

**Report of the organizations of the Spanish
civil society to the
Committee on Economic, Social and
Cultural Rights**

Review 2012-2016

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PRESENTATION

Since May 2010, **Spain has suffered a major setback in human rights**. Economic and social policies, legislative changes, and the inaction of public authorities, far from guaranteeing human rights to citizens, have generated inequality, discrimination and lack of protection in a large part of the population.

Spain has systematically ignored both the recommendations of the ESCR Committee as issued in its report with conclusions for 2012, and those made by various bodies in United Nations emphasizing the need for changes in Spanish laws and policy to comply with the country's international obligations.

The austerity measures, strongly restrictive in nature, that have been adopted in the context of economic and financial crisis have not protected the minimum essential content of the rights of the Covenant and have resulted in regression in rights of a large part of the citizenship and in particular of the groups suffering most discrimination, such as the migrant and refugee population, Roma people, people with disabilities, LGBTQ people and homeless people.

There have been a series of measures that have had a strong effect on the socio-economic context and the rights of the population. These refer to cuts in public expenditure policies, ineffective and limited legislative changes, deregulation of the labour market, progressive conditionality in accessing benefits from the public system of social services, the prevalence assigned to the objective of budget deficit against any other public expense and ESCR's lack of justiciability.

Our entities are especially concerned with the lack of compliance by public authorities with the obligations arising from the International Covenant on Economic, Social and Cultural rights, with regard to the adoption of the necessary measures for:

1. Ensuring **the justiciability and enforceability** of all of the provisions of the Covenant by domestic courts.
2. **Establishing criminal, procedural and institutional guarantees** to ensure that all people enjoy real and effective equality.

3. **Ensuring the protection and the non-regression** under any circumstance of the minimum content of all rights of the Covenant. We are especially concerned with the regression involved in:

- The drastic resource trimming in cooperation and the loss of its quality, which has led Spain to a situation of historical exceptionality in recent times and in relation to other EU countries. This is a clear breach of international commitments.
- The drastic reduction of public expenditure in the field of social welfare that has affected the guarantee of all rights of the Covenant;
- Inefficient employment policies that maintain high unemployment rates;
- Labour reforms that have deepened the job insecurity and the lack of equitable and satisfactory working conditions;
- The adoption of new rules that criminalize social protest and freedom of Association;
- The decrease in the quantity and the quality of the performance of the system of social welfare and their subsystems;
- The lack of measures for the families receiving the protection and assistance needed to be able to fully assume its responsibilities within the community;
- The lack of protection and guarantees of the right to housing which has increased the difficulties of a high percentage of the population to gain access to decent housing;
- Legislative measures that have undermined the universality of the public health system and have been a serious breach of the right to health;
- These ineffective measures have failed to address the structural problems of the public educational system, and have increased discrimination and exclusion of children who are in a situation of increased vulnerability.

4. **Enforcing laws that are contrary to Human Rights legislation** and, in particular, to the provisions of the Agreement. Some of them are:

- Royal Decree-Law 16/2012 April 20, 2012, on urgent measures to ensure the sustainability of the national health system.
- Royal Decree-Law 14/2012, April 20, on urgent measures of rationalization of public expenditure in the field of education.

- Royal Decree-Law 20/2012, July 13, measures to ensure the budgetary stability and promotion of competitiveness.
- Law 3/2012, 6 July, on urgent measures for the reform of the labour market.
- Article 315.3 in the Spanish Criminal Code, which criminalises the trade union activity.
- Organic Law 4/2015 March 30, on public safety

ARTICLE 2. 1. OBLIGATION OF THE STATE IN ASSISTANCE AND INTERNATIONAL COOPERATION

The Government of Spain continues to breach these obligations both in terms of volume of resources invested, and the quality of the assistance offered. No significant advances are observed in terms of consistency of policies for sustainable development, given that the envisaged institutional mechanisms lack sufficient political weight to articulate the Government action towards Human Development.

In the period 2012-2016 the Official development assistance (ODA) has represented on average only 0.18% of the Gross national income (GNI), compared to 0.41% in the previous period as reviewed by the Committee. **This involves a movement away from the International commitment (0.7%)** and is an exception among the countries of the EU and the DAC. As a result, cooperation programs in key human rights areas have stalled democratic governance, gender equity, the strengthening of civil society, or humanitarian assistance.

There is a significant increase of ODA from 0.12% in 2015 to 0.33% in GNI in 2016. This is explained by the cancellation of the interests of delay and a large part of the debt accumulated by Cuba with Spain, as well as by an additional programme of debt conversion to finance projects of economic and social development with the participation of Spanish companies in that country. Without this program, the relief effort would remain in a 0.16% of GNI. This contravenes provision 57 of the guiding principles on foreign debt and human rights: the funds from the debt relief should not replace official development assistance neither be considered as such. It is a trend without improvement in the 2017 forecast, given that the aid budgeted for this exercise is an insufficient 0.21% of GNI.

From a human rights-based approach, the analysis in terms of quality of resources is worrying for the following reasons:

- 1) The increasing use of the modalities of aid in the form of loans, financing or blending¹ and public private partnerships, without being accompanied by impact assessments on human rights, sustainability, transparency, and taxation. Besides, there are no plans for effective ways to exercise extraterritorial control over the activities of Spanish companies, contrary to the observations of the Committee in this matter.
- 2) The tendency to condition assistance to the development to the fulfilment of the interests in security and immigration control, instead of guiding such resources to the protection and assistance to displaced persons or in transit. In addition, Spain is diverting ODA for the assistance of refugees within its borders rather than enabling specific non-ODA resources.
- 3) The reduction of the participation of civil society in the policy of cooperation and its effects on quality and efficiency. With a cut of 56% in resources to the organizations of civil society (CSOs), in the period 2011-2016, the provisions of Spanish law on the responsibility of the State to support its activities is contravened, hindering its role as democracy promoter and defender of right holders, of the rule of law, of social justice and human rights.

Recommendations

1. Define a **framework of reference for development of cooperation policies** under the international human rights law and international humanitarian law.
2. **Increase the budget of ODA to 0.4 per cent of GNP in 2020 and 0.7% of GNI in 2024**, with resources from quality and orientation to create conditions for the enjoyment of human rights, as a response to the commitments made in the 2030 Agenda and within an agenda of broader development financing, establishing regulatory measures and safeguards at international level in areas such as private investment, trade agreements or taxation.

¹ "Blending" refers to use the combined use of credit and donation

3. **Establish measures to ensure the coherence of policy decisions at national and European level**, with the extraterritorial obligations arising from the Agreement. Advance a mechanism of Policy Coherence for Development on the domestic and international policies carried out with a supra - ministerial mandate that incorporates the universal realization of human rights.
4. **Recognize the role and the contribution of CSOs** to the realization of human rights and democratic governance, and strengthen the mechanisms that allows for the deployment of this role, both within and outside the Spanish territory.

ARTICLE 2.2. OBLIGATION OF THE STATES TO ENSURE EQUALITY AND NON-DISCRIMINATION

Immigrants, Roma, LGBTI and homeless people **are still subject to discrimination in economic, social and cultural rights (ESCR)**, particularly concerning employment, housing, health and education. It particularly concerns the persistence of hostile and intolerant attitudes towards these groups, including the agents of the security forces.

It should be pointed out the particular vulnerability faced by minors and women who belong to these groups, who are facing multiple barriers given their ethnic status, origin or sexual orientation. In addition, because of their legal status, unaccompanied minors are a group of particular attention.

These groups are recurring victims of hate crimes, but an important group of them do not know those mechanisms that can be used in those cases. The fundamental rights agency of the EU in the II survey on minorities and discrimination (EU-MIDIS II) points out that the Roma community continues to suffer intolerable discrimination. According to the survey, 51% of the interviewed Roma people have suffered discrimination at some point during the last 5 years, but only 6% reported or denounced the discrimination. Insufficient registration, because of the small number of reported cases, represents a key problem.

In relation to discrimination, the Government expressed its intention to carry out a "map of discrimination", but it still has not made it. The only significant progress in this matter is that data on hate crimes has been collected since 2014 and a protocol for action has already been created, carried out by the Ministry of Interior. **However, statistical records are still very limited.**

Spain does not have a regulation that covers the phenomenon of discrimination in a comprehensive manner, only with legislation that transposes Directive 2000/78/EC and Directive 2000/43/EC, which regulate the matter insufficiently.

Directive 2000/43/EC requires for its implementation a greater and better development, as well as the reactivation of one of the main instruments intended to boost the fight against discrimination: the Council for the Elimination of Racial or Ethnic discrimination, a body of equality which is currently virtually paralysed in its activity. In addition, a broader legal framework that addresses equal treatment in a complementary and comprehensive manner is necessary to fight against discrimination in all areas.

Recommendations

1. **Adopt a comprehensive law to equality of treatment and non-discrimination**, properly transposing Directive 2000/43, providing the necessary criminal, procedural and institutional guarantees so that everyone may enjoy a real and effective equality. Legislation that combines and approach to protection and redress for victims, through a regime of offences and penalties proportionate and reasonable, and the approach to prevention of discriminatory behaviours.
2. **Establish a framework for more efficient work in the fight against discrimination**, backed by a legislative body and coordination measures between the different professional agents involved (institutions of attention to victims, police and prosecutors, judicial services, etc.).
3. **Reactivate the Council for the Elimination of Racial or Ethnic discrimination**: promoting their public and institutional recognition; guaranteeing their independence; developing Directive 2000/43 for the effective enforcement of the legislation on the subject; and assigning resources and the budgetary allocation sufficient for the fulfilment of its objectives.
4. **Withdraw aspects of the regulations that generate discrimination, or apply pending aspects**: obligation to implement the regulation of foreign detention centers; amendment of the regulation on aliens in order to allow undocumented foreign minors to retain the authorization of residence and, where appropriate, work, after becoming legal age without any limitation; ratification of the Convention on the rights of migrant workers and their families. Finally, it should boost its signature as part of its foreign policy.

