

National report - Spain

Etuc SociAll Project

Author: José Luis Monereo Pérez y Sara Guindo Morales

Participating National Trade unions: CCOO, UGT

SUMMARY

In recent years, pensions have become a controversial issue while their social function in a social state subject to the rule of law, such as Spain (Article 1.1 of the Spanish Constitution 1978, hereinafter abbreviated as SC), has become eclipsed by the alleged priorities of economic rationality and competitiveness,¹ which in fact aim to emphasise sustainability in the sustainability-sufficiency dichotomy that now overhangs debates on the topic.

There has been an effort to try to reduce the entitlement of the elderly to a dignified life upon the major social achievement of retirement.² Recent years have seen an emphasis on slowing the growth in pension expenditure rather than increasing income and searching for additional funding mechanisms as a means to address the current concern over financial sustainability (especially, at the contribution level) and the social credibility³ of the Spanish Public Pensions System (providing citizens with the certainty that the system can provide social protection in the event of any precarious situation they may find themselves in). Yet, the populations of all countries in the European Union, to a greater or lesser extent, are growing exponentially older. For example, the life expectancy of women in Spain is 85.8 years.⁴ When taken in conjunction with the low

¹ MONEREO PÉREZ, J. L.: *Público y privado en el Sistema de Pensiones*, Madrid, Editorial Tecnos, 1996; ERRANDONEA ULAIZA, E.: *Sistema español de pensiones: revisión crítica de los elementos comunes al cálculo de pensiones contributivas (Normas sobre tope máximo de pensiones, cuantías mínimas y revalorización de pensiones)*, Granada, Editorial Comares, 2016, p. 4; MONEREO PÉREZ, J. L.: “Notas sobre la sostenibilidad económica y social de las pensiones en la perspectiva constitucional y legal. Propuesta de mejora”, in *Revista Derecho de las Relaciones Laborales*, no. 2, 2018, pp. 173-201; MONEREO PÉREZ, J. L.: *La protección sociolaboral multinivel de los trabajadores de edad avanzada*, Albacete, Editorial Bomarzo, 2019; MONEREO PÉREZ, J. L. y RODRÍGUEZ INIESTA, G.: *La pensión de jubilación*, Murcia, Editorial Laborum, 2020.

² MALDONADO MOLINA, J. A.: “Trabajadores maduros y pensionistas productivos. El envejecimiento activo laboral” in MONEREO PÉREZ, J. L. y MALDONADO MOLINA, J. A. (Ed.): *Envejecimiento activo y vida laboral*, Granada, Editorial Comares, 2019, p. 517.

³ MONEREO PÉREZ, J. L. y FERNÁNDEZ BERNAT, J. A.: “El factor de sostenibilidad: configuración técnica y significación en la política de pensiones”, in MONEREO PÉREZ, J. L., LÓPEZ CUMBRE, L. (Ed.), MALDONADO MOLINA, J. A. y FERNÁNDEZ RAMÍREZ, M. (Coords.): *La pensión de jubilación. Estudio analítico y crítico tras los últimos procesos de reforma*, Granada, Editorial Comares, 2015, p. 120.

⁴ EUROPEAN COMMISSION: *The 2018 Ageing Report Economic & Budgetary Projections for the 28 EU Member States (2016-2070)*, Luxembourg, Publications Office of the European Union, 2018, p. 17.



birth rate, there are increasingly fewer workers contributing and funding a rising number of retirees whose increased longevity means they will receive a pension for a longer period. As a result, the Social Security system sees higher outflows and lower inflows.

On the other hand, the new recommendations recently approved by the lower house of the Spanish legislature, as part of the Toledo Pact, point to a broad backing by parliamentarians and, as can be assumed, social partners for the enhancement and diversification of funding sources.

Besides the above-mentioned structural factor of demographics, there are other circumstantial factors, such as cyclical economic recessions. In fact, the crisis provoked by the COVID-19 pandemic (caused by the Sars-Cov-2 virus) has worsened the system's already faltering sustainability by reducing Social Security contributions due to the closure of businesses and work stoppages that have led to a large percentage of people becoming essentially unemployed either by being made redundant or, particularly at the moment, laid off. While such temporary lay-offs were used in the early months of the pandemic to sustain a large number of jobs, they have impacted Social Security contributions, since dismissals have reduced the system's funding. There has also been the short-term authorisation for early access to pension plans and their accumulated savings, although the extent of this measure is unknown mostly because of a lack of official data.

The health crisis has resulted in a socio-economic crisis that will last years. Setting aside the increased mortality among pensioners, it still has not affected one of the welfare state's fundamental pillars (and strongest income guarantee mechanism⁵): public pensions. But there is an increased need to adopt measures to financially rebalance the system in order to avoid such a scenario. The social right to a retirement pension is an extraordinarily complex entitlement since it involves payments tied to the primary purpose of ensuring the welfare and dignified life of a person.

The above demonstrates the urgent, overriding need to act more aggressively on funding than on expenditure via general taxation (obviously in accordance with the progressive tax principle) or specific taxes as a supplement for funding our distribution system, in which social security contributions paid in by current workers pay for pensions, and thus increasing the financial resources of the Social Security Reserve Fund.

This Reserve Fund, colloquially known as the pension piggy bank, comprises of contribution surpluses after annual settlement of the Social Security budget to cover transitory shortfalls caused by economic downturns as well as demographic imbalances that would put the Social Security system under financial strain in the coming

⁵ MOLINER CROS, A., MARTÍNEZ POZA, A., FUNDACIÓN 1º DE MAYO y FEDERACIÓN DE PENSIONISTAS Y JUBILADOS DE CCOO: *Observatorio social de las personas mayores para un envejecimiento activo*, Madrid, Edita Federación de Pensionistas y Jubilados de CCOO, 2019, pp. 175-176.



generations.⁶ While it is a useful supplementary measure, it is inadequate over the long term on its own, as demonstrated by its systematic depletion in recent years.⁷

Despite its original purpose being a support fund for unforeseen annual financing which would only contribute 3% of the annual pension and administration expenditure, the various Spanish governments suspended that limit during the twin crises suffered by Spain since 2008, prior to the current health crisis, thereby using the fund to a greater extent than initially anticipated. As such, its current resources have been reduced to the bare minimum. The recent parliamentary agreement on pensions, as part of the Toledo Pact, recommends reverting to the original intent of the Fund, adding to it whenever possible and reinstating the constraints on its use.

However, in addition to the sustainability concern, there are many challenges facing the current Public Pension System of Spain, such as discrimination or marginalisation based on gender and age, the informal economy, precarious work contracts (involving low wages, part-time or temporary work), high structural, long-term unemployment rates (especially among young and older people), business restructuring measures (also known as external flexibility measures, for collective redundancies and objective dismissal for economic, technical, organisational or production-based grounds, without forgetting the latest labour reforms that have permitted unilateral dismissal with minimal compensation, except in what is legally deemed as null and void dismissals), the unfavourable pension eligibility conditions for the self-employed, the pressure from the financial and insurance sector to move toward mixed models that would partially substitute the current distribution model, etc.

If these challenges are not resolved in the short term, they will negatively affect the contributions of future pensioners (both in the contributory and in the non-contributory models).

Indeed, the consequence of all these factors is the risk of a retirement pension that is unfair, insecure, insufficient, undignified and unsustainable in the short, medium and long term for relevant groups. This could increase if there is no correction of the 2013 pension reform that diminishes the purchasing power of pensions and automatically reduces its future initial amount based on changes in life expectancy. Reasons enough to cauterise this underlying concern once and for all.

