

The Withdrawal of Health Care from Irregular Immigrants and Medical Conscientious Objection

YOLANDA GARCÍA RUIZ*

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Abstract

The economic crisis so strongly affecting some southern European countries has led to significant cuts in the system of universal public health care in Spain. Such measures particularly affect irregular immigrants and can also cause significant public health consequences.

A form of civil resistance that deserves to be analyzed is the conscientious objection of Spanish doctors who have chosen to continue attending irregular immigrants in contravention of new the rules restricting their access to the public health system and their right to health.

The aim of this paper is to analyze the new regulation which cut health care for irregular immigrants in Spain, the impact of this new regulation on the most vulnerable groups, and the response of doctors, who exercised their right to conscientious objection in relation to applying the new regulation. Finally to examine the announcement of change which came about as a consequence of international and domestic social pressure causing political risk to the Spanish National Government.

Key words

Spanish Health Care Cuts; Economic Crisis; Irregular Immigrants; Public Health; Medical Conscientious Objection

Resumen

La crisis económica, que ha afectado tan profundamente a algunos países del sur de Europa, ha dado lugar a significativos recortes en el sistema de atención sanitaria pública en España. Algunas de las medidas adoptadas han afectado específicamente a los inmigrantes irregulares y pueden tener, incluso, efectos en el ámbito de la salud pública.

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Una forma de desobediencia civil que merece ser analizada es la declaración de objeción de conciencia de determinados médicos y profesionales sanitarios españoles que han continuado atendiendo a los inmigrantes irregulares en contra de las nuevas restricciones impuestas por el Gobierno que afectan al reconocimiento universal del derecho a la salud.

El propósito de este artículo es el de analizar la nueva regulación que limita el acceso a la asistencia sanitaria de los inmigrantes irregulares en España, el impacto de esta nueva regulación en los grupos más vulnerables y la reacción de los médicos y el personal sanitario que, ejercitando su derecho a la objeción de conciencia, a modo de desobediencia civil, continúan atendiendo a los inmigrantes independientemente de su situación de irregularidad. Finalmente, se examina el anuncio de determinados cambios normativos como consecuencia de la presión ejercida sobre el Gobierno español por organizaciones internacionales y grupos sociales nacionales.

Palabras clave

Recortes sanitarios en España; crisis económica; inmigrantes irregulares; salud pública; objeción de conciencia médica

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1. Economic crisis vs human rights?

During the last six years, the world and especially western societies -such as European- have been suffering a major economic crisis. The response to this crisis by international organizations such as the International Monetary Fund, European Central Bank or European Commission, and the response of National Governments are damaging the achievements of the welfare state in Europe and putting at risk some human rights (Saiz 2009, Levy and Sidel 2009, Walby 2009, Benatar *et al.* 2011).

Restrictions to the rights of workers, of access to higher education, on economic support for all levels of public education, and on measures to assist people with fewer economic resources or with disabilities, and on the public health system, are some of the most important consequences of the policies adopted (Clauwaert and Schömann 2012, Laulom *et al.* 2012, Karanikolos *et al.* 2013, Bush *et al.* 2013). Governments have justified all these restrictions by reference to the economic crisis but the measures adopted are changing, little by little, the legal recognition of human rights in our societies (Aguado i Cudolà and Prado Pérez 2014).

A clear example is provided by the measures adopted in Spanish labor Law. Today workers have less right than a few years ago to receive compensation if a company decides to terminate their contracts, there is less stability in general in new contracts, there are fewer possibilities for unions to act in support of workers, reduced salaries and social rights for young people in their first employment, etc. (Alfonso-Mellado and Rodríguez Pastor 2013).

There is also evidence that most of the measures adopted at the instigation of the organs of international economic power, as a response to the economic crisis, are contrary to the interests and rights of the most vulnerable groups (De Lucas-Martínez 2012). Losses in multinational companies resulting from the fluctuations in the financial market will be compensated in different ways by the international market, for example, with new rules favorable to their interests and against the interests of the populations in different countries, but it is not possible to compensate for the losses suffered by the most disadvantaged people in our societies, especially the losses to their social rights.

