Vulnerable groups: can the Spanish social security system guarantee their protection in times of corona? Financial implications for the welfare state

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1. Introduction[1]

The COVID pandemic has caused human tragedy, including illness and death, pushed hospitals and bed capacity to the limits, changed our family life and social interactions, and caused a worldwide economic crisis,[2] in addition to many other undesirable and adverse effects. The pandemic has also produced a boom in teleworking, at least in those activities where its implementation is feasible. This notwithstanding, a significant increase in Spain's unemployment rate has not been prevented.

The year 2020 ended in Spain with a decrease of 360,105 (-1.8 per cent) contributors to the social security system, the largest annual decline since 2012. The economic crisis resulting from the paralysis of productive activity owing to the pandemic has undoubtedly affected those segments of the population the most who are at risk, namely people working in the informal economy and job seekers.

The pandemic has also dramatically increased the number of those whose income lies below the poverty line.

This paper focuses on the legislative reforms devised in Spain in the wake of the pandemic to respond to the needs of two particularly vulnerable groups: the unemployed[3] and people at risk of social exclusion.

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1. Research carried out within the scope of the projects financed by MINECO "La Seguridad Social Internacional y Comunitaria: conflictos de leyes y protección Social" (DER2017-83040-C4-3-R) and Red de Excelencia "La Protección Social y la Coordinación de Sistemas de Seguridad Social en la Unión Europea e Iberoamérica: Los desafíos del Brexit y el pilar Europeo de Derechos Sociales (RED2018-102508-T).

2. Yue Lin; "China's Social Security system and labor protection under the Covid-19 pandemic". E-Revista Internacional de la Protección Social" No. 1/2020; pp. 15-28.

3. José Antonio González Martínez;"Medidas excepcionales en materia de Seguridad Social durante el COVID-19". E-Revista Internacional de la Protección Social No. 1/2020; pp. 136-175.

2. Covid and unemployment

The most important legal instrument supporting employment stability and preventing mass dismissals is the "employment regulation procedure"[4], which allows suspensions of contracts and reductions in working hours, with the peculiarity that employers are exempt from paying social security contributions for their workers,[5] including the unemployment contribution rate. In case of reductions in working hours, social security contributions are only due for services actually performed by employees. On account of these measures, companies have been able to mitigate the pandemic's economic impact. As an extraordinary measure, Article 35 of Royal Decree Law 11/2020 provides for the possibility to request deferments of social security debt under exceptional conditions.

In accordance with the current legislation, workers who are covered by these "employment regulation procedures" are entitled to contributory unemployment benefits, even if they do not fulfil the eligibility criteria for the minimum period of contributory employment. Furthermore, the unemployment benefit amounts received during this period will not be counted for the purpose of calculating the employee's maximum benefit amount.

During the period of applicability of the extraordinary public health measures adopted by the authorities to fight COVID-19, applications for unemployment compensation beyond the maximum benefit amount outside the legally prescribed period will not result in the reduction of the entitlement period for the corresponding benefit.

The total number of unemployed persons in December 2020 was 3,888,137 persons, of which nearly two million were women. In Spain, which has always had one of the highest youth jobless rates in the EU, unemployment among young people under the age of 25 years increased by 47.1 per cent in 2020, compared to 20.8 per cent unemployment among persons aged 25 years and up.

It should be noted that workers covered by the "employment regulation procedures" (approximately 755,000 persons on 31 December 2020) are *not* included in the unemployment figures. Nor does the government

4. Expediente de regulación de empleo: ERTE.
5. Enterprises with less than 50 employees are entitled to a bonus of 100 per cent of social contributions and 75 per cent if the number of employees exceeds this threshold.

include the self-employed who are receiving benefits for cessation of activity. If all of these individuals were added, Spain's actual unemployment rate would exceed 30 per cent.

3. Unemployment measures to fight the covid pandemic

In accordance with Spanish legislation, unemployment compensation includes a cash benefit for full or partial unemployment and payment by the Public Employment Services of the employer's social security contributions.