SECTION 1 – THE NATIONAL CONTEXT

Under its contributory model, the payments out of the Spanish Public Pensions System (for both employees and the self-employed) are funded mostly through the social security contributions of employers and active workers (under the General Social Security Scheme, and various special schemes for the self-employed, coal miners and sea workers,

⁶ HERNÁNDEZ DE COS, P., JIMENO, J. F. y RAMOS, R.: “El sistema público de pensiones en España: situación actual, retos y alternativas de reforma”, in *Documentos Ocasionales*, no. 1701, 2017, p. 17.

⁷ MONEREO PÉREZ, J. L.: “Repensar críticamente el modelo de regulación de la pensión de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, p. 80.



according to the type of worker and work). These workers accumulate pension entitlements that should guarantee them income upon entering retirement, provided that they have completed a general contribution period of 15 years (irrespective of the work being full-time or part-time – becoming entitled to 50% of the regulatory baseline) and a specific contribution period of at least two years in the fifteen years immediately prior to the moment in which the right vested, or the date on which the contributory obligation ceased.⁸

This distribution system equates to an investment mechanism in which the investors (workers) contribute funds (social security contributions) during their working lives for the purpose of funding the pensions of other (retired) people during the investment period. At the same time, those contributions generate an entitlement to a future pension in the form of a life-long income received after retirement until death.⁹ Such entitlements can vary: early retirement is associated with a lower return than normal retirement, while partial retirement and voluntary late retirement tend to give entitlement to payments similar or somewhat less than normal retirement, due to the high replacement rate of the Spanish public pension system compared with other Member States of the European Union.¹⁰

Nevertheless, even though the public pension system in Spain has a higher replacement rate, the country has much lower average salaries in comparison to the average of European countries in a similar state of development.

Article 50 of the SC stipulates that “[t]he public authorities shall guarantee, through adequate and periodically updated pensions, sufficient financial means for senior citizens.” This article should be read in conjunction with Article 41 of the same text whereby “[t]he public authorities shall maintain a public Social Security system for all citizens which will guarantee adequate social assistance and benefits in situations of hardship (...)” and with Article 23 of the revised European Social Charter (“The right of elderly persons to social protection”).¹¹

In turn, these precepts ought to be interpreted with Article 10(2) of the SC, a norm that opens the door to interpreting fundamental rights, including the social right to a pension,

⁸ MORAGA, M. y RAMOS, R.: Una estimación del rendimiento financiero del sistema de pensiones, in *Boletín Económico*, no. 3, 2020. Website: <https://repositorio.bde.es/bitstream/123456789/13383/1/be2003-art24.pdf>

⁹ MORAGA, M. y RAMOS, R.: Una estimación del rendimiento financiero del sistema de pensiones, in *Boletín Económico*, no. 3, 2020. Website: <https://repositorio.bde.es/bitstream/123456789/13383/1/be2003-art24.pdf>

¹⁰ MALDONADO MOLINA, J. A.: “Trabajadores maduros y pensionistas productivos. El envejecimiento activo laboral” in MONEREO PÉREZ, J. L. & MALDONADO MOLINA, J. A. (ed.): *Envejecimiento activo y vida laboral*, Granada, Editorial Comares, 2019, p. 520.

¹¹ MONEREO PÉREZ, J. L. y MALDONADO MOLINA, J. A.: “El derecho a la Seguridad Social (Artículo 12 de la Carta Social Europea Revisada), in MONEREO ATIENZA, C. y MONEREO PÉREZ, J. L. (Eds & Coords): *La garantía multinivel de los derechos fundamentales en el Consejo de Europa. El Convenio Europeo de Derechos Humanos y la Carta Social Europea*, Granada, Editorial Comares, 2017, p. 821 and subsequent.



on an international and multilevel standard,¹² since it stipulates that the fundamental rights and freedoms recognised by the Constitution must be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the topic which have been ratified by Spain.

However, the country's current public pensions system does not constitutionally guarantee this guiding principle of economic and social policy (due to its location in the SC) which should permeate substantive legislation, judicial practice and actions of public authorities (Art. 53 of the SC).

Yet, the constitution should be systematically interpreted (as imposed by the constitutional normative bloc formed by Articles 10(2) and 13 to 96) with reference to fundamental norms like Article 12 of the European Social Charter ("The right to social security") whereby "[w]ith a view to ensuring the effective exercise of the right to social security, the Parties undertake: (1) to establish or maintain a system of social security; (2) to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security; (3) to endeavour to raise progressively the system of social security to a higher level...." This provides an *essential substance* to Social Security that signatory States or Parties need to insert into their national laws.¹³ The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) is also in a similar vein.

In essence, the public authorities have, in recent years, enacted measures that, if maintained, neither ensure adequate or updated pensions nor sufficient financial means for senior citizens. This situation has been exacerbated by the current COVID-19 pandemic; as in other economic crises, pensions run the risk of being frozen and/or cut with the goal of reducing the public deficit if the effects of the 2013 pension reform are not mitigated. Those in retirement could see their purchasing power diminished and, as a result, a gradual yet progressive reduction in the replacement rate would occur precisely at a time in their lives when they and, indirectly, their dependants require extra welfare.

¹² MONEREO PÉREZ, J. L.: *El derecho a la seguridad (Estudio del Artículo 41 de la Constitución Española)*, in MONEREO PÉREZ, J. L., MOLINA NAVARRETE, C. y MORENO VIDA, M^a. N. (Ed.): *Comentario a la Constitución socio-económica de España*, Granada, Editorial Comares, 2002, pp. 1425-1524; MONEREO PÉREZ, J. L.: "El derecho a la Seguridad Social (Artículo 12 de la Carta Social Europea Revisada)", in MONEREO ATIENZA, C. y MONEREO PÉREZ, J. L. (Eds & Coords): *La garantía multinivel de los derechos fundamentales en el Consejo de Europa. El Convenio Europeo de Derechos Humanos y la Carta Social Europea*, Granada, Editorial Comares, 2017, p. 629 and subsequent; MONEREO PÉREZ, J. L.: "Dignidad de la persona y protección social en la Constitución de 1978: Balance y propuestas de reforma para la mejora de sus garantías de suficiencia como derecho social fundamental", in *Estudios financieros. Revista de trabajo y seguridad social: Comentarios, casos prácticos: recursos humanos*, no. 429, 2018, pp. 77-104.

¹³ MONEREO PÉREZ, J. L.: "El derecho a la Seguridad Social (Artículo 12 de la Carta Social Europea Revisada)", in MONEREO ATIENZA, C. & MONEREO PÉREZ, J. L. (Eds and Coords): *La garantía multinivel de los derechos fundamentales en el Consejo de Europa. El Convenio Europeo de Derechos Humanos y la Carta Social Europea*, Granada, Editorial Comares, 2017, p. 629 and subseq.



In this respect, we should recall the term *silver economy*¹⁴ coined by the European Commission¹⁵ – “*silver*” alluding to the grey hair of senior citizens¹⁶ – in the sense that this elderly cohort is and will increasingly be the largest demographic, therefore the higher their pensions the more they will consume and contribute to the economy.

The conclusion from the foregoing is that the public expenditure on pensions is not a burden. It is a positive benefit for society as a whole, which is a reason for increasing incomes, both for those derived from contributions where there is broad scope for improvement while enhancing the contributory nature of the system and for those derived from pre-defined budgetary allowances, instead of restricting oneself to lowering expenditure. All this would ensure that the pension system is sufficient and adequate.