One question which arises repeatedly when we analyse the restrictions in human rights due the crisis: is whether there a real interest on the part of states in the protection of human rights and, especially, in relation to protecting the human rights of the most disadvantaged people? If the answer is affirmative, it is really difficult to understand what has been happening in recent years in our countries. Social differences are growing in European societies. This is also a growing tendency around the world (Barrientos 2011, Cook and Lam 2011, Béland and Waddan 2011), with it seems that there is no prospect of this changing in the future. In fact, it seems that this reality will only become more exaggerated in the future and could have relevant consequences and implications for the political systems of some countries (Kotz 2009).

In order to understand what is happening and what society can do to combat this tendency towards inequality, the main objective of this paper is to analyze a recent problem raised in Spain by a new regulation against the provision of free health care for irregular immigrants. This new regulation, adopted by the Spanish Government as an emergency measure in supposed response to the economic crisis, has caused different reactions from different actors: some from the public sector, including some Regional Governments, and others from private associations such as medical associations who have invoked the option of conscientious objection; and most recently a response at an international level, from the International Committee of Social Rights.

2. New Spanish rules after the economic crisis: withdrawal of health care from irregular immigrants

The 24th of April 2012 a new Royal Legislative Decree (RDL 16/2012) *on urgent measures to guarantee a sustainable National Health System and improve the quality and security of care*, drawn up by the National Government, was published in the Spanish Official Gazette, citing the existence of an urgent necessity to develop a new regime for the sustainability of the National Health System. This new rule has changed the access of the irregular immigrant to the public health care system (Pedrero-García and Leiva-Olivencia 2011, Sobrino-Guijarro 2013). Until its introduction, the regulation of medical attention in the case of irregular immigrants was under Article 12 of the *Aliens Act* 2000 and the requirements for receiving the same attention as a Spanish person were: to be registered in the municipal registry, or to be a minor or a pregnant woman. Also, in the case of suffering an accident or a serious illness, there was a right to receive urgent medical attention (García-Añón 2003a, 2003b).

This previous regulation under Article 12 was consistent with the *right to the protection of health*, provided for by Article 43 of the Spanish Constitution and also by Article 1.2 of the *General Health Act* and by the different Acts regarding Health Care in the Autonomous Communities (Areta-Martínez 2011). The objective was to establish a universal, public and free system. In fact, there was not completely universal and free coverage. It depended, first, on the Autonomous Communities because some of them extended the national regulation to come closer to a universal and free coverage. Second, access to health also depended on personal circumstances. There were a very small number of people outside the public health care system. These were people with either a high level of economic resources and without a link to one of the state social security systems or irregular immigrants who were not registered in the municipal registry (Solanes-Corella 2008). But it is evident that the exclusions at this time affected a very small number of people, the regulation, before the Royal Legislative Decree 2012, in general provided a close universal coverage for free medical attention.

The new regulation though established much more restrictive access to the health care system for irregular immigrants, only some exceptions were made on grounds of the urgency of the need for medical attention or the specific personal circumstances of the migrant.

2.1. Regulation

The Royal Legislative Decree (RDL 16/2012) created a new regulation covering various issues relating to the Spanish Health System. First of all, it addresses access to health care, but it also covers pharmaceutical and medical expenditure, the reimbursement of expenses for health services to European citizens and even human resources in the Spanish Health System (Antoñanzas-Villar *et al.* 2014).

All these measures are significant. Nevertheless, one of the most controversial is the restriction in the attention to irregular immigrants. This is because it changes the previous regulation included in Article 12 of the *Aliens Act* 2000, which was based on the recognition of the right to the protection of health, and replaces it with the concept of access based on the condition of being an insured person or beneficiary, a concept which ignores the existence of a right to health care.

In particular, Article 1 of the new Royal Legislative Decree 2012 establishes the new requirements for health attention in Spain and, with that, introduces a modification of the 2003 Act (L 16/2003) which addressed *cohesion and quality in the National Health System*. One of the most controversial modifications it brings about is the restriction on free health care access in the case of irregular immigrants.

As explained above, free health attention in the Spanish National Health System is now linked to the condition of being insured in the Social Security System or to the condition of being the beneficiary of an insured person (e.g. a wife, or official partner or a child of an insured person, all conditions regulated by the Spanish Royal Decree 1192/2012, 3th August). Previously though in Article 12 of the *Aliens Act* 2000, there was special recognition for irregular immigrants provided they were registered with the municipal registry. The new regulation changes Article 12 of the *Aliens Act* 2000 so that now registration with the municipal registry is no longer sufficient to gain access to free health care. According to the new Royal Legislative Decree 2012, only in the following cases is the right to free medical attention in the case of irregular immigrants recognized:

- The first case is when the person suffers an accident or serious illness.
- The second exception is for pregnant woman, because there are rights to attention during pregnancy, in childbirth and after childbirth (Moreno-Beltrán and Ballesteros Pena 2014).
- And a third exception is made for irregular migrants who are minors they have the same right to medical attention as any Spanish person.

