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POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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The impact of the crisis on fundamental rights across Member States of the EU

Country Report on Spain

STUDY FOR THE LIBE COMMITTEE





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

**The impact of the crisis on fundamental
rights across Member States of the EU**
Country Report on Spain

STUDY

Abstract

Upon request by the LIBE Committee, this study looks into the impact of the economic crisis and the austerity measures which were introduced as a response thereto, to the enjoyment of a set of selected fundamental rights by individuals in Spain. It also contains recommendations on how to make sure that the enjoyment of these rights is ensured in the future.

**DOCUMENT REQUESTED BY THE
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

AUTHORS

Júlia Lladós Vila
Teresa Freixes

Under the supervision of Milieu Ltd. (Belgium), 112 Chaussée de Charleroi, B-1060, Brussels, Tel: +32 2 514 3601; Fax +32 2 514 3603; Project Director: Dr. Emma Psaila, e-mail: emma.psaila@milieu.be, Project Manager: Aleksandra Ivankovic Tamamovic, e-mail: aleksandra.ivankovic@milieu.be; web address: <http://www.milieu.be/>

RESPONSIBLE ADMINISTRATORS

Roberta Panizza
Sarah Sy
Policy Department C: Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

- CGPJ** General Council of the Judiciary
- CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
- CRC** Convention on the Rights of the Child
- CRPD** Convention on the Rights of Persons with Disabilities
- CPI** Consumer Price Index
- CRC** UN Committee on the Rights of the Child
- EC** European Commission
- ECHR** European Convention on Human Rights
- ECSR** European Committee of Social Rights
- EFSF** European Financial Stability Facility
- ESC** European Social Charter
- EU** European Union
- GDP** Gross Domestic Product
- ICCPR** International Covenant on Civil and Political Rights
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- ILO** International Labour Organisation
- IPREM** Public Income Indicator of Multiple Effects (Indicador Público de Renta de Efectos Múltiples)
- MECD** Ministry of Education, Culture and Sport
- MoU** Memorandum of Understanding
- NHS** National Healthcare System
- OHCHR** Office of the High Commissioner for Human Rights

- OJEU** Official Journal of the European Union
- PES** Public Employment Service
- PIT** Personal Income Tax
- PPS** Post-Programme Surveillance
- RESC** Revised European Social Charter
- SMEs** Small and Medium Enterprises
- UDHR** Universal Declaration of Human Rights
- WHO** World Health Organisation

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EXECUTIVE SUMMARY

The Spanish economic crisis was caused by high financial exposure to the property sector, resulting in its GDP falling by 0.9% in 2008 and trending negatively since 2009. In response, in 2012, the Spanish Government requested financial assistance from the EFSF for the recapitalisation of its financial institutions. The Eurogroup approved this support and established an 18-month programme by means of an MoU that aimed for Spain to adopt reforms in several fields, including the financial sector and labour market.

Concerns have been raised regarding some of the austerity measures adopted by the Government, as cuts in social, health and educational budgets have led to a worrying increase in family poverty, negatively impacting the realisation of fundamental rights, including the right to education, to healthcare and to housing, amongst others. In this sense, the objective of the present study is to analyse how austerity measures have impacted the realisation of fundamental rights in Spain.

With regard to the **right to education**, Spain adopted several measures aimed at achieving savings and spending efficiency objectives from the beginning of the crisis: e.g. a reduction of teachers' salaries, an increase of teachers' working hours, an increase of the student-to-teacher ratio, and a general cutback on the budget for education – which supposed a decrease of the budget for scholarships and study grants. The adopted reforms could lead to a decline in the equality of the education system, as well as in its quality. This is a major concern, as it could negatively affect the economic and social development of the country in the long term.

As regards the **right to healthcare**, since the beginning of the crisis, health expenditure growth declined, and even became negative, in real terms, in 2010 and 2011. This reduction has been mainly due to a reduction in pharmaceutical expenditure. Nonetheless, it also affected healthcare resources, i.e. reductions in the number of doctors and nurses and their wages, a decrease in the number of hospital beds, and a rise in co-payments for medical prescriptions, to name but a few. Austerity measures also introduced the limitation of the status of the insured person – no longer providing coverage for undocumented migrants. Therefore, chapter 3 refers to the serious risks resulting from having population groups, especially those with lower incomes and at risk of exclusion, that give up certain care services due to the reduction in the supply of publicly-funded services. Moreover, it sheds a light on the concerning variation in rates of healthcare activity across the country, which makes healthcare services variable and dependent upon the Community, which raises questions about the efficiency and the equality of this service.

Concerning the **right to work**, the Spanish labour market was severely hit by the crisis. The employment responsiveness to GDP decline was much larger in Spain than in most OECD countries: since 2008, the number of unemployed has increased by more than 4 million persons in Spain, especially affecting youth and low-skilled workers. In 2011, during the former Prime Minister Zapatero's government, some reforms were introduced, but it was not until 2012 -with the change of Government of December 2011 when the current Prime Minister Rajoy was elected-, that a broad-based labour market reform took place, in accordance with the MoU recommendations (especially focused on the need to address the Spanish labour market). Measures were set up in order to promote employment shedding and hours and wage reductions (that is, greater flexibility for firms), which was expected to put the Spanish economy back on a path of economic growth. However, it also reduced

dismissal costs and had a painful impact on workers and their families, in particular the low-paid workers who face the greatest risk of economic hardship.

With regard to the **right to pensions**, over the last ten years, contributory pensions to the Spanish Social Security System have increased by more than one million while, at the same time, the worker-to-pensioner ratio is expected to fall due to the gradual ageing of the population, coupled with the recession that affects the labour market in Spain. Accordingly, the Government initiated a pension reform, aimed at guaranteeing the system's sustainability. The final measures undertaken, which came into force in 2014, supposed a systematic change in the pension calculation as well as in the requirements for early and partial retirement pensions. Despite the recent adoption of the measures, it seems obvious that the new measures might deliver a fairer allocation of risks across generations and give place to public savings. Yet, a reduction of the pension amount has already been observed, affecting the pensioners' purchasing power.

With regard to the **right to access to justice**, Act 10/2012 was approved in the context of the crisis, extending court fees to natural persons and in every jurisdiction (civil, administrative and labour law) except the criminal one. The high amount of fees led to complaints before the Spanish Ombudsperson and was also denounced by the Spanish Council of Advocacy, on the grounds that this severely limits the fundamental right to access to justice. Despite the Government reviewing the norm on the recommendation of the Spanish Ombudsperson, amendments were regarded as insufficient – and several complaints and submissions of unconstitutionality were filed before the Constitutional Court in 2013 by several Governments of Autonomous Communities and Courts.

Concerning the **right to assembly**, there was a wave of demonstrations in Spain, mostly as a means of protest against austerity measures and the sharply repressive response by the Government and the security forces of the State. Furthermore, the Spanish Government presented a legislative proposal to extend the scope of punishment against those who organise demonstrations and participate therein. This study exposes how this first draft of the Organic Act on the Protection of Citizens' Safety, dubbed by the media as the "Gag Act", received a firm objection from several judiciary bodies, on the grounds of unconstitutionality. In response to this, the Government modified the draft proposal, which was recently approved by the Council of Ministries, and is awaiting approval by the Senate.

The **right to housing and foreclosure** is a particular concern in Spain, as 415,117 foreclosure proceedings were initiated between 2008 and 2012 due to the inability of households to afford mortgages. Yet, many of the proceedings advanced due to the unfair terms included in mortgage contracts, in favour of banks. The process that gave place to the amendment of Spanish legislation governing the particularities of mortgaged assets by judgment of the CJEU in 2013 (Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunya Caixa), Case C-415/11) was contrary to Council Directive 93/13/EEC, of 5 April 1993, on unfair terms in consumer contracts. Moreover, Spanish legislation does not consider the mortgage obligation to be dismissed after auctioning occurs, so the debtor has to continue paying for the remaining balance and personal loans, for which the Spanish Ombudsperson has repeatedly raised the need to regulate personal insolvency, and to develop the legal concept of the debtor acting in good faith, in order to address this situation.

Finally, the compliance of the aforementioned measures with fundamental rights is analysed in Chapter 9, presenting a list of case law both at the national and the supranational level. In this sense, national case laws regarding fundamental rights in Spain

show that the austerity measures taken in several of the fields analysed in the present study are found unconstitutional. This is especially notorious in cases of collective dismissals. The judiciary also raised several exceptions of unconstitutionality with regard to court fees. In supranational terms, the CJEU also issued judgments with regard the right to unfair terms included in mortgage contracts, which determined many cases of evictions until its action. Finally, the conclusions by the ECSR are presented, which show Spain's failure of compliance with the European Social Charter in some areas, especially in terms of employment.

Recommendations

Right to education

As stressed by Commissioner Nils Muižnieks, there is an imperative need to ensure that cuts inflicted on education budgets do not impede equality of opportunities and inclusive education of children. Moreover, several international bodies have called on Spain to strengthen the system of family benefits and child allowances so as to provide better support to households with children and better protection against poverty. In particular, subsidies for school meals and books must also be seen as a necessary income supplement for impoverished families to combat child poverty. Additionally, action should be taken in line with the 2013 Commission Recommendation *Investing in children: breaking the cycle of disadvantage*, to reach deprived children through educational institutions.

Right to healthcare

Multiple international bodies have recommended that Spain review the austerity measures adopted in recent years, in order to restore its former system of universal free access to healthcare. International bodies criticised in particular the very restricted access to healthcare of non-Spanish citizens. There is also a need to ensure that healthcare services and measures are harmonised throughout the country.

Right to work

A first step to consolidate job recovery should be aimed at enhancing the reactivation of the credit market, especially for SMEs. Furthermore, the ILO recommends easing the administrative and tax burdens to start up a firm, and to set training programmes aimed at enabling entrepreneurs to acquire the managerial skills necessary to run a business; promoting investment in new technology and supporting economic diversification; setting a coherent pack of measures to ensure jobseekers remain in the labour market, for example by designing active labour market policies or improving the targeting of hiring subsidies (based on skills or duration of unemployment); improving the protection of temporary workers and making the dismissal system more predictable to both employers and workers; improving coverage of workers through quality sectorial agreements and coordination guidelines; increasing wages in accordance with productivity gains.

It is also worth mentioning the recommendation set by the Commissioner for Employment, Social Affairs and Inclusion of the European Commission, László Andor, who called for the establishment of a "single open contract" as a measure to prevent unemployment, especially amongst the youth, and to address labour market segmentation.

Right to pension

Taking into account that in Spain, 72% of older people's income comes from public transfers (a value much higher than that of the OECD average, of 59%), it is recommended to monitor the effect of the recent reform on the pensions system in order to foresee and

prevent any possible negative impact it can have in terms of reducing older people's purchasing power and consumption, with special attention to low-income workers.

Right of access to justice

A new revision of Act 10/2012 is expected, for which it is suggested to include the Ombudsperson's recommendations in the new document, as well as from the Spanish Council of Advocacy, the Spanish Tax Agency and the General Council of the Judiciary, which would ensure the Act's compliance with the fundamental right to effective judicial protection for everyone. Especially, the Ombudsman's recommendations that are still pending should be taken into account, including: to significantly reduce the fees for the first instance in the civil and administrative jurisdiction; the removal of fees established in the first instance in the administrative jurisdiction when sanctioning procedures are prosecuted; the exemption of fees in foreclosure cases (for detailed recommendations, see chapter 10).

Right to assembly

It is recommended that the final Organic Act on the Protection of Citizens' Safety reaches certain consensus in the Parliament, to ensure the measure's political stability.

Right to housing

The right to housing was thoroughly analysed by the Spanish Ombudsperson, who has highlighted the need to pass the regulation of personal insolvency proceedings in which the debtor can meet, in good faith, his/her financial obligations in an orderly and realistic way and receive a deduction on their debts.

As a final remark, it can be stated that austerity measures have led to a growing social divide in Spain. In this sense, Spanish socioeconomic strategy should integrate the principle of equality as the assessment criteria to set measures, in order to effectively combat social injustice.

1. THE IMPACT OF THE ECONOMIC CRISIS AND OVERVIEW OF THE MAIN MEASURES ADOPTED TO COPE WITH IT

KEY FINDINGS

- The Spanish economic crisis was caused by a high financial exposure to the property sector, resulting in its GDP falling by 0.9% in 2008 and trending negatively since 2009.
- In response, in 2012, the Spanish Government requested financial assistance from the EFSF for the recapitalisation of its financial institutions. The Eurogroup approved this support and established an 18-month programme for Spain to adopt reforms in several fields, including the financial sector and labour market.
- Concerns have been raised regarding some of the austerity measures adopted by the Government, as cuts in social, health and educational budgets have led to a worrying increase in family poverty, negatively impacting the realisation of fundamental rights.

1.1. The impact of the crisis in Spain

In 2008, the first signs of the economic and financial crisis started to emerge because of high financial exposure to the property sector. Compared to 2007, Spain's Gross Domestic Product (GDP) had only increased by about 1.1% (compared to an annual increase of between 3.2% and 4.2% in the previous years since 2003) and has continued in this negative trend, showing negative or zero annual growth since 2009¹.

The employment rate fell by 9.7% throughout the period 2008-2013², and the harmonised unemployment rate reached 26.7% in October 2013 – the second highest in the OECD area (after Greece) and more than three times the OECD average at that time (7.9%)³. That is, since the start of the crisis, the number of unemployed in Spain increased by more than 4 million persons until 2013, and despite a decrease noted in 2014 (the rate fell to 24.5% in Q2 2014) there are still 3.6 million more unemployed than before the crisis. Long-term unemployment (defined as those unemployed for 12 months or more), as a share of all unemployed, increased from 19.1% (Q4 2007) to 52.3% (Q1 2014). This indicator is of concern, as the individuals affected by long-term unemployment, especially low-skilled workers, risk becoming structurally unemployed⁴. Also, youth unemployment (people aged 15 to 25) presents alarming values, i.e. more than 50% of young people are currently unemployed⁵ (this share reached 52.1% in May 2011 from 19.7% in December 2007 – that is, it was less than one in five before 2008⁶) – putting their long-term career prospects at stake.

¹GDP and main components – volumes (nama_gdp_k)', Eurostat website, last update 8.12.2014, available at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_gdp_k&lang=en.

²Employment (main characteristics and rates) - annual averages (lfsi_emp_a). INDIC_EM: Employment rate (15 to 64 years). Sex: Total', Eurostat website, 2014.

³OECD, 'The 2012 labour market reform in Spain: A preliminary assessment. Executive summary', 2013, available at www.oecd.org/els/emp/SpainLabourMarketReform-Report.pdf.

⁴OECD, 'How does Spain compare? September 2014. OECD Employment Outlook 2014', 2014, available at www.oecd.org/spain/EMO-ESP-EN.pdf.

⁵ibid.

⁶OECD, 'How does Spain compare? OECD Employment Outlook 2012', 2012, available at www.oecd.org/spain/Spain_final_EN.pdf.

Table 1 below illustrates the evolution of the main indicators with regard to the Spanish labour market since the beginning of the crisis:

Table 1: Spain's economy at a glance, 2008-14

	2008	2009	2010	2011	2012	2013	2014
GDP growth rate⁷	1.1 ^P %	-3.6 ^P %	-0.0 ^P %	-0.6 ^P %	-2.1 ^P %	-1.2%	na
Unemployment⁸	11.3%	17.9%	19.9%	21.4%	24.8%	26.1%	24.5%
Long-term unemployment⁹	2%	4.3%	7.3%	8.9%	11%	13%	na
Inflation¹⁰	4.1%	-0.2%	2%	3.1%	2.4%	1.5%	-0.2%

(^P: provisional)

Source: Eurostat, 2014

The employment responsiveness to GDP decline was much larger in Spain than in most OECD countries, which reflects, as mentioned above, the fact that Spain suffered strong reversals in the housing sector. Yet, according to the OECD's evaluations, the Spanish Government was slow to propose corrective measures in order to adjust the average hours per worker and the wage component of unit labour costs in the business sector.

OECD projections for 2014 foresaw an unemployment rate of 25.3% in 2014 and 23.9% in 2015¹¹ (which were higher than what Eurostat values show in Table 1). In terms of GDP growth, it is expected to switch to positive values: 2014 is expected to end with an average growth rate of 1.04%, and it is expected to rise up to 1.49% in 2015¹². Yet the recovery remains both incomplete and fragile. Today, the Spanish economy is smaller in size than in 2007, and the average income of Spanish people is 8 per cent lower than in 2007.¹³ In early 2014, there were more than 1.8 million jobless households in Spain – one million of which had no income support¹⁴.

Following his visit to Spain in June 2013, Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, reported that cuts in social, health and educational budgets have led to a worrying increase in family poverty¹⁵. Even more worrisome, is that children have been disproportionately affected by the austerity measures, and shrinking family benefits have

⁷Real GDP growth rate – volume. Percentage change on previous year (tec00115). Eurostat website, 2014, available at: <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00115&language=en>

⁸Unemployment rate by sex, % Total (tsdec450), Eurostat website, 2014, available at: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdec450&plugin=1>

⁹Long-term unemployment rate by sex, % Total (tsdsc330), Eurostat website, 2014, available at: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tsdsc330&language=en>

¹⁰HICP - inflation rate - Annual average rate of change (%) (tec00118), Eurostat website, 2014, available at: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tec00118&language=en>

¹¹Yárnoz, C., 'The OECD warns on Spanish household's hardships due to the drop in salaries' (*La OCDE alerta de las penurias en los hogares de España por la bajada salarial*), *El País*, online edition, 02.09.2014, available at http://economia.elpais.com/economia/2014/09/02/actualidad/1409682439_497201.html.

¹²Data obtained from OECD, 'Economic Outlook No 95 - May 2014 - OECD Annual Projections', 2014, available at <http://stats.oecd.org/Index.aspx?QueryId=51663>. Please note that the last historical points are from 30 April 2014. Data after this date are OECD forecasts.

¹³ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p. 1.

¹⁴Ibid, at p.2.

¹⁵Today, around 700,000 families in Spain have no regular income, and one in every five people in the country live at the risk of poverty. For more information, see the campaign "1 of every five" from the NGO *Ayuda en Acción*, available at <https://1decada5.ayudaenaccion.org/#vivir-con-600-euros>.

led some children to experience destitution and nutrition problems. Growing child poverty could, therefore, have a devastating long-term impact on children and the country¹⁶.

In this sense, the scale of austerity in a time of recession could have the effect of impeding economic growth, as was pointed out by the European Commission quarterly report on EU employment and the social situation in June 2012¹⁷ and by a recent report by the Office of the United Nations High Commissioner for Human Rights, who stated that "austerity measures raise important concerns regarding the protection of economic, social and cultural rights, including with regard to the principles of non-retrogression, progressive realisation, non-discrimination and minimum core obligations", concluding that "in addition to negatively impacting the realisation of fundamental human rights, austerity measures have also failed to contribute to economic recovery"¹⁸.

1.2. Overview of relevant measures

Since the outbreak of the crisis, Spain has taken a considerable number of measures related to the crisis. These were especially notable after Spain requested financial assistance from the European Financial Stability Facility (the 'EFSF') for the recapitalisation of its financial institutions on 25 June, 2012. The Eurogroup approved this support in July 2012 and established an 18-month programme outlined in the Memorandum of Understanding on Financial Sector Policy Conditionality (the 'MoU') of 20 July, 2012¹⁹. The programme provided Spain with external financing, by the euro area Member States, of up to EUR 100 billion, linked to several reforms aimed at the Spanish financial sector, and its economic policy. For instance, regarding structural reforms, the MoU included recommendations inviting Spain to modify the taxation system (such as a VAT rise, and the elimination of the deduction in PIT for primary home purchases), and to implement reforms on the labour market. These measures, promptly adopted by the Government, undoubtedly had an impact on the fundamental rights analysed in the present study.

The programme included an implementation schedule and the revision of Spain's compliance with the measures agreed by the EC and Spain through the MoU, for which five review reports were published between 2012 and 2014, based on the findings of the European Commission and the European Central Bank periodic missions to Madrid, and including new recommendations. In parallel, the programme's outset also included IMF monitoring via quarterly reports (although the IMF was not a party to the MoU, nor responsible for the implementation or conditionality thereof). From these revision reports, the second one – based on the EC/ECB mission between 28 January and 1 February 2013, is of particular interest, as it points out the need to reform the Social Security System, and exposes that "plans to introduce a sustainability factor in the pension system and to increase the effective retirement age would be an important step in this direction, but still

¹⁶Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

¹⁷EFE, 'EC alerts Spain that austerity could hinder economic growth' (*La CE alerta a España de que la austeridad "puede dificultar el crecimiento"*), El País, online edition, 27.06.2012, available at http://economia.elpais.com/economia/2012/06/27/agencias/1340806037_708942.html.

¹⁸OHCHR, 'Report of the United Nations High Commissioner for Human Rights: Austerity measures and economic, social and cultural rights', 2013, available at www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf, at p.8.

¹⁹EC, 'Memorandum of Understanding on Financial Sector Policy Conditionality between the European Commission and Spain', July 2012 available at http://ec.europa.eu/economy_finance/eu_borrower/mou/spain-mou_en.pdf.

need to be adopted". As it was further exposed, the pension system was modified accordingly²⁰.

The programme concluded, as scheduled, on 22 January 2014²¹, and both the Eurogroup and the IMF confirmed that Spain had fulfilled all of the conditions established by the EU in return for its aid, and that bank liquidity and the solvency of financial institutions had improved²². Moreover, the Spanish economy has started to recover from the crisis, showing a rebound at the end of 2013 – which is expected to be followed by a growth of around 1.5% in 2014. Economic recovery has been accompanied by employment gains: over 200,000 new jobs were created during the first half of 2014. Yet, this partial recovery is fragile, and the economic, employment and social repercussions from the crisis remain significant.²³ The measures adopted in the financial sector also supposed a cut to access to credit for Spanish enterprises, which complicated the sustainability of the labour market. As the tight bank credit conditions still prevail, it represents a major obstacle to the expansion of regular economic activity in Spain²⁴.

Table 2 below offers an overview of the most notable measures that are still in force in Spain, and are argued to have been aimed at coping with the crisis and which may have an impact on the fundamental rights and liberties covered by the present study.

²⁰All documents regarding the Financial Assistance Programme for the Recapitalisation of Financial Institutions in Spain are available at the following website of the European Commission:

http://ec.europa.eu/economy_finance/assistance_eu_ms/spain/index_en.htm. Moreover, the Bank of Spain (*Banco de España*) offers all documents regarding this process, including the IMF reports (in English), in chronological order: www.bde.es/bde/es/secciones/prensa/infointeres/reestructuracion/progreso/.

²¹This was followed by a biannual post-programme surveillance (PPS) that aims at a monitoring of Spain's repayment capacity after having received financial assistance.

²²Spain overcomes the last exam of the Troika requiring to culminate the reforms' (*España pasa el último examen de la Troika, que pide culminar las reformas*) ABC online, 2013, available at www.abc.es/economia/20131216/abci-troika-informe-banca-201312161611.html.

²³ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p.1.

²⁴ibid, at p.3.

Table 2: Main measures adopted by the Spanish Government during the crisis period (2008-2014)²⁵

Budget	
2009	<p>* State General Budget for 2010: decrease of public expenditure to an equivalent of 0.8% of GDP aimed to reduce public deficit to 3% of GDP by 2013.</p> <p>* Stability and Growth Programme 2009-2013: it sets an <i>Immediate Action Plan 2010</i> (with which the Government saved €5,000 million on that year) and a <i>feuille de route</i> for Public Administrations to reduce public deficit as follows: 11.2% in 2009; 9.8% in 2010; 7.5% in 2011; 5.3% in 2012; and 3% in 2013.</p>
2010	<p>* State General Budget for 2011: foresees a deficit of 5.9% in 2010, and sets its reduction down to 2.3% in 2011.</p>
2011	<p>* Stability and Growth Programme 2011-2014: it sets a new <i>feuille de route</i> for Public Administrations to reduce public deficit. The new plan established a reduction of 9.3% in 2010; 6% in 2011; 4.4% in 2012; and 3% in 2013 (according to the Recommendation of the Council of Europe on Excessive Deficit, of 30 November 2009,²⁶ which determines 2013 as the deadline to achieve a deficit level below 3% GDP).</p> <p>* Royal Decree-Law 20/2011, on urgent budgetary, tax, financial measures to correct the public deficit: cutback of €15,000 million through the freeze of public wages, a tax increase and a reduction of Public Administration bodies by 20%.</p>
2012	<p>* State General Budget for 2012: aims at a budgetary stability set at 5.3% of GDP, and established a cutback of €27,300 million for 2012 (that is, the equivalent to 2.5% GDP). This means a decrease of Ministries' budgets of 17%;</p> <p>* Organic Act 2/2012, on Budget Stability and Financial Sustainability: for the control of public administrations' expenditure, it sets a limit for their debt.</p> <p>* Stability and Growth Programme 2012-2015: it sets a deficit reduction plan for fiscal consolidation, to achieve a deficit of 5.3% of GDP in 2012, 3% in 2013, and 1.1% in 2015.</p> <p>* National Reforms Plan for 2012: on measures in fiscal consolidation and restoration of competitiveness.</p> <p>* Update of the Stability and Growth Programme 2012-2015: it adapts the deficit reduction plan to the ECOFIN recommendation of 10 July 2012 in which Spain is conceded an extra year to reach a deficit level under 3% GDP. It sets a new <i>feuille de route</i>, as follows: 6.3% in 2012, 4.5% in 2013 and 2.8% in 2014.</p> <p>* Royal Decree-Law (RDL) 12/2012: introduces several tax and administrative measures in order to reduce public deficit by, inter alia, the rise of Personal Income Tax.</p> <p>* RDL 20/2012, on measures to ensure budgetary stability and promotion of competitiveness: adjustment of €65,000 million during 2012-2014, effecting elimination of 2012 Christmas extra payment, suppression of free disposal days, rise of taxes (VAT from 18 to 21%), it sets a Non-Availability</p>

²⁵ Many of the measures mentioned in Table 2 can be found in the Government's website, available at www.lamoncloa.gob.es/serviciosdeprensa/documentacion/Paginas/index.aspx. Moreover, the main measures are further exposed in the chapters of the present study.

²⁶ Council of the European Union, 'Council Recommendation to Spain with a view to bringing an end to the situation of an excessive government deficit', 30.11.2009, available at www.consilium.europa.eu/media/2374/recommendation.pdf.

	<p>Agreement of €600 million (under the 2012 General Budget).</p> <ul style="list-style-type: none"> * RDL 21/2012, on measures to reform public administration and the financial system: with it, the Government creates a regional liquidity fund to be accessed voluntarily by Autonomous Communities in order to ensure their financial sustainability. * Biennial Budget Plan 2013-2014: to adjust Budget to the new <i>feuille de route</i>. * State General Budget for 2013: the objective of public debt is set at 66 percent of GDP in 2013 for the Central Administration. * National Reforms Plan for 2013: it sets 43 measures to be adopted during the first six-month period of 2013, regarding pensions, labour market, public sector workers, etc.
2013	<ul style="list-style-type: none"> * State General Budget for 2014: the deficit target for the whole of government is established at 5.8% GDP. * Act 19/2013, on Transparency, Access to Public Information and Good Government: it reinforces accountability measures of public managers during the exercise of their functions, establishing sanctions. * National Reforms Plan for 2014: it includes new measures with regard to pensions, labour market, public sector workers, etc. * Update of the Stability and Growth Programme 2013-2016: It sets a new fiscal deficit <i>feuille de route</i>, as follows: -5.7% of GDP in 2013, -5.0% in 2014, -3.4% in 2015, and -2.0% in 2016.
2014	<ul style="list-style-type: none"> * State General Budget for 2015 maintains freeze of public salaries. * National Stability Programme 2014: on measures to boost employment and consolidate economic recovery. * RDL 17/2014: on economic measures and for the financial sustainability of Autonomous Communities and local authorities.
Economy	
2011	<ul style="list-style-type: none"> * Act 38/2011, on bankruptcy: regulates personal insolvency.
2012	<ul style="list-style-type: none"> * RDL 2/2012: restoring health to the financial sector. * RDL 6/2012, on urgent measures to protect insolvent mortgage debtors: aimed at restructuring mortgage debts for those facing extraordinary difficulties in meeting payments, and at making foreclosure proceedings more flexible. * RDL 18/2012: on the consolidation and sale of estate assets of the financial sector. * RDL 24/2012: on the restructuring and resolution of credit institutions. * RDL 27/2012, on urgent measures to strengthen protection for mortgage debtors: establishes a two-year foreclosure suspension on main residences for those cases relating to particularly vulnerable groups.
2013	<ul style="list-style-type: none"> * Act 1/2013, on measures to strengthen protection for mortgage debtors, and to restructure debt and public rental: it modifies and partially covers the provisions of RDL 27/2012, and provides measures for the partial cancellation of foreclosure debt. * RDL 14/2013: on urgent measures to adapt Spanish law to the EU regulations on supervision and solvency of financial institutions.
2014	<ul style="list-style-type: none"> * Plan on measures for growth, competitiveness and efficiency: it proposes measures to promote the competitiveness and efficient functioning of markets; to facilitate access to finance; and to promote employability. * RDL 8/2014, on urgent measures for growth, competitiveness and efficiency: aimed at fiscal consolidation and at adopting structural reforms to

	<p>boost the flexibility of markets and restore competitiveness, following the aforementioned Plan.</p> <ul style="list-style-type: none"> * Act 18/2014, on urgent measures for growth, competitiveness and efficiency. * RDL 11/2014, on urgent measures in bankruptcy matters: it grants legal remedy to debtors in foreclosure proceedings.
Education	
2010	<ul style="list-style-type: none"> * RDL 8/2010: average 5% reduction on all public workers' salaries (including teachers). * Action Plan 2011-2012 to meet education goals for decade 2010 to 2020.
2011	<ul style="list-style-type: none"> * RDL 20/2011: freeze of public wages and teacher's replacement rate of 10%.
2012	<ul style="list-style-type: none"> * RDL 14/2012: increase student-to-teacher ratio by up to 20% of the maximum allowed by Organic Law on Education; increase of teaching time/week by 25 hours in primary education and by 20 hours in secondary compulsory education. Adoption of a de facto non-replacement principle for substitutions.
2013	<ul style="list-style-type: none"> * Adoption of Organic Act 8/2013: for the improvement of the quality of education.
Employment	
2010	<ul style="list-style-type: none"> * RDL 10/2010 and Act 35/2010: measures to reduce the cost of dismissals and speed up recruitment.
2011	<ul style="list-style-type: none"> * RDL 1/2011: introduces a temporary programme (six months) of professional qualification for people having exhausted all of their unemployment benefits. * RDL 7/2011: modifies the terms for collective bargaining, giving priority to enterprise agreements before sectorial agreements. * RDL 10/2011: extends the RDL 1/2011 programme for another six months. * RDL 20/2011: new extension of the RDL 1/2011 programme (six more months).
2012	<ul style="list-style-type: none"> * RDL 3/2012 and Act 3/2012 on urgent measures to reform the labour market: measures to speed-up the dismissals and new recruitments. * RDL 23/2012: third extension of the RDL 1/2011 programme, also modifying the conditions by increasing the requirements for potential beneficiaries.
2013	<ul style="list-style-type: none"> * Act 11/2013: for the promotion of self-employment among young people. * Act 14/2013: to support entrepreneurs and their internationalisation. * RDL 4/2013: on measures to support entrepreneurs and stimulate growth and job creation. * RDL 5/2013: on measures to encourage continuity of working life of older workers and promote active ageing. * RDL 16/2013: on measures to promote stable employment and improve the employability of workers.
2014	<ul style="list-style-type: none"> * RDL 3/2014: on urgent measures to promote employment and permanent contracts. * Act 1/2014: for the protection of part-time workers and other emergency measures in the economic and social order.

Health	
2010	<ul style="list-style-type: none"> * RDL 8/2010: 5% reduction on wages in the public sector, freeze of salaries during 2011. * RDL 4/2010: sets a price reduction for generic medicines at a retail price of over €3.12. * RDL 8/2010: measures such as a general rebate of 7.5% applicable for all medicines prescribed by NHS physicians, in order to save €1,300 million.
2011	<ul style="list-style-type: none"> * RDL 9/2011: reduces public expenditure on the NHS. * RDL 20/2011: extends the freeze on public salaries, limits public employment offer to 10% replacement rate, and increase working hours/week up to 37.5 hours.
2012	<ul style="list-style-type: none"> * RDL 16/2012: new measure package aimed at the sustainability of the NHS in order to save €7,000 million (e.g. it limits the notion of insured person for the purposes of use of medical services, leaving irregular immigrants out, and establishes co-payments).
2014	<ul style="list-style-type: none"> * RDL 81/2014: it establishes rules for ensuring cross-border healthcare, pursuant to Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare.
Justice	
2012	<ul style="list-style-type: none"> * Act 10/2012: extends court fees to natural persons and to other jurisdictions, and makes them more expensive.
2013	<ul style="list-style-type: none"> * RDL 3/2013: reductions on the court fees amounts previously established by Act 10/2010.
Social	
2011	<ul style="list-style-type: none"> * Act 27/2011 reforming the Social Security System: it modifies conditions of the pension beneficiaries (for instance, it increases the retirement age to 67).
2012	<ul style="list-style-type: none"> * Plan to fight irregular employment and social security fraud 2012-2013: it includes two legislative modifications: draft Act to combat illegal employment and social security fraud, and the draft Organic Act amending the Penal Code with regards to tax fraud and fraud against social security (to increase penalties against incriminating behaviours). * Draft Act on measures for advancing measures for preventing and combating tax fraud. * RDL 20/2012 on measures to ensure budgetary stability and promotion of competitiveness: cutback of €283 million in assistance aids.
2013	<ul style="list-style-type: none"> * RDL 5/2013: represents a systematic change in the pension calculation as well as in the requirements for early and partial retirement pensions.

Many of the measures listed above were adopted through Royal Decree-Laws, which the Government may implement in extraordinary circumstances of necessity and urgency and which expire after 30 days unless validated and adopted as Acts of Parliament. The Spanish Constitution specifically states that no decree-law can affect the rights, duties and freedoms of the citizens contained in Part 1 of the Constitution on Fundamental Rights and Duties, amongst others, as follows:

Section 86 of the Spanish Constitution: "1. In case of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws and which may not affect the legal system of the basic State institutions, the rights, duties and freedoms of the citizens contained in Part 1, the system of Self-governing Communities, or the general electoral law. 2. Decree-laws must be immediately submitted for debate and voting by the entire Congress, which must be summoned for this purpose if not already in session, within thirty days of their promulgation. The Congress shall adopt a specific decision on their ratification or repeal in the said period, [...]. 3. During the period referred to in the foregoing subsection, the Cortes may process them as Government Acts by means of the urgency procedure."

Yet, many of the measures adopted in response to the crisis have raised doubts about their unconstitutionality that were brought before the Constitutional Court. The most recent and relevant constitutional judgments are included under section 9 together with an overview on measures' compliance at supranational level.

The following sections of the national study will focus on the rights to education, healthcare, work and pension. These rights were selected in light of the research carried out at EU and international level on the impact of the crisis on fundamental rights which showed that these rights have been most significantly affected by the austerity measures imposed across Europe. However, to make sure the national studies reflect the situation in the country, section 8 will provide a final overview of the national context reporting on other rights that might have been importantly affected in that Member State. Finally, the study provides findings on the right to manifestation and assembly as well as on the right of access to justice.

2. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO EDUCATION (COMPULSORY EDUCATION)

KEY FINDINGS

- Spain adopted several measures aimed at achieving savings and spending efficiency objectives since the beginning of the crisis, e.g. a reduction on teachers' salaries, an increase of teachers' working hours, an increase on the student-to-teacher ratio and a general cutback on the budget aimed at education (which required a decrease of the budget for scholarships and study grants).
- Austerity measures could lead to a decline in the equality of the educational system, as well as in its quality. This is major concern, as it can negatively affect the economic system and social development of the country in the long term.

2.1. International and EU legal framework for the protection of the right to education

The right to education is defined as a universal entitlement to education, and is recognised as a right that includes the right to free, compulsory primary education for all, as well as an obligation to provide for a system of secondary education which is not necessarily free, but is available and accessible to all, while the material conditions of teaching staff shall be continuously improved in accordance with the International Covenant on Economic, Social and Cultural Rights (the 'ICESCR')²⁷. In addition, the right to education encompasses the obligation to combat discrimination at all levels of the educational system and to set minimum standards and to improve quality of education. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities²⁸. Education needs to be provided under the principles of: availability, accessibility, acceptability and adaptability²⁹.