In general, the structural and circumstantial factors that have propelled pension reforms in Spain have been the following:¹⁷

1. Demographics. As everyone knows, apart from being the largest growing demographic group, the elderly population is becoming increasingly older (the ageing of the aged), which will lead to other Social Security System benefits supplementing the retirement pension (such as dependency support). While current demographic factors remain, this will become increasingly pronounced. The irreversible ageing of the population, which will be significant in the coming decades even if constrained in time during its greatest intensity, implies a significant challenge for Spanish society¹⁸ and the other Member States of the European Union.

One national strategy adopted in 2011 as a response to the increase in life expectancy (linked to the country’s development and resulting progress in living standards¹⁹) was to gradually raise the retirement age until 2027. In this way, the retirement age would be

¹⁴ MORENO VIDA, M^a. N.: “Las transformaciones sociales y tecnológicas y su incidencia en los sistemas nacionales europeos de asistencia sanitaria: apuntes para la reflexión”, in MORENO VIDA, M^a. N., DÍAZ AZNARTE, M^a. T. (Eds) and GIJÓN SÁNCHEZ, M^a. T. (Coord.): *La protección social de la salud en el marco del estado de bienestar. Una visión nacional y europea*, Granada, Editorial Comares, 2019, p. 92.

¹⁵ Website: <https://op.europa.eu/es/publication-detail/-/publication/a9efa929-3ec7-11e8-b5fe-01aa75ed71a1/language-es>

¹⁶ GUINDO MORALES, S.: *El despido por circunstancias objetivas. Configuración y régimen jurídico*. Doctoral Thesis supervised by José Luis Monereo Pérez, Granada, Edita Universidad de Granada, 2020, p. 342.

¹⁷ See, among others, MONEREO PÉREZ, J. L.: *Ciudadanía y derechos de las personas mayores*, Granada, Editorial Comares, 2013, especially Chapters III and V; MORENO ROMERO, F.: *Trabajadores de mayor edad en la política institucional de la Unión Europea. Equilibrio entre políticas de empleo, pensiones y sistema productivo*, Granada, Editorial Comares, 2016, p. 1 and subseq.; MONEREO PÉREZ, J. L.: *La protección sociolaboral multinivel de los trabajadores de edad avanzada*, Albacete, Editorial Bomarzo, 2019, especially Chapters I, p. 9 and subseq. and III, p. 41 and subseq.

¹⁸ MOLINER CROS, A., MARTÍNEZ POZA, A., FUNDACIÓN 1º DE MAYO y FEDERACIÓN DE PENSIONISTAS Y JUBILADOS DE CCOO: *Observatorio social de las personas mayores para un envejecimiento activo*, Madrid, Edita Federación de Pensionistas y Jubilados de CCOO, 2019, p. 173.

¹⁹ MONEREO PÉREZ, J. L.: “Las reformas de las pensiones. Un análisis global del proceso reformista”, in MONEREO PÉREZ, J. L., LÓPEZ CUMBRE, L. (Eds), MALDONADO MOLINA, J. A. y FERNÁNDEZ RAMÍREZ, M. (Coords): *La pensión de jubilación. Estudio analítico y crítico tras los últimos procesos de reforma*, Granada, Editorial Comares, 2015, p. 29.



adjusted to between 65 for longer contributory careers and 67 for shorter careers, thereby modifying the conditions that had been established in Spain since 1919.²⁰

The 67-age limit would only apply to those people who, by 2027, would have paid into Social Security for a period under 38 years and six months, such that, if the person can demonstrate that amount of contribution, he or she would be entitled to retire.²¹

Furthermore, in 2013, new concepts were introduced which constituted unsatisfactory limitations on the right to a sufficient and decent public pension:

– The sustainability factor whose application has fortunately been delayed indefinitely until at least 2023 but still remains on the statute books. Article 211(1) of Legislative Royal Decree 8/2015 of 30 October approving the consolidated General Social Security Act defines this factor as an automatic mechanism linking the amount received under a Social Security retirement pension to the change in life expectancy of pensioners, thereby adjusting the pension received by those who retire under similar conditions but in different time periods.

In other words, its purpose is to maintain a proportionality between contributions made into the system and the expected payments made out of that system, through an adjustment in the initial retirement pension paid. The total amount received over the lifetime of a pensioner who will probably have a longer life expectancy will be equivalent to the amount received by another who retired in a previous period of time.²²

With a view to the future law, this study argues for the complete repeal of this sustainability factor because it places the risk of their own ageing on pensioners and is thus a measure that clearly contravenes “social justice”. Other ways to achieve the sustainability of pensions should be sought through increasing contributions and not solely on reducing necessary expenditure to guarantee the constitutional and international principle of financial sufficiency and social adequacy of public pensions.²³ Balancing proceeds and outlays which will guarantee sustainability and sufficiency is possible and must be the primary objective.

– The Pension Revaluation Index, untied to the Consumer Price Index, makes the annual revaluation of pensions conditional on the balance of income and expenses of the Social

²⁰ MALDONADO MOLINA, J. A.: “Trabajadores maduros y pensionistas productivos. El envejecimiento activo laboral” in MONEREO PÉREZ, J. L. y MALDONADO MOLINA, J. A. (Ed.): *Envejecimiento activo y vida laboral*, Granada, Editorial Comares, 2019, p. 528.

²¹ MALDONADO MOLINA, J. A.: “La edad pensionable”, in MONEREO PÉREZ, J. L., LÓPEZ CUMBRE, L. (Ed.), MALDONADO MOLINA, J. A. y FERNÁNDEZ RAMÍREZ, M. (Coords): *La pensión de jubilación. Estudio analítico y crítico tras los últimos procesos de reforma*, Granada, Editorial Comares, 2015, p. 81.

²² MONEREO PÉREZ, J. L. and RODRÍGUEZ INIESTA, G.: “Notas sobre las aportaciones del RD-L 28/2018, de 28 de diciembre, en el sistema de pensiones y en la jubilación forzosa”, in *Revista de Derecho de la Seguridad Social*, no. 18, 2019, p. 22.

²³ See the comprehensive MONEREO PÉREZ, J. L. y FERNÁNDEZ BERNAT, J. A.: *La sostenibilidad de las pensiones Públicas. Análisis de la 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*, Madrid, Editorial Tecnos, 2014.



Security System, with some maximum and minimum limits.²⁴ Like the sustainability factor, it is still on the law books but has fortunately been suspended.²⁵ Its repeal is also proposed.

It should be borne in mind that Article 1(2) of the recent Royal Decree-Law 1/2020 of 14 January establishing the revaluation and maintenance of public pensions and benefits of the Social Security system²⁶ stipulates that pensions paid by the Social Security system, on the contributory basis, as well as civil service pensions, will increase 0.9%.

In addition to the foregoing, in the latter stages of the twentieth century (1985), the minimum contribution period for gaining entitlement to a retirement pension increased from 10 to 15 years. Meanwhile, the reference period used for calculating the regulatory pension income rose from two years prior to 1985 to eight and then to 15 years (after 1997) and finally to 25 years (legislated in 2011 to progressively reach this mark in 2022).

In the last decade, the conditions for taking early partial retirement have been toughened. Early retirement has been restricted through penalisation, among other deterrents.²⁷ In a similar vein, in 2011, the right to early *voluntary* retirement was delayed until the age of 63 with pension reduction coefficients applicable, and an early partial retirement system that was set up in 2001 would have disappeared if it had not been agreed under social dialogue and with broad political consensus.