These changes are significant. The new regulation is contrary to the concept of the protection of health as a right (De Lora and Zúñiga Fajuri 2009, Dalli-Almiñana 2015) and is also contrary to the actual protection of Public Health. In relation to the latter while it is true that irregular immigrants have medical attention in the case of a serious illness, what happens with other situations such as infectious diseases?

The risk to the health of irregular immigrants is higher following the modification of the legislation. Evidently, that is the first and most direct consequence of the new regulation, but there is also a concomitant risk to the health of the general population with the restrictions on medical attention for irregular immigrants (Gimeno-Feliu *et al.* 2014). If this is true, and it is, Public Health could be affected so the question is: what arguments are offered by the Government as justification for this new regulation and what is the real motivation for the adoption of this measure?

2.2. Theoretical objective

In theory, the main reason for the new regulation on health care in Spain is the economic crisis and the need to take measures to address this. The preamble to the new Royal Legislative Decree 2012, explains that there is a need to adopt the measures in order to safeguard the National Health System. This is the argument used by the Government both to justify the content of the regulation, and to justify the type of legal mechanism used to introduce it. For the rule used – the Royal Legislative Decree – can only be used in cases of emergency. Nevertheless, the existence of a real emergency is not very clear and the significant nature of the change suggests that instead the Royal Legislative Decree should not have been used to bypass full parliamentary process and political and social debate.

The preamble of the Royal Legislative Decree 2012 also states that health costs put the National Health System at risk and are a threat to its sustainability. For this reason, on the basis of the legal reform, there is a new organization in the model of medical attention far removed from its consideration as a right, the establishment of a new control on pharmaceutical expenditure or the effective application of European Law in reimbursement for attention provided to European citizens.

The theoretical reason is clear: basically, savings in healthcare spending. But, is this the real objective? (Hernando-Arizaleta *et al.* 2009). Even if savings are needed should it be possible to introduce measures which are contrary to human rights? What happened to the right to the protection of health which is included in the International Treaties signed by Spain? It must also be asked whether any

saving could justify measures, which put the Public Health of the population at risk? What responsibility do States have in relation to deaths of irregular immigrants in their jurisdiction and what responsibility does the State have for an epidemic of infectious disease caused by the lack of attention to irregular immigrants? Ultimately, what is the real motivation for not attending to irregular immigrants? Is it really about saving the cost of medical attention or is this restriction designed to achieve other objectives?

2.3. Real objective?

It is widely recognized that one of the most significant challenges in the future and - clearly in Europe - will be irregular immigration. The dramatic news in Spain with the complicated situation in Ceuta and Melilla or in Italy with the events in Lampedusa, in 2013, are only two examples (De Lucas-Martínez 2015).

Population movements are part of the history of humanity (Jordán-Villacampa 2003, De Lucas-Martínez 2015). Migration in order to try to find a better life is an understandable option and a legitimate aspiration (González-Rabanal 2014). But the problem is that current national regulation about the right to enter, stay, and live in a State is, basically, linked to the concept of nationality. A national person in a State has all the rights recognized by the State, but in the case of irregular immigrants the legal status is different and there are limitations on the recognition of some rights (De Lucas-Martínez 2011). But what happens with rights such as the human right to the protection of health, directly linked with public health?

The *Universal Declaration of Human Rights* (UDHR), in Article 25.1, recognizes that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services..." and, in paragraph 2, declares that "Motherhood and childhood are entitled to special care and assistance...". In the same sense but more clearly and legally binding, the *International Covenant on Economic, Social and Cultural Rights*, in Article 12, declares that:

1. The States Parties to the present Covenant recognize *the right of everyone* to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

The improvement of all aspects of environmental and industrial hygiene;

The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

The creation of conditions which would *assure for all medical service and medical attention* in the event of sickness.