The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (the 'CEDAW'), Articles 28 and 29 of the Convention on the Rights of the Child (the 'CRC') and Article 24 of the Convention on the Rights of Persons with Disabilities (the 'CRPD'). Furthermore, it is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (the 'ECHR').

The EU Charter guarantees the right to education and access to vocational and continuing training, with the possibility to receive free compulsory education³⁰.

²⁷International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI) of 16 December 1966, 1976, article 13.

²⁸ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13 – Right to education*, UN Doc. E/C.12/1999/10 (1999), §1.

²⁹*Ibid*, §6.

³⁰ The EU Charter, Article 14.

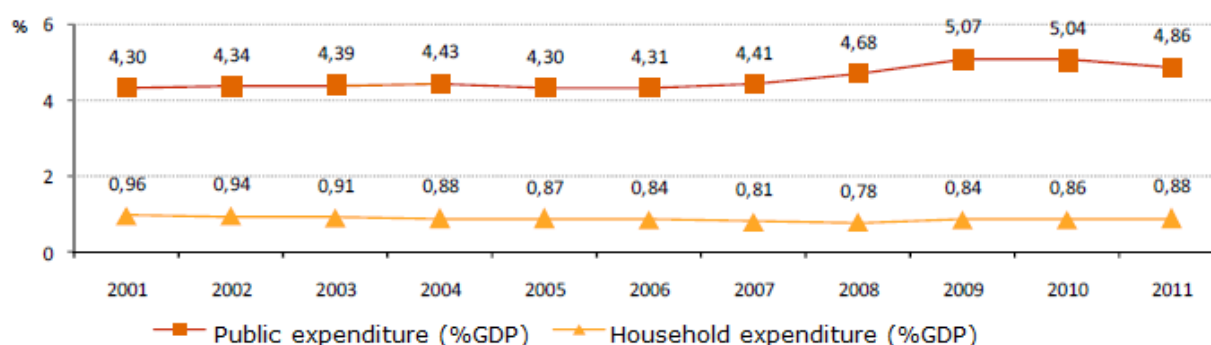
2.2. The right to education in Spain

The fundamental right to education is recognised under Section 27 of the Spanish Constitution, and aims at the full development of human personality, with respect for the democratic principles of coexistence and for basic rights and freedoms. Moreover, elementary education is specifically defined as compulsory and free-of-charge. In this regard, the central Government guarantees a general educational programme, the set-up of educational centres and the inspection and standardisation of the educational system in cooperation with Autonomous Communities, which can exercise a shared competence in this field according to Section 149 of the Spanish Constitution. The right of parents to choose their children's religious and moral instruction is also constitutionally guaranteed³¹.

Compulsory education in Spain begins at the age of six – with enrolment in primary school and lasting for six years, and ending at the age of 16, or after the completion of the lower secondary compulsory education (*Educación Secundaria Obligatoria, ESO*), which lasts for four years. In 2012, the enrolment rate for 5-14 year-olds in Spain was 98% (similar to the OECD average).

Most of Spain's public expenditure on education goes to compulsory education. In 2011, Spain spent an average of 5% of its GDP on educational institutions (the OECD average was 6.1%). Moreover, expenditure, per student, by educational institutions in compulsory education, was similar to the OECD average, i.e. about USD 7,288 for primary education (the OECD average was USD 8,296), and USD 9,615 for secondary education (the OECD average was 9,280)³². Yet, Figure 1 shows that there has been a decrease of investment in education by the State since 2010, which in turn, coincides with an increase of household expenditure on education (up to the levels of 2004).

Figure 1: Public and household expenditure on education (percentage of GDP, base 2000)



Source: MECD (2014)³³

Remarkably, public expenditure per student in public institutions was higher in Spain (USD 9,300 in 2011) than across the OECD in the same period (USD 8,800)³⁴. This fact, together

³¹Spanish Constitution [*Constitución Española*] of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

³²OECD, 'Education at a Glance 2014: Country Note: Spain', 2014, p. 13, available at www.oecd.org/edu/Spain-EAG2014-Country-Note.pdf, at p.13.

³³Ministry of Education, Culture and Sports (MECD), 'Indicator State System on Education, 2014' (*Sistema estatal de indicadores de la educación 2014*), 2014, p. 47, available at www.mecd.gob.es/dctm/inee/indicadores-educativos/seie-2014/seie2014-libro-completo-4062014-f.pdf?documentId=0901e72b8197c344, at p. 47.

with a lower overall expenditure, may be explained, at least in part, by the fact that Spain has a smaller proportion of 6-12-year-olds than those in other OECD countries. Yet it would also be linked to the salary cost of teachers per student, which is, in turn, influenced by five factors: instruction time for students; teaching time for teachers; teachers' salaries; statutory working time for teachers; estimated class size.

In 2012, the salary cost of teachers per student was USD 500 more than the OECD average in primary education, and USD 1,200 more in lower secondary education³⁵. Yet, despite students in primary schools receiving similar number of hours of education in Spain than the OECD average (787 hours versus 794 hours), the number of hours of compulsory education for lower secondary students is greater in Spain (1,061 hours) than on average across OECD countries (905 hours)³⁶. Secondly, the number of hours of teaching time per year, in 2012, was higher at 880 for primary education teachers (in comparison to 782 across the OECD), and 713 for lower secondary education (in comparison with 694 on the average in the OECD countries)³⁷.

With regard to teachers' salaries in Spain, in 2012, these were higher than the OECD average, especially for new teachers at the beginning of their careers, at all levels of education. Nevertheless, Spain presents a higher proportion of lower secondary teachers that have fix-term contracts of one year or less, i.e. 16% of the total, as opposed to the 12% average resulting from the OECD Teaching and Learning International Survey – TALIS³⁸. It needs to be noted, however, that this OECD value did not include the cutbacks imposed on teachers' salaries since 2012, including the indirect cutbacks in teacher training³⁹.

On the other hand, in 2012, the statutory working time was shorter in Spain: 1,425 hours per year in primary education (the OECD average was 1,649 hours), and 1,425 hours in lower secondary education (while it was 1,649 hours for the OECD average)⁴⁰. Again, in this case, numbers should be adapted to the measures adopted by the Government in terms of teachers' replacement – reforms have increased teaching time for teachers. Finally, in 2012, the ratio of students-to-teaching staff in primary and secondary education was lower than in the OECD countries. Nonetheless, these 2012 figures would be the latest available, for which the impact of the increase on the student-to-teacher ratio (a measure established in 2012), is still to be observed.

Finally, besides the positive tendency for some educational indicators, the school drop-out rate remains high, i.e. in 2011-2012, 23.1% of students in lower secondary education reached sixteen years of age without acquiring a qualification⁴¹, compared to 25% in 2010, and 23.5% of students who actually graduated from the secondary school did not continue

³⁴OECD, 'Education at a Glance 2014: Country Note: Spain', 2014, p. 13, available at www.oecd.org/edu/Spain-EAG2014-Country-Note.pdf, at p.9.

³⁵ *ibid*, at pp. 8-9.

³⁶ *ibid*, at p.9.

³⁷ *ibid*, at p.13.

³⁸ *ibid*, at p.8.

³⁹ UNICEF, 'Children in Spain, 2012-2013. The impact of the crisis in children' (*La infancia en España 2012-2013: El impacto de la crisis en los niños*), May 2012, pp. 7-10, available at www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf, at p. 19.

⁴⁰OECD, 'Education at a Glance 2014: Country Note: Spain', 2014, p. 13, available at www.oecd.org/edu/Spain-EAG2014-Country-Note.pdf, at p.7.

⁴¹Ministry of Education, Culture and Sports (MECD), 'Education figures in Spain, 2011-2012' (*Las cifras de la educación en España 2011-2012*), 2012, available at www.mecd.gob.es/dms/mecd/servicios-al-ciudadano-mecd/estadisticas/educacion/indicadores-publicaciones-sintesis/cifras-educacion-espana/2014/D3p.pdf.

their studies after compulsory secondary education, i.e. 28% in 2010⁴². In addition, the 2012 PISA Report highlights limited educational results in terms of capacities, and highlights the increasing impact the socio-economical context of children has on the school results of children. The difference between the most favoured and the most disadvantaged students within the same centre changed from 18 points in 2003 to 27 points in 2012 (against the 19 points of average for OECD countries, according to PISA barometer)⁴³. Therefore, equality in educational results has declined, which could be interpreted as an indirect consequence of the austerity measures, according to the report of Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain on June 2013⁴⁴.

2.3. Overview of relevant measures

Besides the general cutback on the budget aimed at education (see Figure 1), the main measures concerning compulsory education, adopted since 2008, were aimed at achieving the savings and spending efficiency objectives first set by the RDL 8/2010, on 20 May 2010.⁴⁵ Thus, this regulation established an average 5% reduction on all public workers' salaries (including teachers'), to be applied progressively, taking into account salary differences amongst public workers⁴⁶. This decision entered into force on 1 June 2010, and the freeze of salaries became effective as of the fiscal year 2011⁴⁷. Moreover, the RDL 20/2011 of 30 December 2011⁴⁸ established the freeze of public wages and introduced a ban on new employment in the public sector – the so-called 'Public Employment Offer' (except for those services considered as a priority, such as education and healthcare, for which the RDL foresees a replacement rate of 10%⁴⁹), and a reduction of almost 20% of the organisational structures of the State Administration.

Subsequently, the RDL 14/2012, specifically aimed at the educational field, established the following measures with regard to compulsory education⁵⁰:

⁴²Eurostat 2013 mentioned in UNICEF, 'Children in Spain, 2014. The social value of children: towards a State Agreement for Children' (*La infancia en España 2014. El valor social de los niños: hacia un Pacto de Estado por la Infancia*), June 2014, available at www.unicef.es/sites/www.unicef.es/files/infancia-espana/unicef_informe_la_infancia_en_espana_2014.pdf, at p. 22

⁴³OECD, 'PISA 2012- Results. Country Note: Spain', 2013, available at www.oecd.org/pisa/keyfindings/PISA-2012-results-spain-ESP.pdf, at p.3.

⁴⁴Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

⁴⁵Royal Decree-Law 8/2010 of 20 May 2010 for the adoption of extraordinary measures to reduce public deficit [*Real Decreto-Ley 8/2010, de 20 de mayo, por el que se adoptan medidas extraordinarias para la reducción del déficit público*]. BOE 24 May 2010. Consolidated version 2012, available at www.boe.es/buscar/pdf/2010/BOE-A-2010-8228-consolidado.pdf. Not available in English.

⁴⁶Royal Decree-Law 8/2010 of 20 May 2010 for the adoption of extraordinary measures to reduce public deficit [*Real Decreto-Ley 8/2010 de 20 de mayo por el que se adoptan medidas extraordinarias para la reducción del déficit público*], art. 1.2. BOE 24 May 2010. Consolidated version 2012, available at www.boe.es/buscar/pdf/2010/BOE-A-2010-8228-consolidado.pdf. Not available in English.

⁴⁷ i.e. 1 January 2011.

⁴⁸Royal Decree-Law 20/2011 of 30 December 2011 on urgent budgetary, tax, financial measures to correct the public deficit [*Real Decreto-Ley 20/2011, de 30 de diciembre, de medidas urgentes en materia presupuestaria, tributaria y financiera para la corrección del déficit público*]. BOE 31 December 2011, available at www.boe.es/boe/dias/2011/12/31/pdfs/BOE-A-2011-20638.pdf. Not available in English.

⁴⁹Meaning that for 10 workers leaving employment, only one vacancy will be filled.

⁵⁰Royal Decree-Law 14/2012 of 20 April on urgent measures for the rationalisation of public expenditure on the educational field [*Real Decreto-Ley 14/2012, de 20 de abril, de medidas urgentes de racionalización del gasto público en el ámbito educativo*]. BOE 21 April 2012, available at www.boe.es/boe/dias/2012/04/21/pdfs/BOE-A-2012-5337.pdf. Not available in English.

- increasing the student-to-teacher ratio by up to 20% of the maximum allowed by the Organic Law on Education in force at the time (25 pupils in primary education and 30 pupils in secondary education)⁵¹. This means that, in order to limit public spending, the new recruitments are either not allowed, or are ensured, to replace only a small proportion of staff leaving service⁵²;
- increasing the teaching time per week for teachers in publicly financed schools. Thus, 25 hours became the minimum teaching time in primary education (until now, it was the maximum working time allowed) and a minimum of 20 hours is set in secondary education (previously, the limits on permitted working hours ranged from 18 to 21);
- reducing teacher replacement, i.e. the employment of temporary staff to substitute absent teachers only if absence is longer than ten days.

Finally, measures to ensure budgetary stability and promotion of competitiveness, adopted on 13 July 2012, involved the withdrawal of the 2012 Christmas allowance for the entire public sector, as well as the suppression of free disposal days and additional vacation days for seniority. This set of measures also introduced changes to the remuneration system of public employees during temporary disability⁵³. Nonetheless, on 25 September 2014, the Government approved the State General Budget for 2015, which would include the

⁵¹ As specified in Art. 2 of the Royal Decree-Law, note that Organic Law 2/2006 of 3 May on Education established the maximum increase on the number of pupils in 10% (Art. 87.2). The recently approved Organic Law 8/2013 of 9 December for the improvement of educational quality (Art. 66) keeps this ratio, despite the Royal Decree-Law (See: Organic Law 8/2013 of 9 December for the improvement of educational quality [*Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa*] BOE 10 December 2013, available at www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12886.pdf. Not available in English). It is interesting to mention that this Act, popularly known as LOMCE, received strong opposition from the other parties in the Parliament and provoked several public demonstrations (the latest, on 24 October 2013, after the adoption of the Law). Its critics focus on its support to state-subsidised private schools and the Church, and contributing to the segregation of students (see: Aunión, J.A. and Silió, E., 'Public schools go onto the streets to put a stop to Wert's law' (*La escuela pública se echa a la calle para frenar la 'ley Wert'*), *El País*, 10.05.2013, available at http://sociedad.elpais.com/sociedad/2013/05/09/actualidad/1368090821_258562.html; and Aunión, J.A., 'The Church wins the education reform' (*La Iglesia gana la reforma educativa*), *El País*, 17.05.2013, available at http://sociedad.elpais.com/sociedad/2013/05/17/actualidad/1368789921_57054.html).

⁵² This is the case for Act 2/2012 of 29 June 2012 on the State General Budget for 2012, which states that new recruitments may not exceed 10% of the effective replacement rate (Spain (2012) Act 2/2012, of 29 July, on the State General Budget for 2012 [*Ley 2/2012, de 29 de junio, de Presupuestos Generales del Estado para el año 2012*]. BOE 30 June 2012, available at www.boe.es/boe/dias/2012/06/30/pdfs/BOE-A-2012-8745.pdf. Not available in English). Moreover, the previous State General Budgets for the years 2010 and 2011 established the same minimum of replacement (See: Spain (2010) Act 39/2010, of 22 December 2010, on the State General Budget for 2011 [*Ley 39/2010, de 22 de diciembre, de Presupuestos Generales del Estado para el año 2011*], Preámbulo IV. BOE 23 December 2010, available at www.boe.es/boe/dias/2010/12/23/pdfs/BOE-A-2010-19703.pdf. Not available in English). The same has been maintained in further Acts for the General Budgets 2013 (Spain (2012) Act 17/2012 of 27 December 2012 on the State General Budget for 2013 [*Ley 17/2012, de 27 de diciembre, de Presupuestos Generales del Estado para el año 2013*]. BOE 28 December 2012, available at www.boe.es/buscar/pdf/2012/BOE-A-2012-15651-consolidado.pdf. Not available in English) and 2014 (Spain (2013) Act 22/2013 of 23 December 2013 on the State General Budget for 2014 [*Ley 22/2013, de 23 de diciembre, de Presupuestos Generales del Estado para el año 2014*]. BOE 26 December 2013, available at www.boe.es/buscar/pdf/2013/BOE-A-2013-13616-consolidado.pdf. Not available in English).

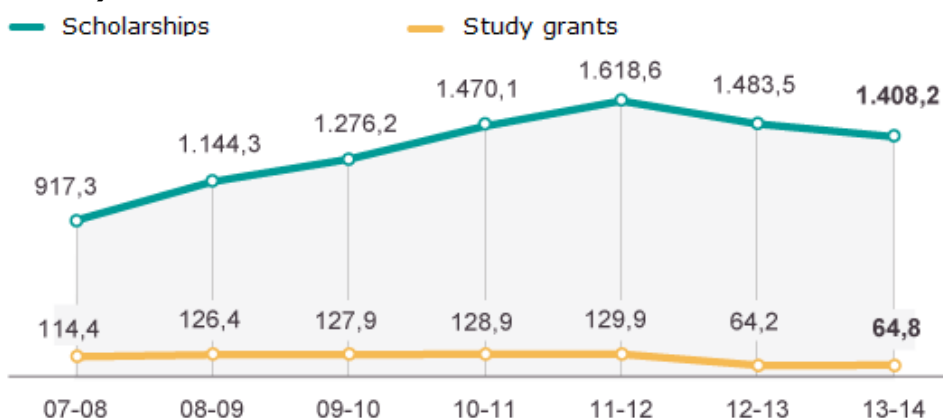
⁵³ Royal Decree-Law 20/2012 of 13 July 2012 on measures to ensure budgetary stability and promotion of competitiveness [*Real Decreto-Ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuetaria y de fomento de la competitividad*]. BOE 14 July 2012, available at www.boe.es/boe/dias/2012/07/14/pdfs/BOE-A-2012-9364.pdf. Not available in English.

reimbursement of 25% of the missed 2012 Christmas allowance⁵⁴. The new Law, however, is expected to maintain the wage freeze for the fifth consecutive year⁵⁵.

2.4. The impact of the measures

Cutbacks in the budget dedicated to education, as established by the several Acts on State General Budgets, were supposed to bring a decrease in the budget for scholarships and study grants of 15.75% over the last two years (from €1,748 million in 2011-2012 to €1,472 million in 2013-2014, at all educational levels), as the Figure 2 below shows. In other words, 693,111 study grants disappeared since 2011-2012 (a decrease of 40%), according to recent data of the Ministry of Education, Culture and Sports (MECD)⁵⁶. There was also a decrease in the number of beneficiaries of study grants, despite the number of beneficiaries for scholarships remaining stable throughout the crisis period, as Figure 3 shows.

Figure 2: Evolution on the budget dedicated to scholarships and study grants (in € million)



Source: MECD, available in El País⁵⁷

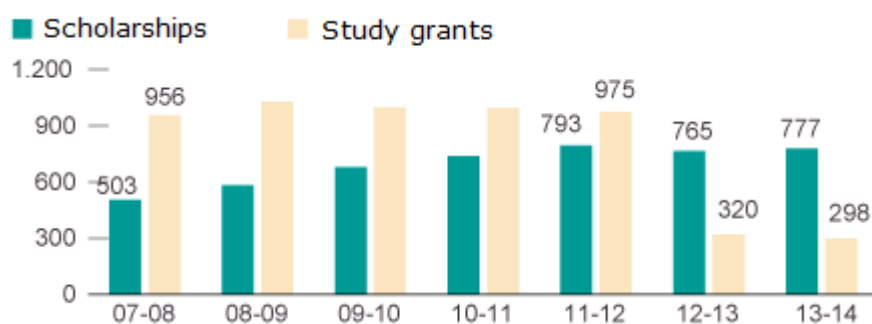
⁵⁴González, J.S., 'Montoro will return civil servants the 25% of the extra pay which was removed in 2012' (*Montoro devolverá a los funcionarios el 25% de la extra suprimida en 2012*), *El País*, online edition, 25.09.2014, available at http://economia.elpais.com/economia/2014/09/25/actualidad/1411644662_314525.html.

⁵⁵González, J.S. & Romero, A., 'The Government will freeze the salary of civil servants in 2015 for the fifth consecutive year' (*El Gobierno congelará el sueldo a los funcionarios en 2015 por quinto año*), *El País*, online edition, 23.09.2014, available at http://economia.elpais.com/economia/2014/09/23/actualidad/1411486231_544946.html.

⁵⁶Ministry of Education, Culture and Sports (Ministerio de Educación, Cultura y Deportes, MECD), 'Data and figures. School Year 2014/2015' (*Datos y cifras. Curso escolar 2014/2015*), 2014, available at www.mecd.gob.es/servicios-al-ciudadano-mecd/dms/mecd/servicios-al-ciudadano-mecd/estadisticas/educacion/indicadores-publicaciones-sintesis/datos-cifras/Datosycifras1415.pdf.

⁵⁷ See http://elpais.com/elpais/2014/09/15/media/1410804801_740863.html.

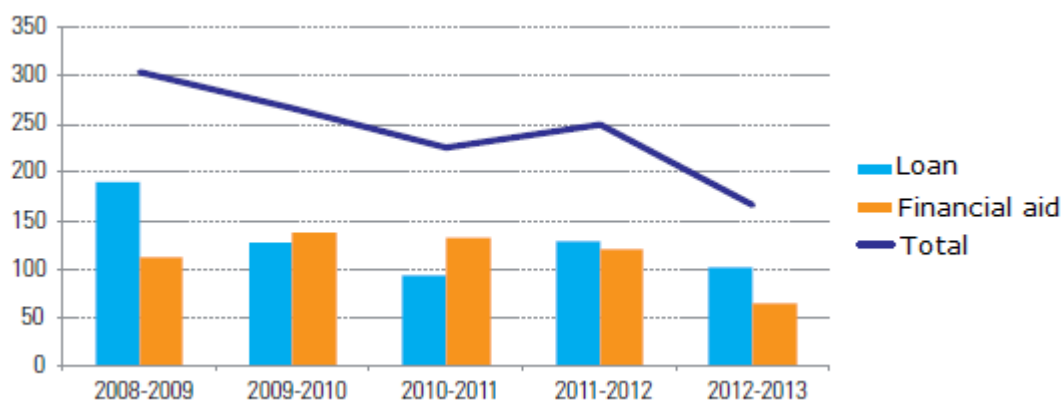
Figure 3: Number of beneficiaries of scholarships and study grants (in thousands of people)



Source: MECD, available in El País⁵⁸

In its Report on Childhood 2012-2013, UNICEF highlighted that this decrease in scholarships is primarily affecting households with lower rents⁵⁹. The Ombudsperson also reported that the number of scholarships specifically aimed at the acquisition of school books and loan systems had decreased, and with it, the number of beneficiaries, as well as their financing – from a total of €303.5 million in 2008 to 166.3 in 2013, a decrease of 45%⁶⁰, as Figure 4 below demonstrates:

Figure 4: Financing of aids and programmes for the acquisition of school books on a loan (€ million, academic courses 2008-2009 to 2012-2013)



Source: UNICEF (2014)⁶¹

Secondly, subsidies aimed at school meals have also been drastically reduced – these have been cut by 30-50% in various autonomous communities, which had a notable impact in

⁵⁸ See http://elpais.com/elpais/2014/09/15/media/1410804801_740863.html.

⁵⁹ UNICEF, 'Children in Spain, 2012-2013. The impact of the crisis in children' (*La infancia en España 2012-2013: El impacto de la crisis en los niños*), May 2012, pp. 7-10, available at www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf, at p. 19.

⁶⁰ Spanish Ombudsperson, 'Study on the free-of-charge school books: programs, aids, loans and re-use' (*Estudio sobre gratuidad de los libros de texto: programas, ayudas, préstamos y reutilización*), October 2013, p. 40, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Libros_texto_corregido_con_ADENDA_U_LTIMO.pdf.

⁶¹ UNICEF, 'Children in Spain, 2014. The social value of children: towards a State Agreement for Children' (*La infancia en España 2014. El valor social de los niños: hacia un Pacto de Estado por la Infancia*), June 2014, available at www.unicef.es/sites/www.unicef.es/files/infancia-espana/unicef_informe_la_infancia_en_espana_2014.pdf, at p. 24.

terms of malnutrition among a growing number of children of deprived families⁶². In response to this intervention, the Spanish Ombudsperson made reference to the Spanish Constitution, calling public authorities to “maintain programmes and systems that support free and compulsory elementary education, within the framework of respect for the constitutional provision that establishes it as a fundamental right - article 27⁶³, and for maintaining the principle of equality that presides over the educational system”⁶⁴.

In conclusion, cuts in social, health and educational budgets, and on family subsidies, affected children disproportionately - the child poverty rate in Spain reached 30.6% in 2011⁶⁵, growing by 10% in comparison to the 2008 data⁶⁶, which in turn, influenced their academic performance – as pointed out by the above-mentioned 2012 PISA Report. Therefore, the austerity measures have led to a decline in the equality of the education system, as well as in its quality; which can negatively affect the economic and social development of the country in the long term⁶⁷.

⁶²Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

⁶³ See art. 27. 4 of the Spanish Constitution, which establishes that “elementary education is compulsory and free”. Spanish Constitution [*Constitución Española*], of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

⁶⁴Spanish Ombudsperson, 'Study on the free-of-charge school books: programs, aids, loans and re-use' (*Estudio sobre gratuidad de los libros de texto: programas, ayudas, préstamos y reutilización*), October 2013, p. 40, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Libros_texto_corregido_con_ADENDA_ULTIMO.pdf.

⁶⁵Eurostat, 'At risk of poverty or social exclusion in the EU 27', Eurostat Press Office, 26.02.2013, available at http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-26022013-AP/EN/3-26022013-AP-EN.PDF.

⁶⁶UNICEF, 'Children in Spain, 2012-2013. The impact of the crisis in children' (*La infancia en España 2012-2013: El impacto de la crisis en los niños*), May 2012, pp. 7-10, available at www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf, at pp.7-10.

⁶⁷Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>. Also see Cabrero, G., 2014, 'Investing in children: breaking the disadvantage cycle. A report on national policies. National report: Spain' (*Invertir en la infancia: romper el ciclo de desventajas. Un informe de políticas nacionales, España*), European Commission, 2014, available at https://www.gitanos.org/upload/91/30/ES_Investing_in_children_2013_ES.pdf. Thirdly, the lastly published UNICEF Report on the state of children in Spain presents the possible future scenarios that may arise from the current decline in children's investment: UNICEF, 'Children in Spain, 2014. The social value of children: towards a State Agreement for Children' (*La infancia en España 2014. El valor social de los niños: hacia un Pacto de Estado por la Infancia*), June 2014, available at www.unicef.es/sites/www.unicef.es/files/infancia-espana/unicef_informe_la_infancia_en_espana_2014.pdf, at pp. 10-29.

3. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO HEALTHCARE

KEY FINDINGS

- Since the beginning of the crisis, health expenditure fell and even became negative, in real terms, in 2010 and 2011. This reduction has been mainly due to a reduction in pharmaceutical expenditure. Nonetheless, it also affected healthcare resources, i.e. a reduction in the number of doctors and nurses and their wages, a decrease in the number of hospital beds, and a rise in co-payments for medical prescriptions, to name but a few. Austerity measures also introduced the limitation of the status of the insured person – no longer providing coverage for undocumented migrants.
- Concerns have been raised with regard to the serious risks resulting from having population groups, especially those with lower incomes and at risk of exclusion, that give up certain care services due to the reduction in the supply of publicly-funded services.
- Finally, there is a concerning variation in the rates of healthcare activity across the country, which makes healthcare services variable and dependent upon the Community, which also raises questions about the efficiency and equality of this service.

3.1. International and EU legal framework for the protection of the right to healthcare

Article 12 of the ICESCR guarantees the highest attainable standard of health. This right is repeated in the Constitution of the World Health Organisation⁶⁸. Right to health does not mean the right to be healthy, but contains different freedoms and entitlements, where the entitlements represent the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable standard of health. Nonetheless, a line must be drawn between the right to health and the right to healthcare. The right to health is broader and means that 'governments must generate conditions in which everyone can be as healthy as possible⁶⁹'. This entails ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. The right to healthcare, on the other hand, is limited only to the first component – the right to have access to health services. The right to health, and implicitly the right to healthcare, needs to meet the requirements of: availability, accessibility, acceptability and quality⁷⁰. This entitlement indeed represents the right to healthcare. The right to health (or healthcare) has been re-emphasised in Article 12 the CEDAW, Article 25 of the CRPD, Article 24 of the CRC and Article 11 of both the European Social Charter and the Revised European Social Charter.

⁶⁸ Constitution of the World Health Organisation, preamble.

⁶⁹ WHO, *Factsheet 323 on the right to health*, available at <http://www.who.int/mediacentre/factsheets/fs323/en/> (last accessed 23 October 2014).

⁷⁰ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 14 – The right to highest attainable standard of health', UN Doc. (E/C.12/2000/4).

Article 35 of the EU Charter guarantees the access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

3.2. The right to healthcare in Spain

The right to health protection is recognised by the Spanish Constitution under Section 43, Division 2 on the Rights and Duties of Citizens, under Part I on Fundamental Rights and duties. It specifically establishes that "it is incumbent upon the public authorities to organize and watch over public health by means of preventive measures and the necessary benefits and services"⁷¹.

In Spain, the Central Government and the Autonomous Communities share competences on the right to healthcare. The central Government's Ministry of Health, Social Services and Equality is responsible for the overall functioning of the system, pharmaceutical legislation, border health issues, and international health-related matters. All other issues are devolved to the 17 autonomous communities, which administer 90% of public healthcare capital⁷². In this sense, there is a concerning variation in rate of healthcare activity across the country, which makes healthcare services vary according to the Community, which raises questions about the efficiency and the equality of this service⁷³.

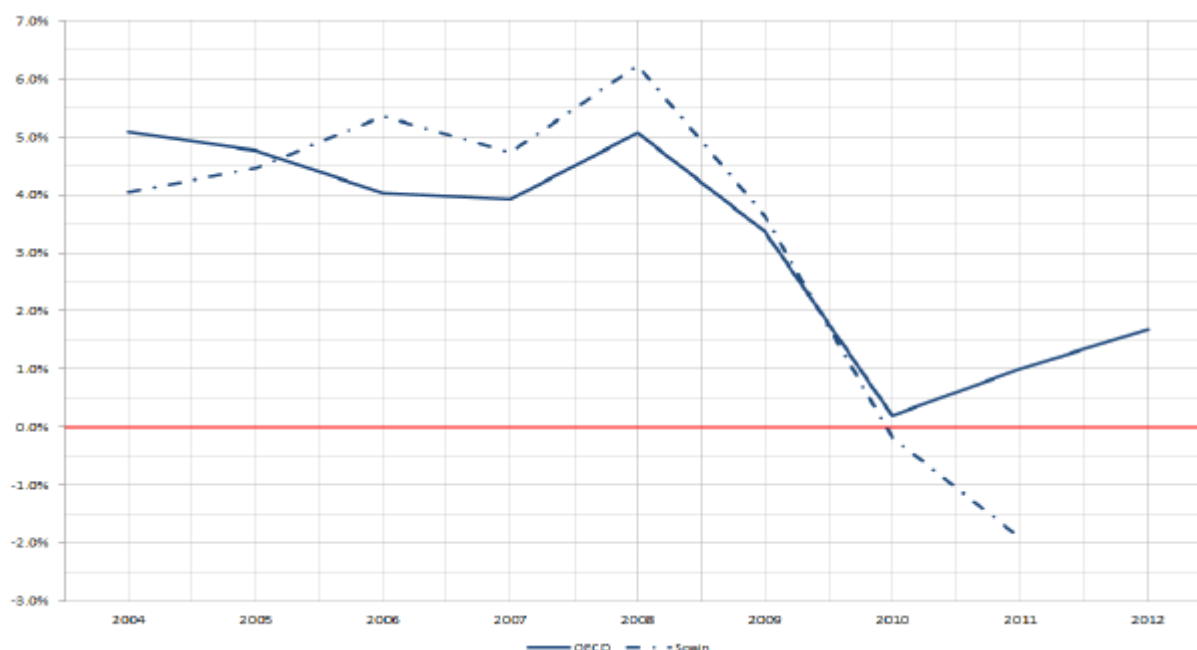
Total spending on health care in Spain accounted for 9.4% of GDP in 2011 – the latest data year available, which was above the OECD average of 9.3%. That same year, 73% of that spending was funded by public sources (similar to the OECD average, of 72%)⁷⁴. Prior to the crisis, Spain's rate in health spending was comparatively high. Yet, health expenditure fell and even became negative in real terms in 2010 and 2011, as Figure 5 below shows:

⁷¹Spanish Constitution [*Constitución Española*] of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

⁷²Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363.

⁷³For further information, see: OECD, 'Spain: Geographic variations in health care', in *Geographic Variations in Health Care: What do we know and can be done to improve health system performance?*, 2014, available at <http://dx.doi.org/10.1787/9789264216594-en>.

⁷⁴OECD 'OECD Health Statistics 2014', 2014, available at www.oecd.org/health/healthdata.

Figure 5: Health expenditure growth rates (in real terms) since 2004. Spain and the OECD average

Source: OECD Health Statistics 2014⁷⁵

As will be discussed further, the reduction in health spending in Spain is mainly due to a reduction in pharmaceutical expenditure, which fell by more than 6%, in real terms, in 2011⁷⁶. Other measures affecting health care resources include: reduction in the number of doctors and nurses and their public wages, and a decrease in the number of hospital beds.

3.3. Overview of the measures

The most relevant measures regarding the right to healthcare were first introduced by RDL 8/2010 on 20 May 2010 and set out several measures affecting public sector workers⁷⁷, imposing:

- an average 5% reduction in all public sector workers' salaries (including public health services personnel), applicable since 1 June 2010;
- a freeze of salaries for the financial year 2011. This measure was extended by RDL 20/2011, 30 December 2011⁷⁸, which also set a considerable freeze of the Public Employment Offer (limiting the replacement rate to 10%) and the increase of working time per week up to 37.5 hours.

⁷⁵OECD 'OECD Health Statistics 2014', 2014, available at www.oecd.org/health/healthdata.

⁷⁶ ibid.

⁷⁷ Royal Decree-Law 8/2010 of 20 May 2010 for the adoption of extraordinary measures to reduce public deficit [*Real Decreto-Ley 8/2010, de 20 de mayo, por el que se adoptan medidas extraordinarias para la reducción del déficit público*]. BOE 24 May 2010. Consolidated version 2012, available at <https://www.boe.es/buscar/pdf/2010/BOE-A-2010-8228-consolidado.pdf>. Not available in English.

⁷⁸Royal Decree-Law 20/2011 of 30 December 2011 on urgent budgetary, tax, financial measures to correct the public deficit [*Real Decreto-Ley 20/2011, de 30 de diciembre, de medidas urgentes en materia presupuestaria, tributaria y financiera para la corrección del déficit público*]. BOE 31 December 2011, available at www.boe.es/boe/dias/2011/12/31/pdfs/BOE-A-2011-20638.pdf. Not available in English.

In terms of pharmaceutical expenditure, since 2010, Spain has introduced a series of measures in order to reduce its spending, which includes:

- RDL 4/2010 26 March 2010⁷⁹, setting a price reduction for generics at a retail price of over €3.12;
- RDL 8/2010, establishing new terms for the pharmaceutical sector by setting a general rebate of 7.5% applicable for all medicines prescribed by National Health System (NHS) physicians (including those excluded from the reference price system), a rebate of 20% for absorbent products, and an optimisation of the number of units per package of medicinal products. With this, the Government estimated the total savings to be achieved by these measures at €1,300 million;
- RDL 9/2011 19 August 2011, reducing public expenditure on the NHS.⁸⁰

Later on, in 2012, the Government also approved the RDL 16/2012 of 20 April⁸¹, which set a new package of measures aimed at the sustainability of the NHS, in order to save €7,000 million (that is, a cut of 13.65% of the budget)⁸²:

- Before the reform, Spain offered a system of universal and free access to healthcare, which was substituted by a system of access to health care based on employment status (in other words, conditional on payment of contributions to the Social Security System). Accordingly, the new system only covers Spanish and EU citizens, as well as those third country nationals, who are issued a valid work permit and pay contributions – removing from the insurance any undocumented migrants, (except in special situations, e.g. an emergency resulting from serious illness or accident, care for pregnant women, both prenatal and postnatal, and minors aged under 18)⁸³.
- The restoration of the NHS services portfolio in an attempt to coordinate all autonomous services and guarantee an equal provision of services throughout the country.

