

THE POLICY IMPACT OF THE SPECIAL REGIME FOR DOMESTIC WORKERS 2011 REFORM ON DOMESTIC WORKER IN SPAIN

By

Yesica Huerta

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Supervisor: Andrea Krizsán,

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Abstract

This thesis investigates and assesses the policy impact of the SRDW 2011 reform on domestic workers. It identifies the positive and negative aspects of the reform based on the criteria of the Law 27/2011 and Royal Decree 1620/2011 regarding to the spheres of social protection and employment relationship. It analyzes the reform according to the perspectives of different interest groups. Based on the secondary data and empirical evidences, this thesis argues that the SRDW 2011 reform rather than granting protective action, job security and working conditions, the implementation of the reform contributes to lower their wages and deducing the number of working hours. Moreover, this thesis underlines that the reform puts domestic workers in a worse position and make them a vulnerable target for exploitation and mistreatment.

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Introduction

This thesis is motivated by the Special Regimen for Domestic Workers (SRDW) 2011 reform in Spain. After twenty six years of the creation of the SRDW, the Spanish government finally decided to reform the SRDW and include the special regimen into the General Social Security System (GSSS). This reform was made in the middle of an economic crisis, unstable social security system and general election¹. The reform was considered a great success from the side of the ruling party, the Spanish Socialist Worker's Party (PSOE), Trade Unions (CCOO and UGT), the Platform of Association for Domestic Workers (PADW), and domestic workers themselves because it gives access to social benefits and improve employment relationships. Moreover, the ILO Convention 189² played an influential role in the policy making, since several recommendations were added to the SRDW³ (ILO, 2011).

In Spain, the issue of domestic worker's rights is particular important not only in the European Union (EU), but in the rest of the world. According to ILO report (2013), Spain is considered to be one of the industrialized countries in the EU with the highest number of domestic workers working in the sector in comparison with the rest of EU countries. From 1995 to 2010, the number of domestic workers increased rapidly, reaching approximately to 747,000 domestic workers in 2010 (taking into account that during the years 2008 and 2009 the number of

¹ The SRDW 2011 reform was passed in August and the Spanish General Election were held in November. At the time, the Spanish Socialist Worker's Party (PSOE) was the ruling party, but after the election it was overthrown by the opposition People's Party (PP)

² ILO (2011) convention Decent Work for Domestic Workers

³ The Spanish government adapted the following articles: Article 6 (condition of employment); Article 7 (written contract), Article 10 (working hours), Article 11 (Minimum wage), Article 12 (Remuneration), Article 13 (Social Protection), and Article 16 (Extending employment opportunities).

domestic workers decreased due to the economic crisis) (ILO, 2013). Furthermore, this issue is important to investigate because domestic work is a highly demanded low-skill job in the domestic sector and it is dominated and most of them migrant women. On the one hand, female migrant workers use the domestic sector as a platform to access the labor market informally and without a problem (Oso Casas, 2010). As Oso Casa indicates, domestic work can be advantageous, since this job can provide free board and allow migrant women to save some money while they get used to the host country (2010).

On the other hand, several scholars suggest that the high demand of female domestic workers is also attributed to different factors, such as the insertion of Spanish women into the labor force, which had created a gap for Spanish women between family matters and work; the increase of elderly population that needs social care (Leon, 2007; 2013; Bettio, Simonazzi and Villa, 2006); and the Mediterranean welfare regimen model, which is characterized by the prevalence of the “family and relations support” (Parella Rubio, 2003). This model suggests that female domestic workers are the main provider of care for children and the elderly (2003).

In addition, the ‘subsidiary principle’ states that the regulation of social provision and care services not only for children but for dependent family members is a responsibility of the family (mainly women) to provide care and support (Parella Rubio, 2003). In this case, Spanish women have to manage to find a way to keep working and maintain the balance in their family life. The inefficiency of the welfare state in regard to social provisions and the lack of reconciliation of work and family life” (Peterson, 2013) policies force Spanish women to depend on domestic workers and pay them for their domestic services as a necessity rather than a luxury.