In the same sense, the *European Social Charter* recognizes, in Article 11, the right to the protection of health and establishes:

With a view to ensuring the effective exercise of *the right to protection of health*, the Parties undertake, either directly or in co-operation with public or private organizations, to take appropriate measures designed inter alia:

to remove as far as possible the causes of ill-health;

to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

to prevent, as far as possible, epidemic, endemic and other diseases, as well as accidents.

The Spanish Government knows perfectly well its obligations under the signature of the treaties on human rights and knows, indeed, that the new regulation on medical care is contrary to these obligations.

The theoretical argument for the restrictions in medical attention to irregular immigrants - as explained previously - is the economic crisis but this cannot be an excuse for adopting measures contrary to the International Treaties signed by Spain. Probably, there is another intention, linked to the policy on migration and not to the economic crisis (Olmos-Alcaraz 2012). In this sense, the restrictions on medical care could act as a deterrent to immigration and this could be the *real purpose* of the new regulation.

3. Reactions to the withdrawal of health care from irregular immigrants

One of the most interesting phenomena to occur after the adoption of the new regulation restricting medical attention in 2012 was the diversity of reaction against this legal measure. Reactions were motivated by the realization that the measures were against international agreements on human rights - accepted and signed by Spain - and against rights and principles enshrined in the Spanish Constitution and that the sole argument for their introduction was the economic crisis. The most significant reactions came from some Regional Governments, and from doctors invoking conscientious objection to continue attending irregular immigrants and also from international community through the International Committee of Social Rights.

3.1. Regional governments

The Spanish Constitution, in article 149.1.16^a, reserves the basic regulation on health to the State but the legislative development and the enforcement of the legislation on health is, in fact, a competence of the Regional Governments. For this reason, after the promulgation of the Royal Legislative Decree in 2012 one of the first reactions against the new rule was from some Regional Governments such as the Basque Country, Andalusia, Asturias and the Canary Islands. All of them expressed their intention to continue to facilitate access to medical attention for irregular immigrants in the same way as before the Royal Legislative Decree. They adopted different mechanisms to do this (Lema-Tomé 2013/2014, Delgado del Rincón 2014).

In the case of Andalusia for example, the option has been to carry on in the same as before without any restrictions in non-compliance with the new rule. Another region, the Canary Islands, also announced that nobody in need of medical care would be without attention in its territory. And the same has happened in Asturias.

The option in the Basque Country was to regulate medical attention in its territory through a new Regional Decree 114/2012, June 26, *on the regime of health benefits of the National Health System in the area of the Basque Country*. The preamble of this rule explains the intention of the Regional Government, which is to maintain the "*status quo*" in relation to medical attention because -as the Decree itself says- a context of economic crisis is not the best moment to restrict health coverage. In this sense, Articles 2 to 5 of the Regional Decree recognize, in general, a free and universal medical attention.

The reaction of the National Government was to appeal to the Constitutional Court (Tribunal Constitucional de España) citing a conflict between national and regional competences. The decision of the Constitutional Court has not been handed down yet, but the Court responded to the appeal of the National Government with a provisional measure -demanded by the Basque Country- in relation to the implementation of the Regional Decree until the announcement of its final decision.

3.2. *The Spanish Constitutional Court*

The provisional decision on the implementation of the Regional Decree in the Basque Country was adopted by the Constitutional Court on 12th of December 2012. As an interim measure the Constitutional Court found that the Regional Decree should remain in force and medical attention continue to be given until it could give its final decision. In making this decision it raised a number of significant points:

- a) First of all, the Constitutional Court stated that, in a case of conflicts of competences, it is necessary to balance the different interests concerned and also to consider the damage to and problems that would be created for affected people. What harm would be caused if a Regional Decree which was ultimately found to be valid was suspended until a final decision was made?
- b) On the same lines, the Court mentioned Article 43 of the Constitution which concerned the right to the protection of health as an individual and human right and, in noted that the Decree was consistent the obligation of the public powers to protect this right.
- c) The Court affirmed also that the withdrawal of health care from irregular immigrants could affect the health of the population in general because they are often affected by communicable diseases such as AIDS, tuberculosis, etc.
- d) And, finally, the Court expressed the view that the main argument used by the National Government, in particular the economic crisis, was not sufficient justification for the restriction of a human right and for putting public health at risk.