⁷⁹ Royal Decree-Law 4/2010 of 26 March 2010 for the rationalisation of pharmaceutical expenditure charged to the National Healthcare System [*Real Decreto-Ley 4/2010, de 26 de marzo, de racionalización del gasto farmacéutico con cargo al Sistema Nacional de Salud*]. BOE 27 March 2010, available at www.boe.es/boe/dias/2010/03/27/pdfs/BOE-A-2010-5030.pdf. Not available in English. This regulation preamble specifies to be in line with Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems (http://ec.europa.eu/health/files/eudralex/vol-1/dir_1989_105/dir_1989_105_en.pdf).

⁸⁰ Royal Decree-Law 9/2011, 19 August 2011, on measures to improve the quality and cohesion of the National Health System, to contribute to tax consolidation, and to raise the maximum amount of State guarantees in 2011 [*Real Decreto-ley 9/2011, de 19 de agosto, de medidas para la mejora de la calidad y cohesión del sistema nacional de salud, de contribución a la consolidación fiscal, y de elevación del importe máximo de los avales del Estado para 2011*]. BOE 20 August 2011, available at www.boe.es/boe/dias/2011/08/20/pdfs/BOE-A-2011-14021.pdf. Not available in English.

⁸¹ Royal Decree-Law 16/2012 of 20 April 2012 on urgent measures to guarantee the sustainability of the National Healthcare System and to improve the quality and security of its services [*Real Decreto-Ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones*]. BOE 24 April 2012, available at www.boe.es/boe/dias/2012/04/24/pdfs/BOE-A-2012-5403.pdf.

⁸² Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363, at p.1.

⁸³ The RDL 16/2012 is supplemented by: Royal Decree-Law 1192/2012 of 3 August which regulates the status of insured persons and beneficiaries for publicly funded health care in Spain through the National Health System [*Real Decreto 1192/2012, de 3 de agosto, por el que se regula la condición de asegurado y de beneficiario a efectos de la asistencia sanitaria en España, con cargo a fondos públicos, a través del Sistema Nacional de Salud*]. BOE 4 August 2012, available at www.boe.es/boe/dias/2012/08/04/pdfs/BOE-A-2012-10477.pdf. Not available in English.

- The establishment of co-payments on medical prescriptions which are variable, depending on rents, and which affect pensioners who now have to pay at least 10% or up to a monthly expenditure ceiling of €8, €18 or €60 depending on income. Pensioners with a gross annual income higher than €100,000 will have to pay 60% of the medication price, and the general public, which used to pay 40% of the price would now pay between 40% and 60% of the price. Co-payment levels for public sector workers (30%) and the chronically ill (10%) already existed and are maintained. However, co-payment is eliminated for the unemployed without benefits. – the percentage paid used to be 40%. Co-payment affects drugs and orthoprosthesis devices, dietary products, as well as non-emergency medical transportation – it does not affect medical services. Persons with disabilities pay €5 for ambulance trips⁸⁴. The RDL has been in effect since 1 July 2012, although this clearly falls within the competencies of the Autonomous Community.

The aforementioned measures which were introduced in order to ensure budgetary stability and the promotion of competitiveness, adopted on 13 July 2012, also affected the benefits of the employees in the health system, i.e. the removal of the 2012 Christmas allowance, suppression of free disposal days and additional seniority vacation days⁸⁵, high cuts to professional training (75%) and public health and quality programmes (45%)⁸⁶. Following budgetary shortfalls in some autonomous communities, the Central Government created an €18 billion regional liquidity fund to be voluntarily accessed in order to ensure their financial sustainability through RDL 21/2012, also of 13 July⁸⁷; followed by a second €23 billion fund in 2013.⁸⁸

Finally, some Autonomous Communities were considering the privatisation of hospital and health centres as a potential measure to be introduced within their competence shared with the central authorities. For instance, Madrid Autonomous Community planned to outsource the management of six hospitals in Madrid – regarding which, the doctors' unions 'Asociación de Facultativos Especialistas de Madrid' (Madrid's Association of Specialist Physicians - AFEM)⁸⁹ and 'Asociación de Médicos y Titulados Superiores de Madrid' (Association of Physicians and Professionals with Higher Degrees of Madrid – AMYTS)⁹⁰ appealed to the High Court of Justice of Madrid [*Tribunal Superior de Justicia de Madrid*]⁹¹. Finally, the plan was aborted in April 2014⁹².

⁸⁴Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363, at p.1.

⁸⁵ Royal Decree-Law 20/2012 of 13 July 2012 on measures to ensure budgetary stability and promotion of competitiveness [*Real Decreto-Ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuetaria y de fomento de la competitividad*]. BOE 14 July 2012, available at www.boe.es/boe/dias/2012/07/14/pdfs/BOE-A-2012-9364.pdf. Not available in English.

⁸⁶Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363, at p.1.

⁸⁷Royal Decree-Law 21/2012 of 13 July 2012 on measures to reform public administration and the financial system [*Real Decreto-Ley 21/2012, de 13 de julio, de medidas de liquidez de las Administraciones Públicas y en el ámbito financiero*]. BOE 14 July 2012, available at www.boe.es/boe/dias/2012/07/14/pdfs/BOE-A-2012-9365.pdf.

⁸⁸Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363, at p.1.

⁸⁹ For more information, see: www.asociacionfacultativos.com/.

⁹⁰ For more information, see: <http://amyts.es/>.

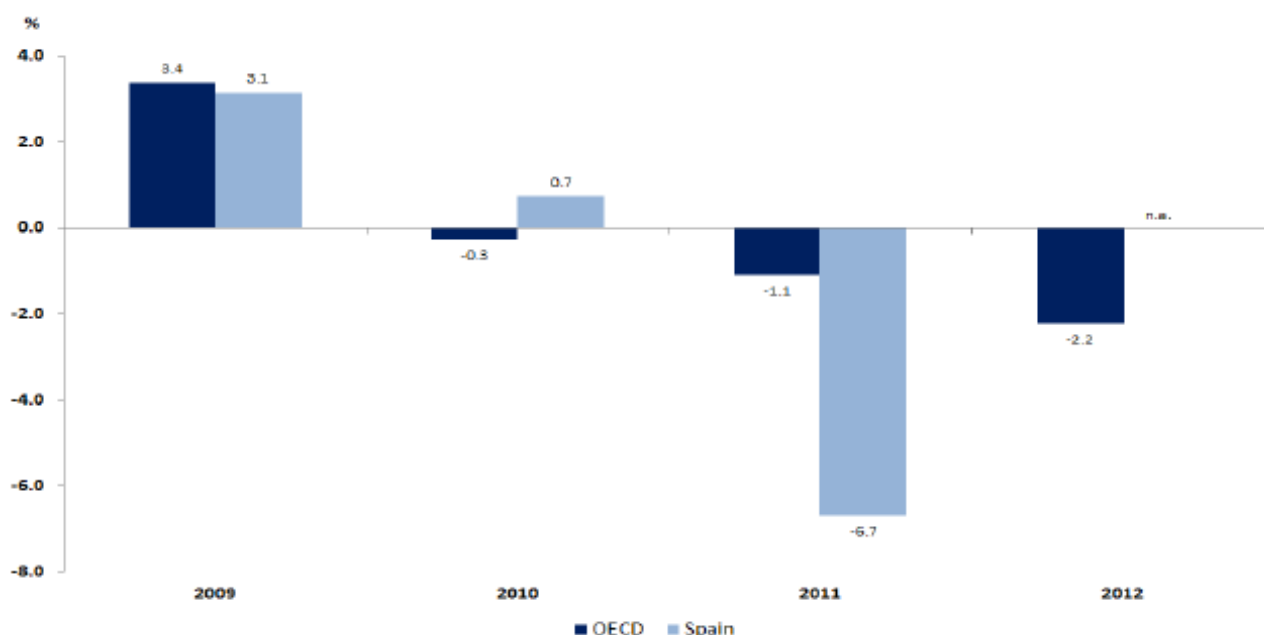
⁹¹ See for example: Ruling [*auto*] of the High Court of Justice of Madrid. Chamber for Contentious Administrative Proceedings. Section 3. Appeal No. 787/2013. Id Cendoj: 28079330032013200001. Available at <http://www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=6842190&links=11%20septiembre%202013&optimize=20130918&publicinterface=true>.

⁹²Sevillano, E., 'Health gives up on hospital privatisation' (*Sanidad renuncia definitivamente a la privatización hospitalaria*), *El País*, edición Madrid, 11.04.2014, available at http://ccaa.elpais.com/ccaa/2014/04/11/madrid/1397239898_967369.html; EFE, 'The High Court of Justice of Madrid considers closed the appeals against

3.4. The impact of the measures

First, the reduction in health spending in Spain resulted in a series of measures to reduce pharmaceutical expenditure: these measures included a general rebate applicable for all medicines prescribed by NHS physicians in 2010, and mandated price reductions for generics and increase in co-payments in 2012. As a result, in 2011 the spending on pharmaceuticals fell by more than 6% in real terms, as shown in Figure 6 below. Furthermore, the market in generic medicines experienced an increase in its share which doubled between 2008 and 2012, reaching 18% of the total pharmaceutical market value and 40% in volume⁹³.

Figure 6: Annual growth of pharmaceutical spending (in real terms) since 2009. Spain and the OECD average



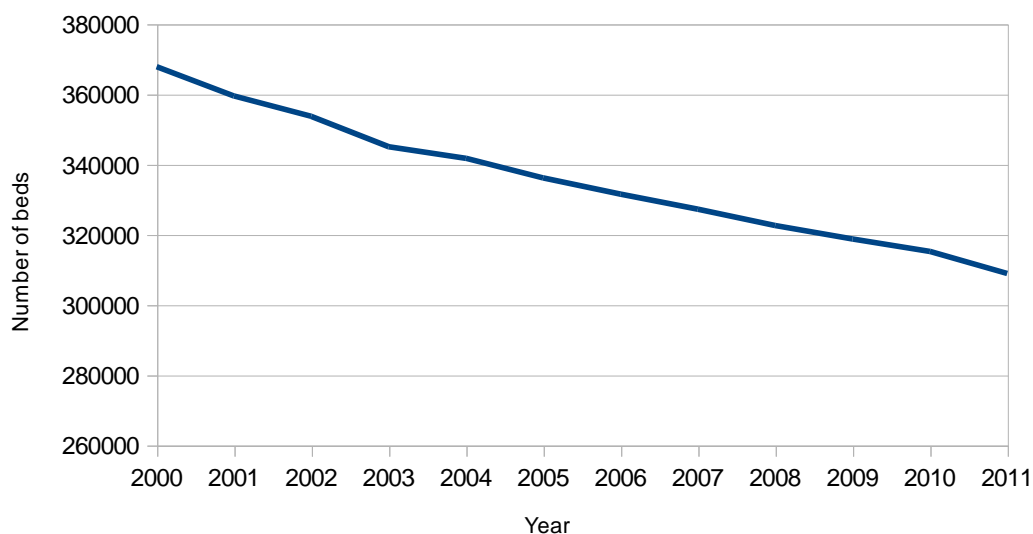
Source: OECD Health Statistics 2014⁹⁴

With regard to the NHS, the number of hospital beds ('NHS capacities'), has been declining, as observed in Figure 7:

the privatisation of the health sector in Madrid' (*El TSJM da por cerrados los recursos contra la privatización sanitaria madrileña*), *El País*, edición Madrid, 29.05.2014, available at http://ccaa.elpais.com/ccaa/2014/05/29/madrid/1401363527_753380.html.

⁹³OECD 'OECD Health Statistics 2014', 2014, available at www.oecd.org/health/healthdata.

⁹⁴OECD 'OECD Health Statistics 2014', 2014, available at www.oecd.org/health/healthdata.

Figure 7: Hospital beds in Spain, 2000-2011 (per 100,000 inhabitants)

Source: Eurostat 2014⁹⁵

Various medical reports⁹⁶, published since the start of the crisis, highlight cutbacks in healthcare (note that since 2010, annual investment in healthcare per person decreased by €150 – equal to a general cutback of €6,700 million) which put people's lives at risk. That is, a report by the British Medical Journal⁹⁷ suggested an increase in the number of suicides, HIV and tuberculosis cases. Moreover, the report highlights the counter-productive effects of the austerity measures. In periods of crisis, healthcare systems should be protected more rather than less, as occurrences in illnesses grow. For instance, the rise of the unemployment rate results in mental health problems such as depression (which increased by 19.4% since 2006) and alcoholism. Consequences could be even worse, taking into account that irregular migrants are now excluded from the NHS, except in cases of emergency. In this sense, some Autonomous Communities (Asturias, Andalusia and the Basque Country) rejected the adoption of this measure⁹⁸, and others (Asturias, Andalusia, Navarra, Catalonia, the Government of the Canary Islands and the Basque Country) initiated proceedings against several articles of the RDL 16/2012 before the Constitutional Court⁹⁹. In addition, Andalusia has maintained free-of-charge and equal access to health

⁹⁵Hospital beds per 100,000 inhabitants (tps00046)', Eurostat website, 2014.

⁹⁶See: Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363; Karanikolos, M. et al., 'Financial crisis, austerity, and health in Europe', *The Lancet* 2013; Vol. 381, No.9874, available at [www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(13\)60102-6.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(13)60102-6.pdf); Royo-Bordonada, M.A., Díez-Cornell, M. & Llorente J.M., 'Health-care access for migrants in Europe: the case of Spain', *The Lancet* 2013; Vol. 382, No.9890, available at [www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(13\)61667-0.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(13)61667-0.pdf); Legido-Quigley, H. et al, 2013, 'Erosion of universal health coverage in Spain', *The Lancet* 2013; Vol.382, No.9909, available at [www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(13\)62649-5.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(13)62649-5.pdf).

⁹⁷Legido-Quigley, H. et al, 2013, 'Will austerity cuts dismantle the Spanish healthcare system?', *BMJ* 2013;346:f2363, available at www.bmj.com/content/346/bmj.f2363.

⁹⁸Sahuquillo, M., 'Spain's cuts in health put lives at risk, according to a study' (*Los recortes en sanidad en España ponen vidas en riesgo, según un estudio*), *El País*, online edition, 13.06.2013, available at http://sociedad.elpais.com/sociedad/2013/06/13/actualidad/1371120738_219035.html.

⁹⁹ For instance, see the Complaint of unconstitutionality No. 4123-2012, against art. 1. One and, linked to it, 1. Two; 2. Two, Three and Five; 4. Twelve, Thirteen and Fourteen and Third Additional Provision and First Transitional Provision of Royal Decree-Law 16/2012, 20 April, on urgent measures to guarantee the sustainability of the National Healthcare System and to improve the quality and security of its services [*Recurso de*

care on the ground that failure to guarantee it entails long-term costs for the authorities¹⁰⁰. Moreover, the Report highlights that the measure would be contrary to UN recommendations included in Resolution A/67/L36¹⁰¹.

The OECD Report 'Health at a Glance 2013'¹⁰² warns about the serious risks presented when population groups, especially those with lower incomes, give up certain care services due to the reduction in the supply of publicly-funded services and the introduction of co-payments. The reduction of health personnel due to the lack of replacement of working absences or retirements and the closure of health centres in afternoons is highlighted in the report as another risk factor. The Report also refers to healthcare since 2012, with regard to waiting lists when, in early 2013, 571,395 people were waiting to undergo surgery. The increase in the average waiting time also set records: it moved from 76 days (2010) to 100 days (mid-2012)¹⁰³. Newspapers reported that the closure of operating rooms, the increase in waiting lists, the lack of staff, the introduction of co-payment etc., entailed an increase in the provision of private health insurance. Thus, in 2011, the insurance industry saw its premium income increase by 3.06 %¹⁰⁴.

inconstitucionalidad n.º 4123-2012, contra el art. 1. Uno y, por conexión, 1. Dos; 2. Dos, Tres y Cinco; 4. Doce, Trece y Catorce y disposición adicional tercera y transitoria primera del Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones]. BOE 24 July 2012, available at www.boe.es/boe/dias/2012/07/24/pdfs/BOE-A-2012-9863.pdf. Not available in English.

¹⁰⁰Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

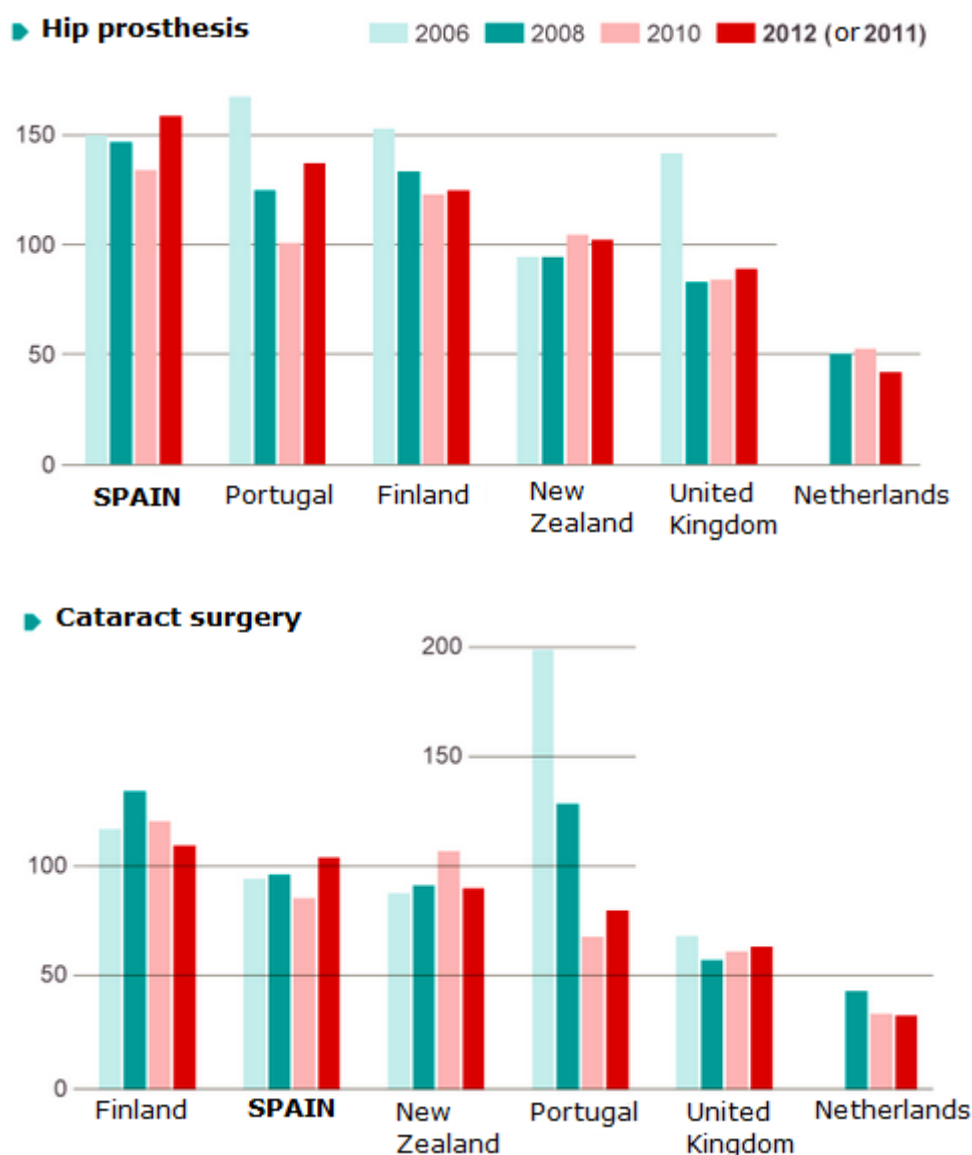
¹⁰¹UN, 'Sixty-seventh session of the General Assembly. Agenda item 123. Global health and foreign policy. Doc. A/67/L.36', 6 December 2012, available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N12/630/51/PDF/N1263051.pdf?OpenElement>.

¹⁰²OECD, 'Health at a glance 2013: OECD Indicators', 2013, available at www.oecd-ilibrary.org/docserver/download/8113161e.pdf?expires=1411908847&id=id&accname=quest&checksum=E80505C5540F295CDEFB930EAA8AB1E6.

¹⁰³Prats, J., 'The OECD warns on the effects of health cuts' (*La OCDE alerta de los efectos de los recortes sanitarios*), *El País*, online edition, 21.11.2013, available at http://sociedad.elpais.com/sociedad/2013/11/21/actualidad/1385062183_415382.html.

¹⁰⁴García, M.A., 'Public health takes advantage on public cuts' (*La salud privada aprovecha el tijejetazo público*), *El País*, online edition, 05.04.2012, available at http://economia.elpais.com/economia/2012/04/05/actualidad/1333639115_304085.html.

Figure 8: Waiting lists for certain types of surgery interventions (in days)



Source: El País 2013¹⁰⁵

With regard to the exclusion of irregular migrants from the NHS, the NGO *Médicos del Mundo* (MdM) published a report in 2012, analysing the provision of healthcare services to the most disadvantaged groups in seven EU countries, including Spain. It stated that 62% of patients attended by the NGO service had previously been rejected by the NHS – this is three times higher than the average in the rest of the analysed countries, i.e. Belgium, France, Germany, Greece, the Netherlands and the United Kingdom¹⁰⁶. Spain had granted the right to healthcare to migrants in 2000 – with the approval of the Organic Act 4/2000,

¹⁰⁵Prats, J., 'The OECD warns on the effects of health cuts' (*La OCDE alerta de los efectos de los recortes sanitarios*), *El País*, online edition, 21.11.2013, available at http://sociedad.elpais.com/sociedad/2013/11/21/actualidad/1385062183_415382.html.

¹⁰⁶Doctors of the World (*Médicos del Mundo*), 'Health as a factor in cooperation for development and humanitarian action. 2012 Report' (*La salud en la cooperación al desarrollo y la acción humanitaria. Informe 2012.*), 2012, available at www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos Informe_2012_f1d45db7%232E%23pdf.

of 11 January¹⁰⁷. The prerequisite was to prove effective residence in Spain through registration in the municipal census. According to the Fundamental Rights Agency, before the crisis, Spain - together with France, Belgium and Italy, had the most extensive NHSs in Europe¹⁰⁸. Today, according to MdM, the Spanish system leaves their most vulnerable groups with no health service, and is switching from an inclusive to an insurance model of healthcare¹⁰⁹.

The measures exposed aimed at the unification of all healthcare provided throughout the country. Yet, they have not solved the unequal provision of healthcare services; on the contrary, the system appears to be chaotic as different measures were introduced at the regional level. Thus, for example in the Autonomous Community of Catalonia, a pharmaceutical fee was introduced and applied between June 2012 and January 2013 which required patients to pay one euro per prescription. The measure was, however, suspended in that month and finally declared unconstitutional in March 2014¹¹⁰. On the other hand, the Government of the Basque Country - which implemented co-payment just recently, on 19 November 2013, has been the first Autonomous Community to approve a Decree¹¹¹ in order to allow the most disadvantaged groups to request compensation/reimbursement¹¹².

¹⁰⁷ Organic Act 4/2000 of 11 January 2000 on the rights and freedoms of aliens and their social integration [*Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*]. BOE 12 January 2000, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf. Consolidated version 2013. Not available in English.

¹⁰⁸FRA, 'Migrants in an irregular situation: access to healthcare in 10 European Union Member States', Publications Office of the European Union, 2011, available at http://fra.europa.eu/sites/default/files/fra_uploads/1925-FRA-2011-fundamental-rights-for-irregular-migrants-healthcare_EN.pdf.

¹⁰⁹Doctors of the World (*Médicos del Mundo*), 'Health as a factor in cooperation for development and humanitarian action. 2012 Report' (*La salud en la cooperación al desarrollo y la acción humanitaria. Informe 2012.*), 2012, available at www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_Informe_2012_f1d45db7%232E%23pdf.

¹¹⁰ Constitutional Court. Judgment 71/2014, of 6 May 2014. Complaint of unconstitutionality 7208-2012 filled by the President-in-Office of the Government with regard to the each of the provisions of the Government of Catalonia's Act 5/2012, of 20 March, on fiscal, financial and administrative measures, and for the creation of the tax on stays in tourist establishments. Limits on the taxing powers of Autonomous Communities: nullity of the legal provision that regulates the tax on preparatory and accessory acts for the prescription and dispensing of medicines; interpretation in conformity with the definition of the taxable event for personal and material services in the field of administration of the Administration of Justice [*Tribunal Constitucional. Pleno. Sentencia 71/2014, de 6 de mayo de 2014. Recurso de inconstitucionalidad 7208-2012 Interpuesto por la Presidenta del Gobierno en funciones en relación con sendos preceptos de la Ley del Parlamento de Cataluña 5/2012, de 20 de marzo, de medidas fiscales, financieras y administrativas y de creación del impuesto sobre estancias en establecimientos turísticos. Límites a la potestad tributaria de las Comunidades Autónomas: nulidad del precepto legal que regula la tasa sobre actos preparatorios y accesorios de la prescripción y dispensación de medicamentos; interpretación conforme de la definición del hecho imponible de la tasa por la prestación de servicios personales y materiales en el ámbito de la administración de la Administración de Justicia*]. BOE 4 June 2014, available at www.boe.es/boe/dias/2014/06/04/pdfs/BOE-A-2014-5900.pdf. Not available in English.

¹¹¹ Decree 447/2013, of 19 November, regulating the aids aimed at facilitating adherence to medical treatments prescribed by the personnel of the Basque Health System [*Decreto 447/2013, de 19 de noviembre, por el que se regulan las ayudas destinadas a facilitar la adherencia a los tratamientos médicos prescritos por personal del Sistema Sanitario de Euskadi*]. BOPV 28 November 2013. Available at www.euskadi.net/r33-2288/es/contenidos/informacion/disposiciones_sanidad/es_not/adjuntos/1305170a.pdf. Not available in English.

¹¹² Elorza, A., 'The copay indemnity can be requested before the end of the year' (*La compensación del copago se podrá solicitar antes de fin de año*), *El País*, edición del País Vasco, 19.11.2013, available at http://ccaa.elpais.com/ccaa/2013/11/19/paisvasco/1384864364_977532.html

4. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO WORK

KEY FINDINGS

- In Spain, since the start of the crisis, the number of unemployed has increased by more than 4 million persons, especially affecting youth and low-skilled workers.
- Since the last 2012 reform of the labour market, Spain has observed a decline in the number of unemployed people in the second quarter of 2014. Measures were aimed at reducing labour market duality and promoting job creation and entrepreneurship. Finally, collective dismissals were modified in order to help companies face economic difficulties in times of crisis. Nevertheless, the judiciary reported a higher amount of litigation in the aftermath of the reforms.

4.1. International and EU legal framework for the protection of the right to work

There is no blanket guarantee in the international law of the right to work, if understood as the right to have and maintain gainful employment. Article 6 of the ICESCR recognises the right to work in the sense of opportunity of everyone to gain their living by freely chosen or accepted work. In that regard, States Parties are expected to take appropriate steps to safeguard this right, including by providing vocational and technical training and economic policies aimed at steady economic development and full employment. This right, according to the ICESCR implies that the Parties must guarantee equal access to employment and protect workers from being unfairly deprived of their employment, including by preventing discrimination. This right depends on a number of interdependent and essential elements, implementation of which will depend on the conditions present in each State Party, which may be identified as: availability, accessibility, acceptability and quality, while the states have the general obligation to respect, protect and fulfil this right¹¹³. Moreover, the International Labour Organization (the 'ILO') has the right to work as the core of its activities, and numerous conventions have been adopted within its framework to protect and improve the enjoyment of the right to work.

Similarly, the EU Charter guarantees to everyone the right to engage in work and to pursue a freely chosen or accepted occupation¹¹⁴, which corresponds to the guarantee from the ICESCR. The EU Charter, furthermore, provides for a guarantee for everyone to a free placement service¹¹⁵, protection from unjustified dismissal¹¹⁶ and the right to fair and just working conditions¹¹⁷.

¹¹³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18 – Right to work*, UN Doc. E/C.12/GC/18 (2006).

¹¹⁴ The EU Charter, Article 15(1).

¹¹⁵ The EU Charter, Article 29.

¹¹⁶ The EU Charter, Article 30.

¹¹⁷ The EU Charter, Article 31.

4.2. The right to work in Spain

The Spanish Constitution recognises the right and duty of all Spaniards to work, to freely choose their profession or trade, to advance through work, and to receive sufficient remuneration for the satisfaction of their needs and those of their families under Section 35 (under Part I. Fundamental Rights and Duties - Division 2 on the Rights and Duties of Citizens). It explicitly prohibits discrimination on account of sex and establishes the Workers' Statute regulation by law¹¹⁸.

Accordingly, the Workers' Statute¹¹⁹ is one of the main legal instruments establishing the multiple employment contract modalities in the Spanish context, as well as dismissals. One of the most notable features of Spanish legislation regulating the labour market is the large volume of contractual arrangements it includes, i.e. up to 41 types¹²⁰. Of these, the following stand out:

- In terms of duration, contracts may be *permanent* or *fixed-term (temporary)*. The former can be ordinary contracts or contracts covered by the Employment Promotion Programme (i.e. subsidised contracts, such as *Permanent Contracts to Support Entrepreneurs and SMEs*), while both can be either full-time or part-time.
- *Training contracts*: can take the form of *training and learning contracts* (in principle for workers aged between 16 and 25 years) or *internship contracts* (for graduates within the last five years). These are fixed-term agreements (between one and three years, and between six months and two years, respectively), and can be either part-time or full-time.
- *Contract for hire or service*: aimed at the completion of a particular work or service, and it is of uncertain duration (although it should not exceed a three-year period).
- *Interim contract*: aims to substitute employees with a reserved right to their job, or to temporarily cover a post during a selection or promotion process aimed at finding a permanent candidate – it is therefore a temporary contract.
- *First Employment Contract*: aimed at young workers with no previous experience – it can last from three to a maximum of six months in duration (temporary).
- *Casual contract to cover demand for production*: aims to meet the situational demands of the market, e.g. production overload backlog, even in the case of normal business activity. Its maximum duration is six months within a period of 12 months (temporary contract).
- *Relief contract*: concerns the replacement of a company's employee who accesses partial retirement (it is compatible with the performance of their job on a part-time basis). The replacement contract is the tool used to fill the partially occupied post with an unemployed worker (or with someone who already works for the company).

¹¹⁸Spanish Constitution [*Constitución Española*] of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

¹¹⁹ Royal Decree-Law 1/1995 of 24 March approving the revised text of the Workers' Statute Act [*Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*]. BOE 29 March 1995. Consolidated version 2014, available at <https://www.boe.es/buscar/pdf/1995/BOE-A-1995-7730-consolidado.pdf>. Not available in English.

¹²⁰ See the types of contracts at the website of the Spanish Ministry of Labour, available at www.empleo.gob.es/es/Informacion/contratos/index.htm.

but with a fixed-term contract), to cover the rest of the workday of the new pensioner.

Spanish legislation raises the following forms of contract termination:

- *By free will of the employee (resignation).*
- *Force majeure:* extraordinary, unforeseeable or unavoidable circumstances that definitely preclude the development of work (fire, war, etc.). The extinction entitles the employee to receive compensation for 20 days of salary per year worked to a maximum of 12 monthly installments.
- *Collective dismissal:* based on economic, technical, organisational or production causes that compromise the viability of the company. Thus, collective dismissal is set forth as a solution by the employer to address the situation. The definition of collective dismissal applies to those cases in which the downsizing of a company affects a given volume of its employees (10 employees in a company of less than 100, 10% if the number of employees is between 100 and 300, or 30 workers for companies employing more than 300 workers) in a period of 90 days. If the reduction affects over 50% of workers, companies (except those that are going through a bankruptcy proceeding) should develop a plan including a redeployment programme for the affected employees.
- *Objective justified dismissal:* termination of the contract is due to causes such as the incompetence of the employee and absences, and such employees don't receive severance payments. Since the 2012 reform, objective justified dismissal may be imposed due to economic, technical, organisational or production reasons (as in the case of collective dismissal) and in such case, the dismissed staff received severance payments, as in the case of force majeure.
- *Disciplinary dismissal before the commission:* due to repeated unjustified absences at work, disciplinary offenses, verbal offenses to other members of the company, the continued voluntary decline in work performance etc.
- *Unfair dismissal:* due to breach of contract by the employer. Before the 2012 reform, severance payments for this type of dismissal corresponded to 45 days of salary per year of service, up to a maximum of 42 months.
- *Other reasons:* e.g. mutual agreement, death of a party.

For a number of years before the crisis, the unemployment rate in Spain was constantly above the EU average. Thus, for example, in 2007 it was 8.2%, while the EU average was 7.2%, whereas in 2008 it grew, while the EU unemployment rate fell – and was 11.3% in Spain and 7.0% at the EU level¹²¹. Nonetheless, the global financial and economic crisis hit the Spanish labour market particularly hard. The unemployment rate in Spain reached 26.7% in October 2013, the second highest in the OECD area (only exceeded by Greece), and more than three times the OECD average (7.9%). Since the start of the crisis, the number of unemployed has increased by more than 4 million persons in Spain. Moreover, long-term unemployment (defined as those unemployed for 12 months or more), as a

¹²¹ 'Unemployment rate, 2002-2013 (%)', Eurostat website, 2014, available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Unemployment_rate,_2002-2013_\(%25\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Unemployment_rate,_2002-2013_(%25).png).

share of all unemployment, has risen from 19.1% in the fourth quarter of 2007 to 50.4% in the third quarter of 2013¹²².

Following the last 2012 reform of the labour market, Spain experienced a decline in the number of unemployed people in the second quarter of 2014: its unemployment rate, one of the highest in the OECD, fell to 24.5% from 25.3% in the first quarter. Yet, the unemployment rate is still 15.5% higher than before the crisis as can be observed in Figure 9 below. In other words, over 4.5 million jobs were lost between 2007 and the first half of 2014 (almost one in six of all jobs available in 2007)¹²³. From this rate, two figures are of particular concern:

Youth unemployment: in 2014, 53.2% of people aged 15-24 were unemployed, while the rate was 18.1% before the crisis (2007)¹²⁴ – which is worrying as it could jeopardise a young person's long-term career path. Moreover, the proportion of young people neither in employment, nor in education or training – known as "NEETs" or "NiNi" in Spanish, has increased from 12.8% (2007) to 22.5% (2013) of the total young population¹²⁵.

- Long-term unemployment rose from 1.7% (2007) to 13% in 2013, of the total active population¹²⁶. The increase has been most pronounced for youth and low-skilled workers¹²⁷.

¹²²OECD, 'The 2012 labour market reform in Spain: A preliminary assessment. Executive summary', 2013, available at www.oecd.org/els/emp/SpainLabourMarketReform-Report.pdf.

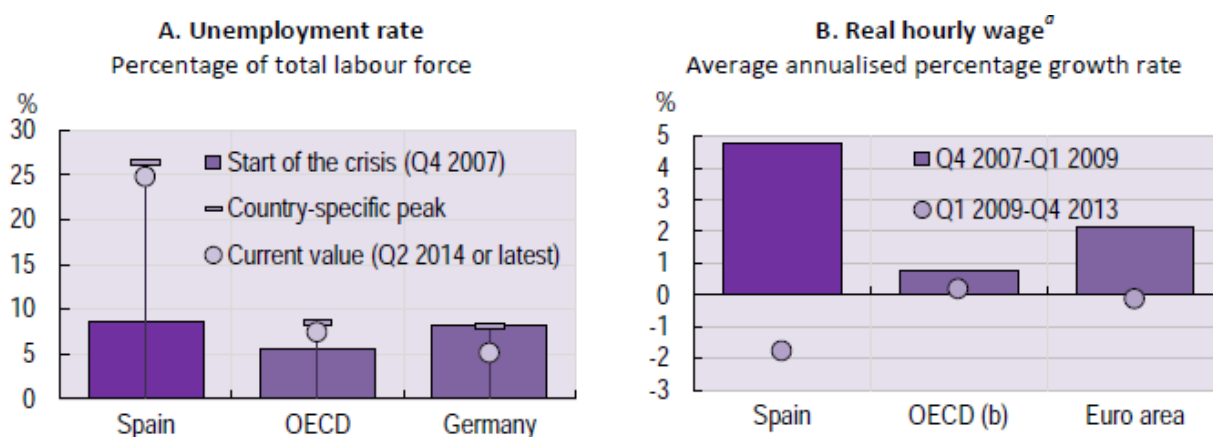
¹²³ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p. 2.