ARTICLE 3. OBLIGATION OF THE STATE TO ENSURE EQUALITY AND A VIOLENCE FREE LIFE

Organic law 3/2007 for the effective equality of women and men enshrined in its general principles the adoption of the measures necessary for the eradication of violence against women, family violence and all forms of sexual harassment and harassment by reason of sex. However, **the Spanish State violates this law and its international commitments in the field of human rights and fight for the eradication of violence against women.**

The law 7/2015, June 30, of family relations in cases of separation or rupture of the parents is an example of the lack of commitment by the Spanish State to deal with the problem of violence against women. In 2016 at least 57 women were murdered by their partners and ex-partners and 16 minors were orphaned by gender-based violence. In the last decade, 26 girls were killed by their father during visitation. However, **the State does not assume responsibility for the adoption of measures that contribute to eliminate this serious form of discrimination.**

Law 17/2015 does not present the existence of a history of violence as a central criterion to determine the rights of visit of the abusers. On the contrary, it allows judges to grant a regime of visits to a parent convicted by final judgment by gender-based violence.

The enactment of the State Pact against gender violence, approved in September 2017, does not imply that legislative reforms will be carried out in order to comply with the recommendations of the Committee on the Elimination of the Discrimination against women (CEDAW Committee) and with the Istanbul Protocol, which Spain is failing to enact in a systematic way.

Current legislation in the field of gender-based violence does not collect other forms of violence that exceed the scope of violence by partners or ex-partners, nor has it reviewed the processes of care to the victims, in order to improve their attention avoiding unfortunate situations of secondary victimisation.

Underage victims of sexual abuse do not have guaranteed access to justice since legal specialists do not have expertise in children's rights, justice is not adapted to their needs and the prosecutions largely turn minors into victims.

An estimated 70% of the procedures for sexual abuse to minors is superseded without even a trial phase, and those cases that reach this phase, processes on average last 3 years and minors should repeat their history at least 4 times.

With regard to the prevention of and fight against trafficking in human beings and the protection of victims, the reforms adopted to ensure the full transposition of the directive-2011/36/EU have been insufficient. There is a persistent regulatory dispersion that generates legal uncertainty and lack of protection to the victims. There are numerous barriers and obstacles for victims to access these rights, even from the phase of identifying victims, and continuing throughout the criminal proceedings. In practice, **there is a lack of a comprehensive vision in addressing the phenomenon of trafficking from a human rights approach with a gender perspective and considering childhood.**

Recommendations

1. **Take the necessary measures so that the history of domestic violence** is taken into account at the time stipulated for custody and visiting rights to the sons and daughters.
2. **Strengthen the implementation of the legal framework** with a view to ensuring that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence.
3. Review current legislation in the field of gender-based violence **to incorporate all violence against women** contained in the CEDAW and the Istanbul Protocol.
4. Development of a **comprehensive strategy of violence against children** with measures on prevention, detection and restoration, which are implemented at all administrative levels and that is articulated along a basic law for the Elimination of violence against childhood.
5. **Adopt a comprehensive legal framework addressing trafficking in human beings as a serious violation of human rights** and a manifestation of gender violence that includes all forms of exploitation and all victims, regardless of their nationality. This would allow all victims to obtain comprehensive protection through appropriate measures that guarantee their rights.

ARTICLE 4. JUSTICIABILITY OF ESCR

The Spanish Government has systematically failed to fulfil the recommendations of the United Nations human rights bodies regarding the adoption of the necessary legislative measures to guarantee ESCR. Measures need to be taken regarding to a similar protection as the one applied to citizens and politicians, ensuring full justiciability and enforceability of all of the provisions. Also, in terms of not taking measures in a context of crisis which could result in the denial or violation of ESCR.

In Spain the effective exercise of the rights referred to in the ICESCR, has a lower guarantee than civil and political rights to be located in the constitutional text outside the scope of protection. For instance in preferential and summary procedure in the ordinary court, law reservation or individual appeal for protection before the Constitutional Court. Most of ESCR are considered guiding principles of social and economic policy, so theoretically the positive legislation, judicial practice and the performance of public authorities are oriented towards respect, recognition and protection. However, those can only be alleged before the ordinary courts if state laws so regulates them (article 53.3 of the Spanish Constitution) and virtually none of those laws establish it.

Based on the non-consideration of ESCR as fundamental rights in the Spanish Constitution, the **Spanish Government has implemented measures that have resulted in serious right violations without any legal response from citizens**. This has further accentuated the sense of helplessness and vulnerability in broad sectors of the population, in the understanding that both the central and the autonomous governments were passing laws without taking into account the obligations to promote, respect and not impeding the exercise of ESCR. In addition, these rights should be guaranteed by implementing the approach based on human rights in the design, implementation and evaluation of policies leading to the exercise of those rights. This will prevent the worrying drift towards assistance and charity that is currently taking place.

The Spanish Government has justified the retrenchment measures on social spending under the pretext of ensuring the sustainability of the Health system (RD 16/2012 of 20 April), dependence (RD 20/2012 of 13 July), education (20 April RD 14/2012) and facilitating the recruitment in the labour market (law 3/2012 on 6 July on urgent measures for the reform of the labour market).

All this affected by the new article 135 in the Constitution, which subordinates the expenditure of the public administrations to the principle of budgetary balance, ignoring the obligation to protect the most vulnerable members of society in a context of crisis-scarred economy.

In addition, the central Government has systematically prevented the development of regional laws that sought to guarantee greater protection than a national legislation, or to eliminate discriminatory elements contrary to international law of the Human Rights².

Recommendations

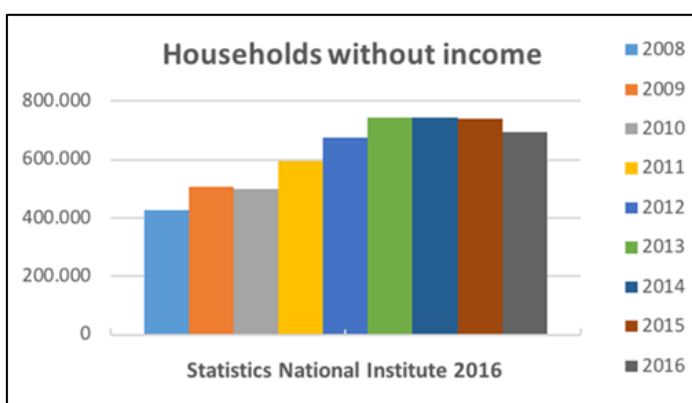
1. **Provide DESC with the same hierarchy and degree of protection of civil and political rights in the Spanish Constitution**, articulating the possibility of invoking these rights before the judges and courts of the corresponding jurisdiction.
2. **Free the social expenditure of the Spanish public administrations from the budgetary balance prerequisite** as established by the new wording of article 135 of the Constitution.
3. Withdraw the Royal Decrees laws 14/2012, 2012 16 and 20/2012 as well as law 3/2012 of 6 July.
4. In the meantime, incorporate in the legal texts a reference to DESC forecasts so as to exercise legal actions in the event of infringement.
5. **Implement the approach based on human rights in the design**, implementation and evaluation of social policies

ARTICLE 6. THE RIGHT TO LABOUR AND LABOUR RIGHTS

Unemployment is the main economic, social, and employment problem of our country, both for its dimensions and characteristics. In Spain there are more than 4.5 million people looking for work without finding it: 1 in 5 people who want to work cannot do so.

² See annex II with a list of rulings from the Constitutional Court.

The situation is exacerbated by analysing its composition: there are 2.7 million long-term unemployed, of whom 2 million have been unemployed for more than two years; there are 1.6 million unemployed over 45 years of age; the rate of unemployment among young people is above 50%; the unemployment rate among women is 3 points higher than the one among male population.



The reduction in unemployment from 2014 is still insufficient to return to the pre-crisis level. In addition, a part of that reduction corresponds not to job creation but to the decline in people looking for it: **the active population has been reduced by**

more than 600,000 people. Unemployment is the main risk factor in poverty in Spain: 61% of unemployed persons are at risk of poverty and social exclusion. The reason is that the majority has neither employment nor protection. **Public authorities are not fulfilling their obligation to promote conditions for access to employment through technical and vocational training.**

It is also necessary to underline:

- a) The budget allocated to the training of workers is descending since 2010. In 2017, budgets are reduced in 5% in relation to 2016.
- b) Training unemployed people should take into account the low level of implementation of the budget. Only between 2012 and 2014³, the difference between the allocated budget and the one executed is more than 1,200 million euros.
- c) Accordingly, the coverage rate is insignificant. Between 2012 and 2014, the number of participants has fallen by 33% and the coverage in relation to the registered unemployment is 3.25%.

³ See Informe de ejecución del Plan Anual de Evaluación de la Calidad, Impacto, Eficacia y Eficiencia del conjunto del Subsistema de Formación Profesional para el Empleo (latest data available): https://www.sistemanacionalempleo.es/pdf/Resumen_ejecutivo_Plan_2014.pdf

- d) Moreover, in the educational system, training for adults ⁴declined 26% in the educational system in the last year (2016). Between 2007 and 2016, public investment in active policies has been reduced by 51%, reducing the budget dedicated to the formation to 34% since 2005.
- e) The contents of training are concentrated in a few sectors: 35% people trained in areas of administration and management, safety and environment.
- f) The EU has created a youth guarantee scheme to ensure that all persons under 30 years of age receive a good offer of employment or training. The launch in Spain has been very poor. 79% of young people in situations of social exclusion have difficulties to get access to this help. Only 30% of offers involve some type of employment, compared with 70% of EU-28, and there are important differences in access by sex: 58.6% are boys and 41.4% girls.