Since the government announced the state of emergency on 14 March 2020, a battery of legal measures has been enacted to fight unemployment caused by the COVID-19 health crisis. These measures are regulated in Royal Decree Law 8/2020, Royal Decree Law 11/2020, Royal Decree Law 17/2020, Royal Decree Law 24/2020 and Royal Decree Law 30/2020. These provisions were exclusively promulgated by the government –not by Parliament– on the basis of Article 86 of the Spanish Constitution, which stipulates that "in cases of extraordinary and urgent need, the Government may issue temporary legislative provisions...".[6]

The objectives and features of the new unemployment provisions are as follows:

- to stabilise employment and prevent the destruction of jobs;
- temporary validity, depending on the development of the pandemic;
- duration of receipt of cash benefits will not be reduced in case of late submission of application;
- unemployment benefits have been extended to workers whose contracts were terminated during their probation period after 9

6. Article 86.1 Spanish Constitution:"...in cases of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws and which may not affect the regulation of the basic State institutions, the rights, duties and liberties contained in Title 1, the system of the Autonomous Communities, or the General Electoral Law. 2. The decree-laws must be submitted forthwith to the Congress of Deputies, which must be summoned for this purpose if not already in session. They must be debated and voted upon in their entirety within thirty days after their promulgation. Congress must expressly declare itself in favour of ratification or repeal within said period of time, for which purpose the Standing Orders shall establish a special summary procedure. 3. During the period established in the foregoing clause, their passage through the Cortes may be the same as for Government bills, by means of the emergency procedure".

March 2020, regardless of the reason for the termination, as well as to those workers who voluntarily terminated their employment contract after 1 March 2020, because they had a firm job offer with another company that ultimately did not enter into the contract due to the COVID-19 crisis.

The extensive legislation adopted since the state of emergency was declared has resulted in around 30 different unemployment benefit schemes. Yet nearly 1.3 million unemployed persons are not covered by them. Legislative diffusion has made the system far too complex. Moreover, the Spanish administration does not have sufficient human resources to process the many submissions received, and many applicants have had to wait months to receive help.

3.1. Special contributory unemployment benefits introduced due to the current extraordinary circumstances

3.1.1. Measures for unemployed workers whose contracts have been suspended or whose working hours have been temporarily reduced

- Recognition of the right to contributory unemployment benefits, even if the worker has not yet accumulated the required minimum contribution period;
- the (temporary) period during which unemployment compensations is received due to the extraordinary circumstances caused by the pandemic will not be included for the purposes of calculating the worker's maximum duration of unemployment insurance;
- the cash benefit amount shall replace 70 per cent of the employee's average wages[7] earned during his or her last 180 days of contributions or during the period immediately prior to the situation of unemployment;
- the duration of the benefit shall be extended until the end of the period of suspension of the employment contract or the temporary reduction of working hours.

7. The "regulatory base" for unemployment compensation is used to calculate the total amount of this benefit, while the State Public Employment Service uses the "contingency contribution base" to determine the payment of contributions during the period of unemployment compensation.

3.1.2. Intermittent permanent workers

If the worker's activity has been suspended and he or she has over 360 days of contributions, he or she is entitled to unemployment compensation. If the worker becomes involuntarily unemployed again and re-applies for unemployment benefits, he or she will be put back on the payroll for a maximum of 90 days.

If the worker's activity has been suspended or if he or she has not been able to return to work and has not accumulated the required minimum contribution period, the worker is entitled to a contributory benefit that will be paid until the worker can return to work (for a maximum of 90 days).

The current period of extraordinary measures does not imply a reduction in future eligibility for the corresponding unemployment benefits.

3.1.3. Extraordinary contributory unemployment benefit for bullfighting professionals who are not entitled to other unemployment benefits

Bullfighting professionals who apply are eligible for the extraordinary contributory unemployment benefit, provided that they do not have access to ordinary unemployment benefits. Those workers included in the census referred to in Article 13.2.a) of Royal Decree Law 2621/1986 on 31 December 2019 are eligible beneficiaries.

Entitlement to this subsidy was established on 6 November 2020, provided that the application was submitted before the deadline. If the application was submitted after the deadline, entitlement to the benefit commenced on the day following submission of the application.

