law (SCL) states that: Joint custody shall not be ordered when either of the parents is involved in criminal proceedings brought as a result of an attempt on the life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the other spouse or of a minor living with them. Neither shall it be ordered when the Judge deems the comments of the parties and the proof gathered to constitute well-founded indications of gender-based violence.

- To establish the obligatory suspension of visiting rights in all cases in which the minor has witnessed, suffered or lived with violence, without prejudice to measures being adopted to promote the application of Articles 65 and 66 of Basic Law 1/2004.

- To prohibit prison visits by minors to a father who has been sentenced for gender-based violence.

- To prevent a father who is a perpetrator of gender-based violence from having access to recordings made during judicial enquiries concerning the children.

- To decouple psychological attention to minors exposed to gender-based violence from the exercise of parental authority,

- To reinforce support and assistance to the children of mortal victims of violence, as this is a situation requiring special protection.

- To improve the specific training of legal agents in dealing with minors.

- To promote the launch of exclusive “Family Meeting Points” which are specialised in attending to cases of gender-based violence and, in their absence, to draw up and apply specific Protocols.

- To establish a specific system for pedagogical and educational attention for the children of mortal victims of gender-based violence, through the designation, when necessary, of support teachers for educational backup.

- To include persons undertaking permanent foster care or assuming parental responsibility or guardianship of an orphaned minor as beneficiaries of the right to preferential access to social housing, under the terms laid down in the applicable regulations, also providing effective support measures for any necessary change of dwelling or place of residence, in accordance with the family income of the receiving family.

- To allow persons holding parental responsibility for minors orphaned due to gender-based violence to claim the minimum personal and family tax allowances and other tax benefits against Personal Income Tax (PIT), with the exclusion of the father perpetrating the gender-based violence.

- To make all aid and benefits for minors received for causes related to gender-based violence exempt from PIT and other taxes.

- To promote the practical application of the recognition of the minors as direct victims of gender-based violence.

- To recognise more clearly the connection between violence to women and the suffering of the children, who are also victims.

- To make video recordings of the statements of minors obligatory in order to avoid re-victimisation.

- To give substance to the right of children to be heard and to participate in matters which affect them. To give children under 12 years of age the opportunity to be heard, taking into account their age and maturity, and prioritising the interest of the child at all times.

- To allow young people to change their surname. To allow the right to discard the surname of the parent perpetrating gender-based violence, if they so wish.

- To work with the Regional Authorities so that the rehabilitation of under-age aggressors in cases of gender-based violence includes the gender perspective.

With respect to the Strategic Equal Opportunities Plan 2014-2016 (SEOP) (page 42 of the Report), it should be noted that the input of the Council for the Participation of Women was disregarded in its evaluation. Furthermore, although work has been done on a draft SEOP 2018-2021M, at February 2019, this document has still not been approved.

RIGHT TO AN EQUITABLE SALARY. REMUNERATION OF YOUNG WORKERS ON WORK PRACTICE CONTRACTS

Work practice contracts in Spain are regulated by Article 11.1. a), b) and e) of the Workers´ Statute (WS):

"1. Persons holding a university or professional training qualification at medium or higher level or qualifications officially recognised as equivalent, pursuant to legislation governing the current educational system, or a professional certificate in accordance with the provisions of Basic Law 5/2002, of 19 June, on Qualifications and Professional Training, and who are thereby entitled to practice as a professional, may sign a work practice contract within five years following the termination of the studies in question, or seven years if the contract is signed by a worker with a disability, in accordance with the following rules:

a) The job must provide professional practice appropriate to the level of studies or training held. The jobs or professional groups to which work practice contracts may be applied may be determined by collective bargaining at national sectoral level or, in its

absence, in sectoral collective bargaining agreements at a lower level.

b) The term of the contract may not be less than six months or greater than two years. Within these limits, the national sectoral collective agreement or, in its absence, sectoral collective bargaining agreements at a lower level may determine the term of the contract, taking into account the characteristics of the sector and the practice work to be undertaken.

e) The salary of the worker shall be that laid down in the collective agreement for workers undergoing practice and, if not laid down in the agreement, it may not be less than 60% and 75% of the salary set in the agreement for a worker performing the same or an equivalent job, during the first and second years of the contract, respectively."

Article 11.1 of the Workers´ Statute regulates the type of work practice contract that may be signed with employees holding a university or professional training qualification at medium of higher level, or other equivalent qualifications or professional certificates.

This is a type of contract aimed especially at young persons, as their first work experience.

As regards remuneration, the salary corresponding to the job done is not guaranteed. Since it is a temporary contract, a significantly lower salary is allowed.

Article 11.1.e) of the SWR allows the collective agreement to establish specific remuneration due to the type of contract involved and independently of the tasks that may be performed by the worker. It does not refer to the sectoral agreement, but allows any agreement, including the company collective agreement, the possibility of reducing the pay of these employees (who are, furthermore, temporary employees) with respect to the usual salary for the job and the professional expertise.

And what is even more serious, in the absence of a collective agreement, the company can reduce the salary by up to 40% in the first year and 25% in the second year of the contract.

This precarious remuneration, together with the fact that, without any objective reason, the employment contract is only temporary, and the possibility of obtaining different professional certificates together generate an environment in which young people are particularly unprotected in their access to the labour market, prolonging their lack of personal independence, which is a factor in in-work poverty.

We therefore believe that the Committee on Social Rights should consider Spain to be in non-compliance with Article 7 of the Charter, since several sections may in the judgement of the Committee be in contradiction with the documents, regulations and actions or inaction of the Spanish Government as described above, especially:

- in that the non-compliance noted in the previous period still continues,

- in that the legal framework for protection against violence to minors is clearly insufficient,

- in that there is neither a comprehensive law for the protection of children against violence nor any specific public action programme which addresses this problem from a systematic, integrating perspective, thereby failing to comply with the Charter,

- in that the Government of Spain has not established the appropriate measures and controls, and neither has it established monitoring mechanisms, to prevent child labour and it does not ensure the prevention of child labour in harvesting work or guarantee the right to education and school attendance of children accompanying their parents during seasonal agricultural work,

- in that, in the case of work by children in domestic service, the Royal Decree which governs the special employment situation of workers in domestic service in a family home infringes two sections of Article 7 of the Social Charter, specifically, those referring to appropriate health and safety conditions for workers under 19 years of age and to working time, including overtime. The result is that the health, safety and the physical, mental, intellectual and moral integrity of the young person is not guaranteed, as the Law on the Prevention of Occupational Hazards is not applicable either in these contracts governing domestic service in family homes in Spain,

- in that, furthermore, specific data is required regarding the salary received by employees under trainee contracts,

- in that it is incompatible with the Charter for persons to receive lower pay than that corresponding to the job performed, simply due to the fact that they have a temporary contract, in general, and a work practice contract, in particular.

As well as any other matters which, in view of these comments and in the judgement of the Committee, infringe the European Social Charter.

A) ON NON-COMPLIANCE WITH ARTICLE 8: THE RIGHT OF EMPLOYED WOMEN TO PROTECTION.

NON-COMPLIANCE BY SPAIN WITH THIS ARTICLE OBSERVED BY THE COMMITTEE - Conclusions XX-4 (2015)-:

It is essential to bear in mind here that the Committee has already declared Spain to be in non-compliance with certain obligations in the following matters. These are, then, non-compliances that have already been detected, and so it must be determined whether they continue to exist, in addition to other new non-compliances.

OBSERVATIONS ON THE GOVERNMENT REPORT:

Art. 8 of the Charter

The Strategic Equal Opportunities Plan (SEOP) 2014-2016, promoted by the Institute for Women's Affairs, was approved by the Council of Ministers on 7 March 2014. But SEOP 2014-2016 was approved without taking into account the serious economic crisis affecting the country, which we have still not overcome, and the serious consequences of that crisis affecting the working population, especially women. The plan has been deliberately designed to avoid addressing the impact on and very serious consequences for employed women of austerity policies, the reduction of public services and labour market reform. The measures included in the Plan are generic and vague and do not define specific action. At times, they are mere repetitions of matters already contemplated under current legislation or are simple declarations. Neither does it provide for the participation of trade union or women's organisations in the implementation and development of the measures, as guarantors of the dynamic application of the measures contemplated.