¹²⁴Unemployment rate by sex and age groups – annual average, %. Age: less than 25 years. Sex: total (une_rt_a)', Eurostat website, 2014, available at <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>. Therefore, data refers to young people who are seeking employment.

¹²⁵Young people not in employment and not in any education and training by sex, age and activity status. Sex: total. Age: from 15 to 29 years. Wstatus: not employed persons. Unit: percentage (yth_empl_150)', Eurostat website, 2014, available at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=yth_empl_150&lang=en.

¹²⁶Long-term unemployment rate by sex, % Total (tsdsc330)', Eurostat website, 2014, available at <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tsdsc330&language=en>.

¹²⁷OECD, 'How does Spain compare? OECD Employment Outlook 2012', 2012, available at www.oecd.org/spain/Spain_final_EN.pdf.

Figure 9: Labour market developments in Spain, end-2007 to mid-2014

a) Total compensation of employees divided by total hours worked by employees in real terms (deflating using the consumer price index).

b) OECD is the weighted average of 33 OECD countries excluding Chile.

Source: OECD 2014¹²⁸

2012 measures also caused a large downward adjustment in real wages in order to boost economic competitiveness, at a cost, i.e. low-paid workers face high risks of economic hardship¹²⁹. The OECD also points out the need to improve job quality (in all three dimensions: earnings quality, labour market security and the quality of the working environment), which especially affects youth, low-skilled workers and those in temporary jobs), as Figure 10 shows. Youth have also replaced the elderly as the group experiencing a greater risk of income poverty – something already documented before the crisis, but further intensified in the recent years throughout the OECD area, and more significantly in Spain¹³⁰.

Finally, it has to be highlighted that the Spanish labour market had traditionally been characterised by dualism: it was composed of long-term workers with permanent contracts (stringently protected by law) and a notable share of temporary contracts – which made workers on such contracts weak in facing adverse economic shock, as witnessed through the crisis¹³¹. In this sense, 2012 reforms were expected to help reduce dualism – with measures such as the reduction of dismissal costs of permanent workers, extension of trial periods, and making wages and working conditions more flexible, and ensuring that the Spanish labour market would be more resilient to future downturns. Today, Spain is a country with the greatest share of fixed-term contracts for new hires, and it has become worse since the start of the crisis, i.e. from 80% of employees with up to three months of job tenure on temporary contracts in 2007, to 88% in 2012¹³².

¹²⁸OECD, 'How does Spain compare? September 2014. OECD Employment Outlook 2014', 2014, available at www.oecd.org/spain/EMO-ESP-EN.pdf.

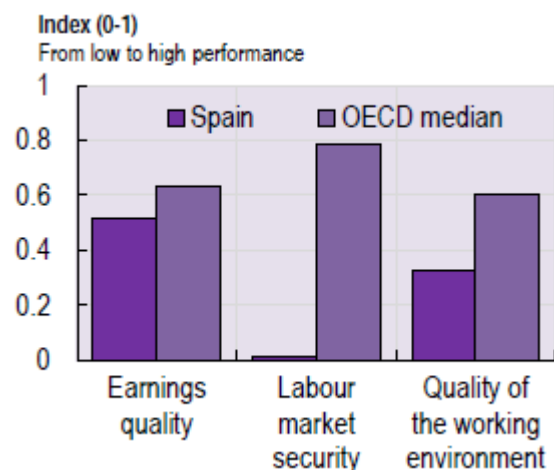
¹²⁹ *ibid.*

¹³⁰OECD, 'Rising inequality: youth and poor fall further behind. Insights from the OECD Income Distribution Database, June 2014', June 2014, available at www.oecd.org/els/soc/OECD2014-Income-Inequality-Update.pdf, at p. 5.

¹³¹ *ibid.*

¹³²OECD, 'How does Spain compare? September 2014. OECD Employment Outlook 2014', 2014, available at www.oecd.org/spain/EMO-ESP-EN.pdf.

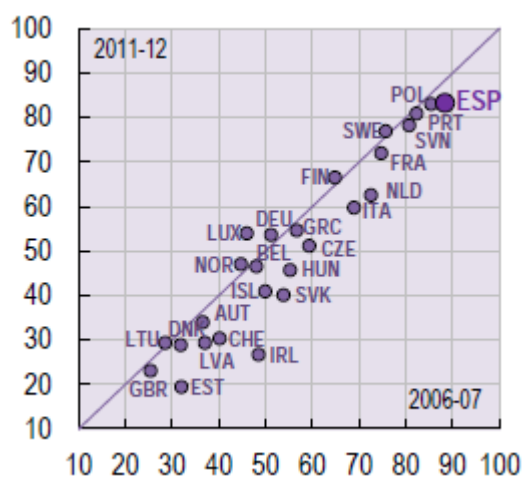
Figure 10: Job quality and job opportunities (2010)



Source: OECD Employment Outlook, 2014¹³³

Figure 11: Fixed-term contracts among new hires, 2006-2007 and 2011-2012

Percentage of employees with no more than three months of tenure



Source: OECD Employment Outlook, 2014¹³⁴

Lastly, as mentioned in Chapter 1, following ten consecutive quarters of contraction, the Spanish economy started to bounce back at the end of 2013 (mainly due to gains in exports); a fact that was accompanied with over 200,000 new jobs created during the first half of 2014¹³⁵. Nevertheless, the fragility of the labour market (despite the 2012 reform) is no guarantee for the continuity of job creation. Moreover, according to the ILO, it would take until 2013 to restore employment to 2007 levels¹³⁶. The distribution of market income (gross earnings and capital income) is estimated to remain significantly more unequal despite this rebound from the crisis: compared to 2010, market income inequality measured by the Gini coefficient (which goes from 0–perfect equality–to 1 or 100%, when

¹³³ *ibid.*

¹³⁴ OECD, 'How does Spain compare? September 2014. OECD Employment Outlook 2014', 2014, available at <http://www.oecd.org/spain/EMO-ESP-EN.pdf>.

¹³⁵ ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dqreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p.1.

¹³⁶ *Ibid*, at p.2.

one person has all the income) increased by another 1.5 percentage points in 2011¹³⁷. Moreover, inequality of disposable income increased by 4% between 2007 and 2011; and relative income poverty rate and anchored poverty (with the value of the threshold fixed in real terms at the 2005 level) increased by 1.8 and 7.9 percentage points respectively, between the onset of the crisis and 2011¹³⁸.

4.3. Overview of the measures

The first reform of the Spanish labour market took place in 2010, through approval of the RDL 10/2010 of 16 June 2010,¹³⁹ followed by the Act 35/2010 of 17 September 2010¹⁴⁰. The measures consisted of reducing the cost of dismissals and speeding up recruitments:

- The contract for the promotion of employment (*contrato de fomento del empleo*) is reformed. This type of contract was launched in 2001 for people aged 16 to 30, people aged 45 and over, unemployed women, people having been unemployed for more than six months, and disabled people. The RDL 10/2010 sets the prerequisite of unemployment in only 3 months, and it broadens the personal profiles of those who can apply for it: unemployed people who, in the two previous years had benefitted from temporary contracts; temporary employees to whom the company envisages offering a fixed-term contract; unemployed people aged 31 to 33 who have been fired in disregard of their fixed-term contract – also setting forth a compensation of 33 days of salary per year of service for dismissals under this kind of contract.
- The State takes charge of one part of the compensation concerning almost all cases of dismissal: unfair dismissals in ordinary fixed-term contracts; contracts for the promotion of employment; collective dismissals on objective grounds.
- The contract for hire or service (previously limited to three years) is extendable by another 12 months upon agreement.
- The RDL *penalises the chaining of temporary contracts*: the employee will become permanent after two years if they have had two or more contracts for the same or “a different” workplace in the same company “or group of companies”. The severance payment was eight days of salary per year of service in 2008. The reform increases this payment by one day per each calendar year of service, up to the maximum of 12 days in 2015¹⁴¹.
- This reform includes “economic, technical, e.g. the introduction of new ways of production, organisational and production-related, e.g. a temporary fall in demand”, as causes for an objective justified dismissal (both individual and collective). Yet the period during which the company has to justify its economic losses is not specified. Discretion is left to the judge to decide whether or not a decrease in income actually occurs. In

¹³⁷OECD, ‘Rising inequality: youth and poor fall further behind. Insights from the OECD Income Distribution Database, June 2014’, June 2014, available at www.oecd.org/els/soc/OECD2014-Income-Inequality-Update.pdf, at p. 1.

¹³⁸ Ibid, at p. 7.

¹³⁹ Royal Decree-Law 10/2010 of 16 June 2010 on urgent measures to reform the labour market [*Real Decreto-Ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado laboral*]. BOE 17 June 2010, available at www.boe.es/boe/dias/2010/06/17/pdfs/BOE-A-2010-9542.pdf. Not available in English.

¹⁴⁰ Act 35/2010 of 17 September on urgent measures to reform the labour market [*Ley 35/2010, de 17 de septiembre, de medidas urgentes para la reforma del mercado de trabajo*]. BOE 18 September 2010. Consolidated version 2012, available at <http://www.boe.es/buscar/pdf/2010/BOE-A-2010-14301-consolidado.pdf>. Not available in English.

¹⁴¹ This measure was approved on a temporary basis until 1 January 2013; however, the RDL 3/2012 reactivated it from 31 December 2012 onwards.

turn, the company must argue the decision to dismiss, before making another decision aimed at saving costs.

- The notification period for objective justified dismissals is reduced to 15 days, compared to 30 days previously.
- The so-called German model of reduction of working hours on economic grounds is introduced: 10-70% of the working hours may be reduced (full-time work may become part-time work). Dismissed employees have entitlement to unemployment benefits which correspond to the working conditions set in their previous contract.

The second package of reforms in the labour sector came along with the change of Government, when Mr. Rajoy took up office as Spain's Prime Minister in December 2011. The new Executive unveiled broad labour market reforms through RDL 3/2012 of 10 February 2012¹⁴², and the Act 3/2012 of 6 July 2012¹⁴³, with a view to reducing labour market duality and promoting job creation and entrepreneurship¹⁴⁴:

- *New labour market intermediaries*: temporary employment firms are allowed to operate as employment agencies upon authorisation of the Public Employment Service and fulfilment of the obligation to grant employees a service free of charge;
- The provisions set forth by the Workers' Statute regarding *training and learning contracts* are amended in order to reduce high levels of unemployment among young people. Thus, the age limit to be eligible for this contract is raised to 25 years, from the previous limit of 21 years. In addition, an exceptional measure is established: as long as the unemployment rate in Spain is over 15%, training and learning contracts may be signed with workers up to the age of 30. Moreover, a new minimum duration (from six months to one year) and a new maximum duration (from 2 to 3 years) are set for this kind of contract, applicable unless a collective agreement states otherwise. Finally, prior to the reform, the worker could not sign a second training and learning contract. Once the contract has expired, the employee is not allowed to sign another contract for the same work activity they were carrying out, but they may do so in another sector (either in the same company or with another employer).
- *The definition of the economic reason for (individual and collective) objective justified dismissal (either individual or collective) is clarified*: companies will resort to dismissals if they have losses or experience a decrease in the income or sales figures for three consecutive trimesters. They will also be able to *suspend contracts or reduce the working time on economic (losses for three consecutive months), organisational or production grounds, as well as in cases of force majeure*. In such cases, however, the employees have the right to recover unemployment benefit during the unemployment/suspension period, with an upper limit of 180 days and under certain conditions.

¹⁴² Royal Decree-Law 3/2012 of 10 February 2010 on urgent measures to reform the labour market [*Real Decreto-Ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral*]. BOE 11 February 2012, available at <http://www.boe.es/boe/dias/2012/02/11/pdfs/BOE-A-2012-2076.pdf>. Not available in English.

¹⁴³ Law 3/2012 of 6 July 2012 on urgent measures to reform the labour market [*Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral*]. BOE 7 July 2012, available at www.boe.es/boe/dias/2012/07/07/pdfs/BOE-A-2012-9110.pdf. Not available in English.

¹⁴⁴ For more information on the state of the Spanish labour market, see: ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf. Concrete information on the 2012 reform is included (pp. 89-90 and p. 135 onwards).

- *The procedure for collective dismissals changes*: until the last reforms, these were done by means of a labour force adjustment plan (ERE, in Spanish) which required approval by the Ministry of Employment and Social Security or the corresponding autonomic body). It was also part of the procedure that a company negotiated conditions for dismissals with workers' legal representatives¹⁴⁵ prior to presenting the plan to the labour authority for its approval (90.5% of the cases presented before the authorities fulfilled this criterion of previous negotiation). Now, the official authorisation is no longer required by law, for which the employer may still continue to carry out the adjustment plan in the absence of an agreement with employees, by unilateral decision. The only resort for the employees against such measures is bringing a court case.
- The *automatic conversion of temporary to fixed-term contracts* (established by the RDL 10/2011, of 26 August 2011, which modified Article 15.5 of the Workers' Statute and which applied after working for 24 months in the same company or group of companies within a 30-month period through two or more temporary contracts) *is temporarily suspended*.
- The *compensation for unfair dismissal is reduced* from 45 days of salary per year of service with an upper limit of 42 monthly wages to 33 days with an upper limit of 24 monthly wages. This measure applies to all employees but has no retroactive effects. This means that if an employee with an old, ordinary contract were to be unfairly dismissed, the compensation would need to be calculated through a double scale (the period worked after the enforcement of this measure would be calculated as seen above) and the 42 monthly wages would apply if the accumulated compensation before the publication of the Decree exceeded 24 months. This measure also *allows the employer to skip the judicial stage* by simply admitting that it is an unfair dismissal and paying the corresponding compensation. Severance payments for all other types of dismissals are set to 20 days of salary per year of service with an upper limit to 12 monthly wages.
- *In terms of promotion of job creation, a new category of Permanent Contract to Support Entrepreneurs and SMEs* is created with the aim to give companies with less than 50 employees financial incentives to hire new workers (especially unemployed young workers and those above 45) in a cheaper way (through tax reductions and discounts in social security contributions) and to dismiss employees during the first year (which is understood as the probation period).
- The *capitalisation (one-time payment) of 100% of the unemployment benefit is now available* to young workers up to the age of 30 and women up to the age of 35 who start an economic activity as self-employed workers. Before the amendments, only the capitalisation of 80% of the benefit was possible.
- *Part-time employees* may now do overtime (as long as the total number of hours worked does not exceed the legal limits for part-time jobs), something that was not allowed by the previous legislation.
- *Telecommuting* rights are expanded and *tax deductions* are available to companies of less than 50 employees who transform professional contracts, relief contracts and interim contracts into permanent contracts.
- *The reform allows firms more flexibility as a means to promote greater use of permanent contracts*: the classification of an occupations system is modified, and

¹⁴⁵ The workers' legal representative is a trade union candidate working in a company that stood for elections and won the representation of the employees of the same. In Spain, elections of workers' representatives are done within the company.

companies are allowed to *unilaterally decide on the irregular distribution of 5% of the working hours* (that is, in disregard of the rules established by contract). That is, companies are no longer obliged to justify the assignment of employees belonging to a professional category to tasks which are inferior to their own category. Secondly, *unexpected mobility is accepted* upon due justification and consultation with the workers' legal representatives. In the event of substantial individual modifications to employment conditions, the employer must notify the employee at least 15 days in advance (before, it was a 30-day period) and upon previous consultation with the workers' legal representatives. The employee then has the possibility to agree to the modification or to terminate the contract (with a compensation of 20 days of salary per year of service).

- As for *dismissals in the public sector*, Additional Provision 20 is included in the Workers' Statute establishing that "dismissals on economic, technical, organization or production grounds of public employees (...) shall be carried out according to" the criteria set for collective dismissals and contract terminations on objective grounds.
- The Spanish Employment Strategy 2012-2014¹⁴⁶ is also modified by the Royal Decree-Law, which suppresses a series of contractual allowances for employers hiring disabled people.

Aiming at the protection of employees from unemployment, the RDL 1/2011 of 11 February 2011¹⁴⁷, introduced a temporary programme of professional qualification for people who have received all of their unemployment benefits from active employment policies and the reception of financial aid. The six months was extended on two occasions through the RDL 10/2011 of 26 August 2011¹⁴⁸ and the RDL 20/2011 of 30 December 2011.¹⁴⁹ The RDL 23/2012 of 24 August 2012¹⁵⁰ added a third extension concerning the allocation of financial aid but modified the terms. Accordingly, not only does the person need to have used up all rights to other benefits and to prove their income is not higher than 75% of the national minimum wage (calculated on a monthly basis), but also:

- to have been registered as a jobseeker for at least 12 of the last 18 months, or

¹⁴⁶ Royal Decree-Law 1542/2011 of of October 2011 approving the Spanish Labour Strategy 2012-2014 [*Real Decreto 1542/2011, de 31 de octubre, por el que se aprueba la Estrategia Española de Empleo 2012-2014*]. BOE 19 November 2011, available at www.boe.es/boe/dias/2011/11/19/pdfs/BOE-A-2011-18146.pdf. Not available in English.

¹⁴⁷ Royal Decree-Law 1/2011 of 11 February 2011 on urgent measures to promote the transition to stable employment and the retraining of the unemployed [*Real Decreto-ley 1/2011, de 11 de febrero, de medidas urgentes para promover la transición al empleo estable y la recualificación profesional de las personas desempleadas*]. BOE 12 February 2011, available at www.boe.es/boe/dias/2011/02/12/pdfs/BOE-A-2011-2701.pdf. Not available in English.

¹⁴⁸ Royal Decree-Law 10/2011 of 26 August 2011 on urgent measures to promote youth employment, promotion of employment stability and maintenance of the retraining programme for people who use up their unemployment benefits [*Real Decreto-ley 10/2011, de 26 de agosto, de medidas urgentes para la promoción del empleo de los jóvenes, el fomento de la estabilidad en el empleo y el mantenimiento del programa de recualificación profesional de las personas que agoten su protección por desempleo*]. BOE 30 August 2011, available at www.boe.es/boe/dias/2011/08/30/pdfs/BOE-A-2011-14220.pdf. Not available in English.

¹⁴⁹ Royal Decree-Law 20/2011 of 30 December 2011 on urgent budgetary, tax and financial matters for the correction of the deficit [*Real Decreto-ley 20/2011, de 30 de diciembre, de medidas urgentes en materia presupuestaria, tributaria y financiera para la corrección del déficit público*]. BOE 31 December 2011, available at www.boe.es/boe/dias/2011/12/31/pdfs/BOE-A-2011-20638.pdf. Not available in English.

¹⁵⁰ Royal Decree-Law 23/2012 of 24 August 2012 prorrogating the programme for professional requalification of those persons having used up all of their unemployment benefits [*Real Decreto-Ley 23/2012, de 24 de agosto, por el que se prorroga el programa de recualificación profesional de las personas que agoten su protección por desempleo*]. BOE 25 August 2012, available at www.boe.es/boe/dias/2012/08/25/pdfs/BOE-A-2012-11132.pdf. Not available in English.

- to have family responsibilities.

The RDL also includes an increase in the financial aid amount for beneficiaries with three or more dependents: from 75% to 85% of the monthly Public Income Indicator of Multiple Effects (IPREM) for a maximum period of six months. This regulation also demands an active job search over 30 days – this being the only requirement.

Finally, in 2013, further measures were implemented by the Spanish Government through Act 11/2013¹⁵¹ to promote self-employment among young people, i.e. individuals aged 30 and younger. The adopted measures include: (i) reduced social security contributions for a period of 30 months beginning on the date of registration with social security, (ii) unemployment benefits are made available for those under 30 years old who set up as self-employed, for up to 270 days, (iii) unemployed workers can immediately access full unemployment benefits in order to invest in this activity, and (iv) unemployed workers have the option to interrupt the receipt of unemployment benefits for a period of 60 months while engaging in a self-employment activity¹⁵².

4.4. The impact of the measures

The first labour reform of 2010 provoked a general strike that took place on 29 September, three months after the reform was introduced¹⁵³.

Yet, the reform of February 2012 had immediate consequences. In March, objective dismissals exceeded unfair dismissals (35,480 against 32,590) for the first time in two years, due to the changes in severance payments and the possibility to justify it on economic grounds¹⁵⁴. The reduction of temporary contracts was another consequence hoped to be achieved by the reform – 23% fewer wage earners were employed on temporary contracts in 2012 – a historically low figure¹⁵⁵.

Nonetheless, despite these supposedly positive figures, the ultimate consequence of the reforms was job loss. Almost half a million contracts were not renewed in 2012¹⁵⁶. Moreover, as the ILO reports, the share of temporary employment remains high – in 2013, over 23% of total employment consisted of temporary jobs. Indeed, involuntary temporary employment increased from 87.2% in 2008 to 91.7% in 2013. Also involuntary part-time employment is on the rise, and has become a pressing problem in Spain since the

¹⁵¹Act 11/2013 of 26 July on measures to support entrepreneurship and stimulate growth and job creation [*Ley 11/2013, de 26 de julio, de medidas de apoyo al emprendedor y de estímulo del crecimiento y de la creación de empleo*] BOE, available at www.boe.es/boe/dias/2013/07/27/pdfs/BOE-A-2013-8187.pdf.

¹⁵²ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, pp. 91-92, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf.

¹⁵³González, J.S., 'Three decades of labour reforms' (*Tres décadas de reformas laborales*), *El País*, online edition, 10.02.2012, available at http://economia.elpais.com/economia/2012/02/10/actualidad/1328866949_808378.html.

¹⁵⁴Sánchez-Silva, C., 'Labour reform: first phase' (*Reforma laboral: primera fase*), *El País*, online edition, 18.05.2012, available at http://economia.elpais.com/economia/2012/05/18/actualidad/1337367073_953413.html.

¹⁵⁵Gómez, M., 'The reform speeds up the drop in employment' (*La reforma acelera la caída del empleo*), *El País*, online edition, 26.01.2013, available at http://economia.elpais.com/economia/2013/01/26/actualidad/1359234567_166589.html.

¹⁵⁶ *ibid.*

beginning of the crisis. Accordingly, the share of part-time workers that would rather have a full-time job increased from 36.0 per cent to 63.3 per cent between 2008 and 2013¹⁵⁷.

The new contractual modality, allowing dismissals without compensation during the first year of employment, i.e. the *Permanent Contract to Support Entrepreneurs and SMEs*, aimed at the promotion of permanent contracts, did not have any effect in terms of permanent recruitment, since the number of those contracts dropped by 2.2%¹⁵⁸. In addition, another consequence was, as previously pointed out, a substantial slowdown in real wage growth. Since 2009, hourly wages fell at a rate of 1.8% per year, a situation that notoriously affected low-paid workers¹⁵⁹.

Moreover, the number of employees affected by collective dismissals during that year almost doubled, i.e. from 6,500 in March 2011 to 11,064 in March 2012¹⁶⁰. This phenomenon was due to the removal of administrative authorisation, which brought a reduction of compensations caused by the loss of the power of trade unions. For instance, newspapers have repeatedly reported on the (ab)use of the new modality of collective dismissals carried out by large companies¹⁶¹.

Judiciary warns about higher litigation figures in the aftermath of the reforms. As a matter of fact, in January and February 2012, 282 adjustment plans (three times as many as the previous year) were withdrawn in order to be dealt with by the RDL 3/2012. After the reform, many collective dismissals were annulled by the National High Court (*Audiencia Nacional*) and the Autonomous Communities' High Courts of Justice (*Tribunales Superiores de Justicia autonómicos*). This will be presented in more detail in Chapter 9 of the present study.

The main trade unions called for a general strike on 19 February 2012, which became the greatest union mobilisation in Madrid in recent years (more than half a million participants), followed by Barcelona (450,000 participants), Valencia (80,000) and 54 other Spanish cities¹⁶².

Finally, it should be highlighted that self-employment measures did have some success in terms of keeping the number of self-employed stable in recent quarters, since 2011, after its fall following the start of the crisis in 2008, i.e. the number of people registered as self-employed in Spain went from around 3.3 million in the first quarter of 2008 to close to 2.9 million in the first quarter of 2010. From the first quarter of 2014, overall self-employment

¹⁵⁷ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p.92.

¹⁵⁸Gómez, M., 'The reform speeds up the drop in employment' (*La reforma acelera la caída del empleo*), *El País*, online edition, 26.01.2013, available at http://economia.elpais.com/economia/2013/01/26/actualidad/1359234567_166589.html.

¹⁵⁹OECD, 'How does Spain compare? September 2014. OECD Employment Outlook 2014', 2014, available at <http://www.oecd.org/spain/EMO-ESP-EN.pdf>.

¹⁶⁰Sánchez-Silva, C., 'Labour reform: first phase' (*Reforma laboral: primera fase*), *El País*, online edition, 18.05.2012, available at http://economia.elpais.com/economia/2012/05/18/actualidad/1337367073_953413.html.

¹⁶¹For instance, see: Sánchez-Silva, C., 'Labour reform: first phase' (*Reforma laboral: primera fase*), *El País*, online edition, 18.05.2012, available at http://economia.elpais.com/economia/2012/05/18/actualidad/1337367073_953413.html.

¹⁶²Recudero, M., 'Thousands of people say "no" to the reform' (*Miles de personas dicen 'no' a la reforma*), *El Mundo*, online edition, 18.02.2012, available at www.elmundo.es/elmundo/2012/02/18/espana/1329602232.html; Quílez, S., 'The first protest against the labour reform accounts hundreds of thousands of people' (*La primera manifestación contra la reforma laboral concentra a cientos de miles de personas*), *rtve.es*, 19.02.2012, available at www.rtve.es/noticias/20120219/primera-manifestacion-contra-reforma-laboral-concentra-cientos-miles-personas/499317.shtml. See moments of the demonstrations at http://economia.elpais.com/economia/2012/02/19/album/1329649966_934809.html#1329649966_934809_1329678273.

should be 13.9% below the figure registered at the beginning of 2008. Nevertheless, it should be stressed that the 75% share of “economically dependent self-employed”, that is, legally self-employed individuals who are dependent on one client for most of their income but offer their services as a self-employed worker, is considerably higher than in the fourth quarter of 2013 at 18.4%¹⁶³.

This situation is of particular concern, as it reflects the fragility of the Spanish economy despite its success in approving the last revision of Spain’s compliance with the measures agreed by the EC and Spain through the MoU (as explained in Chapter 1). In this regard, there is a need to address the tight bank credit conditions that still prevail, which represent a major obstacle to the expansion of small businesses, thereby constraining productivity gains and the creation of high-quality jobs¹⁶⁴.

¹⁶³ILO, ‘Studies on Growth with Equity. Spain. Growth with jobs’, 2014, available at www.ilo.org/wcmsp5/groups/public/---dqreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, pp 93-95.

¹⁶⁴ Ibid, at p.3.

5. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO PENSION

KEY FINDINGS

- Over the last ten years, contributory pensions to the Spanish Social Security System have increased by more than one million while, at the same time, the worker-to-pensioner ratio is expected to fall due to the gradual ageing of the population, coupled with the recession that affects the labour market in Spain. Accordingly, the Government initiated a pension reform aimed at guaranteeing the system's sustainability.
- In 2013, the Government adopted a reform which represents a systematic change in the pension calculation, as well as in the requirements for early and partial retirement pensions. These came into force in 2014. Despite the recent adoption of measures, it seems obvious that the new measures might deliver a fairer allocation of risks across generations and give place to public savings. Yet, a reduction of the pension amount has been observed, affecting the pensioners' purchasing power.

5.1. International and EU legal framework for the protection of the right to pension

There is no internationally guaranteed right to pension. However, pensions, including the contributory pensions, as well as the so-called social pensions (in so far as provided by applicable legislation), have been observed through the lenses of the right to property. Namely, having developed the doctrine of pensions as acquired rights, the European Court of Human Rights has observed pensions through the lenses of the right to property as guaranteed by Article 1 of Protocol No. 1 to the ECHR¹⁶⁵.

With this understanding, Article 17 of the EU Charter guarantees the right for everyone 'to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.'

5.2. The right to pension in Spain

Pensions are guaranteed by the Constitution in Section 50, which states that "public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age." In Spain, the obligation is to pay social security contributions from the salary, for as long as the employment lasts¹⁶⁶.

¹⁶⁵ See e.g. *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41. For a full list of references to the regime of 'acquired rights' see *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72.

¹⁶⁶For more information on the obligation of the worker to contribute to the social security system, visit the website of the Ministry of Labour and Social Security, available at www.seg-social.es/Internet_1/Trabajadores/CotizacionRecaudaci10777/AreaInformativa/Laobligaciondecotiz4903/index.htm.

In Spain, pensions (within the Social Security System) may be contributory or non-contributory:

- The former are economic benefits of a generally unlimited duration, the enjoyment of which is generally subject to a prior legal relationship with the Social Security, i.e. a minimum contribution period of 15 years, including the two years immediately preceding the date on which the person becomes entitled to the retirement pension, provided that all other requirements of age, cessation of the working activity, are met. This pension can be granted in the case of retirement, permanent incapacity (disability), or death (family pensions for widows and orphans).
- The non-contributory (or assisted) pensions are granted to those citizens who are in need of assistance, but have not made the required contributions to be entitled to receive the contributory benefits. These pensions are subject to a limitation which depends on the maximum income level on grounds of disability or retirement and are managed by the Autonomous Communities¹⁶⁷.

Contributory pensions for retirement (which are subject to the analysis in this chapter) may be granted in several different forms:¹⁶⁸

- ordinary retirement: retirement age is set at 67 years since the entry into force of Act 27/2011 (or at 65 years of age, if contributing to the fund for 38 years and 6 months);
- early retirement (in strictly limited circumstances): possible after the age of 52;
- flexible retirement: allowing the possibility to combine or reconcile the pension with a part-time contract, within working time limits;
- partial retirement: possible after the age of 60. This form of retirement is a combination of part-time work and part-time retirement (from 25 to 75%).
- special retirement at the age of 64: established as a measure to promote employment, but no longer possible from 1 January 2013, with certain exceptions.

Pensions are also granted from different regimes depending on the type of job of the worker, e.g. general regimes and special regimes for farm workers, the self-employed, and domestic employees, etc.

Over the last ten years, the number of contributory pensions to the Spanish Social Security System have increased by more than one million¹⁶⁹, while the monthly expenditures for

¹⁶⁷For more information on contributory and non-contributory pensions, see the website of the Ministry of Labour and Social Security, available at www.seg-social.es/Internet_1/Pensionistas/Pensiones/ModalidadesClases/index.htm#35116.

¹⁶⁸For more information on the types of pensions, visit the website of the Ministry of Labour and Social Security, available at http://www.seg-social.es/Internet_1/Trabajadores/PrestacionesPension10935/Jubilacion/RegimenGeneral/index.htm.

¹⁶⁹Thus, 9,172,026 pensions were paid in April 2014, representing an increase of 1.6% from the previous year, and where 5,536,489 were retirement pensions. EFE, 'Pension spending reaches EUR7.966 million in April, an increase of 3.3%' (*El gasto en pensiones alcanza los 7.966 millones en abril, el 3,3% más*), *El País* online edition, 24.04.2014, available at http://economia.elpais.com/economia/2014/04/24/agencias/1398323947_221945.html; and Spain, Ministry of Labour and Social Security, 'Evolution in the number of pensioners and pensions, 2010-2014. September 2014' (*Evolución del número de pensionistas y de pensiones (2010-2014). Septiembre 2014*), available at www.seg-social.es

pensions rose by around 80%. At the same time, the worker-to-pensioner ratio fell in the last years due to the gradual ageing of the population, coupled with recession and economic crisis.

Spain is currently spending around 10% of its GDP on public pensions¹⁷⁰, an increase of 0.7% in comparison with 2009¹⁷¹. Moreover, according to the EU 2012 Ageing Report, the pension spending trend was to increase to 14% GDP in Spain by 2050¹⁷². Given this outlook, the need for new measures guaranteeing the sustainability of the pension system is being discussed.

The first proposal for a pension reform was agreed between the previous Government and social partners, and was included in the Act 27/2011 reforming the social security system¹⁷³. This regulation was complemented by the Agreement of the Council of Ministers, of 28 October 2011, on the Global Strategy for the Employment of Ageing Workers 2012-2014 (the so-called Strategy 55 and Over), establishing the global framework for policies leading to the employment of ageing workers. Several important changes relating to the conditions of the pension beneficiaries were made during this first phase, the entry into force of which was due on 1 January 2013, as will be discussed below.

The second set of pension system reforms was passed in 2013 through the RDL 5/2013, on measures for the: promotion of the continuity of ageing workers' working lives; active ageing¹⁷⁴; Act 23/2013, regulating the Sustainability Factor and the Social Security pension system revaluation index¹⁷⁵. With its entry into force in 2014, these measures represent a systematic change in the pension calculation as well as in the requirements for early and partial retirement pensions.

According to the OECD, "today the average monetary living standards of Spanish people aged 65 and over are relatively high at 86% of the total population's level of disposable income", the same as the OECD average. Public transfers account for 72% of the income of elderly people, which is quite high in comparison with the OECD average, which is set at 59%. Furthermore, Spain achieved a substantial reduction in old-age poverty between 2007 and 2010: from 21% to 12%. On average, in OECD countries, the poverty rate

social.es/Internet_1/Estadistica/Est/Pensiones_y_pensionistas/Series_de_Pensiones_en_vigor_y_Pensionistas/index.htm.

¹⁷⁰Thus, in April 2014, 7.965,62 million euros were paid, which is an increase of 3.3% from 2013. EFE, 'Pension spending reaches EUR7.966 million in April, an increase of 3.3%' (*El gasto en pensiones alcanza los 7.966 millones en abril, el 3,3% más*), *El País* online edition, 24.04.2014, available at http://economia.elpais.com/economia/2014/04/24/agencias/1398323947_221945.html.

¹⁷¹OECD, 'Pensions at a Glance 2013. OECD and G20 Indicators. Spain', 2013, available at www.oecd.org/spain/OECD-PensionsAtAGlance-2013-Highlights-Spain.pdf. Pension spending data is also available at the OECD website, available at <http://data.oecd.org/socialexp/pension-spending.htm>.

¹⁷²EC, 'The 2012 Ageing Report: Economic and budgetary projections for the EU27 Member States (2010-2060)', February 2012, p. 406, available at http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-2_en.pdf, at p. 406.

¹⁷³Act 27/2011 of 1 August 2011, on the update, the adaptation and the modernization of the Social Security System [*Ley 27/2011, de 1 de agosto, sobre actualización, adecuación y modernización del sistema de Seguridad Social*]. BOE 2 August 2011, available at <http://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13242.pdf>. Not available in English.

¹⁷⁴Royal Decree-Law 5/2013 of 15 March 2013 on measures for the promotion of the continuity of ageing workers' working life and active ageing [*Real Decreto-Ley 5/2013, de 15 de marzo, de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo*]. BOE 16 March 2013, available at www.boe.es/boe/dias/2013/03/16/pdfs/BOE-A-2013-2874.pdf. Not available in English. According to its wording, the measures proposed by the RDL 5/2013 meet the EU Council Recommendations of 10 July 2012 in the field of sustainability of the pension system and the promotion of active ageing.

¹⁷⁵Act 23/2013 of 23 December regulating the Sustainability Factor and the Social Security pension system revaluation index [*Ley 23/2013, de 23 de diciembre, reguladora del Factor de Sostenibilidad y del Índice de Revalorización del Sistema de Pensiones de la Seguridad Social*] BOE 26 December 2013, available at www.boe.es/boe/dias/2013/12/26/pdfs/BOE-A-2013-13617.pdf. Not available in English.

among the elderly fell from 15.1% to 12.8% over the same period¹⁷⁶. Nonetheless, the aforementioned recent measures could have a negative impact on the pensioners' poverty levels.

5.3. Overview of relevant measures

The above-mentioned Act 27/2011 imposed:

- The *increase in the retirement age to 67*. The previous age was 65 and is, however, still enforceable for workers who have contributed to the system for at least 38 years and six months. The modification will be gradually implemented over the period of 15 years (until 2027).
- The *increase in the requirement for the duration of contributing to the system* in order to receive the full pension: from 35 to 37 years.
- A *modification in the benefit calculation*: instead of taking the average income in the last 15 years of work as the pension calculation base, the new basis was set to the *last 25 years*.

