

**Unemployment and Difficulties for Reconciliation.
Key Gender Issues in the Economic Crisis in Spain**

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Abstract

Due to the definition of “work” usually employed by labour lawyers and economists, and given that the economic crisis in Spain has had an impact mainly on the construction sector, which has a prevalently male workforce, the effects of the crisis on women have hardly come to light. However, this paper provides data to support the following conclusions: women have suffered significant employment and Social Security affiliation losses; there has been a significant increase in the number of women seeking paid work outside the home; and women spend more time working than men. Nonetheless, the worst effect of the crisis is that equality is no longer in the political agenda, and that the rights of reconciliation of family and professional life underwent a considerable setback in the 2012 labour reform.

Keywords: equality, gender, employment, reconciliation, economic crisis.

1. Reasons why the effects of the crisis on women are invisible

When analysing the effects on the labour market of the economic crisis which has been developing in Spain since 2008 and the labour reforms designed to respond to it, we run the risk of failing to see what has happened to women since then. This is firstly due to the fact that those of us who analyse the labour market and its regulations usually take as our reference values those of “paid work”. The “work” that is the object of our studies is freely provided, paid and dependent, as a salaried worker. This is how regulations - in the Spanish case, the workers’ statute¹ - define work, and this is how we reflect it in our analyses. Some authors even boast that this definition of “work” is not the result of an intellectual exercise, but rather the result of capturing in regulations the features that define “work” in reality: the hegemonic way of “working” which became widespread after the industrial revolution in the capitalist system and which remains fully present in it. From this approach, which remains the majority approach among labour lawyers and economists, it is impossible to perceive what goes on beyond a definition of “work” that belongs to the time and social reality when the “family wage” model was created (Fraser 1994, 591), and when the sexual division of labour and the devaluation of the work usually provided by women led regulations to reflect only the legal attributes which defined male work (Agenjo 2011, 87).

Hence classic or conventional analyses do not take into account the consequences of the crisis which fall outside the framework of the exchange of work for a salary. Employment or unemployment rates are analysed, in best-case scenarios disaggregating data on the basis of sex according to the guidelines of “feminist empiricism”, but hardly anything is known about what happens in the home, or about the impact of the crises on care work, which is still today usually provided by women. In some cases, care is not even regarded as work; in other cases, even though care is regarded as work, there are no data or instruments to measure this economic reality. The end result is that, with the exception of some works in feminist economy, little is known about the effects which the economic crisis has had on the more than 9.1 million women who are regarded - in a

¹ Royal Legislative Decree 1/1995, of 24 March, approving the consolidated text of the Workers’ Statute Law, available at <http://www.boe.es/buscar/act.php?id=BOE-A-1995-7730> (revised: 7 May 2013).

manner that eloquently reflects the dominant conception of “work” (Gálvez and Torres 2010, 17) - as “inactive” in the most recent Active Population Survey (EPA, after its spanish initials), or about its effects on the more than 7.5 million women “occupied” once their paid working day ends.

The second reason why the consequences of the crisis for women can go unnoticed is related to the way in which the crisis has developed in Spain. To the international financial crisis, one must add the specificity of the collapse of the construction sector, which until then had been the engine driving the growth of the economy, and whose workforce was practically in its entirety male. It is a well-known fact that the effects of crises on female employment depend on women’s position in the relevant production structure. For this reason, there is no uniform pattern by which to evaluate the gender consequences of economic crises, but rather variations based on women’s prior situation in the relevant economic framework (Walby 2009, 7-8). In Spain, the fact that the crisis has mainly impacted the construction sector, and that the workforce in this sector was mainly male, has led to a lower impact - or, at least, to an apparently lower impact - on women’s employment.

Over the crisis, according to EPA data², more than 3.7 million jobs have been lost, more than 2.8 million of which were held by men and almost 881,000 by women. Given these data, according to which more than 76% of the jobs lost as a result of the crisis were held by men, women’s unemployment may seem “of little importance” by comparison. For this reason - because comparisons between the impact of the crisis on men and women tend to overshadow what is happening to women - I decided to focus only on the data concerning women, so that, beyond the impact of the crisis on men, its consequences for women can be fully appreciated.