SEOP 2014-2016 did not guarantee job creation for the 2,700,000+ unemployed women in Spain, and neither did it contain essential tools to effectively combat gender discrimination at work. Such tools would necessarily empower collective bargaining through equality plans and positive action measures in order to palliate the disastrous effects of labour market reform on the working conditions of employed women.

CCOO and UGT drew up a raft of proposals aimed at short-term job creation for unemployed women and the prevention of long-term unemployment, which affects 1,600,000 women, or 58% of the female unemployed, submitting them to the Employment Commission of the Council for Women's Participation (of which we form part). The measures drawn up by UGT and CCOO, and many other women's associations, were included in the report of the Council for Women's Participation. But the Government ignored the proposals.

Annual employment plans

In recent years, there have been significant changes in employment policies which have impacted the treatment of women under those policies.

The most infamous is that women have ceased to be a priority objective and only appear as a priority in some cases, in certain situations and taking into account certain personal or employment circumstances, but almost as an afterthought.

And so, in the annual employment plans for the years 2012 to 2015, the principle of equal opportunities for men and women was mentioned, but women did not have a preferential position as a priority objective under the plans.

The central objective of Axis 4 in the 2015 plan was access to employment, "Equality of opportunity in access to employment", on the promotion of measures to reconcile family and working life, and on the joint responsibility of men and women, but little more, and it only took into account certain groups (victims of gender-based violence, self-employed women).

The 2016 Plan repeated Axis 4, “Equality of opportunity in access to employment”, in which the “Promotion of measures to encourage the reconciliation of family and working life and joint responsibility” again appeared.

Not all of Spain’s regional authorities (the Autonomous Communities, or ACs) implement this line of action. Only one AC has laid down a line of action on equality plans and only one other has a line of action to reconcile the working, family and personal life of women, but this has still not been developed in practice.

This situation is repeated in the Annual Employment Plan for 2017, in which some ACs have lines of action to promote gender equality in employment: *Hiring of women in masculinised jobs*.

Differentiated distribution of employment: paid work for men and unpaid work for women

However, the lack of adequate employment policies is creating a very serious economic and social gap to the detriment of women, such that:

On average, women have 5.9 hours less paid work per week than men and 12 hours more unpaid work than men (family care tasks). If these differences are broken down by type of working day, men in full-time employment work an average of three hours more than women, but only half the hours of women, 11.3 hours fewer, in unpaid work.

In part-time employment, men only work one hour more than women, but the unpaid work of women is more than double that of men working part-time.

Men are slowly beginning to become involved in the care and education of their children. However, the proportion of men involved in these tasks is in inverse proportion to the amount of time devoted to them.

While a greater proportion of men reported that they spent two hours a week on the care and education of their children, the majority of women devoted an average of four hours per week.

Unpaid leave to care for family members is still taken by women

Maternity leave in Spain continues to fall. The instability of employment, together with lower rates of female employment and the precariousness characteristic of the Spanish labour market, encourages this situation.

An analysis of the evolution of parental leave taken by both parents over the period 2012-2017 shows that around 98% was taken by the mother.

In 2016, there was a slight increase in the percentage of fathers who shared parental leave, rising to 2.04%, only to fall again in 2017 to 1.84%.

The reality is that there are no adequate policies to encourage the joint responsibility of men and women.

Evolution of the use of parental leave 2012-2017

	Total parental leave	Taken by the mother	Taken by the father	Percentage leave taken by the father
2012	**298,732**	**293,704**	**5,028**	**1.68**
2013	**288,842**	**283,923**	**4,919**	**1.70**
2014	**281,151**	**276,239**	**4,912**	**1.75**
2015	**278,389**	**273,181**	**5,208**	**1.87**
2016	**278,509**	**272,821**	**5,688**	**2.04**
2017	**268,328**	**263,398**	**4,930**	**1.84**

Source: UGT, from Ministry of Employment and Social Security data

Effect on maternity benefits of Spanish tax law

One of the most important issues is that the Law on Personal Income Tax (PIT) laid down that the benefits paid to women after giving birth to or adopting a child were subject to personal income tax.

However, the Supreme Court, after a lengthy trial involving an employed woman, declared that "public benefits for maternity received from the Social Security are exempt from Personal Income Tax."

So declared a sentence of Section Two of Chamber III, of the Administrative Dispute Court, which rejected an appeal by state attorneys, who claimed that those benefits should not be exempt from PIT.

In its sentence of 3 October 2018, in appeal 4483/2017 and Resolution Nº 1462/2018, the Supreme Court confirmed a sentence of June 2017, which upheld an appeal by a woman and ordered the Ministry of Finance to reimburse the amount of PIT paid in 2013 on Social Security maternity benefits received in that financial year.

As a consequence of that sentence, the Government issued Royal Decree-Law 27/2018, of 28 December (published in the Official State Bulletin on 29 December), which approved certain tax and land registry measures, modifying the text of point h) of Article 7 of Law 35/2006, on PIT, to allow for the express exception of:

- Parental benefits received from the public regime of the Social Security.

- Parental benefits received from mutual societies which act as alternatives to the special regime of the Social Security for self-employed or freelance workers, up to the limit of the maximum benefit paid by the Social Security for such benefits.

- The remuneration received during leave for childbirth, adoption or care and paternity, by public employees registered in a Social Security regime which does not give the right to receive any parental benefits, up to the limit of the maximum benefit paid by the Social Security for such benefits.

This legislative modification was to take effect from the entry into force of Royal Decree-Law 27/2018 (30 December 2018) and for prior financial years which had not prescribed. That is to say, tax paid unduly on parental benefits since 2014 could be claimed.

However, the Government did not implement any additional measure to enable other taxpaying parents affected by the 2006 regulation to reclaim the tax paid, and so the Government was financing itself, illegally, with a tax imposed on a benefit that mainly affected women, and was doing so in a totally abusive and inappropriate manner.

Part-time work is still feminised

A breakdown of types of working day, using data for the year 2017, shows the large gap between men and women in part-time employment.

Of all full-time employees, 59.44% are men and 40.56% are women. In absolute terms, 3,022,700 more men than women have a full-time job.

In contrast, in the case of part-time work, 2,066,925 are women, compared with 751,950 men who have a part-time job. There are 1,314,975 more women than men in part-time work.

Working population 2017

	Men	Women	Difference	Women as % of total working population	Gap
Full-time employees	**9,514,300**	**6,491,600**	**3,022,700**	**40.56**	**18.88**
Part-time employees	**751,950**	**2,066,925**	**+1,314,975**	**73.32**	**46.64**

Source: UGT from Working Population Survey data of the National Statistics Institute, 2017

In part-time employment, the percentage of women is 73.32%, in contrast to 26.68% who are men.

The gender gap, then, in part-time work is 46.64 points, and in full-time work, 18.88

points.

This figure is worrying if we take into account that part-time work in Spain is not voluntary and the regulation of part-time work offers less social protection and worse access to the contributory benefits of the Social Security system. And this is despite recent sentences of the European Court of Justice (ECJ) recognising the discrimination suffered by Spanish woman as a result of part-time work. The Government continues to ignore the negative impact on women of the new legislation that it introduces.

Of those 2,066,925 women in part-time work, over 1 million (1,115,297, or 55.78%) report that the reason for undertaking part-time work is that they have not been able to find a full-time job. The second reason, almost one fifth (19.5%), is family responsibilities, and among these, 12.56% take care of children or sick, disabled or elderly adults, and for the remaining 6.95%, it is due to other family obligations.

Only 9.07% of women working part-time report that they do so because they do not wish to work full-time. The rest are for other reasons, such as educational or training courses (5.03%), their own illness or incapacity (1.09%) or other reasons which were not specified or not known (9.20%).

The loss of employment due to discrimination: illegality of the dismissal of a woman during maternity leave, or for other maternity-related matters.

The loss of employment as a consequence of maternity is still a matter of great concern in Spain.