The reform set forth by the RDL 5/2013 (on measures for the promotion of the continuity of ageing workers' working life and active ageing), and Act 23/2013, which sets the Sustainability Factor and the Social Security pension system revaluation index, maintains the existing distribution system, which is essentially contributory and based upon intergenerational solidarity. However, it introduces a few amendments aimed at levelling out the longer life expectancy and the decrease in worker-to-pensioner ratio, including the introduction of a new sustainability factor which should take into account the ageing of the population.

The second key measure for the sustainability of pensions is the Social Security *pension system revaluation index*, calculated on an annual basis, which presents the following modifications:

- *Four variables:*

- (1) income;
- (2) expenses of the social security system: the annual revaluation of the pensions will be calculated according to the evolution of the system's income and expenses, which will keep pensions proportional to the amount collected for pensions on an annual basis;
- (3) annual variation index of the number of contributory pensions: the proportion between the number of contributors and the number of pensioners;
- (4) year-to-year variation of the system's average pension: determined by the Government's budgetary effort to allocate funds to the system according to the fiscal deficit or surplus.

¹⁷⁶OECD, 'Pensions at a Glance 2013. OECD and G20 Indicators. Spain', 2013, available at www.oecd.org/spain/OECD-PensionsAtAGlance-2013-Highlights-Spain.pdf, at p. 2.

- *Abandoning the index of consumer prices (CPI as a reference):* pensions are not automatically revaluated according to the annual inflation rate. In disregard of the four variables already mentioned, pensions will increase on a yearly basis at least 0.25% and not more than 0.5% plus the CPI of the previous year.
- The revaluation factor is not obtained through the figures of only one year's tax, but it will be revised *every five years* in order to recalculate pensions according to that period.
- *This factor concerns all pensioners:* unlike the intergenerational equality factor, which only affects new pensioners, the annual revaluation factor applies to all present and future pensioners. The factor entered into force on 1 January 2014.

And finally the new regulation includes:

- The *compatibility of the reception of a retirement pension with self-employed activities* or activities as an employed person leading to the promotion of the extension of the working life. For the first time in Spain, those workers having contributed for many years and having achieved the statutory retirement age are allowed to combine a full-time or part-time job with the reception of 50% of their pension and enjoy limited social contribution obligations.
- The *modification of early pension (in force since April 2013):*
 - as established by the Act 27/2011, there is a difference between forced early retirement and voluntary early retirement. In both cases, the minimum age will be progressively increased between 2013 and 2027 – the first one from the age of 61 to 63, and the second one from the age of 63 to 65;
 - a longer contribution period will be required: a minimum of 35 years for the voluntary early pension means two more years than in the previous reform (Act 27/2011) and five more than currently. As for forced early retirement – 33 years of contribution are required;
 - “The application of the reduction factors, i.e. percentages to be applied for each semester of early retirement with respect to the ordinary age (in 2013, 65 years 1 month), becomes more gradual and takes into account the contribution record aiming at the strengthening of the neutrality and contributive principles”, according to the Ministry of Employment and Social Security.¹⁷⁷ Such percentages imply a reduction in the pension amount.
 - Reduction factors for early retirement have also been changed.
- The *modification of partial retirement (in force since April 2013):*
 - This modality is redressed towards its original objective: to facilitate intergenerational transmission of knowledge and experience. “This measure prevents the use of this modality as a privileged access to early retirement”, as justified by the Social Security authorities.
 - The new legislation raises the minimum age and contribution period to access partial retirement, and reduction factors are still not applicable.

¹⁷⁷See Spain, Ministry of Labour and Social Security, ‘The Council of Ministers passes measures to promote active ageing and prevent age discrimination in employment policies’ (*El Consejo de Ministros aprueba medidas para fomentar el envejecimiento activo y evitar la discriminación por edad en el empleo*), 15.03.2013, available at <http://prensa.empleo.gob.es/WebPrensa/noticias/ministro/detalle/1891>.

- The maximum reduction of working hours is limited to 50%.
- A maximum reduction of 75% is allowed when a hand-over contract with a younger worker is signed.
- The worker's minimum contribution period is raised to 33 years (25 years for people with disabilities).

Finally, in 2012, the Government decided to suspend the compensation paid to pensioners by the deviation of CPI - a measure which was contrary to Article 48 of the Act on Social Security in force by then, by means of Art. 2.1. of the RDL 28/2012¹⁷⁸ on ground of the difficult economic situation¹⁷⁹.

5.4. The impact of the measures

After this first year of enforcement of the new reform, pensions increased by a minimum 0.25%, set by the new revaluation system, and reached 999.41 euro per month – the average contributory pension of the 5.5 million pensioners in Spain as for June 2014¹⁸⁰. According to what is foreseen by the State Budget for 2015, pensioners have already lost purchasing power, given that a rise in prices (measured by the private consumption deflator) of 0.6% is projected. The consequence is a decrease of the purchasing power by 0.35% in 2014, which will continue its downward trend due to the fact that pensions will not be increased more than 0.25% until 2019 while an increase in inflation is projected¹⁸¹.

It seems obvious that the new measures might deliver a fairer allocation of risks across generations and give place to savings – the saving of 3.4% of the GDP in 2050 is expected, with respect to a scenario with no reforms¹⁸². Furthermore, while it is true that pension expenses have maintained their upward trend, the growth of real pensions has been the slowest of the last three decades:

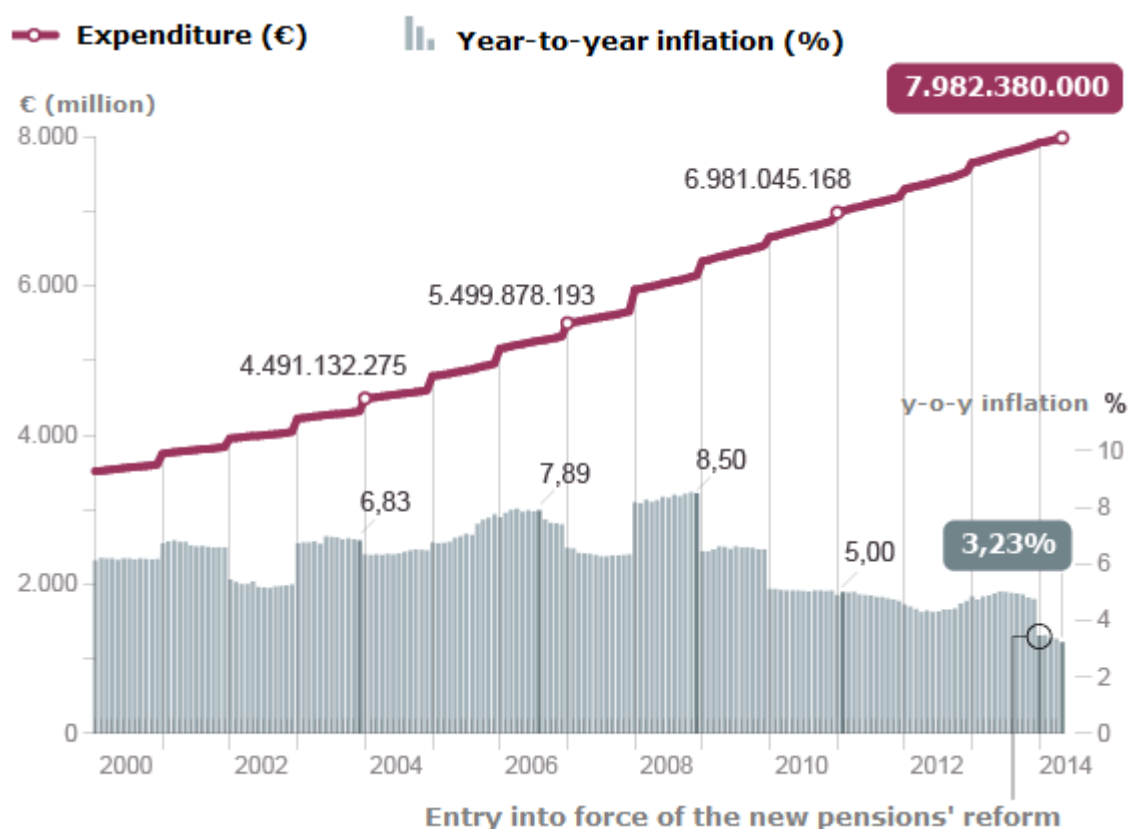
¹⁷⁸Royal Decree-Law of 30 November on measures for the consolidation and guarantee of the Social Security system [*Real Decreto-ley 28/2012, de 30 de noviembre, de medidas de consolidación y garantía del sistema de la Seguridad Social*] BOE 1 December 2012, available at <http://www.boe.es/boe/dias/2012/12/01/pdfs/BOE-A-2012-14695.pdf>. Not available in English.

¹⁷⁹Núñez, F., 'The Government will not compensate pensioners for the increase in the Consumers Price Index (*Índice de Precios al Consumo, IPC*)' (*El Gobierno no compensa a los pensionistas por el aumento del IPC*), *El Mundo*, 30.11.2012, available at www.elmundo.es/elmundo/2012/11/30/economia/1354279903.html.

¹⁸⁰Gómez, M., 'Retired people are already "mileuristas"' (*Los jubilados ya son mileuristas*), *El País*, online edition, 26.06.2014, available at http://economia.elpais.com/economia/2014/06/26/actualidad/1403769048_223950.html.

¹⁸¹Gómez, M., 'Pensions will lose purchasing power in the first year of the reform' (*Las pensiones perderán poder adquisitivo en el primer año de la reforma*), *El País*, online edition, available at http://economia.elpais.com/economia/2014/09/30/actualidad/1412068899_230678.html.

¹⁸²*El País*, 'The Spanish National Central Bank requests to encourage savings in view of the possible downsize of pensions' (*El Banco de España pide fomentar el ahorro ante la posible rebaja de la pensión*), *El País*, online edition, 23.07.2014, available at http://economia.elpais.com/economia/2014/07/23/actualidad/1406113831_633406.html.

Figure 12: Evolution of expenditure on benefits

Source: Ministry of Labour and Social Security/EL PAÍS¹⁸³

Yet, reforms also increase the uncertainty for future retirees regarding their pension entitlements. This issue may be particularly relevant for low-income workers in terms of pensioner poverty. In this sense, the Bank of Spain explained that, even though the new measure ensures system sustainability in the long term, to compensate an ageing population, it does not always guarantee that the purchasing power after retirement will stay the same. As a matter of fact, following the Government's estimations, a person retiring in 11 years will receive 3% less than another person having generated the same pension rights but retiring at this moment. Thus, the Government admits that "depending on the evolution of the inflation rates, pensions might be reduced in real terms". Given the uncertainty about the future pension rights, the Bank of Spain finds it "convenient" to develop new mechanisms aimed at stimulating private savings in view of retirement¹⁸⁴.

¹⁸³Romero, A., 'The pension expenditure increases to its slowest in three decades with a 3.2% growth' (*El gasto en pensiones crece a su ritmo más bajo en tres décadas con un 3.2%*), *El País*, online edition, 27.05.2014, available at http://economia.elpais.com/economia/2014/05/27/actualidad/1401176226_984035.html. Not available in English.

¹⁸⁴El País, 'The Spanish National Central Bank requests to encourage savings in view of the possible downsizing of pensions' (*El Banco de España pide fomentar el ahorro ante la posible rebaja de la pensión*), *El País*, online edition, 23.07.2014, available at http://economia.elpais.com/economia/2014/07/23/actualidad/1406113831_633406.html.

6. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT OF ACCESS TO JUSTICE

KEY FINDINGS

- Act 10/2012 was approved in the crisis, extending court fees to natural persons and in every jurisdiction except the criminal one. The high amount of fees led to complaints before the Spanish Ombudsperson and was also denounced by the Spanish Council of Advocacy, on the grounds that this measure severely limits the fundamental right to access to justice.
- The Government reviewed the norm on the recommendation of the Spanish Ombudsperson. Nevertheless, amendments were regarded as insufficient, and several complaints and submissions of unconstitutionality were filed before the Constitutional Court in 2013.

6.1. International and EU legal framework for the protection of the right of access to justice

While access to justice has not been explicitly guaranteed by international human rights law as such, it has however figured highly in the general requirements of the respect of rights of individuals. Hence, the UDHR, ICCPR, or ECHR, while guaranteeing procedural rights by means of the right to a fair hearing (or trial), do not make a reference to access to justice. The absence of a guarantee of the right of access to justice, has not prevented the ECtHR to effectively provide protection of this right by expanding the guarantee from Article 6 of the right to a fair trial to also mean the guarantee of the right to access to a court. Furthermore, Article 13 of the ECHR guarantees the right to legal remedy, which is also an important element of access to justice.

More recently, however, the Convention on the Rights of Persons with Disabilities¹⁸⁵ guarantees the right of people with disabilities on access to justice on an equal basis with others.

Access to justice is guaranteed by Article 47 of the EU Charter, which guarantees the right of everyone to an effective remedy before a tribunal established by the law, by means of a fair and public hearing within a reasonable time, with access to legal aid, if necessary. However, even though it is seen to typically mean 'having a case heard in a court, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as European Ombudsman at the EU level¹⁸⁶.'

¹⁸⁵CRPD, Article 13.

¹⁸⁶FRA, [Themes: Access to justice](#).

6.2. Access to justice in Spain

Spain guarantees access to justice as a fundamental right in Section 24.1 of the Spanish Constitution, which states that “all persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests [...]”. Moreover, the principle of equality before the law is recognised in Section 14.¹⁸⁷

In Spain, the court fees have existed until 1987, when they were removed to better guarantee access to justice and prevent corruption in judicial offices. In 2002, Act 53/2002¹⁸⁸ imposed the fees again for corporations and legal persons with an income higher than 8 million euros. Later, amidst the crisis, the Act 10/2012 on fees in the administration of justice was approved, extending court fees to natural persons. This led to 790 complaints before the Spanish Ombudsperson applying for constitutional review in 2013. These facts are exposed below, together with the measures that followed them.

6.3. Court fees in time of crisis

Act 10/2012 on court fees¹⁸⁹ fundamentally provides for:

- Criminal jurisdiction remains exempt from fees; but not the civil, administrative and social jurisdictions, according to Article 1 on the scope of application of court fees.
- Article 2 on taxable events defines the following proceedings as subject to court fees: a claim in all kinds of declarative processes and enforcement of extrajudicial actions in the civil jurisdiction, counterclaim formulation and initial request for payment procedure and the European order for payment; as well as the filing of administrative actions; the necessary bankruptcy proceeding [*solicitud de concurso necesario*] and the incidental demand in insolvency proceedings [*demanda incidental en procesos concursales*]; the filing of an extraordinary appeal on procedural infringement in civil law; the filing of appeals against judgments and appeals in cassation in civil and administrative courts; the filing of pleas and cassation procedures in the social order; and the opposition to the execution of judicial resolutions. For instance, appealing a decision concerning a dismissal will cost €500 per claimant.
- It extends the application of fees to individuals and legal persons of small economic size, hitherto exempt, as well as to the labour sphere - though just beyond the first instance, and with a 60% reduction in favour of workers and self-employed who had also been exempted in the previous regime. The exemption of fees is extended to the following groups: people who have been granted the right to legal aid (with insufficient assets, with a household income less than two times the annual minimum interprofessional wage according to the Legal Aid Act¹⁹⁰ - that would be less than

¹⁸⁷Spain, Spanish Constitution [*Constitución Española*] of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

¹⁸⁸Act 53/2002, of 30 December, on fiscal and administrative measures, and for social order [*Ley 53/2002, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social*]. BOE 31 December 2002. Available at <https://www.boe.es/boe/dias/2002/12/31/pdfs/A46086-46191.pdf>. Not available in English.

¹⁸⁹Act 10/2012 of 20 November for the regulation of some court fees of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences [*Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses*]. BOE 21 November 2012. Available at www.boe.es/boe/dias/2012/11/21/pdfs/BOE-A-2012-14301.pdf. Not available in English.

¹⁹⁰Act 1/1996 of 10 January on Legal Aid [*Ley 1/1996, de 10 de Enero, de asistencia jurídica gratuita*] BOE 12 January 1996. Consolidated version 23 February 2013. Available at

€1290,60 in 2014¹⁹¹); as well as the Public Prosecutor, the Central State Administration, the Autonomous Communities' administration, local authorities and all their subordinate public bodies, the Parliament (*Cortes Generales*) and Legislative Assemblies of the Autonomous Communities.

- The Act also sets some criteria for the objective exemption of the fees, which include the following cases:
 - a) The filing of a claim and lodging of further appeals in relation to the proceedings on legal capacity, filiation and minors, as well as matrimonial proceedings exclusively concerning the guardianship and custody of minors or maintenance (food) claimed by one parent against the other on behalf of minors.
 - b) The filing of claims and lodging of further appeals in the case of procedures especially established for the protection of fundamental rights and civil liberties, as well as against the performance of the Electoral Administration.
 - c) The request for voluntary bankruptcy proceeding by the debtor.
 - d) The filing of administrative appeals by public officials to defend their statutory rights.
 - e) The presentation of initial requests for payment procedures and the demand for oral proceedings on monetary claims if the amount thereof does not exceed two thousand euros. This exemption shall not apply where the claim exercised is based on an extrajudicial enforcement order in accordance with Article 517 of the Law 1/2000 of January 7 on Civil Procedure.
 - f) The filing of an administrative appeal in cases of breach [*silencio administrativo negativo*] or inactivity of the Administration.

- A significant increase in the amounts of the fees regarding its fixed part¹⁹²: the fork moves from €50 to €600 and €100 to €1200. Table 3 shows the established fixed part for each procedure as follows:

www.boe.es/buscar/pdf/1996/BOE-A-1996-750-consolidado.pdf. Not available in English.

¹⁹¹Royal Decree 1046/2013 of 27 December fixing the [*Real Decreto 1046/2013, de 27 de diciembre, por el que se fija el salario mínimo interprofesional para 2014*]. BOE 30 December 2013, available at www.boe.es/boe/dias/2013/12/30/pdfs/BOE-A-2013-13764.pdf.

¹⁹²The Act maintains various aspects of the regulation which was incorporated in Article 35 of Act 53/2002, of 30 December. This is the case for maintaining the criterion of the amount of the fee according to two factors: a variable amount, in response to the amount of the judicial procedure; and another fixed part, depending on the type of procedure.

Table 3: Court fees (fixed part by type of proceeding) according to Act 53/2002 and Act 10/2012

Jurisdiction	Fixed part (€) by type of procedure Act 53/2002		Fixed part (€) by type of procedure Act 10/2012	
Civil jurisdiction	Verbal	90	Verbal and Exchange procedure	150
	Ordinary	150	Ordinary	300
	Order for payment	90	Request for payment, European order for payment procedure and incidental claim in insolvency proceeding	100
	Executory proceeding	150	Extrajudicial execution and opposition to the execution of judicial resolutions	200
	Insolvency proceeding	150	Forced insolvency	200
	Appeal	300	Appeal	800
	Cassation and infringement of procedural requirements	600	Cassation and extraordinary procedure for infringement of procedural requirements	1,200
Administrative jurisdiction	Abbreviated process	120	Abbreviated process	200
	Ordinary process	210	Ordinary process	350
	Appeal	300	Appeal	800
	Cassation	600	Cassation	1,200
Labour jurisdiction	None		Plea [<i>Suplicación</i>]	500
			Cassation	750

Source: Article 6 of Act 53/2002¹⁹³, and Article 7 of Act 10/2012¹⁹⁴

For instance, with the entry into force of Act 10/2012, appealing a decision becomes especially expensive (from €300 to €800). This Act also provides for the payment of costs by those affected by a foreclosure or those lodging appeals before the labour jurisdiction, something that has been widely criticised given the current economic and labour context of the Country. On the other hand, the variable part accounts for 0.5 percent of judicial expenses up to a million Euros, and 0.25 percent of the total expenses of those judicial proceedings (equal to the tax base for court fees) that are above the million Euro mark, up to a maximum of €10,000 (although this amount is set at €18,000 for those proceedings of undetermined amounts).

According to the Ministry of Justice's press release of 30 March 2012¹⁹⁵, this measure aimed at the prevention of overburdening the courts, by limiting litigation, which had grown

¹⁹³Act 53/2002 of 30 December on fiscal and administrative measures and for social order [*Ley 53/2002, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social*]. BOE 31 December 2002. Available at <https://www.boe.es/boe/dias/2002/12/31/pdfs/A46086-46191.pdf>. Not available in English.

¹⁹⁴Act 10/2012 of 20 November for the regulation of some court fees of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences [*Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses*]. BOE 21 November 2012. Available at www.boe.es/boe/dias/2012/11/21/pdfs/BOE-A-2012-14301.pdf. Not available in English.

¹⁹⁵Spain, Ministry of Justice, 'The Government passes in second instance a complete review of the judicial fees system' (*El Gobierno aprueba una complete revisión del sistema de tasas judiciales en segunda instancia*), 30.03.2012, available at www.mjusticia.gob.es/cs/Satellite/1292348729507?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Medios&blobheadervalue1=attachment%3B+filename%3D120330_Tasas_con_cuadro_adjunto.pdf&blobheadervalue2=1288776697747.

since the beginning of the crisis: e.g. from 2007 to 2011, the number of decisions increased by 70% in civil courts, and by 100% in labour courts¹⁹⁶, and covering judicial costs, in turn, in those cases of persons entitled to free assistance due to lack of resources. However, it entailed a limitation to access to justice for many middle-income citizens. In this sense, the statistics show a decrease in the number of incoming cases in almost all jurisdictions affected by the adoption of these measures. That is, there was a decrease of -9.2% between 2012 and 2013 of incoming cases in the civil jurisdiction and of -15.5% in the administrative jurisdiction. The number of incoming cases is approximately the same, considering the timid increase of 1.2% in the same period¹⁹⁷.

It is worth mentioning that, first, the fees can still be reclaimable, but only if the refund has been ordered by the court. However, in most cases, the Court does not award a refund of the fees to the winning party. That is, the fee was already included in costs by Law 37/2011 of 10 October on measures for procedural facilitation¹⁹⁸ and, in some cases, the fee is recoverable via costs: the court generally imposes costs on the party whose claims have been rejected or they may be allocated between the parties in cases of estimation / partial dismissal of the claims (the Act allows certain discretion, for example, where the case raises doubts, or in view of bad faith of one of the parties, to determine the payment of costs). However, in many other cases it is not. It is not, for example, in court proceedings in which the law itself does not provide for costs; and therefore having no imposition of costs, the fee cannot be legally deduced. This is the case of civil appeals and appeals in cassation, when these are won by the appellant – in the second instance (art. 398 of the Code on Civil Procedure¹⁹⁹). In Family Law, imposition of costs is also uncommon. Fees are not returned if the other litigant is a recipient of legal aid, or when the other party is the Public Prosecutor which cannot be ordered to pay costs, according to Art. 394 of the Code on Civil Procedure²⁰⁰.

Moreover, it has been widely denounced by the Spanish Council of Advocacy²⁰¹ and even by certain rulings²⁰² that, in general terms, there is a lack of proportionality between the fees and the average purchasing power of the citizen who has to pay those fees – which leads to an unequal access to justice. Actually, this even brought about the creation of the Platform “Justice for all” (*Plataforma Justicia para Todos*) in 2012.²⁰³ Finally, the adoption of Act

¹⁹⁶Spanish General Council of the Judiciary (*Consejo General del Poder Judicial*), ‘The Spanish Judiciary in figures, 2011’ (*La justicia dato a dato: año 2011*), 10.07.2012, available at www.poderjudicial.es/cgpj/es/Temas/Estadistica_Judicial/Analisis_estadistico/ch.La_Justicia_dato_a_dato.default.

¹⁹⁷Spanish General Council of the Judiciary (*Consejo General del Poder Judicial*), ‘The Spanish Judiciary in figures, 2013’ (*La justicia dato a dato: año 2013*), 13.05.2014, available at www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Analisis-estadistico/La-Justicia-dato-a-dato/La-justicia-dato-a-dato---ano-2013.

¹⁹⁸Act 37/2011 of 10 October on measures for procedural facilitation [*Ley 37/2011, de 10 de octubre, de medidas de agilización procesal*]. BOE.

¹⁹⁹Act 1/2000 of 7 January establishing the Code of Civil Procedure [*Ley 1/2010, de 7 de enero, de Enjuiciamiento Civil*]. BOE 8 January 2014, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-323-consolidado.pdf. Not available in English.

²⁰⁰Act 1/2000 of 7 January establishing the Code of Civil Procedure [*Ley 1/2010, de 7 de enero, de Enjuiciamiento Civil*]. BOE 8 January 2014, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-323-consolidado.pdf. Not available in English.

²⁰¹To know more, see: www.abogacia.es.

²⁰²See the following cases in Chapter 9 (Table 9.1): Provincial Court of Pontevedra, Section 1. Ruling 168/12, of 29 July 2014, available at www.abogacia.es/wp-content/uploads/2014/09/Auto-tasa-recurso-mercantil.pdf; and Supreme Court, Fourth Chamber, non-jurisdictional agreement of the Court on court fees on social and labour matters, of 5 June 2013, available at www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Jurisprudencia-/Acuerdos-de-Sala/Acuerdo-del-Pleno-No-Jurisdiccional-de-la-Sala-Cuarta-del-Tribunal-Supremo-de-05-06-2013--sobre-las-tasas-en-el-Orden-Social.

²⁰³This Platform was launched in 2012, and is integrated by the Spanish Council of Advocacy [*Consejo General de la Abogacía Española*], the Spanish Consumers’ Association [*Consejo de Consumidores y Usuarios*] and the most representative labour unions in the country. Its goal is to publicly speak against the Act 10/2012 and the draft Act on Legal Aid as it “severely limits” and “leaves [many social groups] out of the real possibilities of access to justice”. Moreover, one of its main claims is that the introduction of court fees imposes “serious obstacles” to allow workers to refer unfavourable judicial decisions to a higher authority in the first instance; thus harnessing the labour reform. Europa Press, ‘The platform “Justice for All” is launched to fight against judicial fees’ (*Nace la*

10/2012 was not accompanied by the reform of the Act on Legal Aid 1/1996²⁰⁴, which still remains in force. The latter did not provide for the extension of fees to beneficiaries of legal aid, as at the time of its adoption (1996) court fees did not exist; it is out of date and needs to be modified

In 2012, more than 3,800 letters were addressed to the Ombudsman against the Act 10/2012, of which 2,700 were requests for complaints of unconstitutionality²⁰⁵. In response, on 12 February 2013, the Spanish Ombudsman indicated a series of recommendations with regard to court fees, and about the need to review the current Legal Aid Act (to update the law and reflect the changes made in Act 10/2012)²⁰⁶. In response to the proposals of the Ombudsman, the Government approved the RDL 3/2013 of 22 February²⁰⁷, modifying the court fees regime for the Administration of Justice and the legal aid system (until the adoption of the new Act on Legal Aid, still in draft form). Thus, RDL 3/2013 reduced fees mainly through three measures:

- The reduction of fees in the following cases;
 - Administrative jurisdiction: the amount of the total fee (fixed + variable) in the disciplinary procedure is reduced to 50% of amount of the financial sanction imposed;
 - Labour jurisdiction: The variable fee now distinguishes between natural and legal persons. The same fees are maintained for legal persons, but individuals now pay a variable fee of 0.10% of the tax base up to a variable maximum amount of €2,000.

- More situations for exemption from court fees:
 - In objective terms, the following assumptions are added: matrimonial proceedings, although partially (only if mutually agreed); applications for the enforcement of arbitral awards in consumption; actions in the interest of the insolvency filed by insolvency practitioners; and the judicial division of assets by mutual agreement.
 - In the administrative jurisdiction, public officials acting in defence of their statutory rights have an exemption of 60 percent on the amount of their fee related to the filing of appeals and appeals in cassation.

'Plataforma Justicia para Todos' para luchar contra las tasas), Europa Press, 05.12.2012, available at www.europapress.es/sociedad/consumo-00648/noticia-nace-plataforma-justicia-todos-luchar-contra-tasas-20121205143550.html.

²⁰⁴Act 1/1996 of 10 January on Legal Aid [*Ley 1/1996, de 10 de Enero, de asistencia jurídica gratuita*] BOE 12 January 1996. Consolidated version 23 February 2013. Available at www.boe.es/buscar/pdf/1996/BOE-A-1996-750-consolidado.pdf. Not available in English.

²⁰⁵Spanish Ombudsperson, 'Annual Report. 2012' (*Informe Anual 2012*), available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/Informe_2012.pdf.

²⁰⁶Spanish Ombudsperson, 'Annual Report. 2013' (*Informe Anual 2013*), available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/Informe_2013.pdf.

²⁰⁷Royal Decree-law 3/2013 of 22 February 2013 modifying the court fees regime for the Administration of Justice and the legal aid system [*Real Decreto-Ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita*]. BOE 23 February 2013. Available at www.boe.es/boe/dias/2013/02/23/pdfs/BOE-A-2013-2029.pdf. Not available in English.

- There is an increase on the groups of legal aid beneficiaries, amending Act 1/1996 to comply with Section 119 of the Spanish Constitution²⁰⁸:
 - victims of gender violence, terrorism and human trafficking in the processes related to their status as victims;
 - minors and persons with mental disabilities who are victims of situations of abuse; and their successors, provided that the latter was not the aggressor;
 - requirements to qualify for legal aid are modified, being available to people without sufficient assets and with a gross income that does not exceed the following thresholds:
 - Twice the value of the public income indicator of multiple effects [*indicador público de renta de efectos múltiples*] (IPREM) at that moment (€532.51/month²⁰⁹ in 2014), in the case of persons which are not integrated in a family unit. That is, an income amount lower than €1,065.20 per month;
 - Two and a half times the IPREM in case of persons belonging to a family unit under four members;
 - The triple of this indicator in the case of households of four or more members.

Finally, the RDL 3/2013 also amends the Section corresponding to the payment of costs of the Act 1/2000, of 7 January, establishing the Code of Civil Procedure²¹⁰, to avoid that the fee for the exercise of judicial power in a foreclosure process related to the purchase of the main residence is included in the legal costs to be paid by the person affected by the foreclosure extending the same exemption to the guarantor.

Nevertheless, "Justice for All" declared that this latest reform (performed without having had the opinion of this Platform), continues to hinder the right to effective judicial protection, as the impact of the amendment would be less than 5% from the 306 million provided for in the Financial Report of the Act on Public Tariffs – acknowledged by the Ministry of Justice²¹¹. Accordingly, in 2013, the Governments of Andalusia, Aragon, the Canary Islands, Catalonia and the Socialist parliamentary group filed complaints of unconstitutionality before the Constitutional Court, which were declared admissible²¹². The

²⁰⁸ Section 119 of the Spanish Constitution: "Justice shall be free when thus provided for by law, and shall in any case be so in respect of those who have insufficient means to sue in court."

²⁰⁹ Act 22/2013 of 23 December on the State General Budget for 2014 [*Ley 22/2013, de 23 de Diciembre, de Presupuestos Generales del Estado para el año 2014*]. BOE 26 December 2013. Available at www.boe.es/buscar/pdf/2013/BOE-A-2013-13616-consolidado.pdf. Not available in English.

²¹⁰ Act 1/2000 of 7 January establishing the Code of Civil Procedure [*Ley 1/2010, de 7 de enero, de Enjuiciamiento Civil*]. BOE 8 January 2014, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-323-consolidado.pdf. Not available in English.

²¹¹ Spanish Council of Advocacy (*Consejo General de la Abogacía Española*), 'The Platform Justice for All considers that the reform of judicial fees continues to hamper the effective legal protection of citizens' (*La Plataforma Justicia para Todos considera que la reforma de las tasas sigue dificultando la tutela judicial efectiva de los ciudadanos*), 28.02.2013, available at www.abogacia.es/2013/02/28/la-plataforma-justicia-para-todos-considera-que-la-reforma-de-las-tasas-sigue-dificultando-la-tutela-judicial-efectiva-de-los-ciudadanos/.

²¹² For instance, see Andalusia's complaint: Complaint of unconstitutionality No. 3035-2013, against Sections 1, 2, 3, 4, 6, 7 and 8 of article 1 of Royal Decree-Law 3/2013, of 22 February 2013, modifying the court fees regime for the Administration of Justice and the legal aid system [*Recurso de inconstitucionalidad n.º 3035-2013, contra los apartados 1, 2, 3, 4, 6, 7 y 8 del artículo 1 del Real Decreto-ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita*]

Labour Courts (*Juzgados de lo Social*), Courts of First Instance, and the Administrative Division²¹³ of the National High Court, presented submissions of unconstitutionality²¹⁴. The new Minister of Justice Rafael Catalá (in office since 29 September 2014, succeeding Alberto Ruiz-Gallardón) announced a new modification of court fees, given the current risk of limiting access to justice for citizens. According to his statements in the press, he is gathering information from the Spanish Council of Advocacy [*Consejo General de la Abogacía Española*], the Spanish Tax Agency [*Agencia Tributaria*] and the General Council of the Judiciary in order to "make a proposal by January, as agreed upon, to adjust the amounts of some of the fees"²¹⁵.

BOE 12 June 2013, available at www.boe.es/boe/dias/2013/06/12/pdfs/BOE-A-2013-6276.pdf. Also see the Socialist parliamentary group's complaint of unconstitutionality: Complaint of unconstitutionality No. 3076-2013, against Royal Decree-Law 3/2013, of 22 February 2013, modifying the court fees regime for the Administration of Justice and the legal aid system [*Recurso de inconstitucionalidad nº 3076-2013, contra el Real Decreto-ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita*] BOE 12 July 2013, available at: www.boe.es/boe/dias/2013/07/12/pdfs/BOE-A-2013-7615.pdf.

²¹³National High Court, Administrative Chamber, Section 007. Ruling No. 28079 23 3 2013 0001361, of 6 September 2013, available at www.abogacia.es/wp-content/uploads/2013/09/2013-09-06-Audiencia-Nacional-Auto-cuestion-inconstitucionalidad-Ley-Tasas.pdf.

²¹⁴Spanish Council of Advocacy (*Consejo General de la Abogacía Española*), 'The Constitutional Court facilitates the study of appeals against judicial fees in view of the stay of proceedings' (*El TC agiliza el estudio de los recursos contra las tasas ante la paralización de procesos judiciales*), 22.09.2014, available at www.abogacia.es/2014/09/22/el-tc-agiliza-el-estudio-de-los-recursos-contra-las-tasas-ante-la-paralizacion-de-procesos-judiciales/.

²¹⁵Spanish Council of Advocacy (*Consejo General de la Abogacía Española*), 'In January, Catalá will raise a 'commitments' proposal to reform the judicial fees' (*Catalá planteará en enero una propuesta 'acordada' para reformar las tasas judiciales*), 29.12.2014, available at www.abogacia.es/2014/12/29/catala-planteara-en-enero-una-propuesta-acordada-para-reformar-las-tasas-judiciales/.

7. RIGHT TO FREEDOM OF EXPRESSION AND ASSEMBLY: PROTESTS AGAINST AUSTERITY MEASURES

KEY FINDINGS

- The wave of demonstrations that took place in Spain, mostly as a means of protest against austerity measures, received a repressive response by the Government and the security forces of the State. This fact has been denounced by Amnesty International, and notably reported by the Spanish press.
- Against this backdrop, the Spanish Government presented a legislative proposal that allegedly aimed at strengthening "public rights and freedoms, better ensuring public safety and preventing any illegal, violent behavior and vandalism"²¹⁶. Yet, with this purpose the Government's proposal extended the security forces' powers of maintaining and restoring public safety in assemblies and demonstrations, enabling them to break up those at their discretion; it also extended the scope of what constitutes an offence against public safety. Consequently, the first draft was dubbed by the media as the "Gag Act", and several judiciary bodies raised objections on grounds of unconstitutionality, as the bill proposed criminalising conduct related to the enjoyment of the right to freedom of expression and peaceful assembly. Thus, the Government modified the draft proposal, which was recently approved by the Council of Ministers, and it is currently awaiting the Senate's approval.

7.1. International and EU legal framework for the protection of the freedom of expression and assembly

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both ESC and RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association.

Indeed, freedom of expression and freedom of assembly are two separate rights. The former guarantees the 'right to hold opinions and to receive and impart information and ideas without interference by public authority'²¹⁷, whereas the latter provides for the protection of the 'right to freedom of peaceful assembly'²¹⁸. However, in the context of this particular study, they are being observed at the same time, and in relation with the same events – the protests in the Member States which were provoked by the austerity measures, and which at the same time served to express their opinions, however quite often by means of collective public assembly, through protests and other forms of manifestations, hence calling for the protection from either or both of these guarantees.