² The EPA data provided in the text are taken from a comparison between EPA data for the first quarter of 2008 (<http://www.ine.es/daco/daco42/daco4211/epa0108.pdf>), the data immediately previous to what is commonly accepted as the start of the crisis, and EPA data for the first quarter of 2013 (<http://www.ine.es/daco/daco42/daco4211/epa0113.pdf>), the most recent data available (revised: 7 may 2013).

2. Rise in unemployment and loss of Social Security affiliation

As was stated, almost 881,000 salaried women have lost their jobs. Furthermore, almost 2.9 million women are unemployed, which amounts to an increase by more than 1.7 million in the number of unemployed women and an increase in the women's unemployment rate by almost 16 points, the current rate being 27.61%. In this respect, it should be pointed out that, throughout the crisis, and however high male unemployment may have been, women's unemployment rates have always been higher than men's. It is true, however, that both unemployment rates have tended to converge, as, at the start of the crisis, the female unemployment rate was 4.12 points higher than the male one, whereas the difference between them is currently 0.83 points. The reason for this convergence, given the data provided, is not an increase in women's employment, but rather the drop in male employment, which has led to a sort of downward levelling of female and male unemployment rates (Gálvez y Torres 2010, 102) and to a clearly false picture of progress in gender equality during the crisis.

Something similar has been the case as regards Social Security affiliation. Since march 2008³, almost 626,000 women have de-registered from the Social Security system. However, an outstanding phenomenon has taken place. The highest number of women affiliated with the Social Security in the history of Spain was reached in may 2008, that is to say, when the impact of the crisis was starting to be felt. Almost 8.3 million women were affiliated then. Since then, the number of women affiliated with the Social Security has dropped to the current 7.5 million. For this reason, the real loss of women affiliated with the Social Security due to the crisis amounts to more than 759,000 women. However, as the crisis developed and male affiliation also dropped, the percentage of registered women as opposed to registered men grew to reach the current 46%. Hence the idea that Social Security equality has grown, when the fact is that a downward levelling between men and women has taken place in this respect too.

³ Social Security affiliation data are taken from the comparison between march 2008 and march 2013, and they are available at <http://www.empleo.gob.es/series/> (revised: 7 may 2013).

Moreover, it is in Social Security that the consequences for women of the austerity policies being currently implemented to fight the crisis have started to become more visible.

It is often stated that cuts in social expenditure have significant gender consequences (Walby 2009, 16). This is also the case for employment. Firstly, usually more women than men work in the production activity sectors that are more linked to social expenditure, such as education, healthcare, and social services, so the staff cuts due to cuts in public investment tend to have greater impact on women (OIT 2011, 3). Secondly, some of these social expenditure sectors provide care for aged people, dependents, and minors, which often releases women from care work and makes it easier for them to access the paid work market. Hence, cuts in social expenditure can also have an impact on women's employment, as it is hard to maintain or access paid work if women are to take on the care work which the State ceases to assume (Gálvez and Torres 2010, 64).

This twofold negative impact is taking place right now in Spain, where we can say that the crisis is changing its face. It started as a crisis in the construction sector, destroying thousands of jobs held by men. But the cutbacks in social expenditure since may 2010 are turning it into a "female" crisis, and currently destroying thousands of jobs held by women. This can be seen in the progression in women's employment destruction over the last three years: 61,000, 186,800, and 308,300 jobs lost in 2010, 2011, and 2012, respectively. This is due to the fact that more women than men work in sectors where large cutbacks in public expenditure are taking place (55.1% of salaried workers in the public sector are women). It is also due to the extension of the crisis towards the services sector, where women have a strong labour presence; and, above all, to an anti-crisis strategy which does not consider its consequences from a gender point of view (Rodríguez 2013, 216).

A very significant example of the link between austerity policies and regression in terms of women's rights is the case of "non-professional carers".

In July 2012 and in order to reduce public expenditure, the government decided to modify Social Security affiliation conditions for those persons who are known as "non-

professional caretakers” of dependent persons, who are mainly women⁴. Until then, Social Security contributions were assumed by the Social Security system itself, so that women who care for dependent family members could have their own social protection despite their not “working” in the paid work market. This was a significant advance brought about by the 2006 Dependency Act⁵, to such an extent that more than 180,000 people, 90% of whom are women⁶, were contributing to Social Security while providing care work outside the paid work market. Now the government has decided that, if they wish to remain affiliated with the Social Security, it must be they who pay the corresponding contributions. As a result of this move, in april 2013, almost 160,000 “non-professional caretakers” ceased to be registered with Social Security⁷. I do not think that this means that all these women will cease to carry out the caretaking work which they had previously provided, but I am sure that they will not have any social protection in the future.