On the other hand, **18% of the workers are at risk of poverty and exclusion** as a result of job insecurity generated by low wages, temporality, administrative irregularities, the disappearance of labour conventions and the weakening of collective negotiation.

Wages in Spain are far from the average at the Euro zone. Half of the workers' wage is less than €1.000 per month. In 2014, 35% of contracts were part-time and 92% of contracts were temporary, being 53 days the average length of a contract. In addition, rotation in the recruitment is greater, and this translates into less rights and greater difficulty to reach an adequate standard of living.

The current economic model results in job insecurity to generate economic growth, even at the expense of people.

Recommendations

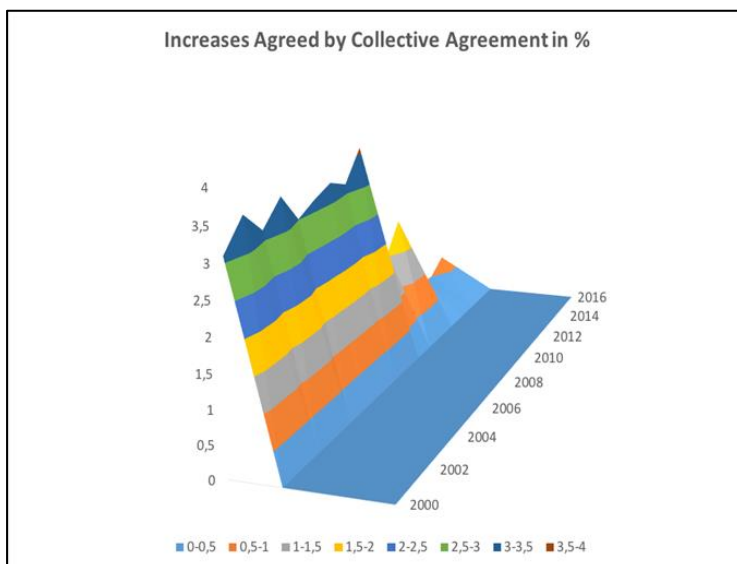
1. **Stop the poor figures in employment** and promote policies capable of generating quality employment with rights.
2. Withdraw law 3/2012.

⁴ 2017 Figures of education, Ministry of education and culture.

3. **Establish active policies of employment** involving training and orientation, not limited only to "adapting them" to the current productive model⁵. These should diversify productivity and support sectors with a higher value of human labour.
4. **Develop a strategy for productive economic development and integration**, generating quality employment, with protection as the nuclear element of economic policies.

ARTICLE 7. EQUAL AND FAVOURABLE WORK CONDITIONS

The national minimum wage in Spain remains one of the lowest in the EU countries, in breach of the target set in the European Social Charter, as signed by Spain. It was frozen between 2012 and 2014 and the rest of the years had small rises, having spent 641.40 euros/month, in 2012 to 655.20 euros/month in 2016, by 14 annual instalments. There has been an increase in the number of people, mainly women and young people, who work for a salary less than the NATIONAL MINIMUM WAGE, since they are largely forced to accept part-time and very short-duration contracts.



Wage increases agreed by collective agreement, from 2012 to 2016, have had a significant reduction in relation to the increase in average 1.16% agreed in 2012.

The labour reform adopted by the Government in 2012 allowed companies to apply the corresponding collective

labour agreement setting the conditions on wages and other aspects below the minimum established in the sectorial agreements. This has allowed a spectacular drop in wages in thousands of companies and a strong pressure for the negotiation of wages in collective

⁵ Spain suffers the longest period with levels of unemployment above 20%, El País, 29-04-2016: http://economia.elpais.com/economia/2016/04/28/actualidad/1461866236_955613.html

agreements. It has also weakened the overall effectiveness of the sectoral agreement **and provoked a strong wage devaluation**, applied even to a greater extent to people getting a job through excessive increase of the precarization of recruitment and hidden economy.

In this period, **the wage gap between salaries has grown**; among women and men; among young people with regard to the elderly; and of those who have a permanent and full time contract versus those that have a temporary or part-time one.

In relation to public employees, the measures taken since 2012 have meant a serious deterioration of their remuneration and working conditions, in addition to the loss of many thousands of jobs.

The labour reform of 2012 deregulated labour relations and reached levels of precariousness unknown until then, which, together with a drastic reduction in public and private investment, has resulted in the increase of **labour accidents**, both in absolute numbers and rates of incidence in all sectors and in all regions.

Table of accidents in a day's work in the period 2012 / 2015

Years	OVERALL TOTAL	Mild	Serious	Mortals
2012	408,537	404,347	3,738	452
2013	404,284	400,447	3,390	447
2014	424,625	420,829	3,329	467
2015	458,023	454,029	3,479	515
2016	489,065	484,912	3,657	496

The issue of occupational diseases is a pending one as to identification, registration and, consequently, prevention. Only 20% of alleged cases of occupational disease are officially recorded. The established system, which makes private entities responsible both for payment of benefits and declaration giving rise to this benefit, has led to a clear reduction of occupational illnesses declared and registered. Other areas of concern are the lack of resources of the Labour Department and the technical agencies in the field of safety and health at work to intervene in cases of occupational diseases, as well as the commodification and the lack of independence of prevention services of the companies.

One of the industrial sectors with less regulation on access to rights is the sector of household cleaners. Legal discrimination suffered by the sector include different areas of law and show the marginalization suffered by workers in the sector, mostly women, and in many cases of foreign origin. In this sense, Spain still does not ratify the Convention 189 of the International Labour Organization (ILO) and recommendation number 201 on decent work for domestic workers.

Recommendations

1. **Withdraw the labour reforms** of 2010 (Royal Decree 10/2010 of 16 June, and law 35/2010 of 17 September) and 2012 (law 3/2012, July 6) and recover the investment in prevention work.
2. **Significantly increase the NATIONAL MINIMUM WAGE** to 1000 euros per month in 2020 (60% of the average net wage).
3. **Adopt economic policies that favour the recovery of the purchasing power of wages**, in both private companies and the public sector, in order to promote the growth of domestic demand, the consolidation of the economy, and face the labour impoverishment.
4. **Adopt action plans with greater resources for the eradication of the underground economy**, penalizing companies and not to the workers who suffer precarious working conditions; as well as to the detection and punishment of discriminatory, fraudulent or abusive business practices in hiring, promotion and pay.
5. **Resume the dialogue with the trade unions in the State public sector on employment**, pay and working conditions, and proceed to the inclusion in the General State budget of necessary items for the significant increase in seats on the calls for public employment.

ARTICLE 8. FREEDOM OF ASSOCIATION, RIGHT TO STRIKE

The change in social and labour policy of the Government, initiated in May 2010, and with its highest point in the labour reform in 2012, **has meant a progressive weakening of the social dialogue, obviating consequences for the workers**

The Committee on Economic, Social and Cultural Rights, in its report of 22 January 2015, concluded that Spain **had engaged in serious violations of labour rights, collective negotiation and freedom of association recognized in the Social Charter Europe** as a result of the approval of 3/2012 RDL and the law 3/2012, strongly affecting collective negotiations, without consultation with trade unions and employers.

The right to strike is affected by the imposition by the Spanish Government of mandatory mediation more than exceptional cases for which in principle, article 31 of the European Social Charter is raised.

In addition, by applying article 315.3 of the criminal code, a clause of the "Franco" era which had been "inactive" for more than 30 years, there has been **an important criminalization of trade union activity** - especially of the picket lines- that has led to over 300 trade unionists to be indicted in procedures related to their performance in general strikes.

The organic law 4/2015 on public safety also incorporates certain infractions that can produce effects contrary to the Spanish Constitution, as pointed out by the Constitutional Court. One of them is the inclusion, as criminal behaviours, of those that are performed strictly within the scope of the exercise of the right of freedom of Association, strike and collective measures. Another comes from the set of offences that have a discouraging effect on the exercise of other fundamental rights. There is the risk, for instance, of some public demonstrations giving rise to sanctions: the mere concentration of workers in a public place, peaceful resistance may give rise to sanctions.

On July 25, 2014, UGT and CCOO submitted a complaint to the Committee on freedom of Association of the ILO against the Government of Spain, of violations of the right to freedom of Association for violation of the conventions of the ILO No. 87, 98 and 154 all them ratified by Spain.

Recommendations

1. **Stop the violation of the right to freedom of Association and the exercise of the right to strike**, ensuring compliance with the ILO Conventions 87, 98 and 154 numbers. All of them have been ratified by the Spanish State on due time, and their infringement has been ratified in the light of the decisions and principles of the Committee on freedom of Association (CFA) of the ILO which guarantee freedom of Association against punitive practices disproportionate, unjustified or arbitrary.

2. **Withdraw article 315.3 the Spanish Criminal Code**, which criminalises the trade union activity.
3. **Withdraw the organic law 4/2015 of March 30**, public safety that restricts the exercise of fundamental rights, restricting democratic freedoms and aiming to stifle social reply.

ARTICLE 9. SOCIAL SECURITY

The Government of Spain repeatedly fails to comply with the obligations of ensuring the right to obtain social benefits, either in cash or in kind, without discrimination, in order to obtain protection in all its dimensions.

Social Security has registered a growing deficit from 2011, in 2015⁶. This situation is due to the increase in spending on pensions by the aging of the population and the loss of revenue generated as a result of the economic crisis and unemployment.