Entitlement to the unemployment benefit regulated in this article shall cease on 31 January 2021.

The termination of this benefit does not, however, denote an exhaustion of contributory unemployment benefits as regulated in the consolidated text of the General Law on Social Security.

To determine the benefit amount, the applicable minimum contribution base for common contingencies is used as the regulatory base, corresponding to Group 7 of the professional categories of the general social security system.

3.2. Extraordinary measures for unemployment assistance

3.2.1. Exceptional unemployment allowance for domestic employees

Persons integrated in the special system for domestic employees within the general social security system can benefit from this exceptional unemployment subsidy in case of suspension or reduction of activity.

Requirements: registration with the social security system prior to the entry into force of Royal Decree Law 463/2020 declaring the state of emergency in response to COVID-19, and being in one of two situations:

- temporary cessation of the provision of services in one or more homes, in full or in part, through no fault of their own, as a result of the COVID-19 health crisis to reduce the risk of contagion;
- their employment contract has ended for reasons beyond the worker's control as a result of the COVID-19 health crisis.

In both situations, the causal events must have occurred after 14 March 2020, the date Royal Decree Law 463/2020 came into force.

3.2.2. Extraordinary subsidy for public performance artists within the general social security scheme

As a result of the health crisis caused by COVID-19, public performance artists, who are entitled to extraordinary unemployment benefits in accordance with Article 2 of Royal Decree Law 17/2020 of 5 May – which approved measures to support the cultural sector and provide tax relief to deal with the economic and social impact of COVID-19 – continue to be entitled to this unemployment benefit.

As an exceptional and temporary measure, protection for this particular group during periods of inactivity comprises unemployment compensation in addition to benefits for child birth and child care, retirement, permanent disability and death, covered by common contingencies.

3.2.3. Exceptional unemployment benefit for technical and support staff in the cultural sector

Beneficiaries: workers who temporarily worked as technical or support staff in the cultural sector, providing services for public performance or show productions.

Among other requirements, the worker must:

- be registered as a job seeker with the Public Employment Services on the date of application for the exceptional benefit and sign the activity commitment;
- not be in full-time employment or self-employment on the date of application for the benefit or on the date of entitlement to the exceptional benefit;
- not have been the beneficiary of any other extraordinary protection measures against unemployment approved following the outbreak of the health crisis caused by COVID-19;
- have proof of a period of employment and of having contributed to the general social security scheme for at least 35 days.

3.2.4. Exceptional unemployment benefit when the temporary contract ends

The beneficiary must meet the following requirements:

- he or she must be registered as a job seeker with the Public Employment Services and sign the activity commitment;
- he or she is not entitled to any other unemployment benefit or subsidy because he or she has not accumulated the required minimum contribution period.

Beneficiaries:

- workers with a fixed-term contract that lasted at least two months are eligible for this benefit, provided that their contract ended after 14 March 2020;
- workers whose activity involuntarily ceased after 15 March 2020 and who have been employed under a fixed-term contract for at least two months, with the obligation to pay unemployment insurance;
- workers whose income does not exceed 75 per cent of the minimum interprofessional wage, excluding the proportional part of two special payments;
- workers who do not earn the minimum income, the inclusion income, social wages or similar aid provided by any public administration;
- workers who were not working full time or were self-employed on the date of termination of the contract or on the date the exceptional benefit was introduced.

After 21 July 2020, it was no longer possible to apply for the Exceptional End of Contract Grant.

3.2.5. Exceptional subsidy for unemployed persons who have exhausted state aid between 14 March and 30 June

Beneficiaries: unemployed workers who have exhausted their entitlement to contributory benefits between 14 March 2020 and 30 June 2020, and are not entitled to any other subsidy.

Workers who have exhausted their entitlement to any of the following benefits between 14 March 2020 and 30 June 2020 are eligible for the exceptional subsidy:

- unemployment compensation in any of its modalities regulated in Chapter III of Title III of the revised text of the General Law on Social Security;
- extraordinary unemployment benefit (SED);
- insufficient contribution allowance;
- active insertion rent.