3. Search for work outside the home

Another effect of the economic crisis is the increase in the number of women seeking paid work. As was to be expected, unemployment and cuts in social expenditure have led to a significant drop in average home income, which dropped by slightly more than 7% since 2008⁸. Given this situation, many women have decided to actively seek work outside the home in order to replace or complete the income lost in the home (Gálvez and Torres 2010, 103). This trend can be observed in EPA, with an increase of almost

⁴ Additional Provision Eighth of the Royal Decree-Law 20/2012, of 13 July, on measures to ensure budget stability and to promote competitiveness, available at <http://www.boe.es/boe/dias/2012/07/14/pdfs/BOE-A-2012-9364.pdf> (revised: 7 May 2013).

⁵ Law 39/2006 of 14 December on promotion of Personal Autonomy and Care of Dependent Persons, available at: <http://www.boe.es/boe/dias/2006/12/15/pdfs/A44142-44156.pdf> (revised: 7 May 2013).

⁶ Cf. the Report headed by Villota, P., entitled “The impact of the economic crisis on remunerated domestic work in the home and a proposal for tax, social, and labour policies to stimulate its formalisation and professionalization”, p. 25, available at <http://www.inmujer.gob.es/observatorios/observIguadad/estudiosInformes/docs/impCrisisEcoTrabDomic.pdf> (revised: 7 May 2013).

⁷ An explanation of this drop in Social Security affiliation can be found at: <http://prensa.empleo.gob.es/WebPrensa/noticias/seguridadsocial/detalle/1823> (revised: 7 May 2013).

⁸ Data taken from the latest Life Conditions Survey, available at <http://www.ine.es/prensa/np740.pdf> (revised: 7 May 2013).

900,000 in the number of “active” women since the start of the crisis (there are currently almost 10.5 million “active” women) and a 4-point increase in the female activity rate since then, reaching the current 53.39% rate, the highest in the historical series. But this is even more obvious if we take into account the fact that, over the crisis, more than 900,000 women have abandoned the “inactive” status which they had when they were providing housekeeping work, moving into an “active” status with regard to the paid work market⁹.

No objections, of course, to the fact that women wish to have paid employment. But the reason why these women enter the “official” work market and the way in which they do so leads us to expect adverse consequences for them. Firstly, because the economic need that drives them, together with the fact that it is more than likely that they will continue to provide care work at home, as men do not take on that work, even if they are unemployed (Gálvez and Torres 2010, 122), means that they have very little power of negotiation in their job search (UNAIDS 2012, 3). This drives them to “vulnerable” employment (OIT 2012, 45-46): temporary or part-time contracts, where women have always been the majority, or else low-salary employment, if not informal work (Walby 2009, 9).

Over the crisis, the percentage of women among employees with open-ended contracts has grown, although it does not reach 48% of the total. Furthermore, the percentage of women among employees with temporary contracts has also grown, and is currently almost 52%¹⁰. That is to say, women constitute more than half of temporary employees, but less than half of employees with stable contracts. It is true that the number of women with part-time contracts - currently slightly more than 1.9 million - has not grown significantly, but it is also true that more than 74% of part-time employees in Spain are women¹¹, and that more than 1.1 million women - and this figure has grown considerably during the crisis - claim that they work part-time because they are unable

⁹ Non-active population data by main non-activity class, available at <http://www.ine.es/jaxiBD/tabla.do> (revised: 7 may 2013).

¹⁰ Employee data by contract type and duration, available at <http://www.ine.es/jaxiBD/tabla.do> (revised: 7 may 2013).

¹¹ Employee data by working hours available at <http://www.ine.es/jaxiBD/tabla.do> (revised: 7 may 2013).

to find full-time paid work¹². As regards salaries, statistics tell us that women constitute the majority of the workers who are paid least: in 2008, 64% of the employees with the lowest salaries were women; in 2010, 66%¹³.