All this fits in with the objective of converging the actual average retirement age (currently around 64 years of age) with the normal legal age, through a gradual, flexible retirement system involving incentives and disincentives to avoid indiscriminate measures on the retirement age.

Nonetheless, the last decade has demonstrated the tensions bearing down on this system and the attempted restrictions on retirement. Ultimately, measures of all types have been enacted which betray the influence of the constitutional mandate set out in Article 135(1) in which it stipulates “[a]ll Public Administrations shall adapt their actions to the principle of budgetary stability.” and the provision of Article 11(5) of Organic Law 2/2012 of 27 April on Budget Stability and Financial Sustainability which states “[t]he Social Security Administration shall maintain its budget balanced or in surplus.”²⁸ In essence,

²⁴ HERNÁNDEZ DE COS, P., JIMENO, J. F. y RAMOS, R.: “El sistema público de pensiones en España: situación actual, retos y alternativas de reforma”, in *Documentos Ocasionales*, no. 1701, 2017, p. 9.

²⁵ OECD.: *Pensions at a Glance 2019: OECD and G20 Indicators*, Paris, OECD Publishing, 2019, p. 11, 17, 30, 35 and 42. Website: <https://doi.org/10.1787/b6d3dcfc-en>

²⁶ Published in the Spanish State Gazette (BOE) on 15 January 2020.

²⁷ MONEREO PÉREZ, J. L.: “Repensar críticamente el modelo de regulación de la pensión de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, pp. 28-29.

²⁸ MONEREO PÉREZ, J. L. y FERNÁNDEZ BERNAT, J. A.: “Revalorización y actualización de pensiones: la STC 49/2015, de 5 de marzo de 2015”, in *Revista de Derecho de la Seguridad Social*, Special no. 1, 2016, p. 16.



an interpretation of Article 135 of the SC would seem to place social expenditure as subordinate to the servicing of the public debt.²⁹

Due to these policies controlling the management of expenditure, the number of people receiving retirement pensions has increased over time while fewer people receive other types of pensions, such as disability pensions.³⁰

2. People born during the baby boom generation in the 1960s, who will reach the legal retirement age (from 2025 onwards³¹), and therefore be entitled to the retirement pension.
3. Women in the job market who, in time, will receive a retirement pension instead of only a widow's pension.
4. The economic cycles that have led to social crises, as happened in 2008, and the current one created by the coronavirus pandemic, while not part of a traditional cycle, can certainly be placed within this category.
5. The labour market. There are people who are working yet in poverty or at risk of social marginalisation because of precarious employment contracts.

²⁹ MONEREO PÉREZ, J. L. and RODRÍGUEZ INIESTA, G.: *La pensión de jubilación*, Murcia, Editorial Laborum, 2020, p. 226.

³⁰ RODRÍGUEZ CABRERO, G., MONTSEERAT CODORNIU, J., ARRIBA GONZÁLEZ DE DURANA, A. and MARBÁN GALLEGÓ, V.: *ESPN Thematic Report on Financing social protection – Spain*, European Social Policy Network (ESPN), Brussels, European Commission, 2019, p. 10.

³¹ *Ibid.*, p. 19.



SECTION 2 – THE CHALLENGES

The obstacles preventing the Spanish Public Pensions System from becoming sustainable in social, economic and financial perspectives are the following:

1. Demographics. The birth rate is very low and life expectancy is very high. Moreover, the ageing of the aged phenomenon is occurring.
2. Discrimination against women, who have become an integral part of the workforce in the latter part of the twentieth century. Furthermore, if the working woman is older, the discrimination is two-fold: based on gender and on age.
3. Ageism or discrimination on the basis of the age of the worker, especially those in the latter stages of their working life.
4. Business restructuring measures or external flexibility measures. This includes unilateral dismissal with minimal compensation, except in what is legally deemed as null and void dismissals (the legal effect of which is immediate reintegration of the worker and payment of lost earnings).

The International Labour Organization defines decent work as productive work developed under conditions of freedom, fairness, security and dignity, within a protective framework that enables workers' rights to be properly protected.³² Decent work when not fulfilled is akin to informal work.³³

The problem stems from many workers³⁴ being in social and labour conditions far removed from those of decent work and even formal work,³⁵ which negatively affects their retirement.

In that sense, dignified or decent work should really cover protection of the worker against dismissal³⁶ through the causal, formal and legal guarantee, since decent work and

³² MONEREO PÉREZ, J. L. and PERÁN QUESADA, S.: “Configuración y sentido jurídico-político y técnico-jurídico”, in MONEREO PÉREZ, J. L. (Ed.), GORELLI HERNÁNDEZ, J. (Ed.), DE VAL TENA, Á. L. (Ed.) y LÓPEZ INSUA, B. M. (Coord.): *El trabajo decente*, Granada, Editorial Comares, 2018, p. 3.

³³ MONEREO PÉREZ, J. L. and PERÁN QUESADA, S.: “El Derecho Social ante el espejo de sus limitaciones. La inacción del Derecho Social ante el fenómeno del trabajo informal”, in MONEREO PÉREZ, J. L. (Ed.) y PERÁN QUESADA, S. (Ed.): *Derecho social y trabajo informal: implicaciones laborales, económicas y de Seguridad Social del fenómeno del trabajo informal y de la economía sumergida en España y Latinoamérica*, Granada, Editorial Comares, 2016, p. XII.

³⁴ VILA TIerno, F.: “Emprendimiento y trabajo autónomo como formas de huida del estándar de trabajo decente”, in *Estudios financieros. Revista de trabajo y seguridad social: Comentarios, casos prácticos: recursos humanos*, no. 421, 2018, p. 45.

³⁵ MONEREO PÉREZ, J. L. and PERÁN QUESADA, S.: “Configuración y sentido jurídico-político y técnico-jurídico”, in MONEREO PÉREZ, J. L. (Ed.), GORELLI HERNÁNDEZ, J. (Ed.), DE VAL TENA, Á. L. (Ed.) and LÓPEZ INSUA, B. M. (Coord.): *El trabajo decente*, Granada, Editorial Comares, 2018, p. 3.

³⁶ MONEREO PÉREZ, J. L.: “Refundar el ordenamiento laboral para juridificar plenamente el principio de justicia social y el trabajo decente”, in *Lex Social. Revista jurídica de los Derechos Sociales*, no. 1, 2019, p. 248.



the termination of the employment contract are linked in three areas: labour, taxation and social protection.³⁷

5. Combating Social Security fraud and the informal or irregular economy, which deprives workers of employment and social rights but also deprives the Public Treasury of the financial resources to perform income redistribution policies (Articles 9(2), 41 and subseq. of the SC).

It is no trivial matter given the deleterious rising growth of the irregular economy (which under the law is technically an “illegal economy” that breaches commercial law, competition law and social law).

6. The pressure to privatise pensions through (collective) occupational plans and (individual) savings plans that would replace public pensions rather than supplement them. So far these have been unsuccessful but are the subject of intense campaigns.

7. As the contributory retirement pension is calculated using the contributions paid by the (public or private) employer and the worker during the latter’s working life, those workers with precarious contracts, in the broadest sense, will have difficulty in obtaining entitlement to a sufficient and adequate pension as a result of periods without contributions or low payments into the system.³⁸

In other words, where workers do not have an employment contract during an extended period of time, the retirement pension receivable will be greatly reduced (they may not even have a right to a contributory pension but rather a non-contributory or supporting allowance). This is a reason for which they could end up below the poverty line or lacking a decent standard of living during their later non-working life³⁹ (or, euphemistically, in their twilight years⁴⁰).