Like all other rights dealt with in the present study, these two rights are not absolute. In other words, they are guaranteed, but only under certain conditions. In that regard, one

²¹⁶ Council of Ministries, 'Report on the Preliminary Draft of the Organic Act on Citizens' Safety, 2013, available at www.lamoncloa.gob.es/documents/mir_anteproyecto_ley_seq_ciudadana.pdf.

²¹⁷ ECHR, Article 10 and EU Charter, Article 11.

²¹⁸ ECHR, Article 11 and EU Charter, Article 12.

important element has to be present – the assembly needs to be peaceful. As soon as the assembly loses this attribute, the State has not only the right, but also the duty to intervene, in order to protect the rights and freedoms of others. At the same time, the opinion needs to be expressed without interference by a public authority, unless such an interference is 'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'²¹⁹.

7.2. Instances of manifestations and protests against austerity measures

The start of the crisis in Spain in 2008 resulted in the imposition of a series of austerity measures which led to a wave of protests. According to Amnesty International, the Government's response to the protests has been largely repressive, i.e. abuse of administrative sanctions against demonstrators, and excessive use of force by police forces²²⁰.

Rather than complying with international treaty obligations and safeguarding the right to freedom of assembly, expression and association, the Government initially chose to present legislative proposals to extend the scope of punishment against those who organise demonstrations and participate therein. The following lines explain the legislative process of the 2013 preliminary draft of the Organic Act on the Protection of Citizens' Security, which was initially dubbed by the media as the "Gag Act", and thus redrafted and finally adopted by Council of Ministers on 11 July 2014.

The civic movement which developed in reaction to the austerity measures generated a wave of protests of unprecedented proportions in Spanish democratic history. The demonstration of 15 May 2011 was set as the starting date in which social networks such as *Real Democracy Now (Democracia Real Ya)*, amongst 200 civil digital platforms and small associations, called for a general strike asking for a radical change of the political system²²¹. This led to the establishment of camps in Puerta del Sol, Madrid and Plaza Catalunya, Barcelona as a means of protest and brought about the emergence of the *15-M Movement (Movimiento 15-M, also known as Indignant's Movement)*, which aimed to promote a more participatory democracy, inspired by the 2009 Icelandic *Kitchenware Revolution*, the Arab Spring, the 2010-2011 Greek protests and the 2010-2011 revolutions in Tunisia. Multiple demonstrations followed in consequence, calling for the respect of fundamental rights affected by the crisis. One of the most remarkable was the General Strike on 14 November 2012, known as 14-N General Strike, which was the eighth in

²¹⁹ ECHR, Article 10.

²²⁰ See the latest version of Amnesty International, 'The State of the World's Human Rights. Report 2013', 2013, p. 120, available at http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf. The 2012 Report specifically highlights the excessive use of force by the police corps against 15-M demonstrators, also known as "the outraged", during May to August 2011 demonstrations (Oppenheimer, W., 'Amnesty International complaints on the "excessive use of force" against the 15-M Movement in 2011' (*Amnistía denuncia "el uso excesivo de la fuerza" contra el 15-M en 2011*), *El País*, online edition, 23.05.2012, available at http://politica.elpais.com/politica/2012/05/23/actualidad/1337800021_913384.html).

²²¹ Alcaide, S., 'The spark of the 15-M Movement' (*La chispa del Movimiento 15-M*), *El País* online edition, 17.05.2011, available at http://elpais.com/diario/2011/05/17/espana/1305583209_850215.html.

democracy and the second in 2012 (following the 22 May 2012 - which is referred to below). According to union organisers, 76.7% of workers attended²²².

With regard to education, on 22 May 2012, there was a general strike against the Government's cutbacks, by all educational unions, requesting the presence of the whole educational community – also known as “the Green Tide” due to the colour of the T-shirts that demonstrators had worn since 2011, when the State Platform for Public Education created them with a printed slogan on it: “Public school for all”²²³. Moreover, there was a week of demonstrations by students' organisations from 8-14 October 2012²²⁴. Another general strike took place on 9 May 2013, followed by a bigger general strike on 24 October 2013. Figures from the unions said 83% of schools and public high schools took part in it²²⁵.

Moreover, just like the “Green Tide” in the educational field, public health unions united as the “White Tide” to demonstrate against the austerity measures of the Government on 17 February 2013. The first national demonstration took place in 15 capital cities²²⁶. Madrid, the city where the movement of the ‘White Tide’ emerged, staged and promoted multiple demonstrations before and since then, is the capital city most affected by privatisation threats due to regional policies, as explained above.

Also in the employment field, the 2010 labour reform provoked a general strike on 29 September, three months after the reform was introduced²²⁷. The 2012 reform gave place to the greatest union mobilisation in Madrid in recent years, on 19 February 2012, with more than half a million participants (according to the organisation team), and 450,000 participants in Barcelona, 80,000 in Valencia and many more in another 54 Spanish cities.²²⁸

With regard to the right to housing, the evictions cases generated a social movement that resulted in the Platform of People Affected by Mortgages [*Plataforma de Afectados por la Hipoteca*], the PAH. The PAH originally emerged in Barcelona in 2009 with the aim to modify the mortgage legislation to allow mortgage debt forgiveness after eviction. In addition to driving a campaign for retroactive non-recourse debt, the PAH aimed at achieving the self-organisation of those affected. This organisation has spread throughout

²²²El País, ‘Hundreds of thousands of protesters shut down the protest against the 14-N general strike’ (*Cientos de miles de manifestantes cierran la protesta de la huelga general del 14-N*), *El País* online edition, 14.11.2012, available at http://politica.elpais.com/politica/2012/11/13/actualidad/1352838703_548795.html. More information available on the CCOO union's website: www.ccoo.es/huelga14n/.

²²³Europa Press, ‘General strike on education against cuts’ (*Huelga general en la educación contra los recortes*), *El Mundo*, online edition, 21.05.2012, available at www.elmundo.es/elmundo/2012/05/21/espana/1337603776.html.

²²⁴Aunión, J.A., ‘Families and students strengthen their protests against the cuts’ (*Familias y estudiantes endurecen la protesta contra los recortes*), *El País*, online edition, 14.10.2012, available at http://sociedad.elpais.com/sociedad/2012/10/14/actualidad/1350245826_263226.html.

²²⁵Silió, E., ‘Students and parents pull on the strike’ (*Alumnos y padres tiran de la huelga*), *El País*, online edition, 23.10.2013, available at http://sociedad.elpais.com/sociedad/2013/10/23/actualidad/1382557688_653585.html.

²²⁶Sahuquillo, M., ‘The “white tide” against the privatisation and the cuts expands’ (*La “marea blanca” contra la privatización y los recortes se extiende*), *El País*, online edition, 17.02.2013, available at http://sociedad.elpais.com/sociedad/2013/02/17/actualidad/1361100253_706389.html.

²²⁷González, J.S., ‘Three decades of labour reforms’ (*Tres décadas de reformas laborales*), *El País*, online edition, 10.02.2012, available at http://economia.elpais.com/economia/2012/02/10/actualidad/1328866949_808378.html.

²²⁸Recudero, M., ‘Thousands of people say “no” to the reform’ (*Miles de personas dicen ‘no’ a la reforma*), *El Mundo*, online edition, 18.02.2012, available at www.elmundo.es/elmundo/2012/02/18/espana/1329602232.html; and Quílez, S., ‘The first protest against the labour reform accounts hundreds of thousands of people’ (*La primera manifestación contra la reforma laboral concentra a cientos de miles de personas*), *rtve.es*, 19.02.2012, available at www.rtve.es/noticias/20120219/primera-manifestacion-contra-reforma-laboral-concentra-cientos-miles-personas/499317.shtml. See moments of the demonstrations at http://economia.elpais.com/economia/2012/02/19/album/1329649966_934809.html#1329649966_934809_1329678273.

the country, promoting policies and actions such as the manifestation of 16 February 2013; denouncing the Government's non-commitment to the Universal Declaration of Human Rights and the ECHR in general; to Article 16 of the European Social Charter²²⁹; Article 11 of the ICESCR²³⁰; in particular, Art. 96.1 of the Spanish Constitution²³¹. Therefore, the European Parliament decided to award the 2013 European Citizens Prize to PAH for its "work in defence of human rights in a European and transnational level."

7.3. Limitations on the right to manifestation and assembly to maintain public order in times of social unrest

These demonstrations, allegedly carried out in a peaceful manner, resulted in multiple episodes of repression and physical violence by the police – a fact that was denounced by Amnesty International in their annual reports for 2012 and 2013 on *The State of the World's Human Rights*²³². For instance, Section 9 of this study includes a case-law²³³ regarding the use of force by police during the general strike of 14 November 2012.

Already in 2012, the Government began studying the reform of the Organic Act on the Protection of Citizens' Safety [*Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana*]²³⁴ and to amend the Criminal Code. The preliminary draft was approved by Council of Ministers on 29 November 2013²³⁵. The preliminary draft regulates the obligations of personal identification and documentation of Spanish citizens, actions for the maintenance and restoration of public safety, the special powers of administrative police on safety and the regime for penalties.

Its articles distinguish between very serious violations (7), serious violations (31) and minor violations (20), unlike the 1992 Act, which only differentiates between serious and minor offences (but establishes a general clause which, when given, allows to qualify as very serious infringements some of those defined as serious), which are listed in Table 4 below. With this, the Government argued that the new wording was clearer and reduced

²²⁹Article 16 of the ESC: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means."

²³⁰Article 11.1 states that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

²³¹Section 96.1 of the Spanish Constitution states that "Validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system. Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law."

²³²Amnesty International, 'The State of the World's Human Rights. Report 2013', 2013, p. 120, available at http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf. The 2012 Report specifically highlights the excessive use of force by the police corps against 15-M demonstrators, also known as "the outraged", during May to August 2011 demonstrations (Oppenheimer, W., 'Amnesty International complaints on the "excessive use of force" against the 15-M Movement in 2011' (*Amnistía denuncia "el uso excesivo de la fuerza" contra el 15-M en 2011*), *El País*, online edition, 23.05.2012, available at http://politica.elpais.com/politica/2012/05/23/actualidad/1337800021_913384.html).

²³³See Table 9.1 regarding the decision of 6 March 2014 by the Court of Instruction No. 11 of Madrid.

²³⁴Organic Act 1/1992, of 21 February, on the Protection of Citizens' Safety [*Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana*]. BOE 22 February 1992. Consolidated version 21 June 2013, available at www.boe.es/buscar/pdf/1992/BOE-A-1992-4252-consolidado.pdf. Not available in English.

²³⁵Camacho, L., Pardo, P., 'What does the new Law on Public Safety provide for?' (*¿Qué sanciona la nueva ley de Seguridad Ciudadana?*), *Público.es*, 29.11.2013, available at <http://www.publico.es/politica/sanciona-nueva-ley-seguridad-ciudadana.html>.

the margin of discretion. In line with the ongoing amendment of the Criminal Code - process which is pending in the Congress of Deputies, the Draft Act includes some of the offences before part of the former Criminal Code that now receive the qualification of administrative offences. Thus, certain behaviours are no longer punishable under criminal law and fall within the scope of administrative law.

Moreover, the new text extends from six months to one year the time limit for the expiry of penalty proceedings. The mere failure to communicate the event of a demonstration is considered a minor infringement and could be considered as a serious violation if such a situation involved the use of violence or the disruption of public safety.

Another innovative aspect of the Bill is that it regulates the probative value of ID and passport, and sets out the duties of the holders of these documents, incorporating the possibility of electronic signature thereof and maintaining the requirement to display them at the request of authority officials, as well as the obligation to allow the checking and verification of its authenticity.

Finally, the Bill provides new powers of preventive policing to security forces. For instance, it allows house searches without warrants; checks and controls in public places, as well as the frisking and identification of people (without justifying an apparent reason). It also provides for the dissolution of meetings or demonstrations, and established a principle of collaboration between security forces and bodies (granting private security guards the power to support the police in this task).

Table 4: Infringements included in the preliminary draft of the Organic Act on the Protection of Citizens' Safety of 29 November 2013

Very serious violations (fines from €30,001 to €600,000)

1. The very serious disturbance of public safety which does not constitute a criminal offence in public events, sports or cultural events, solemnities and religious services or other large meetings (this stems from the decriminalisation of offenses of the Criminal Code).
2. The call by any means or attendance at any assembly or demonstration, with coercive purpose and in disregard of the requirements of the Organic Act 9/1983, of July 15, from the end of the electoral campaign until the Election Day, according to the Organic Law 5/1985 of 19 June, setting the General Electoral Regime (New).
3. The holding of unnotified or prohibited assemblies or demonstrations in places that are considered critical infrastructure under the Act of 28 April 2011 establishing measures for the protection of critical infrastructure²³⁶, or in their immediate vicinity, as well as the intrusion on their premises, including their overflight, and the unlawful interference or obstruction in their performance provided that this could lead to endangering persons or undermine their functioning (New).
4. The manufacture, repair, storage, circulation, trade, acquisition, sale, possession or use of prohibited weapons or non-catalogued explosives (From the 1992 Citizen's Safety Act²³⁷).
5. The holding of public performances or leisure activities which breach the prohibition or suspension ordered by the relevant authority for reasons of public safety (From the 1992 Citizen's Safety Act).
6. The projection of lighting devices on means of transportation that could lead to accidents (New).
7. The commission of three serious violations within two years (New).

Serious violations (fines from €1,001 to €30,000)

1. The serious disturbance of public safety in public events, sports or cultural events, solemnities and religious services or other large meetings, when these do not constitute a criminal offence or a very serious violation (this stems from the decriminalisation of offences of the Criminal Code).
2. Participation in disturbances of public safety using hoods, helmets or any other type of clothing or object that covers the face, preventing or hindering identification (New).
3. The disturbance of public safety that occurs by way of meetings in front of the headquarters of the Congress of Deputies, the Senate and the Legislative Assemblies of the Autonomous Communities, although they were not assembled, in breach of the requirements of Organic Act 9/1983, of 15 July²³⁸ (New).
4. To cause serious disturbances on the roads, public spaces or establishments as well as intentional arson in the street when they represent a danger to persons or property or they cause a disturbance of public safety, if such behaviours do not constitute a criminal offence (From the 1992 Citizen's Safety Act).
5. Acts of obstruction that seek to prevent any authority, public employee or official corporation the legitimate exercise of their functions, the compliance or enforcement of agreements or administrative or judicial decisions, whenever they occur outside the procedures established by law and are not considered criminal

²³⁶Act of 28 April 2011 establishing measures for the protection of critical infrastructure [*Ley 8/2011, de 28 de abril, por la que se establecen medidas para la protección de las infraestructuras críticas*] BOE 29 April 2011, available at www.boe.es/boe/dias/2011/04/29/pdfs/BOE-A-2011-7630.pdf.

²³⁷Organic Act 1/1992, of 21 February, on the Protection of Citizens' Safety [*Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana*]. BOE 22 February 1992. Consolidated version 21 June 2013, available at www.boe.es/buscar/pdf/1992/BOE-A-1992-4252-consolidado.pdf. Not available in English.

²³⁸Organic Act 9/1983, of 15 July, on the right to assembly [*Ley Orgánica 9/1983, de 15 de julio, reguladora del derecho de reunión*] BOE 18 July 1983. Consolidated version of 5 December 2014, available at www.boe.es/buscar/pdf/1983/BOE-A-1983-19946-consolidado.pdf.

- offences. When a violation of equal content is typified by a specific regulation, the latter shall preferentially apply (New).
6. Actions and omissions which seriously impede the performance of emergency services in the performance of their duties (New).
 7. Disobedience or resistance to authority or its officials in the performance of their duties, when these actions do not constitute a criminal offence; and the refusal to provide identification at the request of the authority or its officials or provision of false or inaccurate documents during the identification processes (this stems from the decriminalisation of offences of the Criminal Code).
 8. The disruption of public order during an event of election campaign, electoral administration, act of voting, scrutiny and counting of votes which does not constitute criminal or administrative offence in accordance with the provisions of the Organic Act 5/1985 of 19 June (New).
 9. To hold assemblies or demonstrations in public places or events, carrying weapons or blunt objects likely to cause damage, provided that such behaviours do not constitute a criminal offence, and the refusal to dissolve demonstrations and assemblies in public places as ordered by the competent authority, if the provisions of article 5 of the Organic Law 9/1983, from 15 July, take place (From the 1992 Citizen's Safety Act).
 10. The unnotified or prohibited assemblies or manifestations _ in places that are considered critical infrastructure under the Act of 28 April, or in their immediate vicinity, as well as the intrusion on their premises, including their overflight, and the unlawful interference or obstruction in their performance (New).
 11. To carry, display or use weapons in a negligent or reckless manner or outside the authorized places for their use (New).
 12. The offences or outrages against Spain, the Autonomous Communities and Local Authorities or their institutions, symbols, hymns and emblems, made by any means, when these actions are not considered criminal offences (New).
 13. The offering, solicitation, negotiation or acceptance of paid sexual services in areas of public transit in the vicinity of places intended for use by children, such as schools, playgrounds and recreational spaces accessible to minors or when such behaviours could cause a risk to road safety due to the place in which they occur. This conduct will not be penalised if the offending persons are proven to be victims of human trafficking, according to the legislation on aliens (New).
 14. The manufacture, repair, storage, circulation, trade, transportation, distribution, acquisition, sale, possession or use of service weapons, catalogued explosives, ammunition or pyrotechnics, when lacking the required documentation or authorisation or exceeding the authorized limits, if such behaviours do not constitute a criminal offence; as well as the omission, failure or lack of effectiveness of the mandatory security measures or precautions established (From the 1992 Citizen's Safety Act).
 15. The refusal of access or deliberate obstruction of inspections or regulatory controls established under the provisions of this Act, in factories, buildings, facilities, ships and aircraft (From the 1992 Citizen's Safety Act).
 16. Public, written or verbal statements made through any media, as well as the use of flags, symbols or emblems, in order to encourage behaviours for the disruption of public safety, violent or criminal behaviours or that incite, promote, extol or justify hatred, terrorism, xenophobia, racism, violence against women, or any form of discrimination, provided they do not constitute a criminal offence (New).
 17. The public use of uniforms, badges or official decorations, or replicas thereof, and other items of the police or emergency services' equipment without being authorised to do so, if these do not constitute a criminal offence (This stems from the decriminalisation of offences of the Criminal Code).
 18. The lack of collaboration with Security Forces in the investigation of crimes or prevention of actions that could jeopardise public safety in the cases provided for in Article 7 (New).
 19. The performance or inducements to engage in acts against sexual integrity of

- minors or persons with disabilities in need of special protection, if these do not constitute a criminal offense (New).
20. Use or possession of illegal drugs, narcotics or psychotropic substances, although they were not intended for traffic, in public places, roads, facilities and transportation, as well as the abandonment of the instruments or other effects used for this purpose in the aforementioned places; and the tolerance of such consumption in premises or public buildings by the owners, administrators or managers thereof (From the 1992 Citizen's Safety Act).
 21. Consumption of alcoholic beverages in public places, roads, facilities or transportations when it seriously disturbs citizens' tranquility (New).
 22. The transfer of persons with any type of vehicle, in order to facilitate them access to drugs, narcotics or psychotropic substances, provided they do not constitute a crime (New).
 23. The planting and cultivation of illicit drugs, narcotics or psychotropic substances, when these actions do not constitute a crime (New).
 24. To force or induce others, especially minors or persons with disabilities in need of special protection through the use of physical violence, intimidation or deception, to consumption or possession of illegal drugs, narcotics, psychotropic substances or alcohol, when these constitute a criminal offence (New).
 25. The lack of registers provided in this Act to perform activities with relevance to public safety (From the 1992 Citizen's Safety Act).
 26. The allegation of false data or circumstances to obtain the documentation provided in this Act, provided that it does not constitute an offence (New).
 27. Damage or severe disrepair of movable or immovable property of public use or service, such as traffic signals, street lights, bus shelters, bins and other street furniture, when these actions do not constitute a criminal offence, as well as the obstruction of public thoroughfares with street furniture, vehicles, containers, tires or other objects for the purpose of seriously disturbing public safety (This stems from the decriminalisation of offenses of the Criminal Code).
 28. Failure to comply with navigation restrictions imposed by regulation on high-speed boats and light aircraft (From the 1992 Citizen's Safety Act).
 29. To climb buildings of public bodies or institutions or buildings of historic and artistic interest without proper authorisation, and to descend or throw objects from them, also without authorisation (New).
 30. Releasing fierce or harmful animals or creating the context for them to cause harm, when these actions do not constitute a crime; and cruelly mistreating or abandoning pets under conditions that may endanger their lives or mistreating animals in shows not legally authorised, if these actions do not constitute a crime (This stems from the decriminalisation of offenses of the Criminal Code).
 31. The commission of three minor violations within two years (From the 1992 Citizen's Safety Act).

Minor violations (fines from €100 to €1,000)

1. To hold assemblies in public places or manifestations in breach of the provisions of Sections 4.2, 8, 9, 10 and 11 of the Organic Act 9/1983, of 15 July (From the 1992 Citizen's Safety Act).
2. The display of dangerous objects to people's life and physical integrity as a means for intimidation, provided that it does not constitute a crime or serious violation (From the 1992 Citizen's Safety Act).
3. Failure to comply with pedestrian traffic restrictions or itinerary during a public event, assembly or manifestation, causing minor alterations in the normal development thereof (New).
4. Threats, coercion, insults or harassment that occur during an assembly or concentration where the recipient is a member of the Security Forces and Bodies, and the use of images or personal or professional data of authorities or members of the Security Forces and Bodies which infringes their right to honour, privacy or self-image, that could endanger their personal or family security, endanger protected facilities or put the success of the operation at risk, without prejudice, in any case,

- of the constitutional right to information, when these behaviours do not constitute a criminal offence (This stems from the decriminalisation of offences of the Criminal Code).
5. The threats, coercion, insults or harassment carried out on public thoroughfare and on public open spaces which produce public nuisance, provided they do not constitute a criminal offence (This stems from the decriminalisation of offences of the Criminal Code).
 6. Public statements made through any media whose aim are the libel or slander against public institutions, authorities, law enforcement officials or employees, when these actions do not constitute a crime, and the lack of respect and consideration due to the authority or its officials in the performance of their duties (New + this stems from the decriminalisation of offences of the Criminal Code).
 7. The performance or incitement to commit acts against sexual freedom and indemnity, or to perform obscene exhibitions when they do not constitute a criminal offence (New).
 8. The projection of lighting devices on members of the Security Forces and Bodies, to prevent or hinder the performance of their duties (New).
 9. The occupation of any common, public or private space, except in cases permitted by law or against the decision taken pursuant to it by the competent authority, or to remain in it against the will of its owner, tenant or holder of another right on it, when these actions do not constitute a criminal offence (This stems from the decriminalisation of offences of the Criminal Code).
 10. The omission or insufficiency of measures to ensure the preservation of documentation of weapons and explosives as well as the failure to report the loss or theft thereof (From the 1992 Citizen's Safety Act).
 11. Irregularities in the completion of registers provided for in this Act which are relevant to public safety, including the allegation of false information or circumstances or the omission of required communications within the time limits, provided that these actions do not constitute a crime (From the 1992 Citizen's Safety Act).
 12. The breach of the obligation to obtain the legally required personal documentation, and the negligent failure to report its theft or loss (From the 1992 Citizen's Safety Act).
 13. The third and subsequent losses or misplacement and subsequent request for issuance of personal documentation within five years (New).
 14. The refusal to hand over personal documentation when withdrawal or retention had been agreed (From the 1992 Citizen's Safety Act).
 15. The slight disrepair of movable or immovable property of public use or service, such as traffic signals, street lights, bus shelters, bins and other street furniture, as well as movable or immovable private property in public thoroughfare (This stems from the decriminalisation of offences of the Criminal Code).
 16. The unauthorised placement of elements or non-fixed structures, such as stalls, pergolas, tents, portable or removable constructions or similar objects in the public thoroughfare (New).
 17. Practicing games and sports activities in public spaces not designed for that purpose when there is a risk of harm to persons or property, or it prevents or hinders the stay and movement of people or circulation of vehicles (New).
 18. The improper interference of pedestrian traffic by any other means that generates unnecessary nuisance to persons or risk of harm to persons or property (New).
 19. Climbing buildings or monuments without permission and descending or throwing objects from them, without permission (New).
 20. The removal of fixed or removable railings, stockades, barriers, fences and cordons, placed by Security Forces and Bodies to define security perimeters, even if these were placed preventively (New).

Source: Report on the Preliminary Draft of the Organic Act on Citizens' Security, 2013²³⁹

Immediately after being presented to the public, the preliminary draft of the Organic Law met serious criticism from opposition parties, NGOs (such as Amnesty International²⁴⁰, Greenpeace²⁴¹), civil society groups, unions and top judicial bodies (the General Council of the Judiciary (CGPJ), Spain's legal watchdog, and the Council of Attorneys) and judge and attorney associations (the judge associations Francisco de Vitoria and Foro Judicial, Judges for Democracy [*Jueces para la Democracia*], Progressive Union of Attorneys [*Unión Progresista de Fiscales*]), as well as police associations (Unified Police Union [*Sindicato Unificado de la Policía*] and academics²⁴². They pointed out that:

- the draft proposed criminalising conduct related to the enjoyment of the right to freedom of expression and peaceful assembly. For instance, the disturbance of public safety by way of holding simple meetings in front of State institutions such as Congress, ("although [the participants] were not assembled"), may constitute a serious violation (as it could be seen as a breach of the requirements of the Organic Act 9/1983, of 15 July, regulating the right to assembly²⁴³) – see Table 4²⁴⁴. Also, "offences against Spain" were included as a vaguely defined offence, yet heavily fined, that the Interior Minister Jorge Fernández Díaz explained as any public acts, such as shouting slogans or carrying signs "that are harmful or abusive to Spain or any region" during a protest or demonstration²⁴⁵. The prevention of the performance of public officials on duty, for instance, in opposition to foreclosures, is also considered a serious violation. These measures have been observed as a limit to the right to freedom of expression and peaceful assembly, something that would violate Spain's international obligations;
- the draft planned to prohibit recording and diffusion of images of policemen on duty²⁴⁶, this was one of the most controversial points of the bill, as it could impede the report of malpractice by security forces;

²³⁹Council of Ministries, 'Report on the Preliminary Draft of the Organic Act on Citizens' Safety, 2013, available at www.lamoncloa.gob.es/consejodeministros/paginas/enlaces/291113EnlaceSeguridadCiudad.aspx. Accessed on 27/12/2014. Also see the presentation document made available by the Government on its website (only official document available) www.lamoncloa.gob.es/documents/mir_anteproyecto_ley_seg_ciudadana.pdf.

²⁴⁰Amnesty International, 'Amnesty International Recommendations to the bill for the amendment of the Criminal Code' (*Recomendaciones de Amnistía Internacional al proyecto de Ley de Reforma del Código Penal*), Ref. EUR 4120014-25564, 17.03.2014, available at <https://doc.es.amnesty.org/cqi-bin/ai/BRSCGI?CMD=VERDOC&BASE=SI&I&SORT=-FPUB&DOCR=1&RNG=10&FMT=SI&IWEB3.fmt&SEPARADOR=&&INAI=EUR4120014>.

²⁴¹Cué, C., 'Safety bill calls for 30,000 euro fines for "offences against Spain"', *El País* English edition, 29.11.2013, available at http://elpais.com/elpais/2013/11/29/inenglish/1385751827_730565.html.

²⁴²Fabra, M. and Perez, F., 'Judges, lawyers and police argue that Citizens Safety Law will curtail rights', *El País*, English edition, 02.12.2013, available at http://elpais.com/elpais/2013/12/02/inenglish/1385989604_721063.html.

²⁴³Organic Act 9/1983 of 15 July regulating the right to assembly [*Ley Orgánica 9/1983, de 15 de julio, reguladora del derecho de reunión*] BOE 18 July 1983. Consolidated version of 5 December 2014, available at www.boe.es/buscar/pdf/1983/BOE-A-1983-19946-consolidado.pdf. Not available in English.

²⁴⁴Yet, in this sense it is important to highlight the content of Section 77.1 of the Constitution, which regulates the right to petition before the legislative chambers, providing that (both individual and collective) petitions may be always addressed in writing, and prohibits "direct submission by citizens' demonstrations". See: Spanish Constitution [*Constitución Española*] of 29 December 1978. Consolidated version in Spanish: www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf. Consolidated version in English: www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf.

²⁴⁵Blanco, T., 'Keys to the controversial Law on Public Safety' (*Todas las claves de la polémica Ley de Seguridad Ciudadana*), *elEconomista.es*, 10.12.2013, available at www.economista.es/legislacion/noticias/5381084/12/13/Todas-las-claves-de-la-polemica-Ley-de-Seguridad-Ciudadana.html#.Kku8fVv6nNplufv.

²⁴⁶EFE, 'The Ministry of Interior studies forbidding the recording and dissemination of on-duty policemen' (*Interior estudia prohibir la grabación y difusión de imágenes de policías de servicio*), *El Economista*, online edition, 18.10.2012, available at <http://ecodiario.economista.es/politica/noticias/4332017/10/12/Interior-pondra-coto-a-la-difusion-de-imagenes-de-policias-en-internet.html>.

- there is a tendency towards an expansionist approach of *jus puniendi* by introducing new offences and harsher sanctions (setting fines up to €600,000 for very serious violations). That is, as many of the new infractions (that, until now, fell under the category of misdemeanors in the Penal Code) are to be imposed by administrative decision according to the preliminary draft, a police report would now be enough to sanction someone's action – with no judicial intervention required. Under the new system, fines will be much heavier and levied without the legal guarantee of a trial. A court appeal is possible, but requires paying the new legal fees on top of the fine (see Chapter 6 on court fees), which must now be paid before the trial, not afterwards;
- the General Council of the Judiciary (CGPJ), Spain's legal watchdog, and the Council of Attorneys raised objections against some parts of the draft, warning of its possible unconstitutional nature.²⁴⁷ Critics point out that this legislation proposal seemed tailor-made for the Popular Party (PP) government to quell public displays of citizen discontent over its handling of the economic crisis and the corruption cases that have come to light over recent years²⁴⁸. "It would seem that the government does not trust the judges," says Joaquim Bosch, spokesman for the Judges for Democracy association. "It wants to assume the ability of sanctioning forms of conduct in an extremely discretionary manner, using vague legal concepts, which can lead to very authoritarian action"²⁴⁹.

For these reasons, the draft was dubbed the "Gag Act". Following the above reactions, however, the Government decided to redraft the Act,²⁵⁰ which was recently approved by Council of Ministers on 11 July 2014²⁵¹. Thus, this new draft of the Organic Act was submitted to the Congress of Deputies on 18/07/2014 and was approved by the Plenary (by votes in favour of the deputies of the Government's party) in their session of 11 December 2014²⁵². The text was received in the Senate on 22 December 2014 and is currently in a period of submission of amendments and veto proposals until 4 February 2015, as stated in the Official Bulletin of the Spanish General Courts²⁵³.

The new bill has lost a lot of the focus on police action that defined the original text. Firstly, the 58 types of violations (7 very serious infringements, 31 serious infringements and 20 minor infringements) in the original draft have been reduced to 47 (4, 26 and 17 respectively) and rewritten, as can be seen in Table 5. Private security guards are not

²⁴⁷Duva, J., 'Spanish government tones down its controversial Citizen Safety Law', *El País*, English online edition, available at http://elpais.com/elpais/2014/05/28/inenglish/1401272039_980140.html.

²⁴⁸ *ibid.*

²⁴⁹Fabra, M. and Perez, F., 'Judges, lawyers and police argue that Citizens Safety Law will curtail rights', *El País*, English edition, 02.12.2013, available at http://elpais.com/elpais/2013/12/02/inenglish/1385989604_721063.html. Also in Blanco, T., 'Keys to the controversial Law on Public Safety' (*Todas las claves de la polémica Ley de Seguridad Ciudadana*), *elEconomista.es*, 10.12.2013, available at www.economista.es/legislacion/noticias/5381084/12/13/Todas-las-claves-de-la-polemica-Ley-de-Seguridad-Ciudadana.html#.Kku8fVv6nNplufv.

²⁵⁰ Government's press release (in Spanish):

www.interior.gob.es/web/interior/prensa/noticias/-/asset_publisher/GHU8Ap6ztgsg/content/id/2230243.

²⁵¹Europa Press, 'The Government passes the bill on Public Safety' (*El Gobierno aprueba hoy el proyecto de ley de Seguridad Ciudadana*), *Público.es*, 11.07.2014, available at <http://www.publico.es/politica/gobierno-aprueba-hoy-proyecto-ley.html>.

²⁵² Draft of the Organic Act on the Protection of Citizens' Safety [*Proyecto de Ley de Seguridad Ciudadana*] (121/000105). BOCG. Congress of Deputies, series A, No. 105-5, of 22/12/2014, available at www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-105-5.PDF#page=1. Not available in English.

²⁵³ Draft of the Organic Act on the Protection of Citizens' Safety [*Proyecto de Ley de Seguridad Ciudadana*] (621/000102). BOCG. Senate, No. 460_3115 (Section I) of 22/12/2014, available at www.congreso.es/public_oficiales/L10/SEN/BOCG/2014/BOCG_D_10_460_3115.PDF.

permitted to carry out law enforcement tasks, and legislators have also introduced a new scale of fines for the different types of offences²⁵⁴. The most notable changes are to the provisions regarding home searches, suspect identification, street checks, frisking and enforceable sanctions:

- *House searches*: Existing legislation will be maintained, meaning that the police may only search a house with a warrant or when a crime is clearly being committed. Note that the original draft allowed searches without a warrant if the homeowner permitted it.
- *Identifying suspects*: Requesting identification will only be permitted when the police consider it a reasonable measure to prevent an actual crime, not an administrative violation. Individuals who cannot be identified on the spot may not be held there, but must be taken to the nearest police station until their identity is confirmed. Records must be kept indicating how long the suspect is held in custody.
- *Checks*: Street controls are greatly restricted and are only allowed when the goal is to discover the perpetrator of a particularly serious crime or one that causes public alarm, not individuals who have committed an administrative violation as originally planned.
- *Frisking*: For the first time, the law establishes guidelines for body searches, which may only be conducted when there is reason to suspect that it could prevent or clear up a crime. Only a police officer of the same sex may perform the search, and if the suspect is forced to partially undress, it will have to be done in a private area.
- *Accountability for protests*: The new revised text frees march organisers from accountability for the actions of third parties who participate in the protest.
- *Photographs of police officers*: Using images or information relating to police officers may be a violation if it either endangers the officer's personal safety or that of their family, or the success of an operation.
- *Protests in front of Congress*: Protesting in front of Congress, the Senate or a regional assembly will only be a serious offence when it severely affects citizen safety.
- *Fines*: The amounts of the fines remain unchanged. Very serious violations will incur penalties of €30,001 to €600,000, serious violators will receive fines of between €601 and €30,000, and minor violations will be punished with fines of €100 to €600. Moreover, a new element has been introduced: for serious and very serious violations, fines will be divided in three categories representing minimum, medium and maximum penalties. The category a violator is assigned depends on the circumstances of the violation and on their personal finances.

²⁵⁴Duva, J., 'Spanish government tones down its controversial Citizen Safety Law', *El País*, English online edition, available at http://elpais.com/elpais/2014/05/28/inenglish/1401272039_980140.html.