This has led to a chain of negative effects which should be pointed out. In Spain, working part-time involves a penalisation in terms of social protection. The Social Security contribution for part-time workers is computed in such a way that they must contribute for a much longer period of time in order to obtain the same benefits as full-time workers. Given that most part-time workers are women, the penalisation on part-time work has been regarded as discriminatory by the Spanish Constitutional Court¹⁴ and in several Rulings of the European Union Court of Justice, the latest of which was issued on 22 november 2012, in the *Elba Moreno* case¹⁵. However, despite these “condemnations”, spanish authorities have remained impassive, and nothing has yet changed in the regulation of part-time work, for fear - according to the current Government - of the financial “pressure” which the Social Security system would then have to bear¹⁶.

Further, the fact that women hold most “vulnerable jobs” is one of the reasons that account for the salary gap in Spain, which has widened with the crisis. Women’s salary was 21.87% lower than men’s in 2008, and is now 22.55% lower than men’s¹⁷, which shows that the economic crisis deepened the gender differences in the labour market.

This happens when women do find paid work, but it is more than likely that thousands of women whom the crisis has driven to seek paid work will never find it. These are women who, due to their working lives, would require the support of specific active employment policies suitable for their situation, which could substantially improve their

¹² Data for part-time workers, by reason for part-time hours, available at <http://www.ine.es/jaxi/tabla.do> (revised: 7 may 2013).

¹³ Inequality indicators in the Annual Salary Survey, series 2008-2012, available at <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t22/p133/cno11/serie/&file=pcaxis> (revised: 7 may 2013).

¹⁴ Cf. Constitutional Court Ruling 61/2013, of 14 march 2013, available at <http://www.boe.es/boe/dias/2013/04/10/pdfs/BOE-A-2013-3797.pdf> (revised: 7 may 2013).

¹⁵ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0385:ES:HTML> (revised: 7 may 2013).

¹⁶ The Government’s view with regard to social protection of part-time work can be found at <http://prensa.empleo.gob.es/WebPrensa/noticias/seguridadsocial/detalle/1918> (revised: 7 may 2013).

¹⁷ Annual Salary Survey, series 2008-2012, available at <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t22/p133/cno11/serie/&file=pcaxis> (revised: 7 may 2013).

employability. These policies are practically non-existent and can hardly be developed within a context of cuts in the investments for this purpose. The fact should be taken into account that, in the last 2 years, the funds for active employment policies were cut back in Spain by almost 4,000 million euros, and currently amount - in a country with more than 6.2 million unemployed persons - to a little more than 3,700 million euros, namely slightly less than 0.4% of the GDP¹⁸. Thus, it is highly likely that these women will become chronically unemployed.

4. Working time and home employment

There is yet another effect of the economic crisis on women which I would like to highlight. It is a commonplace to state that economic crises bring about an increase in women's working time (UNAIDS 2012, 8). There are multiple causes for this, but they are all related to the accumulation of paid working time and care working time.

A first reason which should be taken into account is given by the cuts in social expenditure that are being put forward by the proponents of austerity measures as a way to face the crisis. As was already seen, inasmuch as they are “communicating vessels”, and given that hardly any progress has been made as regards women and men's co-responsibility in the assumption of family responsibilities, when the state withdraws from the provision of care services for aged people, dependents, or children, the care work that is left vacant is usually taken up by women (Agenjo 2011, 80). Women, in their turn, due also to the crisis and to the aforementioned decrease in home income, have difficulties “outsourcing” this work to companies or to other women who are domestic workers (Gálvez and Torres 2010, 69). Thus, it is no wonder that feminist sectors insist on talking about a “crisis in caretaking”; or that statistics confirm that women's working time is higher than men's.

It is true that women devote less time than men to paid work - currently 6h 43' for women and 7h 55' for men. However, this had had remarkably detrimental effects for women, as all the social protection rights that take paid working time as their reference

¹⁸ The 2013 budget for active employment policies and for unemployment benefits is available at http://www.sepe.es/contenido/estadisticas/datos_economicos/index.html (revised: 7 may 2013).

are reduced for them (Seguino 2009, 4). As an example: throughout the crisis, the average daily unemployment benefits for women have always been lower than the average daily unemployment benefits for men, and so women's economic coverage against unemployment has always been lower¹⁹. The same thing happens with women's retirement pensions, which, due to differences in remunerated working time and the projection over time of salary differences, are currently 40% lower than men's²⁰. By contrast, women spend more time than men taking care of the family and the home - currently 4h 29' for women as opposed to 2h 32' for men. So, if both working times are added up, women work in fact more hours than men: 11h 12' as opposed to 10h 27'²¹.