Where a person has not contributed to the system or has done so insufficiently to be entitled to a contributory pension, there is a non-contributory pension available to all Spanish citizens and other nationals with legal residency of at least 10 years in Spain, who are over 65 and in a state of need, as well as free medical and pharmaceutical assistance and supplementary social services.

8. Changes in the labour market. In Spain, there are few jobs and what work there is available is of poor quality.

Temporary contracts predominate over permanent contracts, while part-time contracts, the majority of which are unwanted (as they are imposed by the employer on hiring), are

³⁷ VILA TIerno, F.: “Trabajo decente y extinción de la relación contractual (I): Aspectos laborales”, in MONEREO PÉREZ, J. L. (Ed.), GORELLI HERNÁNDEZ, J. (Ed.), DE VAL TENA, Á. L. (Ed.) y LÓPEZ INSUA, B. M. (Coord.): *El trabajo decente*, Granada, Editorial Comares, 2018, p. 266.

³⁸ MONEREO PÉREZ, J. L.: “La renta mínima garantizada como medida estructural del Sistema de Seguridad Social en la “sociedad del riesgo”/Minimum income guaranteed as a structural measure of the Social Security System in the “risk society”, in *Lex Social*, vol. 2., no. 2, 2020, p. 446.

³⁹ *Ibid.*

⁴⁰ MONEREO PÉREZ, J. L., MOLINA NAVARRETE, C., QUESADA SEGURA, R. and MALDONADO MOLINA, J. A.: *Manual de Seguridad Social*, 15th ed., Madrid, Editorial Tecnos, 2019, p. 303.



more abundant than full-time contracts. It cannot be forgotten that salaries are low despite the raising of the minimum wage.

9. The risk of old-age poverty for the self-employed. Their public pensions are lower than those of salaried workers.⁴¹ This socio-legal situation is tied to the contribution deficit inherent in the Special Self-Employed Scheme, which breaks the general rule of contributions based on actual earnings thereby allowing the contributory income base to be freely chosen which, in turn, fosters strategic behaviour by high-income self-employed and contributions not matching actual earnings by those with lower incomes. This is in addition to the growing phenomenon of “false self-employment”.

SECTION 3 – POSSIBLE REFORMS

As the population gradually becomes older, significant challenges grow in many key areas of the economy and not just in relation to pensions.⁴² Nevertheless, the public authorities need to carry out ambitious pension reforms of both a preventive and remedial nature, which would require adjustments to handle the above identified challenges and, as a corollary, help achieve the objectives of the European Union Council’s Recommendation of 8 November 2019 on access to social protection for workers and the self-employed.⁴³

Taking as the starting point the need to overhaul the pension funding system (the current Social Security System was built on a Fordist-like life model in which the cost of retirement pensions was limited,⁴⁴ in addition to the already mentioned causes of high structural unemployment, precarious work, unwanted part-time work, etc.) with new, secure financing sources to avoid exposure to similar situations as occurred to countries like Greece a few short years ago (and even worse situations as a result of COVID-19), the possible and feasible reforms requiring the active and continuous support and participation of the broadest national trade unions could comprise the following:

1. Regulate work provided through digital platforms since, as demonstrated by recent case law on the topic at the national level and from the Court of Justice of the European Union (hereinafter, the CJEU), these false self-employed workers are deprived of protection in their work life compared to salaried workers and also when it comes to retiring. The majority of self-employed people pay social contributions on the minimum income base allowed under the Special Self-Employed Scheme, which is approximately 36% less than

⁴¹ OECD.: *Pensions at a Glance 2019: OECD and G20 Indicators*, Paris, OECD Publishing, 2019, p. 74. Website: <https://doi.org/10.1787/b6d3dcfc-en>

⁴² ARCE, Ó.: *Envejecimiento y pensiones*, Banco de España, Eurosistema, 2019. Website: <https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/IntervencionesPublicas/DirectoresGenerales/economia/Arc/Fic/arce051219.pdf>; ARCE, Ó.: *Envejecimiento y pensiones: situación, perspectivas y retos*, Banco de España, Eurosistema, 2019.

⁴³ Published in the Official Journal of the European Union on 15 November 2019.

⁴⁴ ORTEGA LOZANO, P. G.: “Pensión de jubilación y esperanza de vida: el factor de sostenibilidad”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, p. 340.



the contribution income base of employees,⁴⁵ thereby causing their retirement pension to be lower than the pension received by retired employees.⁴⁶

2. Establish a set of minimum European norms on pensions,⁴⁷ even if this would be complicated due to the peculiarities of each EU Member State.

3. To address the current demographic issue, Spanish public authorities should adopt labour policies that encourage higher birth rates, such as concrete measures on reconciling work, family and personal lives, increased access to maternity and paternity leave and similar situations as in other Member States of the European Union, foster and push for a true sharing of childcare responsibility between men and women, etc. To ensure the sustainability of the Spanish Public Pensions System, there must be a balance between the working population and the non-working population.

4. People should be constantly informed of their obligations and entitlements under the Spanish Public Pensions System so that they can plan sufficiently in advance,⁴⁸ which requires the system to be highly predictable and transparent.

5. Older workers require social and labour protection, which is currently one of the main concerns stemming from the increasing longevity of people and its significant effects on the economy in general and on Social Security in particular.⁴⁹

In Spain, the process of active ageing is especially pronounced.⁵⁰ According to the World Health Organization, active ageing is “*the process of optimising opportunities for physical, social and mental well-being throughout life, in order to increase healthy life expectancy, productivity and quality of life as people age*” – in other words, old age with work.⁵¹

While it is a fact that older workers have special difficulty in re-entering the job market, it is also true that they are at greater risk of being pushed out of it.⁵²

⁴⁵ EUROPEAN COMMISSION.: *Pension adequacy. Report 2018. Current and future income adequacy in old age in the EU*, vol. 1, Luxembourg, Publications Office of the European Union, 2018, p. 66.

⁴⁶ OECD.: *Pensions at a Glance 2019: OECD and G20 Indicators*, Paris, OECD Publishing, 2019, p. 77. Website: <https://doi.org/10.1787/b6d3dcfc-en>

⁴⁷ MONEREO PÉREZ, J. L.: “La renta mínima garantizada como medida estructural del Sistema de Seguridad Social en la “sociedad del riesgo”/Minimum income guaranteed as a structural measure of the Social Security System in the “risk society”, in *Lex Social*, vol. 2., no. 2, 2020, p. 446.

⁴⁸ ARCE, Ó.: *Envejecimiento y pensiones*, Banco de España, Eurosistema, 2019. Website: <https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/IntervencionesPublicas/DirectoresGenerales/economia/Arc/Fic/arce051219.pdf>

⁴⁹ MONEREO PÉREZ, J. L.: *Despido objetivo por ineptitud e incapacidades laborales. Estudio técnico y jurídico-crítico de su régimen jurídico*, Albacete, Editorial Bomarzo, 2017, p. 19.

⁵⁰ MONEREO PÉREZ, J. L., MORENO VIDA, M^a. N., MALDONADO MOLINA, J. A. & GONZÁLEZ DE PATTO, R. M^a.: *Manual de Derecho de la Dependencia*, 2nd ed., Madrid, Editorial Tecnos, 2014, p. 17.