As result of the high demand in the domestic sector, different issues have arisen which have contributed to the controversial debate about domestic workers and their rights as employees. Since this sector is predominately composed by women (mainly women migrant domestic workers), issues of gender inequality have called the attention of researchers and activists in regard to domestic workers' protection in the workplace, labor rights and access to social security benefits as an employee. However, there are several issues that make this problem harder to address; one is the formalization of the domestic work as a paid job and the second is the difficulty to implement effectively. In other words, poor enforcement and monitoring procedures give room to working illegally under an informal economy which eventually contributes to segregation, maltreatment, and high level of exploitation of domestic workers in the sector (Anderson, 2001).

Countries that recognize domestic worker's rights argue that improving their working conditions lead to more informal employment (Gomes and Braviera, 2013), and regulating and controlling this sector can provoke adverse consequences (Leon, 2010). In the case of Brazil, the improvement working conditions lead to an increase of formal market in 1990s after recognizing their labor right and the trend continued to 2000's when the law 11.324/2006 introduced additional rights to domestic workers (Gomes and Braviera, 2013). However, in Leon's study, conducted prior the reform of SRDW 2011, a representative from the Ministry of Labour and Immigration reported that there are two main barriers to enforcing SRDW effectively: one the "impossibility of enforcing labour inspections in private homes makes unemployment protection unfeasible" (Leon, 2010: 415) and second barrier is that "too much employment protection can backfire in the sense that it could encourage households to transfer to the undeclared economy where domestic services are available more cheaply" (Leon, 2010:415).

The levels of complexity that the country is facing around this topic and the economic crisis, taking into account the high unemployment rate (low contribution to the system and more claims for unemployment benefits), and high rate of pensioners' claims, the inclusion of SRDW into the General Social Security system (GSSS) makes me wonder if the main aim of the Spanish government was to reform the SRDW was to increase contribution rather improving job security and working conditions for domestic workers (this you need to reword a bit, i get lost reading it).

Therefore, this thesis investigates and assesses the policy impact of SRDW reform by taking into account the political transition of PSOE, economic crisis, and sustainability of the social security system. I want to identify whether the main aim of SRDW according to the state, trade unions, and associations for domestic workers has been accomplished after fifteen month of implementation. For the purpose of this thesis, I only focus on the Law 27/2011⁴ passed in August and the RD 1620/2011⁵ passed in November of 2011. I analyze from January 2012 until March 2013. Subsequent modifications were made in December of 2012, but are not be evaluated in this thesis.

The development of the study is organized as follows: in the first chapter, I provide a brief historical background of the SRDW and changes made to the regimen since its creation in 1969. Moreover, I provide an overview of the political and socio-economic context prior to the reform and explain the motivation to make the reform and finally how SRDW reform in 2011 came into place. In the second chapter, I assess SRDW reform according to the policy criteria established

⁴Law 27/2011, 1 August, focuses on updating, adaptation and modernization of the Social Security system.

⁵Royal Decree 1620/2011 14 November, it regulates the employment relationship, especially domestic work, in the sphere of the family home.

in Law 27/2011 (social protection) and RD 1620/2011 (employment relationship). Moreover, I identify the positive and negative aspects of the SRDW 2011 reform. In the third chapter, I analyze the main aim of SRDW reform from the perspective of the state, trade unions, and associations that support domestic workers along with domestic workers expectations.

Literature Review

The following literature review offers a better understanding of the complexity of formalizing and enforcing regulations for domestic workers. In addition, it provides a summary of how other countries have had addressed the issue at hand and the measures that have been taken in order to regulate and enforce domestic work policies more effectively. The first part of the literature is about whether domestic workers should be considered as formal employees and if the job they perform should be compensated with a salary: different arguments emerge in the literature, especially when analyzed through the feminist perspective. According to Susan Ostrander, paying domestic services hinder the domestic workers as women (1987), and Bergmann adds that it disrupts domestic labor division especially among women who are assigned some house chores as housewives base on the labor division system (1998). Moreover, Gorz argues that domestic work is morally unacceptable because that set the dynamics of power and status among women (women employer and domestic workers) creating at the same time gender inequality among them. Gorz continues with the argument that paying for domestic services shows how the most privileged people in this case women, tend to designate tasks to domestic workers who are less privileged (1994). Therefore, feminists argue that paying for domestic services is morally wrong because it justifies the “dirty work” domestic workers have to perform for other women (1994).