As for paid care work, it has also undergone a transformation. I would now like to briefly focus on this issue so that its evolution in Spain can be better understood. The drop in home income has led, as is usually stated (UNAIDS 2012, 5), to a parallel decrease in paid care work, which, as a result of the "transfer of class and gender inequalities" mentioned by Castelli (2011, 109), is almost always carried out by women, and very often by immigrant women. Thus, more than 73,000 jobs have been lost in the domestic employment sector²² since the crisis started.

However, the statistics for Social Security affiliation of domestic employees seem to disprove this evolution, as, over the same period of time, there has been a rise in affiliation by more than 243,000 employees²³. The reason for this apparent contradiction lies in a twofold legislation change in 2011, which, on the one hand, forced employers to register home employees in the Social Security system, regardless of the duration of

¹⁹ Data for the gross daily amounts of contribution benefits by sex and age, available at <http://www.empleo.gob.es/estadisticas/BEL/PRD/indice.htm> (revised: 7 may 2013).

²⁰ Data on the amount of women's and men's pensions available at http://www.seg-social.es/Internet_1/Estadistica/Est/Pensiones_y_pensionistas/Pensiones_contributivas_en_vigor/Por_edad/s/150225 (revised: 7 may 2013).

²¹ Data taken from the 2009-2010 Time Use Survey, available at <http://www.ine.es/prensa/np669.pdf> (revised: 7 may 2013).

²² Data for employees by activity sector (activities in homes as employers of domestic employees) available at <http://www.empleo.gob.es/series/> (revised: 7 may 2013).

²³ Data for workers' Social Security affiliation available at <http://www.empleo.gob.es/series/> (revised: 7 may 2013).

their working day, while, on the other hand, it provided further labour right guarantees concerning what is known as the special labour relationship with domestic employees²⁴.

Both measures had a double purpose: formalising the informal work which had always existed in this activity sector and assimilating the labour rights of workers in this sector with those of the rest of workers. These goals would clearly benefit women, including immigrant women, insofar as the most remunerated work in the home is carried out by immigrant women. And they did: from January 2012, when both regulations came into force, to 1 April 2013, when the validity of the first regulation ended, the number of domestic employees affiliated with Social Security increased by more than 146,000, more than 98% of whom were women, and almost 54% of whom were foreign²⁵. This entailed bringing to light the employment of all these women, regardless of their nationality, in order to acknowledge their labour rights and guarantee their social protection (like that of the rest of workers, with the exception of unemployment benefits).

Nonetheless, in December 2012 the legislation prior to 2011 was restored²⁶. Once again, domestic employees will have to pay their Social Security contributions if they work for less than 60 hours per month per employer (the vast majority of domestic employees). This amounts to a step back in the rights of thousands of women, which will possibly lead once again to the growth of informal employment in this sector.

Still, the worst point is the cause of this regress in spanish legislation as regards employment in the home. It is not due to economic reasons, as it is obvious that this measure does not entail any savings in public expenditure. In my opinion, this new step back is rather due to the lack of social consideration accorded to the remunerated work carried out by women in the home, particularly if they are immigrants. This is confirmed

²⁴ I am referring to Law 27/2011 of 1 august on the updating, adaptation, and modernisation of the Social Security system, available at <http://www.boe.es/buscar/act.php?id=BOE-A-2011-13242> (revised: 7 may 2013), as well as to Royal Decree 1620/2011 of 14 November, regulating the employment relationship of a special nature with domestic employees, available at <http://www.boe.es/boe/dias/2011/11/17/pdfs/BOE-A-2011-17975.pdf> (revised: 7 may 2013).

²⁵ Data on employees affiliated with the Special System for Domestic Employees available at <http://www.empleo.gob.es/series/> (revised: 7 may 2013).