⁵¹ RAMOS QUINTANA, M. I.: “Envejecimiento activo en la sociedad del cansancio”, in *Trabajo y Derecho. Nueva Revista de Actualidad y Relaciones Laborales*, no. 54, 2019 (electronic resource).

⁵² ARAGÓN GÓMEZ, C.: “La ineptitud sobrevenida por razón de edad”, in MERCADER UGUINA, J. R. (Ed.): *Trabajadores maduros. Un análisis multidisciplinar de la repercusión de la edad en el ámbito social*, Valladolid, Editorial Lex Nova, 2009, p. 236.



There is well-documented evidence that age, especially at its higher range, is today the main cause (together with gender and race) of discrimination in labour relations.⁵³ Again, women suffer the double discrimination of age and gender within the workplace.⁵⁴

The protection of this large group of workers (the over-55s make up approximately 20% of the working population⁵⁵) has been established nationally, regionally and internationally for the purpose of maintaining and ensuring the health and fitness to work of older workers as they age, developing their skills and employability, and offering them working conditions appropriate and commensurate to their age.⁵⁶

All this aims to, firstly, prevent workers of an advanced age suffering workplace discrimination and ending up in unemployment due to not being hired or being dismissed on the basis of their age and, secondly, curb the numbers taking early retirement. Unfortunately, this rule is not always adhered to by the employer class.

While it is true that the physical and psychological ability of workers deteriorates from a particular age and on approaching the retirement age, seriously prejudicing their health and work, they should be afforded a more flexible organisation of working hours through the modification of their employment conditions so that they can continue working as normal, which, in turn, will boost the job retention of elder workers and strengthen their legal and labour ties.⁵⁷

For example, some measures of the proposed reform could, insofar as the older worker agrees, include the following:⁵⁸ avoid working days without a long break as well as such shortened working days (using instead the split working day); reduce shift work; eliminate any night shifts and place workers on the day shift;⁵⁹ reduce the working hours (establishing measures, such as improvements in collective bargains, to allow the older worker who opts for such a contract to maintain the same contribution base as in the

⁵³ SANGUINETI RAYMOND, W.: “La edad: ¿cenicienta de las discriminaciones?”, in *Trabajo y Derecho. Nueva Revista de Actualidad y Relaciones Laborales*, no. 59, 2019 (electronic resource).

⁵⁴ BURRIEL RODRÍGUEZ-DIOSDADO, P.: “El edadismo: significado, causas y efectos en los ámbitos laboral y de la salud de las personas en edad de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social* Murcia, Editorial Laborum, 2019, p. 157.

⁵⁵ ORTEGA LOZANO, P. G.: “Trabajadores de edad avanzada o trabajadores maduros en la política de empleo” in MONEREO PÉREZ, J. L. y MALDONADO MOLINA, J. A. (Eds.): *Envejecimiento activo y vida laboral*, Granada, Editorial Comares, 2019, p. 495.

⁵⁶ SEMPERE NAVARRO, A. V. and QUINTANILLA NAVARRO, R. Y. (Eds.): *Empleo y protección social de los trabajadores de edad avanzada. Análisis comparado de la situación actual y propuestas de futuro*, Madrid, Edita Consejo Económico y Social, 2009, p. 43.

⁵⁷ *Ibid.*, p. 14 & 107.

⁵⁸ SEMPERE NAVARRO, A. V. and QUINTANILLA NAVARRO, R. Y. (Eds.): *Empleo y protección social de los trabajadores de edad avanzada. Análisis comparado de la situación actual y propuestas de futuro*, Madrid, Edita Consejo Económico y Social, 2009, p. 14; Likewise, MONEREO PÉREZ, J. L.: *La protección sociolaboral multinivel de los trabajadores de edad avanzada*, Albacete, Editorial Bomarzo, 2019, p. 59 and subseq.

⁵⁹ CARRERO DOMÍNGUEZ, C. and MORENO MÁRQUEZ, A.: “Prevención de riesgos laborales y trabajadores maduros”, in MERCADER UGUINA, J. R. (Ed.): *Trabajadores maduros. Un análisis multidisciplinar de la repercusión de la edad en el ámbito social*, Valladolid, Editorial Lex Nova, 2009, p. 233.



previous contract so as not to prejudice his future retirement); and, limit or prohibit overtime (as is the case for under-age workers for their own personal circumstances).

The idea is to make dismissal the last possible resort for the employer and place an emphasis on internal flexibility measures rather than external flexibility measures.

It is not only about an older person's individual right to work but also the organisation of active employment policies seeking to extend a person's working life as a means to ensure the sustainability of the Spanish Public Pensions System.⁶⁰

Ultimately, reasonable adjustments need to be established for those getting on in years. For example, under the Spanish Occupational Hazards Prevention Act 31/1995 of 8 November,⁶¹ there is no specific scheme for injured older people as there is for under-age workers. This creates a situation whereby the older worker is obliged to adapt themselves to the work rather than the work being adapted to them. As a result of this situation, where a worker cannot adapt, measures not conducive to the much sought-after concept of sustainability will be adopted, such as dismissal, early retirement, recognition of permanent disability, etc.

6. Promote continuous training and re-skilling programmes for older people so they are not removed from the labour market for reasons of not adapting to new information and communication technology.

7. Revalue and, consequently, do not freeze or cut pensions. To obtain increased funding, the following strategic measures could be adopted:

- Raise the minimum wage (in this way, the minimum contribution base for Social Security will be raised thereby increasing the system's funding⁶²).

This is without forgetting that minimum pensions should be benchmarked against the minimum wage and its gradual increases, while maintaining a coherency between guaranteed income of a contributory and non-contributory nature for workers and non-workers.

- More tax relief to companies for hiring for the purpose of job creation (and fewer contribution exemptions and reductions).

- Encourage the voluntary postponement of retirement with internal flexibility measures or reasonable accommodation to adapt the work to the older worker, without legally or contractually raising the normal retirement age beyond the 65-67 age range (such a

⁶⁰ MONEREO PÉREZ, J. L.: "Principio de igualdad y despido por ineptitud o discapacidad: la protección garantista multinivel", in *Lex Social. Revista jurídica de los Derechos Sociales*, no. 1, 2019, p. 734. Also, MONEREO PÉREZ, J. L.: "La tutela de las incapacidades laborales frente al despido objetivo por ineptitud: un enfoque desde los derechos de las personas" in Various Authors.: *Las incapacidades laborales y la Seguridad Social en una sociedad en transformación*, Murcia, Editorial Laborum, 2018, p. 878.

⁶¹ Published in the Spanish State Gazette (BOE) on 10 November 1995.

⁶² ORTEGA LOZANO, P. G.: "Pensión de jubilación y esperanza de vida: el factor de sostenibilidad", in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, p. 341.



solution to public pension sustainability is undesirable in terms of social justice since there are inherent human boundaries to the quality of life and well-being in old age that must be insulated, not only for reasons of physical impairment that condition the employability of older people but also for the social value furnished by a long working life⁶³).

– Eliminate/reformulate the maximum pension ceiling established in 1983 as a temporary measure (but ultimately a mainstay in the Spanish system) so that workers will voluntarily extend their working lives (at full- or part-time). The objective is two-fold: pay a lower amount in the number of pensions and partially maintain funding for the system.⁶⁴

Currently, the maximum monthly pension is €2,683.34 (an amount that can only be increased in two cases: firstly, receipt of a maternity/paternity supplement; secondly, voluntary postponement of the legal retirement).