With this declaration the Spanish Constitutional Court maintained in force, partially, the Regional Decree of the Basque Country and opened the possibility for other Regional Governments to extend medical attention to irregular immigrants as at least an interim measure until its final decision.

This was the case, for example, of Navarre who, following the decision adopted by the Constitutional Court, approved a new Regional Act 8/2013, February 25, for the recognition of the right to free medical attention in the public medical system for residents in Navarre. This rule recognizes the right of everybody living in Navarre to receive medical attention and states that the only condition necessary is to prove residence using the municipal registry or show another valid proof in law. The National Government also appealed the Act approved by the Regional Government of Navarra. As had happened in the case of the Basque Country, the decision adopted by the Constitutional Court on 8th April 2014, was also to maintain in force, partially, the Act approved by the Regional Government of Navarre in order to guarantee the right to the health for irregular immigrants and to protect the public health of the population.

3.3. *Resistance strategies: medical conscientious objection and/or civil disobedience*

One of the most significant actions of resistance against the new rule withdrawing health care from irregular immigrants, is the rejection by doctors and other workers in the health sector on the grounds of conscientious objection.

Conscientious objection is the reaction based on the conflict between a legal obligation and a moral, ethical or religious obligation (Sieira-Mucientes 2000, Roca-Fernández 2008, González-Varas 2009, Navarro-Valls and Martínez-Torrón 2011, Castro Jover 2016). The conscientious objector is a person situated between two obligations each very different from one another. One of the obligations is of a legal or contractual nature and the other has its origin in personal conscience (Contreras-Mazarío 2014).

It is very important to understand that conscientious obligation stems from the principles a person holds, and is part of their ethical, ideological or religious beliefs (Fernández-Coronado 2014). In this sense, it is very much more than just an opinion or an idea. It is part of oneself and part of one's own understanding of life (Llamazares-Fernández 2013). For this reason, it is very difficult to act against this conscientious obligation, basically because to act in a different way is, in the end, to act against oneself (Wicclair 2000).

In relation to medical attention for irregular immigrants, the legal obligation is the new Royal Legislative Decree and the restrictions explained. Doctors and other workers in the health sector are obligated by this new regulation in their professional activity but this rule is in contradiction to other professional and ethical obligations. In this sense, it is well known that doctors have an ethical obligation to care for and attend their patients. This obligation is part of their profession and it is contained in the Hippocratic Oath.

The existence of a conflict between the new legal obligation and ethical and professional obligations explains the reaction of doctors and other workers in the health sector in invoking the option of conscientious objection.

In particular, the Spanish Society of Family and Community Medicine launched a campaign to promote conscientious objection in relation to the Royal Legislative Decree. This campaign included sending a document to the main professional associations of doctors with the intention of providing them with relevant information prior to making a declaration as a conscientious objector.

There was interesting reaction from the workers in the health sector is the movement "Yo sí, sanidad universal" which had the same intention. This organization provided information to doctors, nurses, and other worker in the health sector about how they could resist the application of the Royal legislative Decree. Additionally, they offered information about conscientious objection in relation to treatment of irregular immigrants affected for the application of the new regulation. One of the problems for the workers in this context was the ignorance about the consequences of conscientious objection and the movement provided information with the intention of clarifying this. This organization had a legal team who worked to prevent objectors from encountering legal problems.

These kind of initiatives are very significant because it is an act of rejection coming from the main collective involved in the application of the new regulation and indeed this rejection is based on ethical and professional obligations.

In relation to this reaction of doctors - and other workers in health sector - against the application of the new regulation, it is possible to analyze if, in the end, their rejection is more akin to civil disobedience than a conscientious objection (Brownlee 2012, Navarro-Casado 2013). Though it is important to clarify that our purpose in this article is not to do a specific study in relation to the differences between conscientious objection and civil disobedience, it is at least worth noting that the main difference between both concepts lies in the motivation of the actor. In the first case, the intention of a conscientious objector is basically not to be forced to fulfil the legal obligation contrary to their conscientious obligation (Cohen 1968). In the second case, the motivation has a political or legal objective, linked with the idea of justice (Rawls 1999). The purpose in the latter case is not only personal, it is a more general intention to provoke a change in the law.

Following this basic clarification of concepts, the question is whether, ultimately, the rejection of the application of the new Royal Legislative Decree by doctors and other professionals in the health sector is a conscientious objection or a civil disobedience. It is quite likely that this reaction, in fact, belongs to both categories.