Basic Law 3/2007, of 22 March, regulates the effective equality of women and men. Article 10 of the Law, on the deterrent nature of penalties for discrimination, states: "Article 10. Legal consequences of discriminatory actions. Legal arrangements whose clauses or related actions constitute or cause gender-based discrimination shall be considered null and void, and shall give rise to liability through a system of reparations or compensation which are real, effective and proportional to the damage suffered, as well as, if appropriate, through an efficient deterrent system of penalties which prevent discriminatory conduct". That deterrent effect does not, however, exist.

UGT and CCOO understand that the intention of the regulation of the European Social Charter is to ensure that the fact of being a woman and the right and freedom to be a mother does not reduce a woman's professional expectations or her personal possibilities with respect to maternity.

In Spain, the reality is very different. Proof of this is that sentences are still being handed down in employment courts declaring the actions of companies in rescinding the employment contracts of women during or immediately after maternity to be invalid.[i]

Domestic employment and the lack of rights

The Government Report devotes minimum attention and, especially, argumentation to the observation made by the UGT and to the request of the Committee to clarify, with examples of cases, how the courts interpret "discontinuance" *[Translators Note: "desistimiento", a particular means of terminating the employment of domestic employees, in probation periods and of senior managers]* in the case of domestic service.

It is true that the Government makes a reference to some sentences involving discontinuance but, in our view, these are not the most relevant sentences and they do not address the substantial difference between discontinuance during a probation period and that which occurs in the special employment situations of domestic service in a family home and in senior management. And they do not address these matters sufficiently because this situation is the product of a defect at source related to the concept and content of discontinuance.

Article 14 of the SWR stipulates: Probation period.

"1. A probation period may be agreed in writing, subject to the time limits established in collective agreements, if any. In the absence of any stipulation in the collective agreement, the duration of the probation period may not be more than six months for qualified technicians or two months for other workers. In companies with less than 25 employees, the probation period for workers who are not qualified technicians may not exceed three months.

In the case of fixed term temporary contracts under Article 15, with an agreed duration of no more than six months, the probation period may not exceed one month, unless otherwise provided for in the collective agreement.

The employer and the worker are obliged to fulfil the tasks which constitute the object of the probation period, in their respective capacities.

Any agreement which establishes a probation period when the worker has already performed the same functions previously in the company, under any type of contract, is null and void.

2. During the probation period, the worker shall have the rights and obligations corresponding to the job that he or she is performing as if he or she were a member of the workforce, with the exception of those derived from the termination of employment, which may occur at the behest of either of the parties during the period.

3. If the contract has not been discontinued by either party by the end of the probation period, the contract shall come fully into force, and the probation period shall be counted for the purposes of calculating the seniority of the worker in the company.

The calculation of the duration of the probation period shall be interrupted in the event that the worker is affected by situations of temporary incapacity to work, risk during pregnancy, maternity, adoption, custody for the purposes of adoption, foster care, risk during early childcare and paternity, provided that there is agreement between the two parties."

In contrast, in Royal Decree 1620/2011, which regulates the special employment situation of domestic service in the family home, Article 6, on the Duration of the Contract and probation period, lays down that:

1. The contract may be signed for an indefinite period of time or for a fixed term, under the terms contained in the Workers´ Statute and its related regulations.

2. A probation period may be agreed in writing under the terms of Article 14 of the Workers´ Statute. The probation period may not exceed two months, unless otherwise provided for in the collective agreement, and during this period the employer and domestic employee shall be obliged to meet their respective obligations, though the employment may be terminated by either of the parties, with the agreed period of prior notice, which shall in no case exceed seven calendar days".

Article 11, on the Termination of the Contract, establishes that:

"1. The special employment situation of domestic service in a family home shall be terminated in accordance with the provisions of this Royal Decree and of Article 49 of the Workers´ Statute, except for the grounds indicated in points h), i) and l) of Section 1 of said article, which are not compatible with the nature of the special employment situation.

2. The dismissal for disciplinary reasons of the worker must be by written notification and must be for the causes specified in the Workers´ Statute. However, and in the case that the competent court declares the dismissal to be unfair, the compensation, which shall be paid in full and in cash, shall be equivalent to 20 calendar days' salary multiplied by the number of years of service, up to a maximum equivalent to twelve monthly payments.

Failure by the employer to meet the requirements for formal dismissal shall produce the same effect as that described in the previous paragraph for cases of unfair dismissal.

3. The contract may be terminated during its term by discontinuance of the employer, who must give written notification to the domestic employee, clearly and unequivocally stating the wish of the employer to end the employment relationship in this way.

In the case that the worker has been employed for over one year, the employer shall give prior notice of at least 20 days, counted from the notification to the worker of the

decision to terminate the employment. In other cases, the prior notice shall be seven days.

Simultaneously with the notification of the termination of employment, the employer must compensate the worker, paying an amount equivalent to twelve calendar days' salary per year of service, in full and in cash, up to a maximum equal to six monthly payments.

During the period of prior notice, an employee working full-time shall have the right to 6 hours of paid time off per week in order to seek new employment.

The employer may substitute the prior notice with compensation equivalent to the salary for the period of notice, to be paid fully and in cash.

4. If, in the notification of termination of employment, the written format laid down is not used under the terms given in the first paragraph of the previous section, or if the employer does not pay the compensation established in paragraph 3 of that section to the worker simultaneously with the notification, the employer shall be understood to have opted to dismiss the worker, not by discontinuance, with the application of the consequences laid down in Section 2.

However, failure to give prior notice or an excusable error in the calculation of the compensation shall not suppose that the employer has chosen dismissal, without prejudice to the employer's obligation to pay the salary for the period of notice or to pay the right amount of compensation.

5. In the cases foreseen in Sections 2 and 3, the decision to terminate employment cannot be taken with respect to a live-in employee between 17.00 h. and 08.00 h. the following morning, unless the termination of the contract is on the grounds of very serious breach of the duties of loyalty and trust.

6. In accordance with the Third Additional Provision, the Ministry of Employment and Immigration shall put model documents and information at the disposal of employers for the due notification of the termination of the employment contract of workers."

Therefore, despite sharing the name and the fact that it is a means of terminating employment at the will of the employer, the differences between discontinuance during the probation period, discontinuance in the special employment situation of domestic service in a family home and discontinuance of the special employment situation of senior managers are so substantial that, in the specific case that we are commenting, the interests of employed women are seriously prejudiced in both special employment situations, though here we are referring exclusively to domestic service in a family home.

The Government Report refers to the sentence of the Constitutional Court of 10 October 2013, which takes its support from the aforementioned sentences of lower

courts. But this sentence, resolving an appeal for remedy, refers explicitly to discontinuance by an employer during the probation period, referring in its arguments to those already given by the Supreme Court: “in particular, the sentence handed down by the Employment Chamber of the Supreme Court considers that the problem should be addressed from the perspective of protection from the decision to terminate employment derived from the fundamental right to non-discrimination on the grounds of gender (Article 14 of the Spanish Constitution), and that discontinuance by the employer during the probation period or the rule regarding the objective invalidity of the dismissal in the case of pregnancy established under Article 55.5.b) of the SWR, are not applicable given the different legal nature of dismissal and the termination of the employment contract during the probation period”.

And there certainly are differences between dismissal and the termination of employment during the probation period, but in the case of discontinuance, there are also differences between discontinuance during the probation period and discontinuance in the special employment situations:

- **Discontinuance during the probation period:** discontinuance may only occur during the agreed probation period, with no need for prior notice, no right to compensation, and no formal requirements.

- **Discontinuance of employment in a family home**: prior notification, formal requisites and compensation.

The former, therefore, is a means of rescinding an employment contract which, in order to come fully into force, requires the probation period to be completed without discontinuance by the employer, while the latter is a dismissal due to the “loss of trust” but is subject to requirements which bring it close, not in the amount of compensation but in its causes, to other types of rescission of contract (prior notice, in writing, deadlines, payment of compensation, limitations in the case of live-in workers).