– Eliminate the maximum limit of the contribution income base (or increase the contribution bases⁶⁵), so that each worker contributes according to actual earnings, which would increase the funding of the Social Security system by those who earn more.

8. Promote occupational pension plans over savings plans but as an optional supplement and never as a substitute for public pensions. While both types of plans are naturally complementary, in reality, they have different socio-economic functions: the objective of individual savings plans is overall financial, that of occupational plans is social protection.⁶⁶

With this set of ideas, it should be borne in mind that the Spanish Budget Bill 2021 includes an initiative with differentiated tax treatment for these two pillars of supplementary social protection—occupational plans (more tax relief) and individual plans (less tax relief)—which fits in with the model of supplementary pensions provided for under the Spanish constitution.

Article 41 of the SC refers to optional supplementary benefits that have a proper social function in enhancing the benefits provided by the public system, which presupposes a functional and purposeful link between the baseline public benefit and the supplementary benefit. In this sense, the strictly personal pension vehicle (whether personal plans or

⁶³ MONEREO PÉREZ, J. L.: “Repensar críticamente el modelo de regulación de la pensión de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, pp. 84-85.

⁶⁴ MONEREO PÉREZ, J. L. and RODRÍGUEZ INIESTA, G.: “El imparable camino hacia la *flexi jubilación* o la compatibilidad plena entre trabajo y pensión”, in *Revista de Derecho de la Seguridad Social*, no. 9, 2016, p. 16.

⁶⁵ MONEREO PÉREZ, J. L. and RODRÍGUEZ INIESTA, G.: *La pensión de jubilación*, Murcia, Editorial Laborum, 2020, p. 233.

⁶⁶ MONEREO PÉREZ, J. L. and FERNÁNDEZ BERNAT, J. A.: “La política del derecho comunitaria de apoyo a los planes privados de pensiones nuevas medidas para su relanzamiento”, in *Nueva Revista Española de Derecho del Trabajo*, no. 214, 2018, pp. 55-89.



personal insurance) lacks this social purpose as they are more simply savings schemes for financial or tax purposes.

Furthermore, the problem with private pension plans stems from many workers being in precarious situations (entailing lower public pensions in the future) and, therefore, unable to access them since their margin for saving is little to non-existent.

In this sense, the European Commission's 2012 white paper, "An Agenda for Adequate, Safe and Sustainable Pensions", backs a three-pillar system: firstly, a mandatory basic level of pensions; secondly, a level of collective supplementary pensions; and, thirdly, a level of additional personal pensions.⁶⁷

The communicating vessels metaphor should not be forgotten in this respect. There is a chance that such a model could lead to substituting contributions into personal plans for those into the public system, leading to reduced contributions to Social Security.⁶⁸

Finally, priority should be given to occupational pension plans, which ensure ownership of assets, participation and collective control on the part of the workers as opposed to private pension vehicles such as, for example, personal or group insurance schemes.

9. Improve the quality of the labour market to enable the proper accumulation of entitlements to an adequate pension, with policies for full employment in quality, decent and dignified work.

10. Bolster the role of collective bargaining in pensions, and establish occupational pension plans in companies or sectors (the most reasonable, though still underdeveloped, option for Spain's production framework with its high concentration of SMEs and microbusinesses). In this respect, there should be no minimum requirement of staying at the company for two years so that all workers would be eligible for such plans and there would be no indirect double discrimination since coverage would be universal (otherwise, the Matthew effect would occur – Matthew 13:12: "For whosoever hath, to him shall be given, and he shall have more abundance: but whosoever hath not, from him shall be taken away even that he hath.").⁶⁹

11. Reduce precarious employment contracts, that is, temporary contracts, part-time contracts and those with low salaries.

The fact is that labour relations or a job market based on employment instability and cost reduction is manifestly incompatible with the viability of Social Security and its sub-

⁶⁷ Website: <https://op.europa.eu/es/publication-detail/-/publication/32eda60f-d102-4292-bd01-ea7ac726b731/language-es>

⁶⁸ MONEREO PÉREZ, J. L. and FERNÁNDEZ BERNAT, J. A.: "Planes y fondos de pensiones: propuestas de reforma", in *Documentos de trabajo (Laboratorio de alternativas)*, no. 137, 2008, p. 38.

⁶⁹ MONEREO PÉREZ, J. L. and FERNÁNDEZ BERNAT, J. A.: "Planes y fondos de pensiones: propuestas de reforma", in *Documentos de trabajo (Laboratorio de alternativas)*, no. 137, 2008, p. 6.



system of benefits (the major linchpin being retirement pensions). The experience provided by Spain confirms this.⁷⁰

12. Establish migration policies so that immigrants in a regular situation in the country contribute to Social Security and, in this way, assist in the sustainability of the Spanish Public Pensions System.

13. Combat fraud in contribution collection and in the informal economy, and enhance the auditing mechanisms for the Employment and Social Security Inspectorate and the Tax Inspectorate. The purpose of all this is to ensure people are not left helpless at the time of retiring for not having contributed, or for having contributed less due to, for example, overtime unreported to Social Security.⁷¹

14. Inequalities at all stages of a person's life must be rectified; otherwise, the social and economic inequalities suffered will endure into old age, as occurs with the gender gap in pensions.⁷²

Women receive lower pensions compared to men⁷³ (for this reason, 64% of all pensioners who receive supplements to raise their pension to the legal minimum are women⁷⁴).

Furthermore, women receive fewer retirement pensions than men (for not contributing for the legally required minimum period) due to unstable careers, breaks or interruptions in their professional lives as a result of insufficient measures to reconcile family, personal and work lives (for this reason, since 2016, women receiving a contributory pension can receive a supplement for maternity from their second child; albeit since the judgement of the CJEU on 12 December 2019,⁷⁵ men can also apply for this supplement⁷⁶).

In other words, impermanence, shorter hours and lower wages are phenomena strongly tied to the viewpoint that family duties and responsibilities are the remit of women. All

⁷⁰ MONEREO PÉREZ, J. L.: “Repensar críticamente el modelo de regulación de la pensión de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, p. 78.

⁷¹ MONEREO PÉREZ, J. L.: “Repensar críticamente el modelo de regulación de la pensión de jubilación”, in Various Authors.: *Por una pensión de jubilación, adecuada, segura y sostenible: III Congreso Internacional y XVI Congreso Nacional de la Asociación Española de Salud y Seguridad Social*, Madrid, Editorial Laborum, 2019, p. 81.

⁷² MOLINER CROS, A., MARTÍNEZ POZA, A., FUNDACIÓN 1º DE MAYO and FEDERACIÓN DE PENSIONISTAS Y JUBILADOS DE CCOO: *Observatorio social de las personas mayores para un envejecimiento activo*, Madrid, Edita Federación de Pensionistas y Jubilados de CCOO, 2019, pp. 175-176.

⁷³ ERRANDONEA ULAIZA, E.: *Sistema español de pensiones: revisión crítica de los elementos comunes al cálculo de pensiones contributivas (Normas sobre tope máximo de pensiones, cuantías mínimas y revalorización de pensiones)*, Granada, Editorial Comares, 2016, p. 7.

⁷⁴ RODRÍGUEZ CABRERO, G., MONTSERRAT CODORNIU, J., ARRIBA GONZÁLEZ DE DURANA, A. and MARBÁN GALLEGU, V.: *ESPN Thematic Report on Financing social protection – Spain*, European Social Policy Network (ESPN), Brussels, European Commission, 2019, p. 8.