Table 5: Infringements included in the new draft of the Organic Act on the Protection of Citizens' Safety of 11 December 2014, compared to the preliminary draft of 29 November 2013

Very serious violations (fines from €30,001 to €600,000)

- ~~• The very serious disturbance of public safety which does not constitute a criminal offence in public events, sports or cultural events, solemnities and religious services or other large meetings.~~
- ~~• The call by any means or attendance at any assembly or demonstration, with coercive purpose and in disregard of the requirements of the Organic Act 9/1983, of July 15, from the end of the electoral campaign until the Election Day, according to the Organic Law 5/1985 of 19 June, setting the General Electoral Regime.~~
- 1. The holding of unnotified or prohibited assemblies or demonstrations in facilities that provide basic services to the community, or in their immediate vicinity, as well as the intrusion on their premises, including their overflight, and the unlawful interference or obstruction in their performance provided that this could lead to endangering persons or undermine their functioning. In case of assembly or manifestation, their organisers or promoters will be held accountable. REDRAFTED (in accordance with the recommendations of the Council of State).
- 2. The manufacture, repair, storage, circulation, trade, transportation, distribution, acquisition, certification, sale or use of service weapons, catalogued explosives, ammunition or pyrotechnics, infringing the applicable laws, when lacking the required documentation or authorisation or exceeding the authorised limits, if such behaviours do not constitute a criminal offense; as well as the omission, failure or lack of effectiveness of the mandatory security measures or precautions established, on the condition that these actions cause very serious damage. REDRAFTED.
- 3. The holding of public performances or leisure activities which break the prohibition or suspension ordered by the relevant authority for reasons of public safety.
- 4. The projection of lighting beams through any devices on pilots or drivers of means of transportation that could dazzle or distract their attention and cause lead to accidents. REDRAFTED.
- ~~• The commission of three serious violations within two years.~~

Serious violations (fines from €601 to €30,000)

1. The serious disturbance of public safety in public events, sports or cultural events, solemnities and religious services or other large meetings, when these do not constitute a criminal offence or a very serious violation. REDRAFTED (CGPJ and National Fiscal Council).
- ~~• Participation in disturbances of public safety using hoods, helmets or any other type of clothing or object that covers the face, preventing or hindering identification.~~
2. The serious disturbance of public safety that occurs by way of meetings or manifestations in front of the headquarters of the Congress of Deputies, the Senate and the Legislative Assemblies of the Autonomous Communities, although they

were not assembled, in breach of the requirements of Organic Act 9/1983, of 15 July²⁵⁵. REDRAFTED (CGPJ and National Fiscal Council).

3. To cause serious disturbances on the roads, public spaces or establishments as well as intentional arson in the street when they represent a danger to persons or property or they cause a disturbance of public safety, if such behaviours do not constitute a criminal offense.
4. Acts of obstruction that seek to prevent any authority, public employee or official corporation the legitimate exercise of their functions, the compliance or enforcement of agreements or administrative or judicial decisions, whenever they occur outside the procedures established by law and are not considered criminal offenses. ~~When a violation of equal content is typified by a specific regulation, the latter shall preferentially apply.~~ REDRAFTED.
5. Actions and omissions which seriously impede or hinder the performance of emergency services, causing or increasing a risk to people's life or integrity or a damage to property, or aggravating the consequences of the event that prompted the emergency services to act. REDRAFTED (CGPJ).
6. Disobedience or resistance to authority or its officials in the performance of their duties, when these actions do not constitute a criminal offense; and the refusal to provide identification at the request of the authority or its officials or provision of false or inaccurate documents during the identification processes.
 - ~~The disruption of public order during an event of election campaign, electoral administration, act of voting, scrutiny and counting of votes which does not constitute criminal or administrative offense in accordance with the provisions of the Organic Act 5/1985 of 19 June.~~
7. ~~To hold assemblies or demonstrations in public places as or events, carrying weapons or blunt objects likely to cause damage, provided that such behaviours do not constitute a criminal offense, and the refusal to dissolve demonstrations and assemblies in public places as ordered by the competent authority, if the provisions of article 5 of the Organic Law 9/1983, from 15 July, take place.~~ REDRAFTED.
8. Disrupting the development of a lawful assembly or manifestation, whenever it does not constitute a crime. NEW VIOLATION.
9. ~~The unnotified or prohibited assemblies or manifestations in places that are considered critical infrastructure under the Act of 28 April, or in their immediate vicinity, as well as the intrusion on facilities or premises that provide basic services to the community, including their overflight, and the unlawful interference or obstruction in their performance, when this does not constitute a very serious violation.~~ REDRAFTED (Council of State).
10. To carry, display or use weapons in a negligent or reckless manner or outside the authorised places for their use.
 - ~~The offenses or outrages against Spain, the Autonomous Communities and Local Authorities or their institutions, symbols, hymns and emblems, made by any means, when these actions are not considered criminal offenses.~~

²⁵⁵Organic Act 9/1983 of 15 July on the right to assembly [*Ley Orgánica 9/1983, de 15 de julio, reguladora del derecho de reunion*] BOE 18 July 1983. Consolidated version of 5 December 2014, available at www.boe.es/buscar/pdf/1983/BOE-A-1983-19946-consolidado.pdf.

11. The offering, solicitation, ~~negotiation~~ or acceptance of paid sexual services in areas of public transit in the vicinity of places intended for use by children, such as schools, playgrounds and recreational spaces accessible to minors or when such behaviours could cause a risk to road safety due to the place in which they occur. ~~This conduct will not be penalized if the offending person if they are proven to be victims of human trafficking, according to the legislation on aliens.~~ Enforcement officials shall require the persons who offer these services to refrain from doing so in such places, informing them that persistence could constitute disobedience or resistance to authority. REDRAFTED (Ministry of Health, Social Services and Equality).
12. The manufacture, repair, storage, circulation, trade, transportation, distribution, acquisition, certification, sale, ~~possession~~ or use of service weapons, catalogued explosives, ammunition or pyrotechnics, infringing the applicable laws, when lacking the required documentation or authorisation or exceeding the authorised limits, if such behaviours do not constitute a criminal offense; as well as the omission, failure or lack of effectiveness of the mandatory security measures or precautions established, ~~on the condition that these actions cause very serious damage.~~ REDRAFTED.
13. The refusal of access or deliberate obstruction of inspections or regulatory controls established under the provisions of this Act, in factories, buildings, facilities, ships and aircraft.
 - ~~Public, written or verbal statements made through any media, as well as the use of flags, symbols or emblems, in order to encourage behaviours for the disruption of public safety, violent or criminal behaviours or that incite, promote, extol or justify hatred, terrorism, xenophobia, racism, violence against women, or any form of discrimination, provided they do not constitute a criminal offense.~~
14. The public use of uniforms, badges or official decorations, or replicas thereof, and other items of the police or emergency services' equipment without being authorised to do so, if these do not constitute a criminal offense.
15. The lack of collaboration with Security Forces in the investigation of crimes or prevention of actions that could jeopardise public safety in the cases provided for in Article 7.
16. The performance or inducements to engage in acts against sexual indemnity of minors or persons with disabilities in need of special protection, if these do not constitute a criminal offense.
17. Use or possession of illegal drugs, narcotics or psychotropic substances, although they were not intended for traffic, in public places, roads, facilities and transportations, as well as the abandonment of the instruments or other effects used for this purpose in the aforementioned places; ~~and the tolerance of such consumption in premises or public buildings by the owners, administrators or managers thereof.~~ REDRAFTED (Ministry of Health, Social Services and Equality).
18. The tolerance of consumption of illegal drugs, narcotics or psychotropic substances in premises or public buildings ~~or the lack of diligence to impede so~~ on the part of the owners, administrators or managers thereof. REDRAFTED (Ministry of Health, Social Services and Equality).
19. Consumption of alcoholic beverages in public places, roads, facilities or transportations when it seriously disturbs citizens' tranquility.

20. The transfer of persons with any type of vehicle, in order to facilitate them access to drugs, narcotics or psychotropic substances, provided they do not constitute a crime.
21. The planting and cultivation of illicit drugs, narcotics or psychotropic substances in publicly visible locations, when these actions do not constitute a crime. REDRAFTED (by recommendation of the Ministry of Health, Social Services and Equality, with the agreement of the Spanish Anti-Narcotics Special Prosecutor).
 - ~~To force or induce others, especially minors or persons with disabilities in need of special protection through the use of physical violence, intimidation or deception, to consumption or possession of illegal drugs, narcotics, psychotropic substances or alcohol, when there constitute a criminal offense.~~
22. The lack of registers provided in this Act to perform activities with relevance to public safety.
23. The allegation of false data or circumstances to obtain the documentation provided in this Act, provided that it does not constitute an offense.
24. ~~Damage or severe shabbiness of movable or immovable property of public use or service, such as traffic signals, street lights, bus shelters, bins and other street furniture, when these actions do not constitute a criminal offense, as well as The obstruction of public thoroughfares with street furniture, vehicles, containers, tires or other suitable objects for the purpose of seriously disturbing public safety. REDRAFTED.~~
25. Failure to comply with navigation restrictions imposed by regulation on high-speed boats and light aircraft.
 - ~~To climb buildings of public bodies or institutions or buildings of historic and artistic interest without proper authorization, and to descend or throw objects from them, also without authorization.~~
 - ~~Releasing fierce or harmful animals or creating the context for them to cause harm, when these actions do not constitute a crime; and cruelly mistreating or abandoning pets under conditions that may endanger their lives or mistreating animals in shows not legally authorized, if these actions do not constitute a crime.~~
26. ~~Threats, coercion, insults or harassment that occur during an assembly or concentration where the recipient is a member of the Security Forces and Bodies, and~~ The non-authorized use of images or personal or professional data of authorities or members of the Security Forces and Bodies which infringes their right to honor, privacy or self-image, that could endanger their personal or family security, endanger protected facilities or put the success of the operation at risk, without prejudice, in any case, of the constitutional right to information, when these behaviours do not constitute a criminal offense. REDRAFTED (considered a minor violation under the previous draft).
 - ~~The commission of three minor violations within two years.~~

Minor violations (fines from €100 to €600)

1. To hold assemblies in public places or manifestations in breach of the provisions of Sections 4.2, 8, 9, 10 and 11 of the Organic Act 9/1983 of 15 July for which the responsibility shall lie with the organisers or promoters. REDRAFTED (CGPJ and National Fiscal Council).
2. The display of objects dangerous to people's life and physical integrity as a means

for intimidation, provided that it does not constitute a crime or serious violation.

3. Failure to comply with pedestrian traffic restrictions or itinerary during a public event, assembly or manifestation, causing minor alterations in the normal development thereof.
4. ~~Threats, coercion, Insults or harassment actions showing a lack of respect and consideration that occur during an assembly or concentration where the recipient is a member of the Security Forces and Bodies in the exercise of their functions, and the use of images or personal or professional data of authorities or members of the Security Forces and Bodies which infringes their right to honor, privacy or self-image, that could endanger their personal or family security, endanger protected facilities or put the success of the operation at risk, without prejudice, in any case, of the constitutional right to information, when these behaviours do not constitute a criminal offense. REDRAFTED.~~
 - ~~The threats, coercion, insults or harassment carried out on public thoroughfare and on public open spaces which produce public nuisance, provided they do not constitute a criminal offense.~~
 - ~~Public statements made through any media whose aim are the libel or slander against public institutions, authorities, law enforcement officials or employees, when these actions do not constitute a crime, and the lack of respect and consideration due to the authority or its officials in the performance of their duties.~~
5. The performance or incitement to commit acts against sexual freedom and indemnity, or to perform obscene exhibitions when they do not constitute a criminal offense.
6. The projection of lighting beams through any devices on members of the Security Forces and Bodies, to prevent or hinder the performance of their duties. REDRAFTED.
7. The occupation of ~~any common, public or private space~~ someone else's immovable property, dwelling or building, or the thoroughfare, except in cases permitted by law or against the decision taken pursuant to it by the competent authority, or to remain in it against the will of its owner, tenant or holder of another right on it, when these actions do not constitute a criminal offense. REDRAFTED.
8. The omission or insufficiency of measures to ensure the preservation of documentation of weapons and explosives as well as the failure to report the loss or theft thereof.
9. Irregularities in the completion of registers provided for in this Act which are relevant to public safety, including the allegation of false information or circumstances or the omission of required communications within the time limits, provided that these actions do not constitute a crime.
10. The breach of the obligation to obtain the legally required personal documentation, and the negligent failure to report its theft or loss.
11. The negligence in the custody and preservation of legally required personal documentation, considering as such the third and subsequent losses or misplacements and subsequent request for issuance of personal documentation within five ~~three~~ years. REDRAFTED.
12. The refusal to hand over legally required personal documentation when withdrawal or retention had been agreed. REDRAFTED.

13. ~~The slight~~ **Damage** or shabbiness of movable or immovable property of public use or service, ~~such as traffic signals, street lights, bus shelters, bins and other street furniture,~~ as well as movable or immovable private property in public thoroughfare, **whenever it does not constitute a crime. REDRAFTED.**
 - ~~The unauthorized placement of elements or non fixed structures, such as stalls, pergolas, tents, portable or removable constructions or similar objects in the public thoroughfare.~~
14. Practicing games and sports activities in public spaces not designed for that purpose when there is a risk of harm to persons or property, ~~or it prevents or hinders the stay and movement of people or circulation of vehicles.~~ **REDRAFTED.**
 - ~~The improper interference of pedestrian traffic by any other means that generates unnecessary nuisance to persons or risk of harm to persons or property.~~
15. Climbing buildings or monuments without permission ~~and descending or throwing objects from them, without permission.~~ **REDRAFTED.**
16. The removal of fixed or removable ~~railings, stockades, barriers,~~ fences, ~~and cordons~~ **or other elements** placed by Security Forces and Bodies to define security perimeters, even if these were placed preventively. **REDRAFTED.**
17. Releasing fierce or harmful animals or creating the context for them to cause harm, ~~when these actions do not constitute a crime;~~ and cruelly mistreating or abandoning pets under conditions that may endanger their lives, or mistreating animals in shows not legally authorised, if these actions do not constitute a crime. **REDRAFTED (previously listed as a serious violation).**

Source: Draft for the Organic Act on the Protection of Citizens' Safety, approved by Council of Ministers, 2014²⁵⁶

According to the Government's press release, this time the Draft was subject to a process of consultation and incorporated suggestions from the Spanish Data Protection Agency, the Fiscal Council, the General Council of the Judiciary, the State Council, several ministerial departments, the Spanish Federation of Municipalities and Provinces, and from NGOs such as Amnesty International, Greenpeace and Intermon Oxfam. Neighbourhood, traders and parents' associations also had a voice²⁵⁷. Yet, the ruling Popular Party [*Partido Popular*] used its absolute majority to pass the Draft to the Congress, despite resistance from the entire Government's opposition²⁵⁸.

²⁵⁶Council of Ministries, 'Draft of the Organic Act on Citizens' Safety, 2014, available at www.interior.gob.es/documents/10180/2170430/Proyecto_LOPSC_11-07-14.pdf/b9861013-c0c2-4d5c-b517-d971d2397b21.

²⁵⁷Spain, Ministry of Interior, 'Bill of Law on the Protection of Public Safety passed' (*Aprobado el Proyecto de Ley Orgánica de Protección de la Seguridad Ciudadana*), 11.07.2014, available at www.interior.gob.es/web/interior/prensa/noticias/-/asset_publisher/GHU8Ap6ztqsg/content/id/2230243.

²⁵⁸Garea, F., 'Ruling party rams controversial security legislation through Congress', El País English edition, 12.12.2014, available at http://elpais.com/elpais/2014/12/12/inenglish/1418379884_767333.html.

8. OVERVIEW OF THE IMPACT OF THE AUSTERITY MEASURES ON OTHER FUNDAMENTAL RIGHTS IN SPAIN: RIGHT TO HOUSING

KEY FINDINGS

- Since the beginning of the crisis, there have been many foreclosure proceedings due to the inability of households to afford mortgages. Yet, many of the proceedings advanced due to the unfair terms included in mortgage contracts, in favour of banks. Legislation was amended, as it was contrary to Directive 93/13/EC.
- Spanish legislation does not consider the mortgage obligation to be dismissed after auctioning occurs, so the debtor has to continue paying for the remaining balance and personal loans. This leads to a scenario of insolvency for life which puts these people at risk of social exclusion.
- The Spanish Ombudsperson has repeatedly raised the need to regulate personal insolvency, and to develop the legal concept of debtor acting in good faith, in order to address this situation.

In this section, protection of the right to housing is analysed in view of the number of foreclosure proceedings since the start of the crisis in Spain. As exposed in the following section, Spanish regulation allowed the inclusion of unfair terms in mortgage contracts in favour of banks, in contradiction with provisions of Council Directive 93/13/EEC, of 5 April 1993 on unfair terms in consumer contracts. This was recently brought to the Court of Justice of the European Union (CJEU). After two CJEU rulings²⁵⁹, in September 2014, the Spanish Government approved RDL 11/2014²⁶⁰ which may put the debtor and the lending credit institution on equal terms before the law. This fact reflects the Government's position on this social conflict that has exposed many people to the risk of social exclusion and poverty.

8.1. International and EU legal framework for the protection of the right to housing

The right to housing is recognised by Article 25 of the UDHR and by Article 11(1) of the ICESCR. Furthermore, Article 34(3) of the EU Charter guarantees the 'right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources'.

²⁵⁹Judgment of the Court (First Chamber) of 14 March 2013. *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (CatalunyaCaixa)*, Case C-415/11, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=135024&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=215071>; and Judgment of the Court (First Chamber) of 17 July 2014. *Juan Carlos Sánchez Morcillo & María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, SA*, Case C-169/14, available at <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=155118&occ=first&cid=217499>.

²⁶⁰Royal Decree-Law 11/2014 of 5 September on urgent measures in bankruptcy matters [*Real Decreto Ley 11/2014, de 5 de septiembre, de medidas urgentes en materia concursal*]. BOE 6 September 2014, available at www.boe.es/boe/dias/2014/09/06/pdfs/BOE-A-2014-9133.pdf. Not available in English.

The UNCESCR has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. The characteristics of the right to adequate housing are clarified mainly in the general comments on the right to adequate housing²⁶¹ and on forced evictions²⁶². While it does not guarantee the right to own property, the right to housing contains a number of elements, including protection against forced evictions, security of tenure and requirement for non-discriminatory access. As a minimum, it must 'provide more than four walls and a roof'²⁶³.

8.2. The right to housing in Spain

The mortgage market regulation must respect the right to adequate housing and the exercise of other constitutional rights related to it. That is, in addition to recognising the right to housing in its Article 47, the Spanish Constitution²⁶⁴ contains other rights such as the dignity of the person and the right to effective judicial protection. These rights govern the entire intervention of public authorities as well as their obligation to promote the necessary measures to enforce these rights, adapting them to the current juncture and preventing the social exclusion that has been forced on a large number of citizens by the current legal system²⁶⁵. In this sense, as explained below, the Ombudsperson has been emphasising that the protection of these rights must be taken into account when interpreting the rules on the granting of mortgages and on foreclosure, considering the serious problem of over-indebtedness of families and the cases of bankruptcy of non-entrepreneur natural persons²⁶⁶.

8.3. Austerity measures and impacts on the right to housing

According to data from the Bank of Spain, before the crisis, household debt, relative to disposable income, grew. Ninety percent of household debt came from the financing of investments in real estate assets, which were, essentially, loans and mortgages. In 2012, the number of housing mortgages amounted to a total of 6,581,808²⁶⁷. This credit is also the main source of profits for Spanish banks.

²⁶¹ UNCESCR, General comment no. 4 on the right to housing, [UN Doc. E/1992/23](#), 1991.

²⁶² UNCESCR, General comment no. 7 on forced evictions, [UN Doc. E/1998/22](#), 1997.

²⁶³ OHCHR, '[The Right to Adequate Housing](#)', undated, p. 3. See the same document for a detailed overview of UN standards applicable to the notion of adequate housing.

²⁶⁴ Spanish Constitution [*Constitución Española*], 29 December 1978. Consolidated version in Spanish: [www.congreso.es/constitucion/ficheros/c78/cons_espa.pdf](#). Consolidated version in English: [www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf](#).

²⁶⁵ Spanish Ombudsperson, 'Study on the economic crisis and the individual insolvency: activities and proposals of the Ombudsman' (*Estudio sobre crisis económica e insolvencia personal: actuaciones y propuestas del Defensor del Pueblo*), October 2013, p. 8, available at [www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Crisis_economica_e_insolvencia_personal.pdf](#), at p. 26.

²⁶⁶ Spanish Ombudsperson, 'Economic crisis and mortgage debtors: activities and proposals of the Ombudsman' (*Crisis económica y deudores hipotecarios: actuaciones y propuestas del Defensor del Pueblo*), 22.01.2012, available at [www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/informe_deudores_hipotecarios.pdf](#), at p. 7.

²⁶⁷ Spanish National Central Bank (Banco de España), 'Informative note on the housing mortgage execution proceedings' (*Nota informativa sobre los procesos de ejecución hipotecaria sobre viviendas*), 28.01.2014, available at [www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/NotasInformativas/Briefing_notes/es/notabe%2028-01-2014.pdf](#).

With the outbreak of the crisis and family insolvency, according to the General Council of the Judiciary, 415,117 foreclosure proceedings were initiated between 2008 and 2012. At the same time, the total number of evictions was 244,278²⁶⁸. This alarming data generated a social movement that resulted in the Platform of People Affected by Mortgages (*Plataforma de Afectados por la Hipoteca*, the 'PAH')²⁶⁹.

Today, many debtors (natural persons) find that their assets cannot cover all the debts secured on them. In this situation, foreclosure takes place, which can lead to loss of dwelling and other properties. Moreover, in many cases, the mortgage obligation is not over after auctioning occurs, so the debtor has to continue paying for the remainder of the debt, as well as any other personal loans. This leads to a scenario of insolvency for life, given that the Spanish legal system does not provide for the institute of the consumer insolvency.

The need to regulate personal insolvency was first raised in 2009 by the Spanish Ombudsman to the Secretary of State of the Ministry of Justice and the Cabinet of the Presidency, who rejected the possibility of addressing the policy reforms necessary to establish a separate insolvency procedure aimed at natural persons at the time of the reform of Act 22/2003 on Bankruptcy (through adoption of Act 38/2011²⁷⁰)²⁷¹. Subsequently, a Subcommittee on Housing was created in the House of Representatives in order to analyse possible improvements in the Spanish mortgage system, with particular regard to abusive terms. However, its work was confined only to the difficulty in paying for housing rather than insolvency due to other circumstances²⁷².

In 2012, the RDL 6/2012 on urgent measures to protect insolvent mortgage debtors²⁷³ was approved. This regulation, also known as the *Code of Good Banking Practice*, was aimed at restructuring mortgage debts for those facing extraordinary difficulties in meeting payments, and at making foreclosure proceedings more flexible (and ultimately including payment in kind –*dation in payment*– as a definitive means to release the debtor from their debt). However, the Code is based on voluntary adherence (of the bank), and it was inadequate to deal with the social conflicts caused by the crisis in this regard, primarily because it was focused on main residence cases and had a very limited scope of application (it is required that the mortgage lies on the only main residence, that all family members are unemployed, that the amount of the mortgage exceeds 60% of the income of the whole family, that there is no guarantor and that the housing value does not exceed €200,000 - depending on their location). In this regard, the Ombudsperson made a number of recommendations, such as developing the legal concept of the *debtor acting in good faith*, and regulating the *personal insolvency proceeding*, including the possibility to maintain the

²⁶⁸OESC, 'Housing Emergency in Spain: The mortgages execution and eviction crisis from a human rights perspective' (*Emergencia Habitacional en el Estado español: La crisis de las ejecuciones hipotecarias y los desalojos desde una perspectiva de Derechos Humanos*), 2013, p. 13, available at http://observatoridesc.org/sites/default/files/2013-informe_habitatge-17dic.pdf, p. 13.

²⁶⁹The PAH case is thoroughly exposed under Section 6, as it represents a social group that emerged from protests against eviction cases.

²⁷⁰Act 38/2011 of 10 October modifying Act 22/2003 of 9 July on Bankruptcy [*Ley 38/2011, de 10 de octubre, de reforma de la Ley 22/2003, de 9 de julio, Concursal*]. BOE 11 October 2011, available at www.boe.es/boe/dias/2011/10/11/pdfs/BOE-A-2011-15938.pdf. Not available in English.

²⁷¹Spanish Ombudsperson, 'Study on the economic crisis and the individual insolvency: activities and proposals of the Ombudsman' (*Estudio sobre crisis económica e insolvencia personal: actuaciones y propuestas del Defensor del Pueblo*), October 2013, p. 8, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Crisis_economica_e_insolvencia_personal.pdf, at p. 7.

²⁷²*ibid.*

²⁷³Royal Decree-Law 6/2012 of 9 March on urgent measures to protect insolvent mortgage debtors [*Real Decreto-ley 6/2012, de 9 de marzo, sobre medidas urgentes de protección de deudores hipotecarios sin recursos*]. BOE 9 March 2012, available at www.boe.es/buscar/pdf/2012/BOE-A-2012-3394-consolidado.pdf. Not available in English.

use of the dwelling or the business establishment. Another recommendation was to modify RDL 6/2012 in order to extend its scope²⁷⁴.

Later on, the RDL 27/2012 on urgent measures to strengthen protection for mortgage debtors²⁷⁵ was adopted. It established a two-year foreclosure suspension on main residences for those cases relating to particularly vulnerable groups (defined according to both subjective terms – type of household: large family, with dependent persons, etc. and objective terms – for instance, that the mortgage payment exceeds 50% of the family's net income). RDL culminated in the adoption of Act 1/2013 of 14 May, on measures to strengthen protection for mortgage debtors, and to restructure debt and public rental²⁷⁶, which modifies and partially covers the above-mentioned rules (in addition to the provisions of RDL 27/2012) and provides for the cancellation of the remaining debt from foreclosure (provided that 65% of remains are paid within five years; or the 80%, in a ten-year period).

Firstly, with regard to national legislation concerning mortgages, it can be concluded that Spain does not have regulations governing all those affected by mortgages. That is, the measures cover only mortgagors in those cases of loss of the main residence (and regardless of other circumstances, such as loss of business space), and have a very limited scope (as all social groups that do not meet each and every one of the requirements set forth in the aforementioned rules cannot find an alternative solution for their case).

Secondly, although these adopted regulations establish a reductions system for debt forgiveness they have not prevented evicted persons from having to pay for their remaining debt to the credit institution, practically, forever²⁷⁷. These considerations are important as they do not prevent social exclusion of people under circumstances not covered by law, which in turn can pressure them to illegal working situations for the circumvention of payment to creditors. A sample of these statements is found in the Report of the Supervisory Commission in charge of monitoring the Code of Good Banking Practice for the viable restructuring of debts secured by mortgage on primary residence [*Comisión de control del seguimiento del Código de Buenas Prácticas para la reestructuración viable de las deudas con garantía hipotecaria sobre la vivienda habitual*]²⁷⁸, which states that while most banks subscribed to the Code, there have been a small number of beneficiaries of the measures (the figures presented totalled 2,913 cases of restructurings of debt and 1,014

²⁷⁴Spanish Ombudsperson, 'Study on the economic crisis and the individual insolvency: activities and proposals of the Ombudsman' (*Estudio sobre crisis económica e insolvencia personal: actuaciones y propuestas del Defensor del Pueblo*), October 2013, p. 8, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Crisis_economica_e_insolvencia_personal.pdf, at p. 8.

²⁷⁵Royal Decree-Law 27/2012 on urgent measures to strengthen protection for mortgage debtors [*Real Decreto-Ley 27/2012, de 15 de noviembre, de medidas urgentes para reforzar la protección a los deudores hipotecarios*]. BOE 16 November 2012, available at www.boe.es/boe/dias/2012/11/16/pdfs/BOE-A-2012-14115.pdf. Not available in English.

²⁷⁶Act 1/2013 of 14 May on measures to strengthen protection for mortgage debtors, and to restructure debt and public rental [*Ley 1/2013, de 14 de mayo, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social*]. BOE 15 May 2013, available at www.boe.es/boe/dias/2013/05/15/pdfs/BOE-A-2013-5073.pdf. Not available in English.

²⁷⁷Spanish Ombudsperson, 'Study on the economic crisis and the individual insolvency: activities and proposals of the Ombudsman' (*Estudio sobre crisis económica e insolvencia personal: actuaciones y propuestas del Defensor del Pueblo*), October 2013, p. 8, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Crisis_economica_e_insolvencia_personal.pdf, at pp. 16-17.

²⁷⁸Commission provided for in Royal Decree-Law 6/2012 of 9 March on urgent measures to protect mortgage debtors without resources [*Real Decreto-ley 6/2012, de 9 de marzo, de medidas urgentes de protección de deudores hipotecarios sin recursos*]. BOE 10 March 2012, available at www.boe.es/boe/dias/2012/03/10/pdfs/BOE-A-2012-3394.pdf. It is composed of representatives from the Ministry of Economy and Competitiveness, the Bank of Spain, the National Securities Market Commission [*Comisión Nacional del Mercado de Valores*] and the Spanish Mortgage Association [*Asociación Hipotecaria Española*].

payments in kind, between the first year of application of the Code and until December 2013)²⁷⁹, for which it can be concluded that the measures had a minor impact. Finally, reference should be made to Act 1/2000 on Civil Procedure²⁸⁰, which governed the particularities of mortgaged or pledged assets. In 2013, and by judgment²⁸¹, the CJEU declared this provision incompatible with the European Directive on unfair terms in consumer contracts, which was adopted 20 years before, in 1993²⁸². According to the Act, the bank could decide unilaterally on the early maturity of the mortgage due to a default in payment, for example, of a property tax receipt²⁸³. In their ruling, the CJEU granted power to judges to stop evictions based on these grounds²⁸⁴. In response to this judgment, the Government amended the Act by the aforementioned Act 1/2013 of 14 May, which was introduced as *the new Mortgage Law*.²⁸⁵ However, the CJEU, again, ruled against the Spanish mortgage legislation²⁸⁶. The CJEU has estimated that, on this occasion, the debtor had been disadvantaged against the bank with regard to the system of appeals against judicial decisions²⁸⁷. In the anticipation of the new CJEU ruling, the Government already adopted the RDL 11/2014 of 5 September, on urgent measures in bankruptcy matters²⁸⁸. This latest legislative intervention grants legal remedy to debtors in foreclosure proceedings, as they may now oppose the process and require the Provincial Court to review if unfair terms are included in the mortgage contract, which may have contributed to the unpaid dues.

²⁷⁹Ministry of Economy, 'Informe de la Comisión de control sobre el cumplimiento del Código de Buenas Prácticas para la reestructuración viable de las deudas con garantía hipotecaria sobre la vivienda habitual', 2014, available at www.mineco.gob.es/stfls/mineco/prensa/ficheros/noticias/2014/CBP_Informe.pdf, at p. 13. Note that this is the last report available by this Commission.

²⁸⁰Act 1/2000 of 7 January establishing the Code of Civil Procedure [*Ley 1/2010, de 7 de enero, de Enjuiciamiento Civil*]. BOE 8 January 2014, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-323-consolidado.pdf. Not available in English.

²⁸¹Judgment of the Court (First Chamber) of 14 March 2013. *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (CatalunyaCaixa)*, Case C-415/11, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=135024&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=215071>.

²⁸²EC, 'Council Directive 93/13/EEC, of 5 April 1993, on unfair terms in consumer contracts', available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0013&from=EN>.

²⁸³El País, 'The unfairness of eviction derives not from the Mortgages Law, but from the Civil Procedure Law' (*Lo injusto para los desahucios no es la ley hipotecaria, sino la de enjuiciamiento civil*), *El País*, online edition, 15.11.2012, available at http://economia.elpais.com/economia/2012/11/15/actualidad/1352995541_748858.html

²⁸⁴Ceberio, M., 'The European Court of Justice grants judges the power to put a stop to evictions' (*El tribunal de la UE otorga poder a los jueces para frenar los desahucios*), *El País*, online edition, 14.03.2013, available at http://politica.elpais.com/politica/2013/03/14/actualidad/1363248602_932663.html

²⁸⁵Act 1/2013 of 14 May on measures to strengthen the protection to mortgage debtors, debt restructuring and social rent [*Ley 1/2013, de 14 de mayo, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social*]. BOE 15 May 2013, available at www.boe.es/boe/dias/2013/05/15/pdfs/BOE-A-2013-5073.pdf. Not available in English.

²⁸⁶Judgment of the Court (First Chamber) of 17 July 2014. *Juan Carlos Sánchez Morcillo & María del Carmen Abril García v Banco Bilbao Vizcaya Argentaria, SA*, Case C-169/14, available at <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=155118&occ=first&cid=217499>.

²⁸⁷Pérez-Lanzac, C., 'The EU Tribunal also considers the Mortgages Law reform abusive' (*El tribunal de la UE también considera abusiva la reforma de la ley hipotecaria*), *El País*, online edition, 17.07.2014, available at http://politica.elpais.com/politica/2014/07/17/actualidad/1405627638_479379.html.

²⁸⁸Royal Decree-Law 11/2014 of 5 September on urgent measures in bankruptcy matters [*Real Decreto Ley 11/2014, de 5 de septiembre, de medidas urgentes en materia concursal*]. BOE 6 September 2014, available at www.boe.es/boe/dias/2014/09/06/pdfs/BOE-A-2014-9133.pdf. Not available in English.

9. MONITORING COMPLIANCE OF NATIONAL MEASURES WITH FUNDAMENTAL RIGHTS

KEY FINDINGS

- National case laws regarding fundamental rights in Spain show that the austerity measures taken in several of the fields analysed in the present study are found unconstitutional. This is especially notorious in cases of collective dismissals. The judiciary also raised several exceptions of unconstitutionality with regard to court fees.
- In supranational terms, the CJEU also issued judgments with regard to the right to unfair terms included in mortgage contracts, which determined many cases of evictions until its action.
- Finally, the conclusions by the ECSR are presented, which show Spain's failure of compliance with the European Social Charter in some areas, especially in terms of employment.

9.1. Monitoring compliance at national level

The main mechanisms for monitoring compliance of the exposed measures with fundamental rights at national level are the controls of constitutionality carried out by the Constitutional Court in extraordinary cases, and through ordinary jurisprudence in general terms²⁸⁹. Furthermore, judgments of courts are binding for the parties in the proceedings, but, as in other continental law systems, they are not a general source of law, except when the unconstitutionality of an Act is declared. In terms of non-binding recommendations, the role of the Spanish Ombudsperson needs to be highlighted, as it has been exposed in the relevant chapters.

²⁸⁹ Section 53.2 of the Spanish Constitution: "Any citizen may assert a claim to protect the freedoms and rights recognised in section 14 and in division 1 of Chapter 2, by means of a preferential and summary procedure before the ordinary courts and, when appropriate, by lodging an individual appeal for protection (*recurso de amparo*) to the Constitutional Court." Although the Spanish model is defined as a model of concentrated constitutional control (with a special court created for it, the Constitutional Court), in practice it mixes both the concentrated jurisdiction and the diffuse constitutional jurisdiction, as not only the Constitutional Court but also ordinary courts exercise control, according to art. 53.2 of the Spanish Constitution.

Table 6 presents some of the most relevant case law of the Spanish courts with regard to the fundamental rights analysed:

Table 6: National case law regarding the fundamental rights covered in the present study

Case	Issue	Field
Supreme Court, Labour Chamber. Judgment 3490/2014, of 11 April 2014. ²⁹⁰ Procedure: Cassation complaint	Collective dismissals	Employment
<p>The appellants, who were the entire staff of a company, were subject to a collective dismissal under the provisions established by RDL 3/2012 of 10 February 2012²⁹¹. The Supreme Court found that the company failed to act in good faith in the process of negotiation and that it was not proven that the economic situation was untenable. Consequently, the decision of collective dismissal was declared invalid.</p>		
Decisions by Courts of Instruction (no official publication available)	Right to demonstration	
<p>Press news 21 April 2014²⁹²</p> <p>A recent decision of 6 March 2014 by the Court of Instruction No. 11 of Madrid has endorsed citizens to videotape police officers during their public performances if that is of public interest, and that they lose their guarantees as law enforcement officers when they exceed their authority. The decision is motivated by a complaint filed against a woman in 2013 at the moment of an eviction of a neighbourhood resident because of shouting to the local police that they "did not know of laws" and that "were like thugs" because they would not let a third party film them. It was considered that they were acting ultra vires in the exercise of their functions as one of the officers asserted that they were not allowed to record them, and hit the camera. "The officers conducted a performance that lacked legal coverage as there is no prohibition on filming public spaces nor the image of the officers," according to the statement. Prohibiting the recording and diffusion of images of policemen on duty was an objective of the preliminary draft of the Act on Citizens' Safety (see Chapter 7).</p> <p>Press news 16 September 2014²⁹³</p> <p>The trial judge has prosecuted a sub-inspector and a Gunsmith from the Mossos d'Esquadra (Catalan autonomous police) for the firing of a rubber ball from which Esther Quintana lost her eye during the general strike of 14 November 2012 (exposed on Chapter 7), and has imposed a bail of 200,000 euros on them to cover an eventual compensation to the demonstrator if they were found guilty. The judge described the police action of "reckless and disproportionate from the criminal point of view".</p>		

²⁹⁰ Available at www.poderjudicial.es/search/documento/TS/7164134/Despido/20140919.