The lack of growth in revenues beginning in 2014 is due to implemented policies that have led to: 1) **the increase in temporary and part-time employment** (which stands at 27.3% of the total in 2015), whose contribution bases are smaller. 2) **The devaluation of wages** - especially in 2013 - produced as a result of the labour reform of 2012, which has depressed the contribution bases. The Government measures aimed at the promotion of indefinite employment have failed (RD 3/2014 and the RD 1/2015). 3) **The increase of self-employed people** (more than 17% in 2014-2015) whose contribution is located around 60% of the contributions of the general regime.

The reduction in income has resulted in the drastic reduction of the reserve of the Social Security Fund, created to deal with short-term imbalances of income and expenses in the system and regulated by law 28/2003. From 2012, the Fund has not been used for its purposes, but it has been used by the Government in a systematic way to deal with the payment of pensions.

If in 2011 the Reserve Fund amounted to 66.815 billion euros, in July 2016 it had fallen to 24.604. Law 23/2013 reform eliminated the criterion of maintaining the purchasing power of pensions, although it continued to hold due to unusual low inflation.

⁶ Economic report of the Social security budget.

There is a noticeable inequality in the level of pensions in Spain that results in persistent amounts being very low or insufficient pensions to ensure a dignified life, as already noted the Committee in 2012.

89.4% of pensions for widows, which correspond to women in their vast majority, have less than 1,000 euros. On the contrary, this amount only gets to 61% in the case of retirement⁷ pensions. The conditions of inequality and exclusion of women in the Spanish labour market have as a result an important difference with respect to the men in terms of pensions' value, resulting in a higher poverty rate than males over 65 years old. This picture represents high risks for the sustainability of the public pension system, which is essential when people conclude their working age in Spain.

There is also a breach in the obligations **relating to social security benefits for those who have exhausted the provision by unemployment**, being insufficient to ensure the enjoyment of adequate basic social protection. The system is insufficient, complex, and inconsistent and is geographically fractured. In 2016, there was an average of 677.025 households with all members unemployed who did not perceive any benefit, of whom only 39% receive a minimum income; the maximum amount is less than the minimum wage; There are thousands of people living in poverty who do not meet the more stringent requirements to apply for the resource, or who do not know how to do it, and not claiming it⁸.

The social protection system for dependent people has not been developed as foreseen in the law of promotion of Personal autonomy and care for people in a situation of dependency in 2006. This protection is not guaranteed from 2012 through 2015, moment in which moderate dependents (grade I) were incorporated into the system.

According to the report of the Spanish Observatory of Dependencies⁹ one in each three dependents does not receive any benefit or service, the waiting list is maintained at 381.508 and, **at the current pace, it would take over four years to comply with the rights of the dependent persons.**

⁷ Llano, J. C. (2016): El estado de la pobreza 6º informe. Seguimiento del indicador de riesgo de pobreza y exclusión social en España 2009-2015. EAPN España.

⁸Malgesini, G (2015): *EMIN Informe sobre los Sistemas de Rentas Mínimas en España. Análisis y Mapa de Ruta para un Sistema de Rentas Mínimas adecuadas y accesibles en los Estados Miembros de la UE*. EMIN (European Minimal Incomes Network)

⁹Asociación Estatal de Directores y Gerentes de Servicios Sociales de España (2016): Informe del observatorio estatal de la dependencia.

A positive development is that in the last year there has been an increase in the number of people assisted in almost 89,000, although it is clearly insufficient. There are currently 1.207.870 people-dependent, of which 68.4% (826.362) are being taken care of, while 31.6% (381.508) are in the waiting list.

Recommendations

1. Urge the Government **to look for new alternatives in the financing of the Social Security and the public pension system**, centered on the State contribution, drawing to direct taxes, which are considered redistributive.
2. Improve the amounts of **non-contributory pensions**.
3. **Transform the benefit system for the unemployed**, combining the provision of assistance with access to employment, if this does not secure minimum dignified living conditions.
4. **Strengthen attention to the dependency system**, ensure the maintenance of the restocking fee, when having people with the right recognized and which are not being offered the effective delivery or service that corresponds to them.

ARTICLE 10. FAMILY AND CHILD PROTECTION

The policies adopted by the Spanish Government do not guarantee the reconciliation of family and work life of parents and mothers in equality of conditions and in a balanced way between the sexes, making a model of reconciliation steward and taking into account the welfare of childhood. Conciliation must have as a guiding principle the best interests of children, as laid down in the Convention on the rights of the child, in such a way that the family receives the necessary protection and assistance to be able to fully assume its responsibilities within the community.

The Spanish parental system has a strong bias of gender and this has very negative repercussions in the workplace for women. The duration of maternity leave is 16 weeks and of fatherhood has been extended to 4 weeks from January 5, 2017. Despite this, there remains a strong inequality that makes children not being cared for by parents on equal terms, nor does it allow fathers to assume their responsibilities.

According to data from the Ministry of Employment and Social Security¹⁰, 173.161 men chose paternity leave when it was passed in 2007. Only a year later, 279.756 men, certainly a breakthrough.

This initial trend has been reversed: the decline in the number of births, the huge figures of unemployment and growing job insecurity - increasingly more temporary contracts - among other factors, have collaborated on this kick.

The absence of measures of support to families is the difficulty encountered by the fathers and mothers to reconcile their family and professional life. In addition, the labour reform of 2012 gave more authority to employers on the schedules of all employees.

The State must reverse this situation, designing policies that allow citizens to maintain a balance between the need to work and that of properly taking care of children, and ensuring that the rights of the child are taken into account as a priority in its formulation.

Childhood is also unprotected with regard to transfers and social benefits, which do not have the perspective of children, and do not help to get out of poverty, those who are outside the labour market. The social protection system is focused primarily on a public pension system strongly linked to the productive sector and has left patent the limited capacity to reduce child poverty rates: only 7% gets out of the poverty after social transfers. In a situation like the current one, in which nearly one million households are reached with children where all adults are unemployed, with uncertain opportunities for joining the labour market, it is essential to keep out of the system of social protection to those who are excluded from the production model.

Recommendations

1. **A legislative reform** that establishes that birth and/or adoption leave must be granted to each parent so that they are non-transferable, **of equal duration, paid 100% of the base pension and compulsory part**; and to specify transitional measures to progressively increase the parental permission to arrive within a reasonable time to equality, beginning by immediately establishing the six weeks of compulsory for parents.

¹⁰ <http://www.empleo.gob.es/es/estadisticas/anuarios/2015/index.htm>

2. **Design the active employment policies effectively considering the presence of children in the families, measures include:** improvement of the reduction in working hours for child care; tax incentives for companies that respect and promote work and family conciliation with perspective of childhood; paid permits enabling mothers and fathers to deal with everyday needs of their sons and daughters, etc.
3. **Revise and increase the economic benefit for childcare or foster care:** Increase the amount of the current child benefit to charge until 100 euros per month to all families that are currently under the poverty threshold, 150 euros per month in the case of single-parent families. It is necessary to also review the family income that allows access to such provision.
4. **Improvement of the reduction in working hours to care for a son, as covered in article 37.5 of the Statute of workers.** Contemplating again the possibility of choosing not to work in the evenings, weekends, or during school holidays.

ARTICLE 11.1. RIGHT TO AN ADEQUATE STANDARD OF LIVING

The effects of the economic crisis, legislative changes and public policies adopted by the Spanish Government in the past four years have led to an **increasing deterioration in the living conditions of much of the population of Spain**, exacerbating the situations of precariousness by increasing the number of people at risk of poverty and social exclusion, and have punished especially for more vulnerable groups.

Spain has ignored the recommendations from the Committee in 2012 with a view to making sure that austerity measures adopted maintain the level of protection achieved according to ESCR. In recent years, the poverty rate has experienced a large rise, reaching 22.3 per cent of the population, about 10,382,000 people. Particularly worrying is a 6.4% of the population, more than 2.9 million people, living in severe poverty¹¹. According to the European indicator AROPE, in 2016 there was a risk of poverty and exclusion for 27.9%, i.e. 12.989.405 people¹². We should note the special incidence in children, where nearly one in three children (32.9%) are in this situation, and the foreigners who come from the EU (47.3%) and outside the EU (over 60%).

¹¹ Llano, J. C. (2017): El estado de la pobreza 7º informe. Seguimiento del indicador de riesgo de pobreza y exclusión social en España 2009-2015. EAPN España.

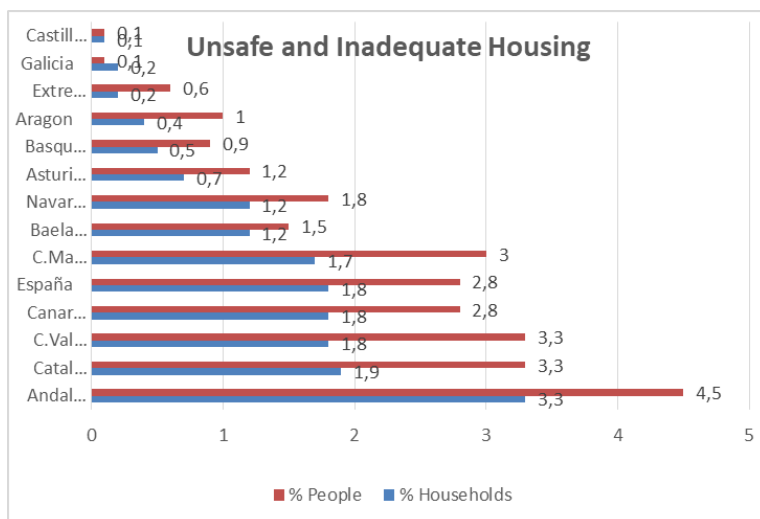
¹² The indicator of risk of poverty and exclusion AROPE (At Risk Of Poverty and/or Exclusion) is the instrument agreed in the European Union, and is integrated at the same time by other three indicators. It includes people who are at risk of poverty (whose incomes are below the average of 60% of the total income of the population) or low intensity of employment in the household, and/or severe material deprivation.