The lower courts from which some sentences are reproduced in the sentence of the Spanish Constitutional Court, as mentioned previously, have adopted the constitutional doctrine regarding discontinuance in the probation period, applying it to discontinuance in the special employment situations, and refusing the protection established under the SWR to women during maternity leave.

This gives rise to decisions such as this, of the Higher Court of Justice of Catalonia, of 7 October 2014:

“All in all, in the absence of comments of indications of discrimination in the appeal presented, and without those indications being apparent from the description of the facts, whose review has not been requested, in this case, the simple fact that the employer decided to discontinue the employment while the plaintiff was taking maternity leave does not reveal the existence of indications of discrimination that

would allow the reversal of the burden of proof proposed in the appeal, in view of the circumstances, and without the applicable regulation allowing the fact of the return to work after maternity leave to be considered an objective discriminatory cause, in accordance with the above." (…) [4]

This type of sentence has been issued by lower courts in cases of both pregnancy and maternity leave. We understand that this not only infringes the substance of Section 2 of Article 8 of the European Social Charter but, moreover, it also represents a double discrimination and lack of protection of employed women in special employment situations of domestic service in family homes and in the special employment situation of senior managers.

PROTECTION OF THE WORKING WOMAN: PROTECTION OF THE WORKING WOMAN. DIFFERENTIATED RECOGNITION OF LEAVE FOR THE CARE OF CHILDREN BY MEN AND WOMEN AS A DISCRIMINATORY FACTOR.

The recognition of employed women's right to a rest period after childbirth is laid down in Article 8.1 of the Charter.

However, when the purpose of this period goes beyond recuperation and has the objective of attending to the newborn child, it is a reconciliation measure which is granted differently, depending on the gender of the worker, and it is in reality a discriminatory measure.

Spanish legislation has accepted this practice. The recent Constitutional Court Sentence 138/2018, of 17 December, Appeal for Remedy 275/2018, and 111/2018 of 17 October, Appeal for Remedy 4,344/2017, have recognised the legitimacy of paternity leave having a different duration from maternity leave.

However, as noted in the Dissenting Opinion of the aforementioned sentences, signed by Justice Balaguer, the sentences given with respect to this matter represent a missed opportunity "to analyse the negative impact of some of these maternity guarantee measures on the equal treatment of women in the labour market". "With this Sentence, this Court, following the previous Sentence of the Plenary, has failed to take the opportunity to explain why parental protection measures, when they are associated exclusively or predominantly with women, may suppose a relative guarantee for women who are already in the labour market, and yet undoubtedly represent a clear barrier to entry for those who are outside that market and an obstacle to promotion for those who are inside, since they generate a disincentive for the employer which affects only women and which, therefore, tends to perpetuate labour market discrimination."

[4] In this case, the worker had seniority of three years and the discontinuance was communicated by registered fax on the day prior to her return to work, after taking maternity leave.

On this basis, the Dissenting Opinion clarifies the different objectives found in European regulations on leave for childbirth: “The strict maternity protection measures (Directive 92/85/EEC), understood to mean attention to the physical condition of a mother after childbirth, which do not even include the protection of breastfeeding [the sentence of the ECJ of 30 September 2010, in the Roca Álvarez case (C-104/2009) should not be ignored], must be distinguished from measures which seek equal treatment in employment and the absence of direct and indirect discrimination (Directive 2006/54/EC), and from measures for the reconciliation of personal and family life (Directive 2010/18/EU)”.

It finishes by stating that “The physical recuperation of the mother is not the exclusive purpose of maternity leave and the purpose of paternity leave is not (only) reconciliation, but the guarantee of equality in access to and the promotion and development of the working life of men and women. And the unequal duration of parental leave, in the proportions that this inequality is laid down in the regulations, (thirteen days as against sixteen weeks), is unjustified and is a disincentive to the hiring of women of fertile age... The Sentence ignores the existence of clear indirect discrimination against women associated with maternity which lawmakers should attempt to eradicate as mandated by Article 9.2 of the Spanish Constitution. A Constitutional Court in this century should have recognised the evolution of social reality and analysed in greater depth the real effects of the protection measures questioned here”.

In effect, according to the explanation offered by the Sentence, the objective sought by legislators in the protection of working parents on the birth of a child is different, depending on whether it is the father or the mother, and so they are not guaranteed the same treatment in terms of the benefits which each parent may enjoy. Consider the doctrine of the Sentence of the Constitutional Court 75/2011, Legal Grounds 3 and 4, from which it can be deduced that “the objective pursued by the legislator in the employment and social security protection afforded in the case of childbirth is different depending on whether it is given to the father or the mother”.

However, the reasoning behind the different objective does not in reality refer to maternity leave, but to the special regime governing use of the leave during the six weeks following childbirth. Constitutional Court Sentence 111/2018, Legal Ground 5, states that “in the case of the mother, the ‘basic purpose’ that has always been sought by the legislator when establishing a maternity rest period and the corresponding economic subsidy of the Social Security system is the protection of the health of the working woman during pregnancy, childbirth and the postnatal period. This rest period is obligatory in, at least, the six weeks immediately following childbirth. For this reason, when the legislation allows the mother to cede a given part of her maternity leave to the father, in the case that both work, it always excludes the obligatory rest period following childbirth, as this would make it unavailable to the mother”.

As can be seen, the purpose of these six weeks is the recuperation, rest and protection of the health of the new mother. But this does not mean that there is not also another objective related to the care of the newborn child, which is an essential element of the purpose of the leave: without the leave, the newborn child could suffer a serious lack of attention.

In the current regulatory framework, since Royal Decree-Law 6/2019, of 1 March, the different duration of parental leave according to the gender of the parent has been eliminated, and is now called the suspension of the employment contract for birth, though this will only take effect when the transition period ends and the provision is approved, and if it is not modified.

Royal Decree Law 6/2019 amends Section 4 of Article 48 of the Workers´ Statute in order to equate the right of male and female workers to enjoy leave for the birth and care of children under the age of 12 months. To do so, the employment contract is suspended for 16 weeks.

However, this equalisation affecting the male worker will be applied gradually as laid down in the Thirteenth Transitory Provision of the Workers´ Statute, introduced under Royal Decree-Law 6/2019. And so, in 2019, the employment contract of a male worker will be suspended for 8 weeks, in 2020 it will be for 12 weeks, rising to 16 weeks in 2021.

These reforms have come into force, but their validity is conditioned to the ratification of Royal Decree Law 6/2019 by the Congress of Deputies.

Until the total equality foreseen for the year 2021 occurs, male workers may not enjoy the same leave as women workers for the birth and care of their children, which could be a direct discrimination against male workers and an indirect discrimination against female workers.

RESTRICTIONS ON THE EXTENSION OF EARLY CHILDCARE LEAVE.

Article 37.4 of the Workers´ Statute recognises the right to paid leave for the care of children, foster children or minors in care who are under the age of 9 months. The leave consists of one hour of absence from work. This leave can be substituted by a reduction of half an hour in the working day, or it can be accumulated and enjoyed as a full day's leave.

Royal Decree Law 6/2019 introduced a final paragraph into Article 37.4 of the Workers´ Statute allowing this leave to be extended from 9 to 12 months of age of the minor, without pay, (but with the right to a Social Security cash benefit for joint responsibility in the care of the infant), but it is conditioned to the right to this extension of parental leave being exercised for the same period of time and under the same conditions by the parents, adoptive parents, guardians or foster parents.

It is logical that the system should aim to encourage the joint responsibility of the father and the mother for the care of the children. But this should be done avoiding situations which discriminate against the woman, such as:

- If one parent fails to exercise the right, or exercises it differently, this prevents the extension of the early childcare leave to the other parent.

- Single-parent families would not enjoy this right. Families in which there is only one parent, adoptive parent, guardian or foster parent have a greater need to extend early childcare leave, and the reconciliation of professional and family life is hindered in a case involving greater need for protection mechanisms.