⁷⁵ [CJEU 2019\281].

⁷⁶ EUROPEAN COMMISSION.: *Pension adequacy. Report 2018. Current and future income adequacy in old age in the EU*, vol. 2 Country profiles, Luxembourg, Publications Office of the European Union, 2018, p. 85.



this is maintained within a legal framework that allows and even promotes this job instability.

15. Amend the SC, relocating Articles 41 and 50 (as well as adding a ratchet clause to pensions in the latter article) to Title I, Chapter II, Section 1 (entitled “Fundamental Rights and Public Liberties”) of the constitution, for the purpose of enhancing the guarantees currently pertaining to this right.

16. The regulation of pensions to discourage early retirement or that companies stimulate departures, since such behaviour displaces older workers who have a wealth of job experience, contradicts the policy to make the Spanish Public Pensions System sustainable (extending a person’s working life⁷⁷) and, in the end, causes more public expenditure and less funding.

17. Finally, once the economic situation improves in the country, increases to social security contributions could be looked at as a way to increase funding of the Social Security system.

Ultimately, the purpose of all these measures is to seek a rational balance between the principle of efficiency regarding economic and financial sustainability and the principle of social justice with regard to the access to and quality of public retirement pensions.⁷⁸

It remains necessary to construct a comprehensive policy that covers all sectors and includes both today’s and tomorrow’s elderly generations, through the interlocking of employment policies with social security and protection policies.⁷⁹

⁷⁷ MONEREO PÉREZ, J. L.: “EREs, prolongación de la vida activa y edad de jubilación”, in *Revista del Ministerio de Trabajo e Inmigración*, Special no. 1, 2010, pp. 159-216.

⁷⁸ MONEREO PÉREZ, J. L.: “Las reformas de las pensiones. Un análisis global del proceso reformista”, in MONEREO PÉREZ, J. L., LÓPEZ CUMBRE, L. (Eds.), MALDONADO MOLINA, J. A. y FERNÁNDEZ RAMÍREZ, M. (Coords.): *La pensión de jubilación. Estudio analítico y crítico tras los últimos procesos de reforma*, Granada, Editorial Comares, 2015, p. 2.

⁷⁹ *Ibid.*, p. 29.



SECTION 4 - RECOMMENDATIONS

We believe that the demographic challenge with regard to pensions is significant but manageable (an increase of around 4% of GDP in 2048, the most demanding year).

These additional needs may be reduced by means of measures that seem to enjoy a high degree of consensus, in view of the public positions expressed by different factors: consolidating the separation of sources of funding; reinforcing and restoring the contributions of the pension system, so that everyone pays contributions according to their real income and correcting the loss of spending power experienced by pensions due to the 2013 reform, among other possible measures; providing additional funding from the state budget to complete social contributions and guaranteeing comparable treatment to different generations; reorganising current Social Security contributions...

This requires tackling and correcting the detailed situations, replacing once and for all the 2013 reform by returning to the previous context of bargaining and agreements.

We have to reinforce income from the job market, by means of contributions, and ensure a fairer distribution of the effort in our tax legislation and structure, which will give us a greater budget capacity.

It is necessary to cater to new needs arising from new realities in the job market, digitalisation, wage gap... and that impact social protection systems. We have to eliminate/reduce gaps in coverage and protection, mainly due to insufficient protection in situations of unemployment and the need for supplementing these benefits with subsidies established by the autonomous regions, in order to eliminate gaps in coverage that lead to situations of poverty and exclusion.

There have been efforts to cover the important gaps in protection that exist in the unemployment system by means of special and temporary benefits, designed as subsidies or subventions, instead of Social Security benefits that provide full legal and jurisdictional guarantees. We believe that a very important improvement has been made by modifying the subsidy for over-52s but, in the opinion of CCOO and UGT, it is essential to tackle and improve the unemployment protection system as a whole.

In the opinion of UGT and CCOO, as long as the government accepts that welfare subsidies must be financed by the state budget, rather than unemployment contributions, there is room for reorganising contributions and creating a reserve fund to maintain the levels of protection with a view to the possibility of a future crisis, rather than reducing protection as in all previous crises. In the case of self-employed workers, we believe that, as in the case of other unemployment benefits, cease of activity has to be managed by the State Public Employment Service (SEPE). Social protection is especially insufficient in the case of self-employed workers.

It is likewise necessary to harmonise unemployment benefits with other measures, such as minimum incomes or minimum income benefits, in order to protect those of working age that are involuntarily unemployed and lack sufficient income, to guarantee a decent standard of living. This would supplement the current social protection system, which has



been completely overrun as a result of the crisis and the devastating effects of austerity policies and cutbacks. The recently approved minimum living income covers some of these gaps in coverage, providing protection for a priority group, and helps to improve child protection, being able to guarantee a homogeneous floor of minimum income in Spain. However, it will be incomplete as long as there still exist important gaps in unemployment protection. Therefore, the reform of subsidies, along with Parliament's approval of the Popular Legislative Initiative, backed by 710,000 signatures, in order to implement a Minimum Income Benefit, must give rise to a comprehensive restructuring of the unemployment protection system, thereby providing a solution to the structural gaps in protection experienced by the unemployed in our country.

Improving the fairness of our Social Security system is also an objective. The evolution of some special schemes, in domestic or agricultural employment; self-employed work, or unjustified differences in accessing retirement, are recent examples of this.

The correction of the very low activity and unemployment rates in over-55s has yet to be carried out in our country. The system facilitates them leaving the job market but not their return. An attempt was also made to limit their access to social protection but, fortunately, this was partially corrected by restoring an unemployment subsidy for over-52s.

Periodic reforms and revisions, with a high degree of consensus and, therefore, social legitimisation, are what we need the most, rather than the model of systematic reform that replaces public coverage with individual responsibility, which can only be exercised, where applicable, by those with sufficient means, thereby increasing inequality.

It is necessary for the political parties and social representatives to accept their responsibilities; to reinforce the inter- and intra-generational commitment to treat the different generations in a fair, comparable way, with robust sources of funding, from the job market and state budget; to balance the Social Security's financial situation, reinforcing its income structure, and to continue improving its contributions and minimum pensions.

For all of these reasons, we also need a tax reform to reduce the great difference with Europe as regards tax collection, amounting to more than 75 billion euros per year, which would help to fund all the reforms, commented herein.

It is necessary to take measures to combat tax fraud and the informal economy, fiscally harmonise the different autonomous regions in relation to wealth taxes, such as asset and inheritance taxes, avoiding fiscal competition among autonomous regions, making changes in income tax –applying larger rates to income above EUR 60,000, in both the general and savings base, applying the rates of the general base to the savings base and integrating all income into a single base. We have to reform corporate tax, which does not collect much and does so very regressively, since small companies pay larger percentages of their profits than big companies, and restructure VAT –applying the super-reduced rate of 4% to all foodstuffs and non-alcoholic beverages, as well as reducing from 21% to 10% the VAT on electricity, gas and heating, and revising the classification of products taxed at one rate or another, so that the tax collected in this way, with ordinary nominal rates above the European average, can also approach the latter in collection



terms. In the case of corporate tax, there should be more cooperation among countries, avoiding the unfair fiscal competition that is eroding taxable income.

Last but not least, the trade unions demand a modification of the key aspects of the labour reform, in order to advance towards a new framework of labour relations that is more inclusive and democratic, with the objective of ending job insecurity, avoiding wage reductions and tackling the impact on gender and youth.



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