²⁶ Royal Decree-Law 29/2012 of 28 December on the improvement of the management and social protection in the Special System for Domestic Employees and other measures of a social and economic nature, available at <http://www.boe.es/boe/dias/2012/12/31/pdfs/BOE-A-2012-15764.pdf> (revised: 7 may 2013).

by the unjustified refusal of the current spanish government to ratify the convention number 189 of ILO on decent work for domestic employees²⁷.

5. Gender equality and political agenda

One effect of the economic crisis which cannot be quantified but which, in my view, is the most harmful of all should still be mentioned. Equality between women and men inside and outside the paid work market has disappeared almost completely from the political agenda.

The environment of crisis, unemployment, cuts in social expenditure, and threats of intervention in the spanish economy by European monetary authorities leaves hardly any space for the development of other debates and other policies. The crisis has removed equality from the public arena, as if it were a luxury from the economic boom years (Gálvez and Torres 2010, 139). It is true that a quick look at social reality suffices to realise how far equality between women and men has come in Spain in recent years, but it also reveals that there is still a long way to go to achieve full and real equality between the sexes in many aspects of life, including work. Without a public discussion of the need for further progress towards equality, and without the political will to do so, it will doubtlessly be much harder to walk down that road. We can even move backwards, as has been the case with the regulation of the reconciliation of family and professional life.

Even though the Reconciliation Act, whose main virtue was to include the problems of reconciliation, which until then had been part of the strictly private sphere, in the public debate (Mora 2007, 133), was passed in 1999²⁸, I believe that it was in the 2005-2007 period that the debate and policies on the equality between women and men

²⁷ Female domestic employee groups have described the attitude of the current spanish government as “patriarchal and classist contempt for domestic work”: <http://www.lamarea.com/2013/03/18/las-trabajadoras-del-hogar-denuncian-que-espana-no-ratifica-el-convenio-de-la-oit-que-reconoce-sus-derechos/> (revised: 7 may 2013).

²⁸ Law 39/1999 of 5 November on the promotion of the reconciliation of the family and work life of workers, available at <http://www.boe.es/boe/dias/1999/11/06/pdfs/A38934-38942.pdf> (revised: 7 may 2013).

reached their apex. The approval of the Gender Violence Act²⁹ and the Equality Act³⁰ are the two regulatory milestones that mark a period when equality appeared constantly in public debate and characterised all of the government's actions, following gender *transversality* guidelines. As proof of this, the 2008-2011 Strategic Plan for Equal Opportunities³¹ was passed in december 2007, and the first minister for equality in the history of Spain took office on 14th April 2008. After this, the drive towards equality faded away as the effects of the crisis were more strongly felt (Rodríguez 2012) and, even though the 2010 labour reform³² maintained a certain drive towards equality (Menéndez 2012, 363), the 2012 labour reform³³ entails a clear backsliding in this field (Pumar 2012).

In any case, it was the aforementioned Equality Act that in my view involved the most extensive transformation of labour and social protection regulations with the aim of creating a more equal, or, put otherwise, a clearly non-discriminatory model for employment relationships (Ballester 2010, 86). Many strong measures were taken then, but I would like to focus here on those concerning reconciliation, as these were directly affected by the 2012 labour reform.

6. Backsliding of reconciliation with no progress in co-responsibility

In order to favour a more balanced distribution of family responsibilities and to reconcile life and work, the Equality Act established/consolidated a number of benefits associated with the care of relatives. They were afforded such a degree of importance

²⁹ Organic Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence, available at <http://www.boe.es/boe/dias/2004/12/29/pdfs/A42166-42197.pdf> (revised: 7 may 2013).

³⁰ Organic Law 3/2007 of 22 march on actual equality between women and men, available at <http://www.boe.es/boe/dias/2004/12/29/pdfs/A42166-42197.pdf> (revised: 7 may 2013).

³¹ Available at http://www.empleo.gob.es/es/igualdad/Documentos/Plan_estragico_final.pdf (revised: 7 may 2013).

³² Law 35/2010 of 17 September on urgent measures for the reform of the labour market, available at <http://www.boe.es/boe/dias/2010/09/18/pdfs/BOE-A-2010-14301.pdf> (revised: 7 may 2013).