We therefore believe that the Committee on Social Rights should declare Spain to be in non-compliance with the corresponding sections of Article 8 of the Convention and of others, which the Committee may detect and judge for itself, including the following:

- repeated infringements, as already observed by the Committee in its previous resolution on the substance of this right, in the reporting period in question,

- the failure of the Spanish Government to create any palliative measures to combat rising unemployment among women in the country, making their employment situation even more precarious, and eliminating women as a priority objective when they are one of the most vulnerable and most severely affected groups in the country as a result of the 2008 crisis, and in general, in Spain,

- women are not joining the labour market and, therefore, there is no adequate policy for the reconciliation of the professional, family and personal life of women in Spain, or any practical legislative development of existing policies,

- the distribution of employment in Spain is clearly discriminatory to women, creating a serious economic and social gap, with excessive unpaid work involving family care being performed by women to a much greater extent than by men,

- unpaid leave to care for family members is still taken mainly by women, and there are no adequate policy or legislative measures promoting the joint responsibility of men and women,

- part-time work is clearly segregated and is performed mainly by women, creating a clear indirect discrimination against women which affects their social benefits, especially retirement benefits, with a gender gap of 46.64 percentage points, independently of the discriminatory decisions regarding the employment of women which are still permitted under Spanish employment legislation,

- domestic workers in Spain have no rights either on access to employment, while in work or on the termination of employment which allow a decent standard of living to workers in this sector,

- leave for the birth of a child, when it is granted for a purpose which goes beyond the physical recuperation of women after childbirth, and which aims to provide time for the care of the newborn child, is granted differently to the mother and the father, and this can be prejudicial to the mother, as it relegates her to family care, and is gender-based discrimination,

- restrictions are being applied to the right to early childcare leave.

B) ON NON-COMPLIANCE WITH ARTICLE 16 (Right of the family to social, legal and economic protection).

NON-COMPLIANCE BY SPAIN WITH THIS ARTICLE OBSERVED BY THE COMMITTEE - Conclusions XX-4 (2015)-:

In this area, it is essential to bear in mind that the Committee has already declared Spain to be in non-compliance with certain provisions. This is, then, non-compliance which has already been detected, and so it must be determined whether it persists, in addition to reporting other new non-compliances.

OBSERVATIONS ON THE GOVERNMENT REPORT:

Taking into account the content of the document "Digest of the case law of the European Committee of Social Rights" (Council of Europe) and the comments made by CCOO and UGT on report nº 27, these are the issues related to this article:

Article 16 of the Charter, on the right of families to social, legal and economic protection, includes issues such as: the right to decent housing and the obligation of the State to guarantee economic protection to families through economic aid to children or to families.

The CCOO and UGT comments on this article in report 27 referred to: the reduction of aid to families, the reduction of grants, reduced funding for the law on dependency, etc.

Issues related to Article 16 in these comments

The main family benefit provided for in the Spanish social protection system is a benefit per dependent child which is received by almost 800,000 families and which is frozen at €291 per annum.

This benefit is clearly insufficient and does nothing to resolve the serious problem of child poverty in Spain, which has a worsened as a result of the economic crisis.

According to the latest available data, families with dependent children are more likely to have an income below the poverty line, with poverty rates of 24% for families headed by two adults and up to 41% for single-parent families (the majority of which are single mothers).

Minimum income schemes are very restricted in their coverage and there are, furthermore, significant differences between Autonomous Communities in both the amount and the coverage.

The Independent Living and Dependant Attention System offers support to families in poverty but State funding was, however, first reduced by 15% in 2012, and that amount has been virtually frozen ever since.

Access to housing is still a serious problem in Spain and it has worsened with the austerity policies of the last decade. Among all public spending on social protection, funding for housing suffered the greatest cuts over the period 2007-2014.

And from 2014 to 2017, public spending on access to housing continued to fall, being reduced from €800 million in 2014 to €474 million in 2017.

The Government has not assumed any commitment to develop integrated policies to support families and much less has it taken into account the recommendations of the Council of Europe aimed at developing infant education and care, at establishing Strategies to combine the access of both fathers and mothers to the labour market, so that families have sufficient disposable income and access to basic social services.

Family policies are still thin on the ground and are certainly not integrated or cross-cutting. Furthermore, general policies have not favoured the family in a scenario which increasingly limits the economic capacity of families, with austerity and reduced employment and social rights.

The only actions taken in this respect have been economic and budgetary cuts which have resulted in reduced rights under family policies.

We would recall that the directive of the Government in the preparation of General State Budgets in the period covered by the report was the massive reduction of social spending, at a time when it was essential to reinforce the Social Service system, especially with respect to the Concerted Plan for Basic Social Service Benefits. In fact, we have seen successive reductions in the General State Budget, with swingeing cuts, specifically from €49,288,000 in 2012 to around €30,006,000 in 2013, which is a reduction of 39.12% in just one year.

Since 2014, the figure of €27,593,000 has remained steady each year. With respect to credits granted to families, those destined to infant and family attention fell between 2011 and 2013 by 46.35%. Specifically, the amount destined to families and non-profit

organisations for programmes was €4,322,120, a figure which has remained steady or even fallen by around 4% since 2014.

Despite the traditional rhetoric in defence of the family, Spain offers the worst family protection system in Europe, aggravated by the repeated use by the Government of highly regressive and exclusive tax regulations. The greater cost of dependent children should be compensated by means of direct benefits and the promotion of the reconciliation of working and family life.

The so-called Integrated Family Support Plan 2015-2017 confirmed once more the lack of interest of the Government in implementing social and economic policies to correct the inequalities and discrimination suffered by families, where women continue to play an essential role in their sustainability and maintenance, a role which has been especially relevant during the difficult years of crisis.

The reforms implemented by the Government in recent years have supposed a significant step backwards for the majority of citizens and families, who have seen how their households have been mired in a profound, serious, prolonged economic crisis as a result of the massive destruction of jobs and, at the same time, their employment, economic and social rights have been cut back at the worst possible time.

These reforms, whose impact has been very negative for most of the population, have had a particularly damaging effect on women.

The Government did not see this Plan as a means of support for the family, but used it to respond to social and demographic challenges, such as the ageing population, the increase in dependency rates and the fall in the population of working age.

Once more, the Government, instead of defining and compiling a raft of important new actions and initiatives, simply repeated the usual actions, publicising some social and economic protection measures which cannot be directly implemented, but which have to follow a process which may not even lead to their approval.

In the view of UGT and CCOO, speaking of family policies also means ensuring that families without income can access resources to cover their essential needs. It is crucial to find an urgent response for all families in this situation, to prevent them from falling into poverty and social exclusion.

Economic protection of families: Vulnerable families

Within the social service system in Spain, Minimum Integration Income Programmes, which are the exclusive competence of the regional authorities, are minimum incomes to aid integration. They may have different names, but their purpose is the same: to ensure that everyone has sufficient resources.

Despite the fact that, in recent years, there has been progress in the regional legislation governing this type of benefit, these programmes do not guarantee the recognition of the subjective right to such incomes, or minimum resources for all citizens in need.

The European Committee on Social Rights, the body which monitors compliance with the European Social Charter, has repeatedly condemned the failure of Spanish legislation to comply with very relevant aspects of the Charter, especially as regards the Minimum Integration Income.

For this reason, and with respect to the above, we again report the infringement of the European Social Charter in the following ways:

- Social assistance should be a universal and a true subjective right of citizens. There are still territories in which social assistance is still not considered a subjective right of the citizen and, on other occasions, receipt of the income is subject to budgetary availability.

- The granting of a minimum income is subject to minimum residence requirements in some Autonomous Communities, which is an infringement of Article 16 of the Charter. Such requirements vary from 6 months in the Balearic Islands to 36 months in other parts of the country.

- The age limit for access to the income is different in different regions.

- The level of social assistance is appropriate when the monthly amount of benefits for a single person is not less than the poverty threshold (50% of the average income). In Spain, the level is clearly insufficient, except in the Basque Country and Navarre.

- The minimum income should be granted to cover the period of necessity. However, it is not administered in this way, with the period for receipt of this income varying between 6 and 24 months.

Furthermore, it is surprising that the Spanish Government counts the amount of the minimum integration income as an economic protection measure for vulnerable families. This is for two fundamental reasons: firstly, because they are not promoted by the central Spanish government, but by the regional governments of the ACs, and, secondly, because not all of the beneficiaries form part of a family grouping or have family responsibilities. In our judgement, this point demonstrates not only the ineffectiveness of the policies but also, much more seriously, the absence of policies to prevent or palliate poverty and social exclusion.