²⁹¹ Royal Decree-Law 3/2012, of 10 February 2010, on urgent measures to reform the labour market [*Real Decreto-Ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral*]. BOE 11 February 2012, available at <http://www.boe.es/boe/dias/2012/02/11/pdfs/BOE-A-2012-2076.pdf>. Not available in English.

²⁹² De Antonio, A., 'Citizens can record policemen during their activities' (*Los ciudadanos pueden grabar a los policías durante sus actuaciones policiales*), ABC, 21.04.2014, available at www.abc.es/espana/20140421/abc-grabar-policias-201404211550.html.

²⁹³ EFE, 'Judge ratifies Esther Quintana's versión and considers the Mossos action "reckless"' (*EL juez ratifica la versión de Esther Quintana y ve "imprudente" la actuación de los Mossos*), Público.es, 08.05.2014, available at www.publico.es/politica/519412/el-juez-ratifica-la-version-de-esther-quintana-y-ve-imprudente-la-actuacion-de-los-mossos.

Provincial Court of Pontevedra, Section 1. Ruling 168/12, of 29 July 2014.²⁹⁴ Procedure: Civil appeal	Court fees	Access to justice
1st Section of the Provincial Court of Pontevedra, specialising in commercial matters, has issued two resolutions in consideration of the complaint filed by the administrator of a Limited Company currently declared insolvent, who was required to pay a substantial amount in fees in order to exercise his right to appeal a decision which condemned him to the loss of certain rights and the payment of substantial compensation. The resolutions state that, according to the doctrine of the European Court of Human Rights and the Spanish Constitutional Court, the introduction of a fee regime is not contrary to the fundamental right to effective judicial protection in itself, unless it is proved that the amount of the fee is so high that it effectively prevents or hinders the exercise of the fundamental right. The Section understands, however, that an exception of unconstitutionality can be raised in this case, since the resulting amount of the fee makes the fundamental right to access to justice (in this case, to lodge an appeal as provided for by Act 10/2012 ²⁹⁵) exceedingly difficult, if not impossible.		
Supreme Court, Fourth Chamber, non-jurisdictional agreement of the Court on court fees on social and labour matters, of 5 June 2013.²⁹⁶ Procedure: agreement	Court fees	Access to justice
In constitutional interpretation of the Act 10/2012 and the RDL 3/2013 and through agreement, the Supreme Court decided to exempt from payment of judicial fees some public workers' groups (the workers and beneficiaries of the social security system, the officers and regular staff of the social jurisdiction and the unions) when filing appeals related to the exercise of a collective interest.		

With regard to the reform in the labour sector, many collective dismissals that took place after the approval of RDL 3/2012 of 10 February 2012²⁹⁷ have already been annulled by the Supreme Court [*Tribunal Supremo*] (Segur Ibérica case²⁹⁸) and the National Court [*Audiencia Nacional*] (see the Tradisa case²⁹⁹) and the High Courts of Justice [*Tribunales Superiores de Justicia*] (i.e. the DOPEC case³⁰⁰ in Catalonia and the Talleres A case³⁰¹ in

²⁹⁴ Available at www.abogacia.es/wp-content/uploads/2014/09/Auto-tasa-recurso-mercantil.pdf.

²⁹⁵ Act 10/2012 of 20 November for the regulation of some court fees of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences [*Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses*]. BOE 21 November 2012. Available at:

www.boe.es/boe/dias/2012/11/21/pdfs/BOE-A-2012-14301.pdf. Not available in English.

²⁹⁶ Available at www.poderjudicial.es/cqj/es/Poder-Judicial/Tribunal-Supremo/Jurisprudencia-/Acuerdos-de-Sala/Acuerdo-del-Pleno-No-Jurisdiccional-de-la-Sala-Cuarta-del-Tribunal-Supremo-de-05-06-2013--sobre-las-tasas-en-el-Orden-Social.

²⁹⁷ Royal Decree-Law 3/2012, of 10 February 2010, on urgent measures to reform the labour market [*Real Decreto-Ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral*]. BOE 11 February 2012, available at www.boe.es/boe/dias/2012/02/11/pdfs/BOE-A-2012-2076.pdf. Not available in English.

²⁹⁸ Supreme Court. Labour Chamber. Appeal No. 166/2013, of 20 May 2014. Id Cendoj: 28079140012014100416. Available at <http://www.poderjudicial.es/search/documento/TS/7155286/Despido/20140905>.

²⁹⁹ National Court. Labour Chamber. Judgment No. 0075/2012. Appeal No. 94/2012, of 25 June 2012. Available at www.poderjudicial.es/cqj/es/Poder-Judicial/Audiencia-Nacional/Jurisprudencia/Actualidad-Jurisprudencial/AN-Social--Declara-la-nulidad-del-despido-colectivo-promovido-por-Tradisa-Logicauto-S-L--El-desistimiento-empresarial-del-despido-colectivo-previo--cuya-resolucion-competia-a-la-Direccion-General-de-Empleo--para-promover--seguidamente--el-mismo-despido-colectivo-al-amparo-del-RDL-3-2012--de-10-de-febrero--al-que-ya-no-era-exigible-la-autorizacion-administrativa-se-estima-fraudulento-al-acreditarse-una-manifiesta-voluntad-de-sustraerse-del-procedimiento-legal--para-beneficiarse-de-un-procedimiento-mas-flexible-que-el-precedente-.

³⁰⁰ High Court of Justice of Catalonia, Labour Chamber. Judgment No. 13/2012, of 23 May 2012. Available at <http://portaljuridico.lexnova.es/jurisprudencia/JURIDICO/131004/sentencia-tsj-cataluna-13-2012-de-23-de-mayo-despido-colectivo-por-causas-objetivas-nulidad-de>.

Madrid) for law avoidance. Hundreds of companies that had started proceedings of collective dismissals prior to the entry into force of this RDL paralysed them, in order to reactivate them under the RDL's new conditions, such as Tradisa's case³⁰². In the judgment against GSS³⁰³, the High Court of Justice of Madrid stated: "*The adjustment plans are a social cost destined to help companies facing an economic crisis or difficulties of productivity affecting their survival. They are not and shall not be a means of job destruction leading to the generation of wealth or profit for the employer who does not experience any crisis, nor do they have real difficulties.*"³⁰⁴

To determine the effects of judgments of the Constitutional Court is necessary to distinguish whether it is a decision regarding an application for *amparo* or in respect of judicial review of laws and regulations having the power of law. In cases of application for *amparo*, the effects are only on the parties, because in these laws are not questioned, but rights violations are repaired. In those cases of review for constitutionality (complaints and submissions of unconstitutionality), the judgement produces effect erga omnes, as it is decided whether a law is constitutional. If finally unconstitutional, it is declared null and void, expelling it from the legal system.

The control of constitutionality of a measure promulgated by the Parliament is exercised ex post by the Constitutional Court. In this sense, it is worth mentioning the seminar that took place in Madrid on September 2014 between the Constitutional Court of Spain and its German counterpart in order to analyse the role of Constitutional Courts during periods of economic crisis³⁰⁵. During its sessions, thought was given to the position that fundamental and social rights occupy in the legal order; as well as to the value of the right to equality as a tool to bring social rights closer to fundamental rights, and to correct inequalities in the field of social services. Moreover, there was discussion about the need to adjust the criteria for prosecution of the Constitutional Courts to the reality of the crisis; and participants reflected on the increasingly intensive involvement that is beginning to take place between the courts of the different Member States and the Court of Justice of the European Union; which seems clear, in view of the case law set forth in the above table.

³⁰¹High Court of Justice of Madrid, Labour Chamber, Section 2. Judgment No. 415/2012, of 30 May 2012. Available at

www.laley.es/Content/Documento.aspx?params=H4sIAAAAAAAAAEAO29B2AcSZYIji9tynt/SvVK1+B0oQiAYBMk2JBAE OzBiM3mkuwdaUcjKasggcplVmVdZhZAzO2dvPfee++999577733ujudTif33/8/XGZkAWz2zkrayZ4hgKrIH9+fB8/IorZ 7LPvflWzs7N/f+9q99NPf+FIXidFtfsb2d3b+f+vR18UJxfP62mb65X+WfnWdnkvzCfvNXb4L3f37T/fwDh16LxUQAAAA ==WKE.

³⁰²EFE, 'The National Court nullifies the Downsizing Plan which Tradisa reformulated after the labour market reform' (*La Audiencia Nacional anula el ERE que Tradisa reformuló tras la reforma laboral*), El País online edition, 06.07.2012, available at http://ccaa.elpais.com/ccaa/2012/07/05/catalunya/1341515014_829853.html.

³⁰³High Court of Justice of Madrid, Labour Chamber, Section 1. Judgment No. 428/14, of 16 May 2014. Id Cendoj: 28079340012014100667. Available at

www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=7197136&links=ERE%20Global%20Solutions&optimize=20141028&publicinterface=true.

³⁰⁴Tejedor, E., 'Judges put limits to the new dismissal of the labour reform' (*Los jueces ponen límites al nuevo despido de la reforma laboral*), El País, online edition, 12.08.2012, available at http://economia.elpais.com/economia/2012/08/12/actualidad/1344802589_536038.html?rel=rosEP.

³⁰⁵Spain, Constitutional Court, 'Informative note Number 69/2014. The [Spanish] Constitutional Court and the German Constitutional Court analyse the role of constitutional courts in the economic crisis' (*Nota Informativa Nº 69/2014, El TC y la Corte Constitucional de Alemania analizan el papel de los tribunales constitucionales en la crisis económica*), 10.09.2014, available at www.tribunalconstitucional.es/es/salaPrensa/Documents/NP_2014_069/NOTAINFORMATIVANUMERO692014.pdf.

Marco following his dismissal by Korota, which is subject to court-supervised administration proceedings. The CJEU ruled to have no jurisdiction to answer the questions referred for a preliminary ruling by the Juzgado de la Social No 2 de Terrassa (Spain).

Court of Justice of the European Union. Judgment of the Court (First Chamber) of 14 March 2013. Case C-415/11.³⁰⁹

Procedure: request for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 3 de Barcelona (Spain), made by decision of 19 July 2011, received at the Court on 8 August 2011, in the proceedings

Protection against home eviction

Housing

The CJEU stated that the Spanish legislation (Act 1/2000 on Civil Procedure³¹⁰) was contrary to Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as it does not allow that those affected by a foreclosure proceeding can object to the court's decision. In their ruling, the CJEU granted power to judges to stop evictions, based on these grounds. In response to this judgment, the Government amended the Act. Yet, this amendment gave place to the CJEU's Case C-169/14.

Finally, the European Committee of Social Rights (ECSR) has adopted several conclusions concerning Spain's compliance with the European Social Charter³¹¹. The table below provides an overview of instances in which the ECSR found that Spain was not in compliance with those Charter's provisions relevant for the present study. The table covers conclusions issued since 1st January 2008. As can be observed, most of them target the employment field.

³⁰⁹Available at

<http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&docid=135024&cid=214625>.

³¹⁰Act 1/2000 of 7 January establishing the Code of Civil Procedure [*Ley 1/2010, de 7 de enero, de Enjuiciamiento Civil*]. BOE 8 January 2014, available at www.boe.es/buscar/pdf/2000/BOE-A-2000-323-consolidado.pdf. Not available in English.

³¹¹See www.coe.int/t/democracy/migration/bodies/eCSR_en.asp, accessed on 01.08.2014.

Table 8: Selected conclusions of the European Committee on Social Rights³¹²

Document ID		Field
XX-2/def/ESP (2013)	<ul style="list-style-type: none"> • Adequacy of benefits 	Pensions
<p>"[T]he situation in Spain is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of sickness benefit is manifestly inadequate."</p>		
	<ul style="list-style-type: none"> • Social security of persons moving between States 	Social security
<p>"The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:</p> <ul style="list-style-type: none"> o equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties; o equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties; o the length of residence requirement for entitlement to non-contributory old-age pensions is excessive." 		
	<ul style="list-style-type: none"> • Adequate assistance for every person in need 	Right to social and medical assistance
<p>"The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the Charter on the grounds that, at least in some of the autonomous communities:</p> <ul style="list-style-type: none"> o minimum income eligibility is subject to a length of residence requirement; o minimum income eligibility is subject to age requirements (25 years old); o minimum income is not paid for as long as the need persists; o the level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra)." 		
	<ul style="list-style-type: none"> • Promotion and provision of social services 	Social services
<p>"[T]he situation in Spain is not in conformity with Article 14§1 of the 1961 Charter on the grounds that:</p> <ul style="list-style-type: none"> o it has not been established that effective access to social services is guaranteed; o the conditions to be met by providers of social services are not clearly defined; o it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist." 		
XX-1/def/ESP/ (2012)	<ul style="list-style-type: none"> • Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects) 	Employment
<p>"The Committee concludes that the situation in Spain is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to employment in the public service for non-nationals are excessive."</p>		
	<ul style="list-style-type: none"> • Free placement services 	Employment
<p>"[...] the matching of people to jobs in Spain, notably through the public employment services, needs to be made more efficient [...] despite the recent reform which allows private for-profit firms to provide placement services [...]."</p> <p>"The Committee concludes that the situation in Spain is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that free placement</p>		

³¹²European Social Charter Document Collection, available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=query×tamp=49156.11>, accessed on 06.10.2014.

Document ID		Field
	services operate in an efficient manner.”	
	<ul style="list-style-type: none"> • Right to vocational training 	Employment
	“The Committee concludes that the situation in Spain is not in conformity with Article 10§4 of the Charter of 1961 on the ground that it has not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working in Spain is guaranteed with respect to financial assistance.”	
XIX-4/def/ESP (2011)	<ul style="list-style-type: none"> • Fair pay to young workers 	Employment
	“The Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the Charter of 1961 on the grounds that young workers’ wages are not fair, and it has not been established that the apprentices’ allowances are adequate.”	
	<ul style="list-style-type: none"> • Time off for nursing mothers 	Employment
	“[T]he situation in Spain is not in conformity with Article 8§3 of the 1961 Charter on the ground that domestic workers are not entitled to time off for breastfeeding.”	
	<ul style="list-style-type: none"> • Equal treatment for the self-employed 	Employment
	Considering equal treatment between self-employed migrants and self-employed nationals, a finding of non-conformity is found with regard to Article 19§10 of the 1961 Charter on the same ground for which it is not in conformity with paragraph 6 of the same Article.	
XIX-3/def/ESP (2010)	<ul style="list-style-type: none"> • Reasonable working time 	Employment
	“[T]he situation in Spain is not in conformity with Article 2§1 of the Charter on the grounds that: <ul style="list-style-type: none"> ○ the Workers’ Statute sets out, as a general rule, a reference period of 1 year for the calculation of average working hours; ○ the Workers’ Statute, as well as specific legislation for certain categories of workers, permit weekly working time in excess of 60 hours.” 	
	<ul style="list-style-type: none"> • Annual holiday with pay 	Employment
	“[T]he situation in Spain is not in conformity with Article 2§3 of the Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.”	
	<ul style="list-style-type: none"> • Decent remuneration 	Employment
	“The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage is manifestly unfair.”	
	<ul style="list-style-type: none"> • The right to safe and healthy working conditions 	Employment
	“The Committee concludes that the situation in Spain is not in conformity with Article 3§1 of the Charter on the following grounds: <ul style="list-style-type: none"> ○ [...]regulations for temporary workers are not sufficiently effective to protect this category of workers in an adequate manner; ○ self-employed workers are not sufficiently protected by health and safety regulations.” 	
	<ul style="list-style-type: none"> • Right of the elderly to social protection 	Social protection
	“[T]he situation in Spain is not in conformity with Article 4 of the Additional Protocol of the 1961 Charter on the ground that it has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.”	
XIX-2/def/ESP	<ul style="list-style-type: none"> • Existence of a social security system 	Employment

Document ID		Field
(2009)		
	<p>"[T]he situation is not in conformity with Article 12§1 of the Charter on the following grounds:</p> <ul style="list-style-type: none"> ○ it has not been established that the levels of sickness benefits are adequate; ○ the level of unemployment benefit for unemployed without family responsibilities is inadequate." 	
	<ul style="list-style-type: none"> • Level of social assistance for a person in need 	Employment
	<p>"The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the Charter on the following grounds:</p> <ul style="list-style-type: none"> ○ eligibility for the minimum income is subject to a length of residence requirement in some regions; ○ the majority of regions stipulate 25 as the minimum age of eligibility for the minimum income; ○ the level of social assistance paid to a single person is manifestly inadequate except for the Basque region; ○ the minimum income is not paid for as long as the need persists. ○ it has not been established that foreign nationals legally resident in Spain are provided with social assistance on an equal footing with nationals." 	
	<ul style="list-style-type: none"> • Right to the elderly persons to social protection 	Social Security
	<p>"The Committee concludes that the situation in Spain is not in conformity with Article 4 of the Additional Protocol on the following grounds:</p> <ul style="list-style-type: none"> ○ it has not been established that there is an adequate legal framework to combat age discrimination outside employment; ○ the level of the non-contributory old age pension is manifestly inadequate; ○ it has not been established that health care programmes sufficiently meet the needs of the elderly." 	
XIX-1/def/ESP (2008)	<ul style="list-style-type: none"> • Vocational guidance in the education system 	Education
	<p>[T]he situation in Spain is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance in the education system is guaranteed.</p>	
	<ul style="list-style-type: none"> • Training of disabled persons 	Education
	<p>"The Committee concludes that the situation in Spain is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training."</p>	
	<ul style="list-style-type: none"> • Employment of disabled persons 	Employment
	<p>"[T] he situation in Spain is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment."</p>	
	<ul style="list-style-type: none"> • Gainful occupation of foreign nationals 	Employment
	<p>"[T]he situation in Spain is not in conformity with Article 18§3 of the Charter on the grounds that foreign workers who have lost their job are not entitled to an extension of their work permit to give them sufficient time to seek new employment."</p>	

10. CONCRETE PROPOSALS FOR IMPROVING THE RESPECT OF FUNDAMENTAL RIGHTS IN TIMES OF ECONOMIC CRISIS

KEY FINDINGS

In light of the impacts of the crisis and austerity measures on fundamental rights, the following recommendations can be made:

- Concerning the **right to education**, a key recommendation is to analyse, by means of a report on the subject, the impact that cuts on education budgets have had on equality opportunities and on the principle of inclusive education. The findings should be concluding in order to address measures on the issue; furthermore, to strengthen the system of family benefits and child allowances so as to provide better support to households with children and better protection against poverty.
- Concerning the **right to healthcare**, the health reforms adopted in the context of the current economic crisis should be reviewed and it should be considered to return to the former system of universal free access to healthcare, to ensure that access to health-care services is provided to migrants regardless of their migration status; furthermore, the current state of disparity and inequality in the provision of health services amongst the Autonomous Communities should be analysed and addressed, to ensure the equal realisation of the right to an adequate standard of physical and mental health to every person in Spain, regardless of their location within the territory.
- Concerning the **right to work**, a recommendation would be to enhance the reactivation of the credit market, especially for SMEs; to ease the administrative and tax burdens to start up a firm, and to set training programmes aimed at enabling entrepreneurs to acquire the managerial skills necessary to run a business; to promote investment in new technology and supporting economic diversification; to set a coherent pack of measures to ensure jobseekers remain in the labour market; to improve the protection of temporary workers and making the dismissal system more predictable to both employers and workers; improving coverage of workers through quality sectorial agreements and coordination guidelines; to increase wages in accordance with productivity gains; to establish a "single open contract" as a measure to prevent unemployment, especially amongst the youth, and to address labour market segmentation.
- Concerning the **right to pension**, it is recommended to monitor the effect of the recent reform on the pensions system in order to foresee and prevent any possible negative impact it can have in terms of reducing older people's purchasing power and consumption, with special attention to low-income workers.
- Concerning the **right of access to justice**, the Ombudsperson's recommendations should be included in the upcoming revision of Act 10/2012, as well as those recommendations from the Spanish Council of Advocacy, the Spanish Tax Agency and the General Council of the Judiciary, which would ensure the Act's compliance with the fundamental right to effective judicial protection for everyone. Especially, the Ombudsman's recommendations that are still pending should be taken into account, including: to significantly reduce the fees for the first instance in the civil and administrative jurisdiction; the removal of fees established in the

first instance in the administrative jurisdiction when sanctioning procedures are prosecuted; the exemption of fees in foreclosure cases.

- Concerning the **right to assembly**, it is recommended that the final Organic Act on the Protection of Citizens' Safety reaches certain consensus in the Parliament, to ensure the measure's political stability.
- Concerning the **right to housing**, it is recommended to pass the regulation of personal insolvency proceedings in which the debtor can meet, in good faith, his/her financial obligations in an orderly and realistic way and receive a deduction on their debts.

This chapter includes the main conclusions reached by the analysis of previous sections, and offers some of the recommendations made by international organisations and public authorities, from a human rights' perspective. In view of the present Spanish context, it can be stated that, while the austerity measures did manage to comply with the MoU recommendations to reduce fiscal deficits and to clean up the financial sector, as set by the ECB and the EU, they failed to respect the realisation of fundamental rights covered by this study. This, in turn, has led to a growing social divide.

Right to education

As highlighted by Commissioner Nils Muižnieks, the substantial cuts inflicted on education budgets, ranging from 14.4% (2010) to 21.4% (2013) had an impact on equality of opportunities and on the principle of inclusive education. Therefore, he stressed the need to make sure that cuts in education budgets, notably in programmes of support for children with specific difficulties, do not affect equal access to quality education for all children³¹³. Moreover, several international bodies have called on Spain to strengthen the system of family benefits and child allowances so as to provide better support to households with children and better protection against poverty³¹⁴, which would help reverse the present context. In particular, subsidies for school meals and books must also be seen as a necessary income supplement for impoverished families addressed not only to guarantee the effective realisation of the fundamental right to education of every child, but also to combat child poverty (with special attention to malnutrition) and reach deprived children through the educational institutions, taking action in line with the 2013 Commission Recommendation *Investing in children: breaking the cycle of disadvantage*³¹⁵. Finally, it should be stressed that cuts in areas such as education are counterproductive for the country's future economic viability.

³¹³Muižnieks, N., Commissioner for Human Rights of the Council of Europe, 'Report following his visit to Spain from 3 to 7 June 2013', CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>.

³¹⁴See United Nations, Committee on the Rights of the Child, 'Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: Spain', 3.11.2010, pp. 7-8, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ESP/CO/3-4&Lang=Sp. Also see CoE, ECSR, 'Conclusions XIX-4 (2011) (SPAIN) Articles 7, 8, 16, 17 and 19 of the Charter', January 2012, p. 17, available at www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXIX4_en.pdf. In its Report, the ECSR concludes that the level of family benefits would not be in line with Article 16 of the European Social Charter.

³¹⁵EC, 'Commission Recommendation Investing in children: breaking the cycle of disadvantage', 20.2.2013, available at http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf.

Right to healthcare

The Royal Decree-Law 16/2012 of 20 April 2012 on urgent measures to guarantee the sustainability of the National Healthcare System and to improve the quality and security of its services has led to a change in the National Health System (NHS) which excludes from the service those people in a situation of exclusion (illegal immigrants), thus promoting social breakdown. Furthermore, this new legislation seems to be generating confusion regarding the terms of its application: *Medicos del Mundo* has reported³¹⁶ how this limitation in the provision of medical services has resulted in situations of neglect in emergency services (which should be of free and universal access), and also in cases involving pregnant women and minors in irregular situations (although both groups are still covered by the RDL), putting an end to the principles of universality and equality that previously characterised the Spanish NHS.

In this regard, it is interesting to highlight the findings of the UN Special Rapporteur on racism who noted, after his visit to Spain in January 2013, with respect to the amendments introduced by Royal Decree-Law 16/2012, “which curtail the right of undocumented migrants to access to public health services as provided in several international human rights instruments ratified by Spain, including article 12 of the International Covenant on Economic, Social and Cultural Rights and article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. [Therefore,] He recommends the review of the health reforms adopted in the context of the current economic crisis to ensure that access to health-care services is provided to migrants regardless of their migration status. He recalls General Recommendation No. 30 on Discrimination Against Non-Citizens (2004) of the Committee on the Elimination of Racial Discrimination, which calls upon States’ parties to respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services; and to review and revise legislation, as appropriate, in order to guarantee that such legislation is in full compliance with the Convention”³¹⁷.

Following his visit to Spain in June 2013, the Commissioner for Human Rights of the Council of Europe also expressed his view on this issue³¹⁸. Lastly, the European Committee of Social Rights refers to it in its latest assessment of Spain (November 2014), warning that the denial of access to healthcare to foreigners irregularly present in the country is inconsistent with the international agreements to which Spain is a party³¹⁹. In this sense, the return to the former system of universal free access to healthcare may be recommended. However, it should be noted that this statement is made without taking into account the economic costs arising from this.

³¹⁶See Doctors of the World (*Médicos del Mundo*), ‘Two years of the health reform: more lives at risk’ (*Dos años de reforma sanitaria: más vidas humanas en riesgo*), 2014, available at www.medicosdelmundo.org/index.php/mod.documentos/mem.descargar/fichero.documentos_Impacto-Reforma-Sanitaria-Medicos-del-Mundo_3ec0bdf9%232E%23pdf, pp. 6-7, and 32-36.

³¹⁷UN Human Rights Council, ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere: Visit to Spain’, 6.06.2013, p. 17, par. 72, available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf.

³¹⁸Muižnieks, N., Commissioner for Human Rights of the Council of Europe, ‘Report following his visit to Spain from 3 to 7 June 2013’, CoE, CommDH(2013)18, of 9 October 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>. The Report expresses concern at the “reported growing obstacles that undocumented migrant children face in accessing health care in contravention of the standards contained in the UN Convention on the Rights of the Child by which Spain is bound” (p. 2).

³¹⁹CoE, ‘European Social Charter. European Committee of Social Rights, Conclusions XX-2 (Espagne). Articles 3, 11, 12, 13 and 14 of the 1961 Charter’, November 2014, available at www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXX2_en.pdf. In this report, the ECSR actually states that “this denial of access to health care for adult foreigners (aged over 18 years) present in the country irregularly is contrary to Article 11 of the Charter” (p. 13).

Secondly, since the Autonomous Communities share the competence on health matters with the Central Government, the implementation of the RDL at regional level has resulted in heterogeneous actions (for instance, in the application of co-payment), causing important disparities and inequalities in the provision of health services throughout the country. This situation should be addressed, which would entail a change of the framework of powers within the healthcare system that would affect the distribution of powers between the State and the Autonomous Communities.

Right to work

As discussed in Chapter 4, the labour market was thoroughly reformed in order to cope with its characteristic dualism and high unemployment rate, as well as to make it more resilient to future downturns. Nevertheless, high unemployment remains the main legacy of the unprecedented recession, which puts pressure on the institutions to reintegrate jobseekers into employment (in face of the risk of dropping out of the labour market). Even if the high rate of job creation witnessed in the second quarter of 2014 were to continue, it would still take until 2023 to restore employment to 2007 levels, according to the ILO³²⁰. Therefore, further action is needed to ensure that sustainable improvements in employment and social conditions are met. In this sense, a first step to consolidate job recovery should be aimed at enhancing the reactivation of the credit market, especially for SMEs. Also, while recognising the latest measures promoted by the Spanish Government in order to boost entrepreneurship, the ILO also recommends easing the administrative and tax burdens to start up a firm, and to set training programmes aimed at enabling entrepreneurs to acquire the managerial skills necessary to run a business. Promoting investment in new technology and supporting economic diversification (e.g. by tax exemptions on the adoption of green technologies) is also one of the recommendations set forth by the ILO. Moreover, it proposes³²¹:

- *To set a coherent pack of measures to ensure jobseekers remain in the labour market:* by designing active labour market policies, improving the targeting of hiring subsidies (based on skills or duration of unemployment), including employers in the design and delivery of vocational training practices (to ensure that the measures meet the demands of the economy), ensuring the effective implementation of the Youth Guarantee scheme proposed by the European Commission in 2012³²², reinforcing the PES.
- *To effectively address the polarisation of the labour market:* by improving the protection of temporary workers and making the dismissal system more predictable to both employers and workers;
- *To improve coverage of workers through quality sectoral agreements and coordination guidelines,* ensuring the effective representation of all bargaining parties;

³²⁰ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf, at p. 2.

³²¹ILO, 'Studies on Growth with Equity. Spain. Growth with jobs', 2014, pp. 5-13, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf.

³²²The Youth Guarantee is a new approach to tackle youth unemployment aimed at ensuring that all young people under 25 get a good-quality, concrete job offer within four months of leaving formal education or becoming unemployed. For more information, please visit: <http://ec.europa.eu/social/main.jsp?catId=1079>. Also see: EU, 'Recommendation of the Council of 22 April 2013 on establishing a Youth Guarantee', 22.04.2013, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0426\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0426(01)&from=EN).

- *To increase wages in accordance with productivity gains*: wages have fallen in nominal terms since 2012, implying a reduction of the purchasing power. A further decrease of wages would hamper domestic demand³²³.

It is also worth mentioning the recommendation set by the Commissioner for Employment, Social Affairs and Inclusion of the European Commission, László Andor, who called for the establishment of a “single open contract” as a measure to prevent unemployment, especially amongst the youth, and to address labour market segmentation³²⁴.

Right to pension

In Spain, 72% of older people’s income comes from public transfers (a value much higher than that of the OECD average, of 59%)³²⁵. In contrast, several reports indicate there would have been a substantial reduction of old-age poverty (the OECD reports a decline from 21% to 12% between the years of 2007 and 2010)³²⁶. As stated in the 2014 Report *Social Justice in the EU – A Cross-national Comparison*, it has to be taken into account that the relative income poverty indicator (used to calculate indicators such as risk of poverty) is measured with regard to individual national income levels. Therefore, it is not surprising that, as the CC states, “Spain shows a comparatively low rate of 12.7 percent, while the corresponding rates in Sweden and Finland are 17.7 percent and 16.1 percent. [...] However, this effect must be interpreted within the context of a decrease in average income levels”³²⁷. Therefore, monitoring the effect of the recent reform on the pensions system is recommended in order to foresee and prevent any possible negative impact it can have in terms of reducing older people’s purchasing power and consumption, with special attention to low-income workers.

Right of access to justice

The role of the judiciary has also been crucial for the realisation of the fundamental *right of access to justice*, as well as to the figure of the Ombudsperson. In this sense, in 2012 the Ombudsperson addressed several recommendations³²⁸ to ensure that court fees are not contrary to the fundamental right to effective judicial protection in itself, nor that they prevent the exercise of this fundamental right. While some of them were already taken into account in the drafting of RDL 3/2013, others are still pending:

- To significantly reduce the fees for the first instance in the civil and administrative jurisdiction. As discussed in Chapter 6, the variable rate at first instance in the civil and administrative jurisdiction can reach thousands of euros up to the limit set at €10,000; there is a high risk that these fees could be dissuasive, and so detrimental for average citizens (who find themselves above the income levels established for the access to legal aid, but unable to pay the fees);

³²³ILO, ‘Studies on Growth with Equity. Spain. Growth with jobs’, 2014, p. 12, available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_309955.pdf.

³²⁴EFE, ‘Brussels proposes the implementation of a “single open-ended contract” in Spain’ (*Bruselas propone la implantación en España de un “contrato único abierto”*), ABC online, 13.05.2013, available at www.abc.es/economia/20130513/abci-contrato-unico-bruselas-201305131359.html.

³²⁵OECD, ‘Pensions at a Glance 2013. OECD and G20 Indicators. Spain’, 2013, available at www.oecd.org/spain/OECD-PensionsAtAGlance-2013-Highlights-Spain.pdf, at p. 2.

³²⁶ibid.

³²⁷Schraad-Tischler, D. & Kroll, D., ‘Social Justice in the EU – A Cross-national Comparison’, Gütersloh: Bertelsmann Stiftung, 2014, p. 31.

³²⁸Spanish Ombudsperson, ‘Annual Report. 2013’ (*Informe Anual 2013*), available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/Informe_2013.pdf, at pp. 44-47.

- The removal of fees established in the first instance in the administrative jurisdiction when sanctioning procedures are prosecuted: it is common that the fee value becomes closer to the value of the litigation, and the Administration is usually not obliged to bear the costs (this would not be an option even if the Administration lost the process, if there were serious doubts in law or in facts, in accordance with Art. 139.1 of the Act 29/1998³²⁹);
- The exemption of fees in foreclosure cases;
- Fee exemption in the social order for appeals and cassation procedures, given the current state of the labour market;
- The exemption from fees for those arbitration procedures that fail to succeed. Currently, the law provides for a refund of 60 percent of the fee when an out-of-court dispute settlement is reached once the process has started. Therefore, it does not appear logical that the legal actions that must occur if this fails are subject to fee;
- The modulation of fees according to the economic capacity of legal persons. That is, the variable part of the fee now distinguishes between natural and legal persons. Yet, the same fees are maintained for all legal persons, applying to large and small businesses on equal terms – despite their differentiated economic capacities. This criterion was already included in the previous Law 53/2002, in which those legal persons being considered small-sized enterprises were exempt from it; and
- The moderation in fees on appeals and pleas, to allow access to this procedure for anyone interested irrespective of their economic capacity.

Furthermore, the recent decision of the new Minister of Justice Rafael Catalá to propose a new reform of court fees, counting on the cooperation of the Spanish Council of Advocacy, the Spanish Tax Agency and the General Council of the Judiciary, is a welcome initiative.

Right to assembly

With regard to the process of reform that took place concerning the Organic Act on the Protection of Citizens' Safety, the intervention of NGOs, unions, civil society groups and Spanish judicial bodies had a decisive impact on the further reconsideration of its provisions in a second draft. It would be desirable that, once the Act is passed, jurisdictional competence is reinforced to defend this right, with special regard to the recordings of police, as requested by the judges' associations and discussed in Chapter 7. Moreover, it is recommended that the final Organic Act on the Protection of Citizens' Safety reaches certain consensus at the Parliament, to ensure the measure's political stability. In this sense, the role of the judiciary has proven to be key for the respect and fulfilment of fundamental rights.

³²⁹Act 29/1998 of 13 July regulating the administrative jurisdiction [*Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa*] BOE 14 July 1998. Consolidated versión 10 December 2013, available at www.boe.es/buscar/pdf/1998/BOE-A-1998-16718-consolidado.pdf.

Right to housing

Following the *2013 Report on Economic Crisis and Personal Insolvency: actions and recommendations from the Ombudsperson*³³⁰, the need to pass the regulation of personal insolvency proceedings in which the debtor can meet, in good faith, his/her financial obligations in an orderly and realistic way, and get a deduction on their debts, is stressed. This would involve establishing a special bankruptcy procedure - called second opportunity, existing for legal entities but not for natural persons - thus avoiding social exclusion.

In general terms, it can be stated that the rigid austerity policies pursued during the crisis and the structural reforms aimed at economic and budgetary stabilisation exacerbated the impact of the crisis, thereby stalling recovery. Consequently, fundamental rights protection has severely deteriorated, which in turn has had negative effects in terms of social justice. The risk of poverty and social exclusion increased as a further result of the crisis, affecting children the most. In this sense, Spanish socioeconomic strategy should integrate the principle of equality as the assessment criteria to set measures, in order to effectively combat social injustice.

³³⁰Spanish Ombudsperson, 'Study on the economic crisis and the individual insolvency: activities and proposals of the Ombudsman' (*Estudio sobre crisis económica e insolvencia personal: actuaciones y propuestas del Defensor del Pueblo*), October 2013, p. 8, available at www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/Crisis_economica_e_insolvencia_personal.pdf.

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- Confederation of Workers' Commissions (*Confederación Sindical de CCOO*), Labour Union
- Médicos del Mundo, NGO
- Ministry of Education, Culture and Sport (*Ministerio de Educación, Cultura y Deporte*)
- Ministry of Labour and Social Security (*Ministerio de Empleo y Seguridad Social*)
- Spanish Council of Advocacy (*Consejo General de la Abogacía Española*)
- Spanish Ombudsperson (*Defensor del Pueblo*)

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Name of the Study	PE number	ISBN number
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