More than half of the people living in single-parent households (53.3%, with an increase of 3.3 percentage points last year) is at risk of poverty or social exclusion. It is especially worrying the situation of children, presenting rates of severe material deprivation of 19.8%, far away from the 5.8% of the general population in 2016. Changes in the policies of guarantees of minimum income in most of the autonomous communities have increased conditionality and restricted the enjoyment of this right, directly affecting the most vulnerable population.

The lack of commitment to social services as an instrument of social cohesion and redistribution of wealth, the virtual disappearance of compensation instruments, such as the concerted Plan, as well as the depth of the cuts produced, have not only diminished the level of enjoyment of ESCR in the population, but that has also led to a missed opportunity for the generation of jobs linked to social care.

10% of Spanish households have difficulties to confront expenses of their main home. This is an example of how the right to adequate housing has been violated in various aspects in the revised period expenses. The mortgage crisis is affecting Spain since 2009, proof of this are the 197,360 foreclosures that have taken place in Spain between 2014 and 2016. However, the loss of housing affects more and more people living rented housing: in 2016 there were 26,397 (41.8%) releases result of foreclosure proceedings, and 34,119 (54.24%) consequence of the law of urban leases. Secondly, there are 3,443,365 homes empty while only 1.5% of the residencies are subsidised, figures clearly insufficient to meet the social needs.

There are 13,504 homes protected from public administrations to meet the demand of 332,529 applicants, and more than 30,000 people living in the street. Thirdly, in 2013, 3.3% of people living in overcrowded houses, a phenomenon which, together with the substandard housing, is derived from the difficulty of access to the housing market and the absence of public housing. 329,000 homes (1,310,000 people) live in inadequate and insecure housing at the same time (classification ETHOS).



The State has not protected the right to housing through the effective regulation of financial institutions.

Recurrent judgments of the Court of Justice of the Union European (ECJ) on the incompatibility between procedural Spanish and mortgage laws and

consumer protection directives are an example of this. The modifications undertaken as a result of the judgments have been minimal. The excessive load involved in access to housing, the lack of public policies that guarantee the enjoyment of this right to the people, make the status of this law in Spain severely overdrawn. Likewise, the Committee has issued two Views considering the violation of the right to housing in 2015 and 2017¹³.

Energy poverty is a drama that increasingly affects more families. In 2014 11.1% of the population (5.1 million people) could not maintain a suitable temperature in their homes during the cold months of the year, compared with 8% in 2012¹⁴. The combination of the reduction in family income, with the continuous increase of supplies – the price of electricity has more than doubled in the last decade, coupled with poor energy efficiency of the Spanish real estate, is making this problem a real epidemic.

Recommendations

1. **Adopt the necessary measures to ensure the respect, guarantee and protection of all human rights of persons living in poverty.** All policies related to poverty must be based on recognition of their rights to make their own decisions and respect their capacity to achieve their own potential, their sense of dignity and their right to participate in decisions that affect to your life.

¹³ In the View E/C.12/61/D/5/2015, for the violation of the right of housing by the State of Spain originated by an eviction, the Committee issued a View in July with several specific and general recommendations. After the six-month period that the State has to implement the decision, the report that the Government of Spain has sent to the ESCR Committee is absolutely insufficient. Reference is made to data provided to the Special Rapporteur on the Right to Housing in March 2017, that is, prior to the Committee's View. Additionally, it hardly answers about the recommendations established in the body of the View.

¹⁴ Report about the energy poverty of 2016.

2. **Develop a State framework of minimum income**, increase its current budget, and allow that it can be complemented by the improvement and rationalization of existing regional laws, as well as of non-contributory Social security resources, to allow a decent standard of living. Improve coordination between local, regional and national bodies that guarantee income.
3. **Restore and revitalize the Plan as an instrument of balance to ensure equity and equality of citizens** in access to social services.
4. Develop a **strategic plan of housing** oriented to rental and rehabilitation, abandoning the tendency to foster housing on property and debt, and providing enough funds for social housing, which gives priority to the rights of people and facilitates the coordination between administrations.
5. **Develop legislation and resources for the eradication of "homelessness"** and shanty settlements that target access to the human right to housing.
6. **Modify the LAU to firmly protect tenants**, increasing the duration of contracts and establishing limits to the predatory pricing of rentals. Reform the mortgage legislation that protects the rights of consumers with regard to the judgments of the European Court of Justice.
7. **Design procedures and tools for specific protection in the case of loss of housing and ensuring the compulsory relocation** by the Administration in case of a situation of vulnerability and lack of alternative housing.
8. **Comply with the recommendations of the Committee following the case E / C.12 / 61 / D / 5/2015.**

ARTICLE 12: RIGHT TO HEALTH

The Spanish Government has not taken the necessary measures to ensure the enjoyment of the highest level of physical and mental health. The adoption of the Royal Decree-Law 16/2012 April 20 and the Royal Decree 1192 / 2012 August 3, undermined the universality of the public health system and has been a serious violation of the right to health and the breach of the obligations arising from the Pact. First, distinguishing between insured, beneficiary, and

excluded figures. Second, depriving of access to the system to thousands of people, most of them immigrants in an irregular administrative situation.

This should add the fixing of a percentage payment of medicines according to the income and the fact's pensioners to cover a part of the payment of the medicines for the first time.

The new regulation has left without coverage to all persons who are in an irregular situation in Spain except in three cases in which they are allowed to access. Health exclusion also reached the community people who lack work or income and residents who have been regrouped by their descendants usually Spanish. The exclusion of migrants in an irregular situation also affects indirectly to children and adolescents since, although they have recognized the health care, the situation of irregularity or limiting access health of the parents is assuming a major barrier to access, since sometimes they have no passport, registration, etc.

The growing number of Spanish people forced to emigrate by the economic crisis are also excluded. For expelled persons who seek employment abroad without success for three months, and unfortunately sick, the Social Security will not pay their medical expenses abroad and they must afford them privately. After ninety days, the migrant loses the right to the health card and if they return to visit their country of origin, they cannot go immediately to the doctor. The adoption of this regressive and discriminatory rule impacts on gender in a way not envisaged by the Spanish State. **The change in the health model affects in particular women,** especially for the detection of violence against women and for the detection of situations of trafficking in human beings. It is essential that women, who may be victims of trafficking, although they are not yet identified as such and irrespective of the regularity of their situation, can be helped out in public health centres.

In the case of asylum seekers, the health card is limited to the period of residence permit and needs to be renewed with the other documentation every six months. It is important to point out that asylum seekers with some type of functional diversity do not have access to all services. It has also been detected misinformation in some health centres on the red card for asylum seekers, the mediation being necessary to ensure their warranty.

With regard to pollution, 99% of the population (45.9 million) has been exposed to pollution levels exceeding the recommendations of the World Health Organization. Nearly two-thirds of the Spanish territory bear an air pollution that fails to comply with the applicable legal standards to protect crops and natural ecosystems. The main source of pollution in urban areas, where most of the population concentrates, is road traffic. The health costs of air

pollution are at least 32,000 million euros a year, a 2.8% of Spanish GDP, according to the WHO and the OECD, without considering the cost of damage caused on crops and natural ecosystems.

Recommendations

1. **Withdraw article 1 of the Royal Decree Law 16/2012 of 20 April**, on urgent measures to ensure the sustainability of the national health system, and improve the quality and safety of their benefits, amending the law 16/2003 of 28 May.
2. **Withdraw the new wording of article 3 of the law 16/2003**, which excludes from the Spanish health system persons who are in an irregular situation in Spain
3. **Ensure a basic portfolio of services from Pediatrics to all children living in Spain** from their birth until the age of 18, regardless of their administrative status, place of residence (urban or rural) and autonomy to make effective the right to health.
4. **Take the necessary measures so that the health of Spanish workers**, seeking jobs abroad, is protected until they find a job, and therefore, these migrants are covered by the health system of the host countries.

ARTICLE 13. RIGHT TO EDUCATION

The education system suffers from an approach of equity that allows equal origin differences among students, causing those who are most vulnerable to fail as a result of their origin. The public educational expenditure in 2016 was 20% lower than at the beginning of the crisis. In 2012, 4.43% was allocated and in 2016 spending came very close to 4% of GDP. However, the budget dedicated to agreements has increased by 6.5% (from 2008 to 2014). **Budget cuts and the loss of equity in the reduction of the items have had very negative consequences in terms of universality and quality of education.**

Compensatory programs (Compensatory education, scholarships and grants, education programs for adults) are those who have suffered greater reduction. This entails an increase in the expenditure of families, which has increased by 28.8% between 2008 and 2015, to intensify the impact of economic capacity in the educational results and expectations of the child. During the period 2014-15 1,910.2 million euros were allocated, which is less than in the period 2012-13.

The cuts have also greatly affected teachers. According to the data of the Ministry of education, culture and Sport, compared to the period 2009/10, public education has lost 23,416 teachers (4.61% of its workforce), while education based on agreements with private schools has increased in 9,091 teachers. This is an increase of 4.81% over the same academic course 2009/10.