An urgent response must be found for all vulnerable persons so that they do not fall into poverty and social exclusion. There is a social obligation which requires the

expansion and completion of social protection systems by taking action in new areas to guarantee a minimum income for all persons without resources.

In short, the effects of the crisis have seriously damaged welfare provision in Spain. Unemployment has risen to historic levels and there has been an unprecedented fall in employment, a series of legislative changes has been implemented which have affected social spending, reducing the coverage of the income guarantee system, dramatically revealing the incapacity of our social protection system to combat the known effects of increased poverty, such as the inadequate unemployment benefits, which have been cut even further under the latest reforms.

With current social protection instruments, all of the citizens in need cannot be protected. While unemployment benefits only protect 56.60%, according to the latest data from September 2018, and even then with coverage which is usually temporary, spending on public unemployment protection services, paradoxically, has been reduced. With respect to protection provided by other public administrations offering a minimum integration income, the total coverage throughout Spain, despite a notable increase, is only 7.75 per thousand.

The trade unions have been demanding the creation of a new state benefit as the solution to this situation.

To address the situation, a People's Legislative Initiative promoted by UGT and CCOO has the main aim of establishing and regulating an economic benefit, which would be a subjective right under the Social Security system, as a minimum income benefit. This minimum income benefit would come under the Social Security system and would be non-contributory. Its purpose is to guarantee an adequate minimum income for persons who wish to work but cannot do so, who lack employment and economic resources for themselves and their dependent family members, if any, and who need economic support. The new benefit, configured in this way, does not necessarily require the beneficiary to have family responsibilities.

As a subjective right, this minimum income should continue for as long as the conditions which gave rise to access to the benefit continue to exist, that is to say, that the beneficiary is unemployed and has no economic resources for him or herself, regardless of whether the corresponding budget item has been spent or not.

INSUFFICIENCY OF MEASURES FOR ACCOMPANYING MINORS ON MEDICAL APPOINTMENTS

Dismissal for absenteeism is regulated under Article 52 d) of the Workers´ Statute, Termination of the contract for objective causes, which states:

“The contract may be terminated: Due to intermittent absences from work, even though they are justified, which number 20% of the working days in two consecutive months provided that the total number of absences over the previous 12 months number at least 5% of the working days, or 25% in four non-consecutive months within a period of 12 months.

For the purposes of the previous paragraph, the following shall not be counted as absences: absence due to legal strike action for the duration of the strike, the performance of activities in legal representation of the workers, accidents at work, maternity, risk during pregnancy and early childcare, illness caused by pregnancy, childbirth or early childcare, paternity, leave and holiday periods, non-occupational illness or accident when the absence has been agreed by the official health service and has a duration of more than 20 consecutive days, or absences caused by the physical or psychological situation resulting from gender-based violence, which must be confirmed by the health or social services, as appropriate.

Absences due to the medical treatment for cancer or serious illness shall not be counted”.

With respect to this regulation, it should be noted that:

- Spanish legislation does not allow for specific permission to accompany children, minors in care or foster care or other dependent family members to medical appointments, thereby hindering assistance to children, minors and family members in need, as well as hindering the reconciliation of work and family life.

- If leave is requested for this cause, the company may refuse. In the case of absence for this reason, the company can decide whether or not it is justified since, when there is no express recognition of the leave, it could trigger the initiation of a disciplinary procedure against the worker. The absence, in itself or in combination with other absences, could also lead directly to dismissal, which, even though declared by a Court to be unfair dismissal, could result in the termination of the employment contract.

- In all events, absences from work caused by the need to accompany family members on a medical appointment, even though such absences may be understood to be justified and unpaid, would be counted as absences and could be used to justify the objective dismissal of the worker for absenteeism. Accompanying family members on medical appointments or treatment is not among the absences which are excluded from the calculation of the total number of absences which may lead to dismissal.

RESTRICTIONS ON WIDOW’S PENSIONS, IN THE CASE OF SEPARATION OR DIVORCE,

WHEN THERE ARE NO ALIMONY PAYMENTS BETWEEN THE SPOUSES, REGARDLESS OF THE REASONS FOR WHICH THERE IS NO ALIMONY.

REGULATORY FRAMEWORK FOR MAINTENANCE PAYMENTS:

With respect to widow's pensions, Article 220 of the General Law on Social Security stipulates: "Maintenance payments in cases of separation, divorce or annulment of marriage. 1. In cases of separation or divorce, the right to a widow's pension shall be held by whoever, while meeting the requirements laid down for different cases in Article 219, is or has been the legitimate spouse, and in the latter case, who has not remarried or formed a civil partnership under the terms referred to in the following article.

Likewise, persons who are legally separated or divorced must qualify to receive the alimony referred to in Article 97 of Spanish Civil Law, which ceases on the death of the ex-spouse. In the case that the amount of the widow's pensions is greater than the alimony, the former shall be reduced to the amount of the latter.

In all events, women shall have the right to a widow's pension, even though they do not have a right to alimony, if it is demonstrated that they were victims of gender-based violence at the time of the legal separation or divorce by means of a decree absolute, or the closure of the case due to the disappearance of criminal liability as a result of death, or, in the absence of a court sentence, by means of a restraining order in favour of the victim, or a report by the Public Prosecutor's Office detailing the existence of indications of gender-based violence, as well as any other type of proof accepted by Law.

2. If, in the case of divorce, more than one beneficiary has the right to a pension, the pension shall be distributed between the beneficiaries proportionally to the time lived by each one of them with the person giving rise to the right, with a guarantee, in all cases, of 40% in favour of the surviving spouse or, if appropriate, of the beneficiary who, while not a spouse, was living with the person giving rise to the right to the benefit at the time of death and is the beneficiary of the widow's pension under the terms of the following article.

3. In the case of annulment of marriage, the right to the widow's pensions shall be held by the survivor whose right to compensation under Article 98 of Spanish Civil Law has been recognised, provided that they have not remarried or formed a civil partnership under the terms of the following article. In the case of more than one beneficiary, the pension shall be distributed between them proportionally to the time lived with the person giving rise to the right, without prejudice to the limits resulting from the application of the provisions of the previous section.

Article 97 of Spanish Civil Law. Royal Decree of 24 July 1889, after the modifications introduced by Final Provision 1.25 of Law 15/2015, of 2 July, Article 1.9 of Law 15/2005, of 8 July, and Article 1 of Law 30/1981, of 7 July.

The spouse to whom the separation or divorce causes economic hardship in relation to the position of the other spouse, (that is, a worsened economic position with respect to the situation during the marriage), shall have the right to compensation which may consist of a temporary or indefinite payment, or a single payment, as determined in the separation agreement or sentence.

If there is no agreement between the spouses, the Judge shall determine the amount in a sentence, taking the following circumstances into account:

1. The agreements reached between the spouses.

2. The age and health of the spouses.

3. Professional qualification and the probability of access to employment.

4. Past and future dedication to the family.

5. Work by one spouse in the trading, industrial or professional activities of the other spouse.

6. The duration of the marriage and conjugal cohabitation.

7. The possible loss of the right to a pension.

8. The income, economic resources and needs of both spouses.

9. Any other relevant circumstance.

The judicial resolution or separation agreement signed before the Clerk of the Court or the Notary shall lay down the regularity of payments, means of payment, mechanism for updating the payment, the duration or date of termination of the pension and the guarantees for effective payment.

Women are the main beneficiaries of widow's pensions.

In the case of separation or divorce, widow's pensions are conditioned to the surviving ex-spouse having been granted recognition of the right to alimony to be paid by the deceased.

This regulation is applied without taking into account the reasons for which the right of the separated or divorced spouse to alimony or compensation may not have been recognised, and even though other compensation mechanisms had been applied.

The amount of Social Security benefit is equivalent to the amount of alimony recognised in the separation or divorce procedure under civil law.