Formalizing domestic work as a paying job is difficult because it takes place within the premises of the household. In Spain, this issue tends to be conflicting because the SRDW interferes with the domestic workers constitutional rights. Even though for the SRDW 2011 reform, domestic work is considered “atypical job” due to unusual characteristics that continue to make it difficult to regulate domestic work as a job and apply the contractual relationship (Banyuls, Cano, Picher and Sanchez, 2003: 83; Leon, 2010). Moreover, domestic work is framed as a solution of the lack of care provision rather than addressing the rights of domestic workers (Peterson, 2013). Instead, the Spanish government frames domestic work as “atypical character” which justifies the poor enforcement and exploitation of domestic workers (Fauve-Chamoux 2005; Gavanas and Calleman 2013) and contributes to employer take advantage over domestic worker (Pateman, 1988).

The second part of the literature explains the difficulty when defining domestic work tasks. As Anderson states, it is difficult to define a job description for domestic work because there are different tasks such as cleaning, washing clothes, cooking, taking care of children performing simultaneously (2001). Schwartz adds that those tasks happen at the same time, which involves a process of coordination and organization, for example while cooking, domestic worker may also be taking care of the child and washing dishes and cleaning (1983). Therefore, he argues against domestic work as paying job because it is difficult to monitor, hard to define the job description, and it demands psychological and emotional work (1983). However, Meagher argues that recognizing the job gives legitimacy and encourages domestic workers to demand for social recognition, fair compensation and better working conditions. It eventually decreases the level of maltreatment and discrimination (1997, 2000: 56). Following the same line, Meagher states that

“formalization of paid domestic work can reduce the risk of certain kinds and economics abuse by ‘triangulating’ the employment relationship, thereby changing the incentive structure of transactions” (Meagher, 1997, 2000: 56).

Moreover the third part of the literature, offers some measures from countries that have introduced legal framework to address social protection and employment relationship. The informality of the domestic sector is among one states’ concern; thus, policy-makers try to address this issue by taking legal measures. For example, Sweden and France offer tax benefits to employers for hiring domestic workers, and Belgium incentivizes employers to hire legally domestic workers with ‘cash transferred’ which it is controlled by state (United Nation, 2010). Regarding social protection, some EU countries, such as Belgium, France and Italy grant domestic workers access to healthcare and enjoy temporarily incapacity in case of sickness (EUAFR, 2011), except Germany, if domestic worker is irregular, they can only receive emergency care for free (2011).

In addition to healthcare access, countries such as Germany, the state established a legal framework for all employees where domestic workers can acquire accident insurance on the name of the employers which suggest that for irregular domestic workers, they can have access to it as well (EUAFR, 2011), and the case of Belgium, if employers are insured in case of their domestic worker suffers an accident, employers can rely the Belgian Public Industrial Accident Fund (2011). In 2003, Jordan introduced legislation in the labor code where employers are obliged to cover half and domestic workers the other half of the life and accident insurance premium (ILO, 2013).

Concerning employment relationship, recent countries such as Bolivia, Uruguay, Brazil, Hong Kong, Argentina, France, Jordan, Switzerland, South Africa, and United States (State level) to mention some, they have modified and put into action labor laws in favor of domestic workers. For example, Bolivia, Uruguay, Philippines and Italy are some of the first countries that have ratified the ILO Convention No. 189 since 2011. Some of the main regulations include written contract, minimum wage, and working schedule (ILO, 2013).

To some extent domestic workers are covered under national legislation, state law, or other specific regulations where domestic worker are in the scope of the legislation. However, in the case of India, there are some pieces of legislation where domestic worker are not under the scope because there are some restriction in the definition of the terms for example, ‘workermen’, ‘employer, or establishment’ (Ministry of Labor and Employment, 2011, p. 15), which can leave room to ambiguity and sometimes a negative interpretation. Moreover, Jordan excludes domestic workers from the national labor law, but it protects domestic workers under specific regulations. Therefore, it is important to carry out the piece of legislation and translate the terms and objectives into practical terms in order to meet the goal of the legislation. However, the problem starts when the main aim of the implementation is not well defined, especially among interest groups and each group is after different interest.