The duration of the exceptional benefit is limited to 90 days and can only be claimed once.

The subsidy amount is equal to 80 per cent of the applicable public indicator of multiple effects income, and is paid out by the Public Employment Services from the month following submission of the application.

4. COVID-19 and self-employed workers

Self-employed persons have been entitled to ordinary protection in case of cessation of activity ("unemployment for the self-employed") since 2010.[8] This protection is provided for self-employed persons who are in a legal situation of cessation of activity. This implies full cessation of the self-employed person's economic or professional activity and may be definitive or temporary. Such protection includes the payment of a monthly financial benefit and social security contributions for common contingencies.

As a consequence of the pandemic, new supplementary benefits have been introduced on a provisional and transitory legal basis to protect unemployed workers. The Spanish social security system has paid out EUR 289.73 million in benefits to over 355,000 self-employed workers to support them in the wake of COVID-19.

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8. Cristina Sánchez-Rodas Navarro; "Good Legal Practices in Spanish Law? Clauses governing residence and the export of Spanish Social Security benefits" in: M.T. Velasco Portro (Coord.); Good Practices in Social Law. Laborum. 2015; pp. 23-45.

4.1. Extraordinary protection in case of cessation of activity

The beneficiaries of this allowance are all self-employed persons who have been impacted by the closure of businesses as a result of the declaration of the state of emergency or whose monthly revenue has decreased by 75 per cent compared to their monthly average in previous quarters.

Unlike the ordinary benefit provided in case of cessation of activity, a contribution period of 12 months is not required to be eligible for this particular benefit.

Requirements:

- the self-employed person must have been affiliated and registered with the social security system on the date of the declaration of the state of emergency (14 March 2020), either under the Self-Employed Scheme or, where applicable, under the Special Scheme for Sea Workers;
- in the event the self-employed person's activity has not been suspended as a result of the state of emergency, he or she must prove a loss in revenue of at least 75 per cent in the calendar month prior to the application for the benefit compared to his or her average revenue in the quarters prior to the declaration of the state of emergency;
- the self-employed person must have paid the mandatory social security taxes. If this requirement has not been fulfilled on the date of the suspension of activity or loss in revenue, the administrative body will request the applicant to pay the outstanding amount within a non-renewable period of 30 calendar days in order to be eligible for the benefit. Once the outstanding amount has been paid in full, the self-employed person acquires the right to protection.

The amount will be 70 per cent of the regular base income, calculated the same way as the ordinary benefit in case of cessation of activity.

The beneficiaries are exempt from paying social security contributions.

4.2. Extraordinary low-income benefit

This benefit is targeted at self-employed persons who are not entitled to protection in case of cessation of activity.

Requirements: the self-employed worker may not have earned an income from self-employment in the last quarter of the financial year 2020 exceeding the minimum interprofessional wage. He or she must prove a loss in revenue in his or her self-employed activity of at least 50 per cent during the fourth quarter of 2020 compared to revenue earned in the first quarter of 2020.

The benefit amount, as a general rule, is 50 per cent of the minimum contribution base.

4.3. New support for seasonal self-employed

Seasonal workers for the purposes of this benefit are considered self-employed workers who have performed services under the Special Regime for Self-employed Workers or the Special Regime for Sea Workers over the last two years during the months of June to December.

Requirements:

- the seasonal worker must be registered and have paid contributions to the Special Scheme for Self-employed Workers or the Special Scheme for Sea Workers as a self-employed worker for at least four months in the period June to December for the years 2018 and 2019;
- he or she was not registered as being employed under the relevant social security scheme for more than 120 days during the period 1 June 2018 to 31 July 2020;
- he or she did not carry out an activity or was not registered as employed between 1 March and 31 May 2020;
- the seasonal worker did not receive any benefit from the social security system between January and June 2020, unless it is compatible with the exercise of an activity as a self-employed person;
- he or she did not earn above EUR 23,275 in 2020;
- he or she has paid all social security taxes.