Firstly it would be a conscientious objection (Seoane 2014), because the main objective is not to be forced to apply a rule contrary to a conscientious obligation based on a professional and ethical obligation.

At a secondary level, the purpose of the doctors could also be to try to change a rule which is contrary to the notion of justice. Since justice requires us to recognize the right to the protection of health as a human right and it is evident that the new rule does not recognize the protection of health as a human right and therefore has negative consequences.

This double face, firstly as a conscientious objection by workers in health sector and secondly as a form of civil disobedience, offers a special force to the action taken and, of course, the use of the law in support of their claims is interesting. The Spanish Constitutional Court recognized the right to 'conscientious objection' in relation to the health sector (basically in relation to the abortion) as a mechanism to reject an unjust law. In other words, as a form of civil disobedience. The health workers action shows the versatility of the law and that it is possible to use this right in a different context from that which it was originally given. Usually, conscientious objection in medicine is used by workers in health sector to resist doing practices contrary to their personal conscience but, in this case, the same right is used in a different way, trying to act (health care) against an unjust regulation and in coherence with their professional ethics.

3.4. *International Committee of Social Rights*

The most significant reaction in support of the doctors' stance against the application of the new Royal Legislative Decree at the international level has been from the Committee of Social Rights. The Committee of Social Rights has as its main function the monitoring of the application of the European Social Charter by the European Council members who have signed and accepted the Charter: Spain is one of those members who have signed.

The European Social Charter established, in 1961, is a mechanism for monitoring activity in the member States in relation to the application of social rights. At first, this monitoring mechanism was based on the presentation of reports from the States, every two years, detailing their compliance with the Social Charter they had ratified. Now, since a decision taken by the Committee of Ministers of the Council of Europe on 1st of October 2007, a new system requires states to present a yearly report on an annual theme (Jimena-Quesada 2014). There are 4 of these thematic groups based on different Articles of the Charter so each one is the object of a report and examination every 4 years. The different groups are focused on:

- Group I: Employment, training and equal opportunities (Articles 1, 9, 10, 15, 18, 20, 24 and 25)
- Group II: Health, social security and social protection (Articles 3, 11, 12, 13, 14, 23 and 30)
- Group III: Labor Rights (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)
- Group IV: Children, families, migrants (Articles 7, 8, 16, 17, 19, 27 and 31)

For 2013 States were required to report on the second thematic group, "Health, social security and social protection." In relation to these rights and their application in Spain, the conclusion of the European Committee of Social Rights was that the Royal Legislative Decree 16/2012 of 20 April *on urgent measures to guarantee a sustainable national health system and improve the quality and security of care*, which had the effect of denying foreigners irregularly present in the country access to health care except in "special situations", was inconsistent with Article 11 of the Charter. The Committee in its Conclusion affirmed that:

...the States Parties to the Charter (both the 1961 version and the revised 1996 version) have guaranteed to foreigners not covered by the Charter rights identical

to or inseparable from those of the Charter by ratifying human rights treaties - in particular the European Convention on Human Rights - or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations.

This affirmation is very significant because it is based in the recognition of the right to the protection of health as a human right, based not only on internal rules but also on international human rights treaties, signed and ratified by Spain and therefore in force.

In relation to the application of this specific human right the Committee say:

...that the States Parties to the Charter have positive obligations in terms of access to health care for migrants, "whatever their residence status". Also in relation to Article 11 of the Charter, the Committee "...has pointed out that paragraph 1 requires States Parties to take appropriate measures to remove the causes of ill-health and that, as interpreted by the Committee, this means, inter alia, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population" insofar as "health care is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law - whether under the European Social Charter or the European Convention on Human Rights.

The Conclusion of the Committee adds much more when it affirms that:

...the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when the beneficiaries need the protection most". They conclude by saying that "...the economic crisis cannot serve as a pretext for a restriction or denial of access to health care that affects the very substance of the said right.

This Conclusions of the Committee of Social Rights has an important legal effect because it ultimately provides a conclusive legal interpretation of the European Social Charter, an International Treaty signed by Spain and in force in the country through application of Articles 10.2 in relation to Articles 93 and 96 of the Spanish Constitution.