The employment thus destroyed has been replaced, in part, by more precarious employment (temporary), occupied by interim staff. In particular, by 9,021 acting teachers. More than 23.56% of public teaching jobs are currently occupied by acting teachers. In addition, the working conditions were affected negatively: throughout these years salaries froze; extra payments have been removed and teaching hours have been increased, with a larger number of students that meet in the classroom (Decree-Law 12/2012).

Spain has the highest rate of premature educational abandonment of the EU with a serious impact not only on the development and life choices of boys and girls, but in the whole of the country. It is estimated that the cost of this oscillates between 5.9% and 10.7% of the GDP. Inequality also affects more boys and girls with the worst socio-economic conditions, and this is a determining factor. 43% of children from the 20% poorest prematurely abandoned his studies. In the case of Roma students, this amounts to 63.7%.

The LO 8/2013 for the improvement of educational quality (LOMCE) does not guarantee the success of all students. Students are classified according to their skills, establishing dividing itineraries and denying the right under conditions of equality for all.

Students from economically disadvantaged environments tend to be concentrated in the same schools and this adversely affects educational performance. There is segregation between public school and private schools under agreement due scoring criteria that discriminate against certain groups. With Roma students and foreign-born segregation occurs at two levels. The first is associated with a residential segregation. The second is linked to school segregation in the classroom, whether segregated centres or not.

As the poverty gap increases the educational gap also increases, and children with families of lower socio-economic origin are more likely to attend school less regularly or doing so in more precarious conditions, affecting negatively to their personal development and their expectations of life when they become adults.

The number of students continues to fall in Spanish universities, especially in the public system, and from the academic year 2011 / 2012 universities have lost more than 101,000 students, according to data from the Spanish Ministry of Education, related to the academic year 2015-16. The increase in rates and the decrease of the scholarships and grants, as well as the hardening to access these, has caused that many young people have resigned to begin University studies or have abandoned them. Education in and for human rights has been excluded from the curriculum, being an obligation of States to include it as one of the main tools for promoting fair and equitable societies where all people exercise their rights.

Recommendations

1. **Equal the average of the OECD public expenditure on education and protect it, by law**, from future cuts, caring for territorial inequalities in investment and scholarships derived from socio-economic differences between regions and provision schemes between public-private systems in each community.
2. **Promote public policies in education, favouring equity and equality that prevent the segregating nature in centres and students**, to recognize the diversity and to give a specific response to specific problems to ensure equality of opportunities.
3. **Support the universalization of public pre-school education and compensatory education**, which replace the complementary services of canteens, transport, etc., used mainly by the most disadvantaged.
4. **Curb cuts in teaching staff and restore their working conditions.**
5. In terms of university education, withdrawal of University fees made from 2012 rises, as well as the modification of the policy of scholarships, with the increase of them to restore equality of opportunity lost, and increase the number of students enrolled in the Spanish public University System.

ANNEX

ANNEX I

ARTICLE 2.2 ICESCR

Discrimination of the Roma community

The Roma community in Spain represents some 725,000-750,00 people, according to official estimates¹⁵. It is undeniable that it has experienced significant social progress in the last 30-40 years as a result of various factors, but despite those social advances, **the gap of disparity between the Roma people and the whole society is persistent**, especially in the areas of greatest impact for social promotion and the exercise of rights: access to employment, quality education, to decent housing, to certain goods and services, etc. The enormous inequality in these areas shows that Roma people are not sufficiently guaranteed fundamental human rights.

1. **The inequality gap is very significant in the field of education**, where still a 63.7% of Roma students do not end the compulsory secondary education (school failure rate), and 64% leaves the education system without continuing studies (early rate of school dropouts)¹⁶. The absence of adapted school support measures, the existence of segregated facilities and itineraries that contribute to segregation by classrooms, along with the lack of recognition of the Roma community in the educational curriculum, are some of the factors that prevent the school success of children and Roma children.
2. **Inequality is evident in access to the labour market**. But with outdated data that does not reflect the impact of the crisis on the Roma community, only 38.4% of Roma people is employed, with 83.6% of the population, and unemployment in 2011 was 16 points superior to that of the general population and conditions of temporality much higher (56%)¹⁷.

¹⁵ National strategy for the Social Inclusion of the Roma population in Spain 2012-2020

¹⁶ Roma students in secondary school: a comparative study, 2013. FSG-MECD-UNICEF

¹⁷ Roma population Spain and Eastern Europe, employment and social inclusion, 2011. FSG

3. **In relation to the housing situation**, the living conditions in slums and the infrahouse are factors that make a difference to the whole population, particularly affecting the Roma community. According to more recent data ¹⁸, the evolution towards the objective of "shanty town zero by 2020" according to the national strategy of Social Inclusion of the Roma population 2012-2020 is positive, although slow. Shantytowns among the homes of Roma people are being progressively reduced (from 10% in the first study, conducted in 1991, and 3.9% in the study conducted in 2007, to 2.17% in 2015), as well as the substandard housing (from 21.4% in 1991, to 7.8% in 2007 and a 6 (46% in 2015). **Despite this positive trend, still more than 9,000 Gypsy families living in Spain in substandard housing without the minimal conditions of habitability (among them, still more than 2,000 live in slums).**

4. In general terms, the latest study is the VII report FOESSA on exclusion and social development 2014 according to which, almost 3 out of 4 Roma people living in Spain (72%) are in a situation of social exclusion, under the poverty threshold, and 54% of Roma people are in a situation of "severe exclusion", five times more than the rest of the society (9.5%). It is important to mention the significant increase in exclusion situations, from moderate to severe, due to the impact of the crisis (in 2009, 50% of the Roma population lived in moderate exclusion situations and 26% in severe exclusion; in 2013, 54% lived in severe exclusion and 18% in moderate exclusion).

In addition to addressing social inequalities, it is necessary to combat discrimination and the feeling against Roma people. The socio-economic conditions of the Roma community are marked, largely because of the strong social rejection that exists towards the Roma community. A rejection that has its roots in a negative social image loaded with prejudices and stereotypes, which stigmatizes the Roma community as a homogeneous whole. This deep feeling against this community, leading in many cases to discrimination, is due, in part, from the lack of knowledge that exists on the Roma community, its history and its culture, and in general, the lack of recognition of their cultural identity. It is necessary to raise awareness among the whole population and to present a realistic, plural and diverse Roma people image to break down stereotypes on which rejection and discrimination are based.

¹⁸ Study-map on housing and Roma population, 2015. FSG - MSSSI

Recommendations

1. **Promote equal opportunities in the access to and exercise of economic and social rights** to reduce the yawning gap of inequality that affects the Roma people mainly: ensuring that all Roma children complete at least the compulsory secondary education (reducing the school failure rate), fighting the school segregation, eradicating slums, and promoting equal opportunities in access to the labour market.
2. **The protection against the violation of the right to non-discrimination, and against the growing anti Roma feeling.** It is essential to make progress in the implementation of the anti-discrimination legislation and the functioning of the equality body, as well as providing a broader protection for victims (Integral law on equal treatment), but also promote the information and comprehensive assistance to victims of discrimination, especially to the victims of multiple discrimination as the Roma women, since they feel helpless, not knowing their rights and not trusting the system.
3. **Progress in the institutional recognition of their cultural identity:** incorporating the history and the culture in the school curriculum, officially recognizing April 8 as international day of the Roma people, etc.

The policy framework for developing most of these measures is the national strategy of Social Inclusion of Roma people 2012-2020, a commitment from the state that requires for the fulfilment of its objectives of greater political will and coordination to all levels (General Administration of the State, autonomous communities, town councils) that the general policies are more inclusive and give response, also, to the needs of the Roma community; as well as the allocation of sufficient resources to carry out specific measures which compensate for these serious social inequalities.

DISCRIMINATION OF MIGRANTS AND REFUGEES

For years, migrant and refugee persons living in Spain, regardless of their administrative status (regularized or not and even in cases in which they have acquired the Spanish nationality), have faced enormous barriers in the warranty and access to ESCR, which have led to serious situations of vulnerability that far from being solved, continue to deepen, leading these people to suffer serious situations of vulnerability.

1. **Equality and non-discrimination:** The migrant and refugee population often suffers discrimination that affects especially women with children and LGTB. According to data from the Ministry of the Interior, the first reason of hate crimes is racism and xenophobia. In addition, there has been an increase in religious intolerance fundamentally towards the population of Muslim religion, which is manifested in the impossibility to open places of worship or the difficulties of study their religion in public education, or the prohibition for using of the veil in certain public spaces.
2. **Right to work:** The economic crisis has aggravated the situation of unemployment of the migrant and refugee population. As noted in the data, the number of unemployed of foreign origin is greater than that of the native population in such a situation. In addition, these people occupy the lowest-paid and most precarious jobs that often leads them to situations of vulnerability. The loss of the job makes it difficult to find a new one that, in the case of the migrant population, makes it impossible to renew their temporary residence cards being pushed out or being forced to return to their places of origin, where in many cases they have already lost their ties families and their social networks.

Persons granted international protection have the right to work, being able to work under the same conditions as the rest of citizens, but in practice access is not always effective because of the shortage of supply and the difficulties in the approval of qualifications, often because of the impossibility of accessing the documentation required in their countries of origin.

In the case of asylum seekers, they are granted a renewable residence permit (every 6 months) and are authorized to work after 6 months from the request. The fact that this is a temporary situation, coupled with the slow resolution of requests for asylum, means **in practice that these people are limited in their access to the right to work.** In the first months they cannot work and later they find it difficult to be hired, since the Contracting Parties have no assurance of continuity, and in many cases they are unwilling to invest in the training of someone who can't renew his/her documentation.