This is particularly serious, and essentially prejudices the situation of women when they have dedicated themselves to the care of the family and are then affected by a marriage crisis.

The public Social Security system ignores the fact that, in cases in which the economic arrangements of the marriage included a regime of joint ownership, all social security payments were made by both spouses and, therefore, the each spouse should have a right to the Social Security benefits generated by the contributions made by the other spouse. However, no benefit whatsoever is allowed to the spouse who did not work in the labour market, even though the marriage has been dissolved, and who can only receive protection if the other spouse is ordered to pay alimony. But in the case that the other ex-spouse has insufficient resources, there would be no protection whatsoever.

In the case of the death of the other ex-spouse, they would only receive a pension from the Social Security system if alimony had been ordered. Therefore, they would have no protection whatsoever if alimony was not set due to the lack of resources of the other ex-spouse, due to the lack of knowledge of the parties, or due to another system of compensation having been agreed, such as an agreement for no payments, or the liquidation of jointly-owned goods.

EXCLUSION OF WORKERS ON PART-TIME CONTRACTS FROM ACCESS TO PART-TIME RETIREMENT.

REGULATORY FRAMEWORK.

Article 215.2 of the General Law on Social Security regulates partial retirement:

2. Likewise, full-time workers may access partial retirement, which must always be simultaneous with a replacement contract under the terms laid down in Article 12.7 of the Revised Text of the Law on the Workers´ Statute, when they meet the following requirements:

In accordance with the provisions of Article 215.1 of the General Law on Social Security, the right to partial retirement is reserved exclusively for full-time workers, with part-time workers being excluded, on the grounds of the type of contract which they have at a given moment in their working career, regardless of their contributions to the Social Security system.

Consequently, employees with part-time contracts do not have the right to part-time retirement.

Although the part-time contract is essentially feminised and is oriented towards facilitating the compatibility of work and family care, in fact it excludes access to partial retirement, regardless of the Social Security contributions of the worker. This is discriminatory treatment that limits the proper protection of the family.

This should be declared a non-compliance with the Charter.

EXCLUSION OF PART-TIME CONTRACTS WITH WORKING DAYS OF LESS THAN 25% FROM THE RIGHT TO BENEFITS FOR THE CARE OF MINORS SUFFERING FROM CANCER OR OTHER SERIOUS ILLNESSES.

In accordance with Article 4.7 of Royal Decree 1148/2011, of 29 July, part-time employees with a working day equivalent to 25% or less of the full day and who reduce their working day, in accordance with the provisions of Article 37.6, paragraph 3, of the Workers´ Statute, in order to care for their under-age children suffering from cancer or any other serious illness, do not have the right to the Social Security benefit for the care of those children.

Part-time employees with a working day of 25% or less of the full day do not have the right to the benefit for the care of children suffering from cancer or another serious illness. This is a disproportionate lack of protection for a group of workers consisting essentially of women.

This should be declared a non-compliance with the Charter.

We also believe that, for the above reasons, as well as the incidences of non-compliance reported, the Committee should also declare that:

- the infringements of the Spanish Government are repeated, as with the previous articles,

- aid to families, grants and the funding of the law on dependency have been drastically cut, making it impossible to provide adequate social protection in these areas in Spain,

- that the minimum income systems have very little coverage, making it impossible to adequately structure the social inclusion system, and this has led to an increase in poverty and social exclusion,

- that access to housing remains a serious problem in Spain, and that there are no integrated family support policies, and much less those recommended by the Council of Europe,

- UGT and CCOO are promoting a People's Legislative Initiative to palliate the situation of in-work poverty in Spain, to be configured as a Social Security benefit

aimed at guaranteeing a minimum income, but which is being ignored, thereby obstructing its passage in the Congress of Deputies of the Spanish parliament.

- In relation to maintenance payments:

- in the case of divorce, the lack of protection of the spouse, (mainly women), who has not worked in the labour market and their complete exclusion from any rights under the Social Security system during the lifetime of the other ex-spouse, is not in compliance with the Charter,

- in the case of divorce, the lack of protection of the spouse, (mainly women), who has not worked in the labour market and who can only receive a widow's pension if they have received alimony, regardless of the reasons for which the right to alimony payments may not have been recognised, such as the lack of resources, lack of knowledge of the parties, or having agreed another system of compensation, such as a no-payment agreement or the liquidation of jointly-owned goods, is not in compliance with the Charter.

C) ON NON-COMPLIANCE WITH ARTICLE 17 (Right of children and young persons to social, legal and economic protection).

OBSERVATIONS ON THE GOVERNMENT REPORT:

Article 17, on the right of children and young persons to social, legal and economic protection, covers the right to education, among other issues.

CCOO and UGT mentioned education in relation to Article 16 in their observations on report 27.

With respect to the right to education, the cuts introduced in 2012, whose effects included fewer grants and an increase in the number of students per classroom, were not reversed between 2014 and 2017.

In the period 2014-2017, public spending on education, measured as a percentage of GDP, continued to fall until, in 2017, it reached its lowest level since 2009: 4.21% compared with 4.95% in 2009. These figures represent a step backwards of 25 years in the level of economic investment in education.

With respect to education between 0 and 3 years, a very small proportion of places are in public centres. More places must be created and they must be guaranteed free of charge.

Furthermore, Spain has a high level of premature school leaving. School leaving is also more prevalent among certain groups, such as the foreign population.

In 2016, 37.6% of the foreign population in Spain left education or training, compared with 22.7% who did so in EU-28. Therefore, addressing school leaving requires more spending to compensate those groups who face greater difficulty in terminating compulsory education.

FAMILY BENEFITS PER DEPENDENT CHILD ARE INSUFFICIENT TO PREVENT POVERTY.

CURRENT REGULATORY FRAMEWORK:

Article 2 of Royal Decree Law 8/2019, on the amount of family benefits paid by the Social Security system.

The amount of non-contributory family benefits paid by the Social Security system and the threshold of income for access to those benefits are regulated in Chapter I of Title VI of the Revised Text of the General Law on Social Security, approved under Royal Legislative Decree 8/2015, of 30 October, and are as follows:

1. The amount of the benefit established under Article 353.1 is €341 per annum.

2. The income thresholds for the right to the benefits for dependent children referred to in paragraphs 1 and 2 of Article 352.1.c), are €12,313.00 per annum and, in the case of families with three children, €18,532.00 per annum, increasing by €3,002 for each dependent child from the fourth child onwards.

3. Without prejudice to the above, the amount of the benefit established under Article 353.1 shall be a total annual amount of €588 in cases of low household income, in accordance with the following scale:

Nº of Members in the household		Income	Total annual benefit in €
Persons > = 14 years (M)	Personas < 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 the age of 18.

N = Number of children under the age of 14 in the household.

M = Number of persons of 14 years of age or over in the household.

Article 352 of the General Law on Social Security establishes a non-contributory social security benefit for families without economic resources and with children under the age of 18 or over 18 and with a disability equal to or greater than 65%, whether children, foster children or children in care for whom the family is responsible.
To receive this benefit, the total family income must generally be less than €12,313 per annum, in which case a benefit of €341 per annum will be granted for each child under the age of 18 or over 18 and with a disability of 65% or more.
These amounts do not provide real economic capacity to their beneficiaries, and do not prevent situations of extreme poverty.

The Committee should therefore declare that the amount of the benefit per dependent child does not prevent the risk of poverty and is insufficient for the end pursued.

INSUFFICIENCY OF ORPHAN'S BENEFITS AND PENSIONS.
Article 224 of the General Law on Social Security regulates the recognition of the right to contributory orphan's pensions and non-contributory orphan's benefits.
Orphan's Pension.
- The beneficiaries of the orphan's pension are children under the age of 18 or under the age of 25 when not in paid employment or in employment but earning less than the Minimum Wage, or children over the age of 18 who are unable to work.
    - The amount of the orphan's pension for the death of one parent is set at 20% of the regulatory base.
    - The amount of the orphan's pension for the death of both parents may be increased to 52% of the regulatory base, with the increase being shared among all of the family members with a right to an orphan's pension.
    - As a general rule, the minimum guaranteed amount of the contributory orphan's pension in 2019 is €2,898. In the case of children with a disability of 65% or more, the minimum guaranteed amount is €5,702.20.