4. Political answers after the international and social pressures

The 31st of March, 2015 the Spanish Minister of Health announced a new measure in relation to the health care of irregular immigrants. In declarations to the mass media, he said that irregular immigrants would have the right to be attended again in Primary and basic health care centres but only for primary health care and not for other kind of services. He explained that this is because the new measure does not include the issuing of a public health card to the irregular immigrants: something which would be necessary to gain complete access to the health care system.

The reason offered by the Minister for changing the regulation established by the Royal Legislative Decree 16/2012 was basically the protection of Public Health. Nevertheless, in his declaration, there was no mention of health care as a human right (Añón-Roig 2010).

This omission was denounced immediately after the announcement by *Doctors of the World* in Spain. This NGO criticized the measure saying it was not enough, because there was still no general recognition of the right of health care for everyone. In addition, the same NGO, warned that the refusal of a public health card to irregular immigrants will have serious consequences because it will be very difficult to follow the progress of the treatment recommended by primary health

care providers and because, of course, with no card there will be no access to medical specialties.

The announcement from the Ministry of Health was published only two months before the Spanish regional and municipal elections and had a very clear political objective. After the victory of Syriza in the Greek elections, the Spanish National Government began to adopt measures in order to limit any negative electoral reaction by the population to restrictive measures, adopted since the beginning of the economic crisis. It is likely that announcement by the current Minister of Health was made for electoral purposes.

The intention is clear: the Government publishes a new measure, just before the regional and municipal elections, and, in theory, with the intention of protecting Public Health but it is evident that this decision was actually directed to the electorate for the purpose of obtaining votes.

Now, the next step will be the application of the new measure announced. In this sense, as mentioned above, the competence is in the hands of the Regional Governments. Some of them, decided not to apply the restrictions to the health care to irregular immigrants but, in other cases, it was applied.

After the elections, the political groups in power in Regional Government changed. More Regional Governments are now in favor of recognizing health care for everyone. This was the case for example, in the Valencian Community. Recently, the new Regional Government there announced that anyone will have the opportunity to receive public health care if they have been officially registered for three months in the municipal registry, are without private health insurance and come from a country which does not have an agreement with Spain on mandatory payment for health care. This measure was announced only a couple of months after the election of the new Regional Government in the Valencian Community and it suggests the official recognition of the universal right to the health care.

It is evident that the reasons behind this kind of changes are linked to both international pressure from the European Committee of Social Rights as explained above, and also to domestic social pressure. In relation to the latter the action from the medical workers was the most relevant, because they used their right to the conscientious objection as a new form of civil disobedience against an unjust law.

5. Conclusion

In the last few years, the Spanish Government used the argument of the current economic crisis to establish some measures which have had an impact on rights, especially in relation to vulnerable people. One of the most controversial measures was the withdrawal of health care from irregular immigrants regulated in a Royal Legislative Decree 16/2012 of 20 April *on urgent measures to guarantee a sustainable national health system and improve the quality and security of care*.

This restriction to the health care of irregular immigrants leaving with few exceptions, pregnant women, children and emergency cases, was fundamentally, a denial of the recognition of the right to the protection of health recognized in the Spanish Constitution and in the international human rights treaties signed by Spain. Nevertheless, the new rule, ignored these internal and international obligations, and established a major restriction on individual access to healthcare which also affects public health.

The reactions against this measure have come from different institutions, organs and groups. One of the most notable - for it is unusual - is the collective rejection by doctors and other workers in the health sector using their right to the conscientious objection as a new form of civil disobedience. Another rejection has come from some Regional Governments with the support of the Spanish

Constitutional Court. Most importantly, in a legal sense, was the rejection by the European Committee of Social Rights.

All these reactions from different levels - regional, international, social and judicial - which oppose the new rule in similar terms - are evidence that the infringement of this most important social right has public implications: the right to the protection of health for every individual and for the population as a whole. In this sense, the final decision of the Spanish Constitutional Court in the cases of the conflict of competences between the Spanish Government and the Basque Country and Navarre – will be significant. Currently the Royal Legislative Decree (RDL 16/2012) is still in force because the first decisions from the Constitutional Court were only provisional.

The social rejections by doctors and other workers in the health sector and, especially, the clear conclusions of the European Committee of Social Rights in favor of the protection of the right to health and against the new rule approved by the Spanish Government have marked the way for change and have forced the recent modification to the Decree announced by the Spanish Minister of Health.

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