Stateless persons are denied access to the right to work. They are granted a card authorizing them to remain in Spain, but not to work. In the majority of cases, the record of stateless persons resolves over a period of between 12 and 18 months, and during that time, they have no right to work, nor the right to get economic aid, or housing benefits.

3. **Right to family unity:** Persons granted international protection have the right to the family extension, but the process is very slow, so in practice the right to family unity is limited and restricted. In the case of applicants, they may not have family extension allowing them to regroup their family until the case is resolved; this is also true of stateless persons. These processes tend to be much more dramatic and have serious psychological consequences in many cases, bearing in mind that relatives who remain in their countries of origin, awaiting to be regrouped, are often in contexts of conflict and serious risk, resulting in serious states of anxiety and distress in the family.

4. **Right to housing and decent life:** Refugees and migrants often suffer serious obstacles to access decent housing because of the shortage of supply, to the requirements and discrimination in access to it. When they leave centres and reception housing, they are usually unable to show economic autonomy nor have they any guarantees, lack of payroll, etc.; essential requirements to get access to rental housing.

Inability to make mortgage payments or to confront the high prices of private rentals has sentenced a significant number of migrant people and refugee women to deal with precarious lodgings, which lack the minimal conditions of habitability, or to face overcrowding in housing, in some cases shared with family members and in other cases with strangers.

5. **Right to education:** Migrants and refugees face serious difficulties coping with the expenditure on education. Although all children are recognised the right to education in the compulsory stage (until 16 years) the economic outlay involved in issues such as books, transportation, etc., cannot be assumed on many occasions by the family. This adds to major trimming suffered public subsidies, grants awarded by the Ministry and the autonomous communities.

In addition, access to private schools under the agreed system is restricted to payment of a fee that in most cases cannot be afforded. With regards to introductory courses for helping children adapt when newly arrived in various autonomous communities these are to be found mainly in Catholic schools.

It is relevant to point out the serious situation which suffer many foreign minors unaccompanied when they need to be recognize as such, and because of this situation they do not get access to the rights they deserve as minors.

Recommendations

1. **Prevent and fighting against discrimination** for asylum seekers, refugees and stateless persons, access to the DESC, with special attention to women and LGTB.
2. **Expedite resolution of asylum records.**
3. Promote access **to employment of refugees, asylum-seekers and stateless persons** and eliminate existing difficulties for the recognition of qualifications.
4. **Streamline and make family group processes more flexible.**
5. **Remove the obstacles existing for the access to the health** system of the asylum seekers and stateless persons.
6. **Pass a law regulating the stateless condition** that guarantees access to the ESCR by these people.
7. **Remove the supplementary provision of the law of immigration that prevents the right of asylum,** and thus access to ESCR, of international protected persons.
8. Adopt a regulation of the law on asylum 2/2009.
9. Facilitate access to introductory courses in **all public schools for newly arrived children.**
10. Withdraw the prerequisite "time of residence in Spain" for applicants for international protection, to gain access to the system of aid and public pensions (PNC, RMI, dependency law, public housing...), **with special attention to the requirements required people with functional diversity.**

DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

More than four million people have a disability in Spain, and this reality affects directly or indirectly to twelve million people. Disability is not usually experienced as a unique issue, which is limited to the person, but radiates and has impact on their immediate life environment. There is a growing situation of disability both from new disability situations and from disability associated with the aging of the population, with situations that did not exist before. This represents 9% of the population, of which 60 per cent are women, and 60% are over 65.

A million people with disabilities live in rural areas with the added challenges of access to basic social inclusion in an environment where access to resources is hindered. In a mainly urban society, they tend to go discreetly omitted.

Increasingly fewer children with disabilities are born and those born with it will have disabilities that are going to need more support along life. However, there is an increase in youth psychosocial disability, mental health problems, the ageing of the population or new and emerging disability. There are increasing situations such as acquired brain injury, rare diseases and other forms of disability that are now occurring in our society.

Quantitative data show poverty in this group, since with lower income, costs are higher.

Poverty and disability are self-sustaining; there are enormous difficulties to access rights and social commodities. There is a high dependence out of the family environment to benefits and public resources; this hinders the exercise of personal autonomy and an independent life.

A situation of permanent and structural exclusion continues. This structural and systematic exclusion of persons with disabilities calls for political and legal action with a demanding **human rights approach**.

1. **In education**, in our country only 80% of students with disabilities is in the ordinary system and 20% in segregated systems, something unacceptable from the point of view of the inclusion and equal treatment, as well as a practice contrary to the International Convention on the rights of persons with disabilities.

On 4 December 2017, the maximum legal limit is enforced to achieve the universal accessibility of all environments, products and services. A term that will be infringed, limiting access to basic services such as education, health, transport, culture or consumption.

2. **In housing**, hundreds of thousands of people living in seclusion in their own home because they have no lift, because they have no platforms, because they do not have ramps, because they have no "signs", because they don't have communication access, because the socialized cost of these actions cannot be imposed socialized accessibility actions cost, since current laws limit it to 12 monthly instalments. Everything that exceeds 12 monthly payments is not supported and must be paid by the person, which usually lacks funds.

In terms of the **law of promotion of personal autonomy** and care for people in a situation of dependence, the co-payment has been an element of deprivation of access, of expulsion, of this emerging social protection device.

The participation rate of people with disabilities is only 38%, so we must make emphasis on the urgency of measures that serve to that in the next few years so that this figure reaches 50%, reducing in this way the "big difference" that exists with the global data from the Spanish citizenship.

20% of the victims of gender-based violence are people with disabilities. This scourge is not neutral. They are most vulnerable to this violence and at the same time, this abuse produces disability

Recommendations

1. **Endow schools of human and material resources** that guarantee the school inclusion and universal accessibility in the classroom, invest in education for everyone and with everyone.
2. **Establish alternative sources of funding for the third sector of social action**, after the change in the model of the primary source originated from the social interest income tax.
3. **Create the Fund for universal accessibility** that will help to pay for all those activities that are still missing, with 1% of the budgets of the State in the field of promotion and agenda, similar to the cultural 1% by law.

4. **Reform the law of Horizontal property**, socializing the cost of accessibility of buildings works.
5. **Promote a new general law of labour inclusion of people with disabilities**, endowing a greater economic autonomy to people with disabilities so that they can decide on their own life.
6. **Investigate the causes of sexist violence in women with disabilities** to tackle it with more and better results, and ensure resources, services and spaces accessible to women with disabilities, to invest in their training and their empowerment.
7. **Update prosthetics' financial help for products of support** needed by people with disabilities to compensate the functionality lost, such as a wheelchair, a headset, a cochlear implant or any other element of support or aid, which is essential to later autonomy, and ensure universal accessibility to healthcare.
8. **Withdraw the co-payment** in the law of promotion of personal autonomy and care for people in a situation of dependence.
9. **Generalize the provision of personal assistance**, such as the provision within the system of autonomy and attention to the more inclusive dependency, which is now only 0.6% of all the features of our system, and that only residually are being granted.
10. **Adapt the Spanish legal system to the International Convention** on the rights of persons with disabilities.

DISCRIMINATION AGAINST LGBT PEOPLE

During the last years, Spain has not promoted significant measures to eliminate multiple discrimination against LGBTI people, and those that have been carried out have been part of the autonomous communities.

1. **On the right to work:**

For years, the labour market has been virtually closed to LGBTI people. Unemployment within this group is alarming; it has an 85% unemployment rate. Many of these people are therefore in a State of extreme social exclusion and facing multiple barriers:

- Difficult to carry out the process of gender reassignment, as well as to keep the work place.
- Difficulties in the repeated request of permits for medical visits that may cause the non-renewal of the contract of employment.
- Difficulties in the period of surgical reassignment, the absence of regulation concerning collective agreements.
- Difficulties in the use of common areas such as changing rooms, bathrooms, etc., since companies do not include these situations and the possibility of these places to safeguard the privacy of persons if necessary.

2. **On the right to education:**

Sexual orientation, identity, or gender expression are one of the leading causes of bullying in Spain. LGBT children sometimes suffer situations of real physical and psychological torture in their schools with the aggravating circumstance that, in many cases, fear telling what is happening to them for fear of the stigma attached to LGBTI people and the consequences that can lead them to reveal their sexual orientation or their gender identity in the bosom of their families. In addition, we must add that the sons also suffer the homophobic bullying and daughters of LGBTI people because of sexual orientation or gender of their parents' identity, this is called discrimination by Association.

3. **Right to family unity:**

Since the Civil Code on marriage was amended in July 2005, giving legitimacy to unions between people of the same sex and legal cover to the sons and daughters of these, a new scenario is open in the conception of the family in Spain. However, laws, rules, regulations and provisions are still necessary in order to make it possible to the daughters and sons of LGBTI people having, in practice, the same rights and opportunities as the whole of the Spanish citizens.

Different standards of protection of the collective of LGBTI people have been adopted in recent years, presenting the sons and daughters of the homoparental families in a situation of inferiority against other minors who make up the group, children LGBTI. In both cases, children need maximum protection against the reality of lgtbifobia that is still felt and suffered in the Spanish society.

Recommendations

Pass a law that is comprehensive at State level, as the one that is currently in process at the Congress of Deputies, the proposition of law against discrimination for sexual orientation, identity or expression of gender and characteristics sexual, and social equality of lesbians, gays, bisexuals, transsexuals, transgender and intersex people.

1. **Implement measures and incentives for public bodies and private companies** that promote the inclusion and the **labour integration** of transgender people and people with HIV/AIDS.
2. **Develop a comprehensive plan for education that promotes non-discrimination** and protects respect for sexual diversity, gender and family transversely in all subjects.
3. **Create and promote programs coordination between education, health and social** systems aimed at the detection and intervention in situations of risk that put in danger the integral development of the minor transgender or gender expression of children under a non-normative scenario.
4. **Legislation allowing the automatic registration of the children born to lesbian couples**, regardless of whether they are married or not; free fertility treatments within the system of Social Security for all women, regardless of their status, civil or sexual; and the legal recognition of same-sex led families.