³³ Law 3/2012 of 6 July on urgent measures for the reform of the labour market, available at <http://www.boe.es/boe/dias/2012/07/07/pdfs/BOE-A-2012-9110.pdf> (revised: 7 may 2013).

that the Act conceived them as subjective rights, and the constitutional court raised them to the category of fundamental rights³⁴.

However, perhaps it is true that regulation of these benefits focused on guaranteeing leaves from paid work for reasons related to care work (reduction in working hours or leaves to take care of children and other relatives) rather than on ensuring a more compatible or harmonious presence in both kinds of work (flexible working hours). Thus, even though this was its aim, it failed to break the sexist cultural paradigm by which it is women who usually provide care work, and thus the ones who usually enjoy this kind of benefits (Ballester 2010a, 104-105). The only exception was the paternity leave, where the Equality Act clearly established a new model for the distribution of responsibilities between the parents (Mora 2007, 131-132), which has allowed more than 1.5 million men to take on care work in the early days of their children's life/adoption/fostering since the Act came into force³⁵. This makes the suspension of its extension to 4 weeks - due, once again, to the economic crisis and austerity policies - even more "painful" from a gender perspective³⁶.

Nonetheless, it should be acknowledged that this does not mean that we have made significant progress towards co-responsibility between women and men, given that, either due to its "neutral" legal regulation (Ballester 2010b, 33) or due to the "dead weight" of the sexist culture that still prevails, the fact remains that regrettably reconciliation leaves continue to be "women's stuff".

³⁴ The Ruling of the Constitutional Court 3/2007 of 15 January, available at <http://www.boe.es/boe/dias/2007/02/15/pdfs/T00013-00019.pdf> (revised: 7 May 2013) mentions "the constitutional dimension of... all measures aimed at facilitating the compatibility of workers' work and family life". Ruling 26/2011 of 14 March, <http://www.boe.es/boe/dias/2011/04/11/pdfs/BOE-A-2011-6541.pdf> (revised: 7 May 2013) also takes this approach.

³⁵ Data available at http://www.seg-social.es/Internet_1/Estadistica/Est/Otras_Prestaciones_de_la_Seguridad_Social/Paternidad/index.htm (revised: 7 May 2013).

³⁶ Law 9/2009 of 6 October on the extension of the duration of the paternity leave in cases of birth, adoption, or fostering, available at <http://www.boe.es/buscar/act.php?id=BOE-A-2009-15958> (revised: 9 May 2013), extended the duration of the paternity leave from 2 to 4 weeks, but the successive General State Budget Laws have delayed the entry into force of this measure, which has now been postponed until 1 January 2014, although it is very likely that it will be postponed once again due to the austerity policies and its cost, estimated at 200 million euros per year.

Thus, the maternity leaves taken by men never even reached 2% of the total of this kind of leaves, and the crisis has not modified this behaviour³⁷. Nor has the crisis changed the fact that women constitute more than 90% of the total people who took leaves to take care of children; or that women always amount to more than 80% of the total people who take leaves to take care of dependents; or the fact that women always amount to more than 97% of the total people who work part-time in order to take care of their children or other relatives. Even though the number of people in the latter situation has decreased by about 39% since 2008 (which suggests that the crisis has also led women to seek full-time jobs), the number of those who have taken leaves has risen since then, which apparently shows that these behaviours do not seem to have been excessively affected by the bad economic situation³⁸.

These data prove that advance was made towards the reconciliation of family and professional life, but not so much towards gender equality, because the fact that it is women who constitute the majority of users of this instrument to establish compatibility between paid work and care work is a sign that the sexual division of labour has hardly been modified. It is quite likely, as I said before, that sexist culture has contributed to this, but there are more reasons.

In Spain, the process of women's entry into remunerated employment was not accompanied by a reflexion or policy regarding the provision of care or policies to support families (León y Salido 2013, 306). In this way, thousands of women made use of reconciliation measures or resorted to low-cost domestic employees to relieve their work overload. Despite the strong presence of women in some production activity sectors, this had led to the persistence of considerable differences between women and men in terms of employment (Otaegui 2013, 13). This, in turn, generated greater difficulties to advance towards co-responsibility. The fact that women are the majority of salaried workers in "vulnerable jobs" and the fact that they have a lower salary level means that their power of negotiation within the couple is lower than that of their male partners. Hence it is usually women who assume the use of measures for the reconciliation of

³⁷ Data available at http://www.segsocial.es/Internet_1/Estadistica/Est/Otras_Prestaciones_de_la_Seguridad_Social/Maternidad/index.htm (revised: 9 may 2013).