The amount is equivalent to 70 per cent of the minimum contribution base for the activity carried out within the scope of the Special Social Security Scheme for Self-employed Workers or, where applicable, of the Special Social Security Scheme for Sea Workers.

For the period during which the worker collects this benefit, he or she is exempt from paying any contributions, though he or she remains registered with the relevant social security scheme.

5. People at risk of social exclusion and COVID-19

Even before the outbreak of the pandemic, Spain's at-risk-of-poverty rate was already 4.4 percentage points above the EU average, and inequalities in disposable income were among the highest in the EU. Of particular concern is the fact that among the Spanish working population, the share of people in employment who are at risk of poverty is 3.4 percentage points above the EU average.[9]

The pandemic has undoubtedly magnified the number of people and households at risk of poverty. It is estimated that around one million families may be at risk of social exclusion.

5.1. Minimum vital income: a new non-contributory social security benefit

The National Strategy for the Prevention and Fight against Poverty and Social Exclusion 2019–2023, adopted in March 2019, announced the introduction of a minimum vital income (MVI) by 2023 at the very latest.

The economic crisis caused by the pandemic, which has been particularly virulent in Spain, accelerated the Strategy's implementation through Royal Decree Law 20/2020. According to Article 4.2, the MVI qualifies as a non-contributory social security benefit.

It is a means-tested benefit.[10] Its primary aim is to prevent the risk of poverty and social exclusion of people who live on their own or who are cohabiting with a partner and cannot meet their basic needs.

The MVI is legally defined as a subjective right to an economic benefit that is part of the protective measures provided by the social security system, and guarantees a minimum level of income for individuals who are economically vulnerable.

It aims to ensure a real improvement in the beneficiaries' opportunities for employment and social inclusion. It functions as a protective network, with the objective of assisting vulnerable individuals in moving from a situation of exclusion to participation in society.

According to Article 7.1.a) of Royal Decree Law 20/2020, beneficiaries must not only legally reside in Spain, but they must also have resided in

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9. Commission Staff Working Document. Country Report Spain 2020. COM(2020) 150 final.

10. F. Moreno de Vega y Lomo; "La dinámica temporal del Ingreso Mínimo Vital". E-Revista Internacional de la Protección Social No. 2/2020; pp. 12-34.

the country continuously and without interruption for at least one year immediately prior to the date of submission of their application.[11]

Monthly amount: between EUR 462 and EUR 1,015 per household.[12]

At present, the MVI has not yet been inserted by the Spanish Government in Annex X of Regulation 883/2004.[13] Therefore, it can be considered an exportable non-contributory benefit.[14]

6. Administrative management of social measures implemented to fight the pandemic

The Public Employment Services have received a barrage of criticism with regard to their management of applications and payment of benefits and subsidies since the outbreak of the pandemic. The Public Employment Services have collapsed due to the lack of staff to process the flood of applications. This situation has caused a major delay, and it may take months before a benefit is actually paid out. In fact, Public Employment Services staff themselves have reported to the media that the processing of applications is lagging behind by up to three months as a result of the pandemic, and have highlighted the lack of resources.

The administration of the minimum vital income is equally chaotic. The number of applications for MVI has clearly overwhelmed the administration: according to the Ministry of Inclusion, Social Security and Migration, 975,000 applications have been received, of which only about 300,000 have been processed. Nearly 60 per cent of applications have been rejected by the rigid approval procedure. The administrative and procedural turmoil in no way reflects the expectations that were raised about this non-contributory benefit targeting the most disadvantaged citizens.

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11. Pepa Burriel Rodríguez-Diosdado;"Las Obligaciones de las Personas Beneficiarias del Ingreso Mínimo Vital: las Infracciones y Sanciones Previstas y su Posible Incidencia en la Coordinación de Prestaciones de la Seguridad Social a Nivel europeo". E-Revista Internacional de la Protección Social No. 20/2020; p. 97.

12. F. Jimeno Fernández;"El Ingreso Mínimo Vital en Hogares Unipersonales". E-Revista Internacional de la Protección Social" No. 2/2020; pp. 77-93.