DISCRIMINATION AGAINST HOMELESS PEOPLE:

In society persists a stigmatized and negative image of persons in situation of homelessness, which increases significantly the risk, subject to discrimination in the enjoyment of ESCR, in particular as regards employment, housing health and education. Discrimination manifests itself in the persistence of hostile and intolerant attitudes, in the maintenance of barriers in access to rights, and more likely to be victims of hate crimes. **50.6% of homeless people who slept in centres in 2012 declared that they were victims of discrimination, 23.8% reported to suffer this situation often or constantly.** It is of particular concern that women reported a higher incidence in the most intense discrimination 6 percentage points more than the males. Within the trends observed in the last period, and that are contained in the comprehensive national strategy for people without home 2015

-2020, increase in homelessness, which has involved a change in the composition of this group: as many young people and old 45, women, non-European foreigners, etc. Along the same strategy, there is a greater difficulty of access to minimum income that ensures a decent standard of living, as guaranteed in article 11 of the ICESCR. According to the survey to homeless in the INE, in 2012, **registering an increase of 97% of the homeless people who lack income (benefits or other financial aid), while they were 0.6% of the HSP in 2005 and 19.6% in 2012.** The situation of discrimination faced by the homeless is originated by the conditions of extreme exclusion, and it will add other factors of discrimination such as ethnic origin, sex, sexual orientation, or disability. Prejudice towards people living in the street occasionally results in assaults little reported and invisible. Many people living on the street have been victims of violence. Most of these assaults are not reported.

Homeless people who have been victims of a crime or aggression by type of crime or aggression and nationality.		
	people	% people
Has been assaulted	4,774	40.8
Has stolen money, belongings, documentation	7,228	61.8
Has suffered some form of sexual assault	657	5.6
Has been scammed	3,312	28.3
Has been insulted or threatened	7,652	65.4
Other	437	3.7
OVERALL TOTAL	11,692	100.0

Source: INE. Survey to homeless people. Year 2012

As the national strategy points out, we can see between 2005 and 2012, a 33-37% increase in various types of crimes or acts of aggression, which are stressed among women and homeless youth.

In this regard, institutions that across the State are working and accompanying homelessness situations as described, together with the result of the collection of information, defend the necessity and urgency of creating joint mechanisms to prevent, detect and address crimes of hatred against persons in situation of homelessness. Establishing protection devices that take into account the particularities of the population in situations of extreme social exclusion; as well as the importance of the reporting of these situations, both for victims and for citizenship, to record, quantify and visualize this reality, and cause a change in the law. The proposal of concrete legislative reform that is comes claiming years ago is that the aporofobia is collected as an aggravating circumstance within the criminal code.

Recommendations

1. **Visualize the situations of discrimination faced by homeless** persons to society in general, with particular emphasis on awareness-raising and training professionals in legal, health, social and police.
2. **Incorporate tools for detecting crimes of hatred toward the homeless**, promoting both these as citizenship in general filed complaints with the Commission of a crime.
3. **Promote the creation of local police units**, specialized in the investigation of acts of discrimination, intolerance and hate crimes.
4. **Incorporate the aporofobia as an aggravating circumstance in the criminal code**

ANNEX II

PROCEEDINGS AGAINST TERRITORIAL LAWS ORIGINATED BY THE GOVERNMENT BEFORE THE CONSTITUTIONAL COURT

WITH REGARD TO HOUSING:

Reference for the foundation the proceedings: Social role of housing, expropriation of the use of empty housing, proceedings in empty homes, procedures and protocols for energy poverty, preventive measures against evictions, measures for alternative accommodation.

Effects: Suspension of the legislation appealed until the Constitutional Court of Appeal issues its ruling.

2013

Andalusia:

- Decree Law 6/2013, April 9, with measures to ensure the fulfilment of the social function of the property. 4286-2013 admitted by Constitutional Court appeal. Sentencia 14/05/2015 anulando Disposición adicional 2ª.
<http://www.boe.es/buscar/doc.php?id=CE-D-2015-164>
- Ley 4/2013 de medidas para asegurar el cumplimiento de la función social de la vivienda. Recurso 7357-2013 admitido por Tribunal Constitucional
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-454

Navarra:

- Ley Foral 24/2013 de medidas urgentes para garantizar el derecho a la vivienda. Recurso 6036-2013 admitido por Tribunal Constitucional.
<https://www.boe.es/buscar/doc.php?id=BOE-A-2013-11886>

2014

Canary Islands:

- Ley 2/2014 de modificación de la ley de vivienda de Canarias. Recurso 1824-2015 admitido por Tribunal Constitucional https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4157

2015

Basque country:

- Ley de la Comunidad Autónoma del País Vasco 3/2015, de 18 de junio, de Vivienda. Recurso 1643- 2016 admitido por Tribunal Constitucional.
https://www.boe.es/diario_boe/txt.php?id=BOE-A- 2016- 3668

Aragon:

- Decree Law 3/2015, of 15 December, urgent social emergencies, economic benefits of a social nature, energy poverty and access to housing. Recurso 4952- 2016 admitido por Tribunal Constitucional. https://www.boe.es/diario_boe/txt.php?id=BOE-A- 2017- 1289

2016

Murcia:

- Ley 10/2016, de 7 de junio, que reforma la Ley 6/2015 de 24 de marzo, de la Vivienda de la región de Murcia y la Ley 4/1996, de 14 de junio, del Estatuto de los Consumidores y Usuarios de la Región de Murcia. Proceedings 1302-2017 admitted by Constitutional Court of Appeal
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2017-10491

Extremadura:

- Ley 7/2016, de 21 de julio, de medidas extraordinarias contra la exclusión social. Recurso 2002-2017 admitido por Tribunal Constitucional.
https://www.boe.es/diario_boe/txt.php?id=BOE-A- 2017-5308

Catalonia:

- Ley 4/2016, de 23 de diciembre de medidas de protección del derecho a la vivienda de las personas en riesgo de exclusión social. Recurso 4752-2017 admitido por Tribunal Constitucional. <https://www.boe.es/buscar/doc.php?id=BOE-A-2017/10/26>

Even being outside the period evaluated in this report, we wanted to note the tendency to automatically taking legal action against any autonomic regulation in reference to the issues discussed above, even after a few months of its territorial enactment:

2017.

Valencia:

- Ley 2/2017, de 3 de febrero, de la Generalitat, por la función social de la vivienda en la Comunitat Valenciana. Approved to institute proceedings against unconstitutionality before the Constitutional Court in the Council of Ministers of 3 November 2017.
<http://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2017/refc20171103.aspx>

WITH REGARD TO EDUCATION:

1. Segregation by sex:

In terms of school segregation by sex, different regional governments have been fighting for years in judicial disputes trying to eliminate the special economic agreement with schools that separate students by sex, as this is a discriminatory practice, contrary to gender equality.

Andalusia has been trying it since 1999, Castilla La Mancha did in 2004, in 2008 Baleares and Cantabria and Galicia in 2009. A first ruling of the Supreme Court in May 2008 stated legal prohibition in Castilla La Mancha. Subsequently, the organic law 2/2006 of 3 May, on Education (LOE) incorporated the prohibition of discrimination by gender in admission to schools and established preference for the financing of joint centres, which gave legal backing to the withdrawal of the economic agreement to segregated facilities in Andalusia and Cantabria (judgments of the Supreme Court of 23 and July 24, 2012).

After 2011 the current Government incorporated the shield of public funding to these centres, first through the laws of the State budget from 2013 (law 17/2012) and 2014 (law 22/2013), and then in the articles of the law 8 / 2013, 9 of December, for the improvement of the quality of education (LOMCE) that modifies the LOE 2006. On this legal basis, first the Constitutional Court, declaring legal measure in the PGE in 2013, and then the Supreme Court (ruling 1957 / 2017 4-may-2017), have forced Andalusia to restore funding to segregated education by sex.

This precept of the LOMCE, along with others, is appealed to the Constitutional Court by the Group Parliamentary Socialist Congress (Appeal No. 1406 - 2014), the Government of Andalusia (Appeal No. 1455-2014) and the Government of the Canary Islands (Appeal No. 1435 - 2014).

2. Scholarships

The Basque country has transferred competencies on scholarships since 1996. For the first time, the State Government has presented proceedings against to the administrative courts against the calls for the Basque Government of University and non-university courses scholarships 2014-2015 and 2015-2016, based on which their coverage and higher amounts violate the homogeneity of the system. The courts resolved in favour of the State proceedings for college scholarships from 2014 / 2015. The Basque Government has decided to take them to the Supreme Court by appeal.

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CEAR, Comisión Española de Ayuda al Refugiado.

CERMI, Comité Español de Representantes de Personas con Discapacidad.

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Fundación Secretariado Gitano

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IDHC, Institut de Drets Humans de Catalunya

Observatori DESC

International Observatory of the human rights to peace

Provivienda

Red Acoge

Spanish network against trafficking in persons.

Save the Children

Women's Link Worldwide.

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48. **Fundación Bayt Al-Thaqafa**
49. **Proyecto Cultura y Solidaridad**
50. **Colegio Oficial Diplomados en Trabajo Social y Asistentes Sociales Asturias**
51. **Crece Con Futuro**
52. **Entreculturas**
53. **AOCD, Asociación Olontense contra la Droga**
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60. **Fundación Canaria Yrichen**
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