³⁸ Data available at <http://inmujer.gob.es/estadisticas/consulta.do?area=6> (revised: 9 may 2013).

family and work life, given the difficulty of negotiating so that their male partners do so (Gálvez y Torres 2010, 179).

Given this, it seems that the Spanish government should have taken measures to improve women's employment quality and steps towards correcting the obvious lack of co-responsibility by both sexes in the assumption of care work, following Fraser's teachings (1994, 594) on the "deconstruction of gender differences". However, the Spanish government's actions have gone in the opposite direction. The 2012 labour reform, that is, Law 3/2012 of 6 July on urgent measures for the reform of the labour market³⁹, promotes employment precariousness as a (rather dubious) measure to create employment and, rather than advancing towards co-responsibility, poses serious difficulties for the compatibility of family and professional life.

This is a reform inspired to the strengthening of corporate powers, in such a way that companies can modify a large part of the conditions of paid work, sometimes even without taking employees' or trade unions' concerns and views into account. If, as is now allowed by the Workers' Statute, a part-time contract can impose overtime hours, if a company can irregularly distribute 10% of the working hours throughout the year with a mere 5 days' advance warning, and if working hours, working schedules and their distribution and shift schedules can be substantially modified, any reconciliation plans which had been previously established lose all certainty, given that companies can modify the schedules for paid work at any time, and thus change family life schedules (Pumar 2012). Ultimately, this can lead to the resignation of employees who are unable to make their paid work compatible with their family responsibilities, thus amounting to a sort of "dismissal" with no severance payment from the company (Ballester 2012, 100).

These are, so to speak, the collateral damages of the reform. But there is also a damage that directly concerns the possibility of using the reduction of working hours as a reconciliation measure. Until now, the reduction of working hours to take care of children and other relatives had been an unconditional right for employees, and it was possible to choose the working hours of reference (daily, weekly, etc.) to which the reduction applied. From now on, a reduction in working hours can only apply to daily work-

³⁹ Available at <http://www.boe.es/boe/dias/2012/07/07/pdfs/BOE-A-2012-9110.pdf> (revised: 9 May 2013).

ing hours, thus losing the flexibility margin which had previously existed, and the right to reduced working hours is conditional upon what is established in collective bargaining, in order to make employees' rights compatible with the production and organisational needs of companies (Ballester 2012, 109-112).

It should be pointed out that I have always defended the role of collective bargaining in the adoption of measures towards the equality between women and men in paid work. However, the experience after the coming into force of the Equality Act as regards the negotiation of equality measures and plans has been so disappointing (Mora 2007, 134-135) that making the application of the measures for reconciliation of family and professional life conditional upon such a negotiation can bring them to an end.

Firstly, because the crisis weakens the power of negotiation held by workers' representatives, in such a way that, as was proven in the aforementioned failed experience, it is almost impossible to reach agreements that make progress towards the equality between women and men in paid work. Secondly, because the 2012 reforms in the framework of collective bargaining - particularly the limitation to 12 months of the ultra-activity period for collective agreements - substantially weaken it, to the extent that never before, not even in the most difficult times of the economic crisis, had there been so few collective agreements and so few workers covered by collective bargaining. Given this scenario, allowing collective bargaining to set the pace for reconciliation between family and professional life amounts, as I previously said, to placing the very possibility of its exercise at risk.

In this way, not only will we not make any progress towards co-responsibility, but we will move backwards even as regards reconciliation, losing, in any case, gender equality. The pretext to move in this direction was the economic crisis. The context - in my view - was a different one: an ideological counter-reformation imposed by a conservative government which regards real equality between women and men as a negligible matter⁴⁰.

⁴⁰ A very eloquent example of the attitude of the current Spanish government towards gender equality was given by Dolores de Cospedal, Secretary General of the Popular (conservative) Party and the President of the Autonomous Region of Castile-La Mancha, who believes that positive actions to promote women's political involvement are "chauvinistic" and "offensive": http://politica.elpais.com/politica/2013/03/07/actualidad/1362684797_712315.html (revised: 9 May 2013).

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