NON-CONTRIBUTORY ORPHAN'S BENEFIT.

- There is no general non-contributory orphan's pension, as it depends on specific circumstances.
- The beneficiaries of the orphan's benefit are children in the same circumstances as beneficiaries of the orphan's pension and whose situation is a result of violence against women and when the father cannot pay the amount of the benefits.
- The amount of this non-contributory benefit is 70% of the minimum social security contribution base in force at any given time.

From the above, it can be seen that the amount of the orphan's pension does not guarantee that the needs of the children will be covered after the death of the parent, especially in the case of the minimum orphan's benefit or when there is no right to a contributory orphan's pension. They do not in any way prevent social vulnerability or poverty, including extreme poverty.

The Committee should therefore declare that:

- The amount of orphan's pensions and the lack of orphan's benefits to cover children in situations of social vulnerability are not in compliance with the Charter.

For this reason, we believe that the Committee should declare that:

- the rights of minors are being infringed, especially the right to education, as a result of the austerity cuts introduced in 2012, with a resulting rise in the number of pupils per classroom and the reduction in grants for study,

- the problems of school leaving are not being addressed by the Spanish Government.

D) ON NON-COMPLIANCE WITH ARTICLE 19 (Right of migrants workers and their families to protection and assistance)

NON-COMPLIANCE BY SPAIN WITH THIS ARTICLE OBSERVED BY THE COMMITTEE - Conclusions XX-4 (2015)-:

In this matter, it is essential to take into account that the Committee has already found Spain to be in non-compliance with certain provisions on the following issues. They are, therefore, existing non-conformities and so, again, it must be determined whether they persist, as well as reporting other new instances of non-compliance:

OBSERVATIONS ON THE GOVERNMENT REPORT:

The comments by UGT and CCOO on this article in Report 27 referred to healthcare.

Migrants were excluded from healthcare in 2012, under Royal Decree-Law 16/2012, of 20 April, on urgent measures to guarantee the sustainability of the National Health System and to improve the quality and security of its services. This exclusion remained in force during the period 2014-2017. In July 2018, the socialist Government passed Royal Decree 7/2018, on universal access to the National Health System. This

regulation may be the beginning of a process to reinstate the principle of universal access to healthcare, but its further development remains pending.

The observation of the Government on page 121, on the activity of the Council for the Promotion of Equal Treatment and Non-Discrimination on Racial or Ethnic Grounds, states that: *"In the period between January 2014 and December 2017, one of the most relevant activities of this Council has been to attend to victims of racial or ethnic discrimination through its assistance and guidance service".*

In fact, this has been the only activity of the Council since 2015. With the departure of the President of the Council, the activities and meetings of this consultative body also ceased and, therefore, for the last three years it has not undertaken or fulfilled the rest of its duties as established under Article 3 of Royal Decree 1262/2007, of 21 September, which regulates the composition, competences and functioning of the Council for the Promotion of Equal Treatment and Non-Discrimination on Racial or Ethnic Grounds:

a) To provide independent assistance to the victims of direct or indirect racial or ethnic discrimination in the processing of their complaints.

b) To undertake autonomous, independent analyses and studies and to publish independent reports on racial and ethnic discrimination and on respect for the principle of equality, understood as the absence of all forms of direct or indirect racial or ethnic discrimination against persons. In the exercise of this function, the Council may:

1. At its own initiative or at the request of the competent bodies in the General State Administration, make independent reports on any draft regulations, plans, programmes and other initiatives related to the purpose and aims of the Council.

2. Elaborate and approve the Annual Report on discrimination and the application of the principle of equal treatment of persons of different racial or ethnic background, and submit the Report to the Ministry of Employment and Social Affairs.

c) Promote measures that contribute to equal treatment and the elimination of racial or ethnic discrimination, and to make, if appropriate, any pertinent recommendations and proposals, and especially:

1. To analyse regulations from the perspective of equal treatment and non-discrimination on the grounds of race or ethnicity, proposing initiatives for their adoption or modification.

2. To propose initiatives and make recommendations with respect to plans and programmes for the promotion of equal treatment and non-discrimination on the grounds of race or ethnicity.

3. To advise and inform with respect to indirect anti-discrimination practices in different areas of action.

4. To promote informative and awareness-raising activities and any other activities necessary for the promotion of equal treatment and non-discrimination.

5. To establish relationships for the exchange of information and collaboration with similar bodies or institutions internationally, nationally, regionally or locally.

6. To establish cooperation and collaboration mechanisms with other bodies, entities and high-level institutions for the defence of fundamental rights.

d) Elaborate and approve the Annual Report on the activities of the Council and submit it to the Ministry of Employment and Social Affairs.

With respect to the Reports mentioned on page 122, those issued since 2015 are not the product of the normal activity of the Council, but have been produced by the victim attention service.

Furthermore, and although it is not mentioned in the Government Report, between 2012 and 2018, the successive General State Budgets have suspended the application of Article 2.3.4 of Basic Law 4/2000 on the rights and freedoms of foreign citizens in Spain and their social integration:

> *Article 2.3.4: In accordance with the criteria and priorities of the Strategic Immigration Plan, the Government and the Autonomous Communities shall agree biennial action programmes to reinforce the social integration of immigrants at the sectoral conference on immigration. These programmes shall be financed by a state fund for the integration of immigrants, to be provided with an annual budget and which may include formulas for the joint financing of budget items of the fund with receiving Administrations*.

This has given rise to the suspension of the provision of a budget for this Fund which, until 2011, served to put into practice the Strategic Citizenship and Integration Plan 2011-2014.[5]

V.3 FOREIGN LABOUR IN AGRICULTURAL SECTOR: SITUATION OF AGRICULTURAL WORKERS

On the other hand, we would like to draw attention about two aspects that we are especially worried about, and about which the existing information is insufficient so we would request that the Government be required to provide more details or more detailed information, about these aspects including a specific report from the Labour

[5] http://extranjeros.mitramiss.gob.es/es/Programas_Integracion/Plan_estrategico2011/index.html

Inspectorate, quantitative and qualitative, on these matters, with hearing of the trade union organizations:

- The situation of foreign women in agricultural work.
- The situation of dignity conditions in access to housing for foreigners in agricultural work.

The Committee should therefore declare that:

- the Spanish Government must again be reported, as it continues to be non-compliant.

AND, IN VIEW OF THE ABOVE, the COMISIONES OBRERAS TRADE UNION CONFEDERATION and the UNIÓN GENERAL DE TRABAJADORES DE ESPAÑA submit the above comments and observations on the Report presented by the Government of Spain to the European Committee on Social Rights, requesting that it note:

- **The continued non-compliance of the Spanish Government.**
- **The deficiency of the information provided by the Spanish Government with respect to the matters raised in all of the areas covered in this report.**
- **The non-compliances with respect to the European Social Charter in all those matters referred to in each of the above sections and all of the articles referred to in these comments.**

And it is requested that the necessary measures be taken to ensure the employment and social rights guaranteed under said instruments.

Madrid, 5 April 2019.

[i] Among many others, the Sentence of the Higher Court of Justice (SHCJ) of Madrid, of 5 October 2012 (ÇAS 2012/2497). SHCJ of Cantabria, of 25 February 2009 (AS 2009/1081). SHCJ of Madrid, of 28 November 2014, nº 945/2014. AS 2015/400. SHCJ of Catalonia, Sentence nº 1469/2018 of 2 March. AS 2018/1531. SHCJ of Cantabria, nº 224/2006 of 22 February, AS 2006/371. JS Barcelona (Catalonia) Sentence 280/2001 of 21 May AS 2001/1659. Higher Court of Justice of Asturias, Sentence nº 2392/2004 of 23 July, JUR 2004/255949. SHCJ of Andalusia, Malaga, Sentence nº 674/2013 of 11 April JUR 2013/251179. Sentence of the Supreme Court of 10 March 2016 JUR 2016/88879. SHCJ of Catalonia nº 2735/ 2011 of 14 April AS 2011/1759.