13. Thais Guerrero Padrón; "Ingreso Mínimo Vital y nacionales británicos en España en tiempos del Brexit". E-Revista Internacional de la Protección Social No. 2/2020 pp. 60-76.

14. Cristina Sánchez-Rodas Navarro; "El Ingreso Mínimo Vital a la Luz del Derecho de la Unión Europea y de los Convenios Internacionales de Seguridad Social Vigentes en España". Cuadernos de Derecho Transnacional No. 1/2021; p. 295.

E-government poses yet another hurdle, because the unemployed and people at risk of social exclusion have to communicate with the authorities, submit applications, etc. using digital means. Not all applicants, however, possess the digital means to connect with the administration. Obviously, the digital gap affects those with less economic resources far more than it does other groups.

To make matters worse, the process of vaccinating the population has also been riddled with problems, including a lack of vaccines, politicians who are being vaccinated although they do not belong to a priority group, lack of information, etc.

7. Financial sustainability of the welfare state in the wake of the pandemic

Aid, subsidies, grants, allowances and benefits to support businesses and workers cost the Spanish government over EUR 150 billion in 2020. Pending EU funds, the country's public debt will rise exponentially.

The increase in public spending caused by the pandemic is coupled with a drastic drop in revenues due to rising unemployment and falling numbers of contributors. This will raise new challenges for financing the Spanish social security system.

In response to the COVID-19 pandemic and the urgent need to address the accompanying health crisis, the scope of the European Union Solidarity Fund (EUSF) has been extended to cover major public health emergencies. Spain will receive a total of EUR 67.38 million in aid.

Spain is looking to Europe to cope with the costs of the pandemic's impacts. This support comes at a price, however: in exchange for financial assistance from the European Recovery Fund, the European Commission expects Spain to introduce specific reforms and detailed targets as well as a timetable to implement these. One of the most sensitive issues in this regard are pensions.

Member States are focusing on recovery and developing resilience plans in order to be able to be eligible for funds under the Recovery and Resilience Mechanism. Spain presented its national recovery plan "Spain Can" on 7 October 2020, which will guide implementation of the European funds (EUR 72 billion) until 2023, and mobilise 50 per cent of the resources available to Spain through the Next Generation EU instrument over the coming three years.

With growing social protest against the austerity policies imposed by the government in previous years, leading to political instability as a result of the rise of nationalism, it is unlikely that any Spanish government in the short term will be able to cope with the "political damage" that any new attempts to substantially reform the pension system by reducing coverage and pension amounts.

Moreover, the EU does not have the power to impose any pension reforms in the Member States, much less to legislate on this issue; ultimately, the Member States take the final decision.[15] EU recommendations should not become an instrument that undermines Member States' sovereign competence in social security legislation.

If the pandemic further destabilises the precarious balance between the EU's Economic Pillar and the European Pillar of Social Rights, citizens' disaffection with the European institutions will grow, and episodes such as Brexit may spread.

8. Conclusions

Teleworking has not prevented an upsurge in Spain's unemployment rate.

The year 2020 ended with an average drop of 360,105 contributors (-1.8 per cent) to the Spanish social security system, which represents the largest annual decline since 2012.

The key legal instrument to protect employment stability and prevent mass dismissals has been the "employment regulation procedure".

The measures adopted by the government to fight unemployment are exceptional and transitory. The fight against social exclusion, which has been exasperated by the pandemic, has, however, created a new, permanent non-contributory social security benefit: the minimum vital income (MVI).

The extensive legislative measures adopted in Spain since the state of emergency was pronounced have increased the unemployment protection system's complexity. Moreover, the Spanish administration does not have sufficient human resources to process the many applications it receives, meaning people have to wait for months to receive any support.

Finally, financing the pandemic's social costs will pose challenges to the development of the European Pillar of Social Rights.

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15. C. Sánchez-Rodas Navarro; "Sobre la (in)competencia de las instituciones europeas para reformar los sistemas públicos de pensiones nacionales a la luz del derecho de la UE y de los tratados internacionales". Cuadernos de Derecho Transnacional No. 1/2018, pp. 394-412.