Even though Spain was one of the first countries that introduced legal instruments from the ILO Convention No. 189 in the SRDW 2011 reform to protect domestic workers, it still does not ratify. In the reform, Spain recognizes domestic worker’ rights which may contribute to decrease the level of exploitation; however, the poor enforcement lead to the reoccurrence of abusive incidents in the workplace. To assess the impact of the legislation on domestic workers, this

thesis intends to identify those factors that hinders domestic worker and how affect in their daily life.

Fifteen months after SRDW was passed, there are still some issues up in the air, which makes the SRDW reform implementation to some extent uncertain and ambiguous. As part of the literature review I provide a better understanding of the regulations and modifications added to the new reform, which includes reforms in both spheres social security protection and employment relationship. By looking at the technical normative and legal security from the Law 27/2011 and the RD1620/2011, I assess some elements of the reform that were carried out and analyze the impact of the reform. I start with the Law 27/11 which refers to the social security benefits. Under this law, I focus on three aspects: (a) contribution to the Social Security system, (b) affiliation, and (c) protective action⁶. Second, I focus on the RD1620/2011 which includes elements related to employment relationships such as (a) job employment, (b) wages, (c) working schedules and vacation time⁷. Based on the elements mentioned above from both spheres, I assess regulations of each aspect by taking into account the rights and responsibilities for both and employers and domestic workers.

I want to scrutinize the impact of the SRDW reform and evaluate the positive and negative aspects from both spheres of the social protection and employment relationship to see if the objective of SRDW has been accomplished. Therefore, I ask the following research questions:

⁶There are other regulations implemented such as permanent disability, retirement, economic benefits by religious profession, death and survival and family benefits, maternity, paternity and risk during pregnancy and breastfeeding. However for this purpose of this study I focus on fours aspects due to the time and complexity to assess those aspects in the short time of the implementation. Moreover, I am mainly interested on the wages and working schedule, elements in the reform that directly and immediately affect domestic workers after the implementation.

⁷ The RD 1620/2011 includes the modification of unfair dismissal and compensation, but in this analysis there are not going to be included.

1. How does the inclusion of SRDW into the General Social Security system impact domestic workers?
 - a. What are the positives and negatives aspects of SRDW's implementation?
2. What was the main aim of the Spanish government, trade unions, and associations for domestic workers to reform the SRDW in 2011?
 - a. Were the objectives of the SRDW accomplished, according to the perspective of the State, trade unions, and associations for domestic workers and domestic workers?

Methodology

Research Design

To conduct this study, I collected primary and secondary data in order to analyze the impact of SRDW 2011 reform in Spain. Since my focus is based on the changes made in the spheres of social protection and employment relationship, I conduct the following approach. First I conducted desk research to complete literature review section. Moreover, I investigated each element of interest and identified the possible advantages and disadvantages of the system. However, my aim was to obtain first hand information and reactions from associations and domestic workers in regard to the changes and how that affect domestic workers directly, especially on wages and working schedule; thus, I also conducted a qualitative research, which consisted of interviewing and moderating a focus-group. I decided to conduct my field study in Madrid because it is one of the main cities in the country along with Barcelona, with a high percentage of domestic workers working in the sector. Therefore, conducting my interviews there facilitated my field work contacting different associations and domestic workers.

Empirical Research

In order to select my sample, I applied a convenience sampling and referrals to identify potential participants in the Community of Madrid, Spain. I contacted diverse associations, especially those that are part of the Platform of Associations for Domestic workers (PADW) and domestic workers. Once I identified my potential interviewees, I interviewed two associations, Caritas'Organization, Madrid and Centro Pueblos Unidos (United Town's Center), and four

domestic workers⁸. Each interview lasted approximately 30-40 minutes. I used two different questionnaires one for associations and the other one for domestic workers, where I addressed the themes of interest, wages and working schedule. The domestic workers' interviews were confidential, anonymous, and voluntary. I did not expect domestic workers to disclose any information regarding their legal status, although it was mentioned during the interviews. In addition to the interviews, I participated in a focus group called "Charla Mutua Apoyo Mutuo" (Talk Mutual, Mutual Support) at the center Pueblos Unidos (United Towns' center). In the group, there were five unemployed domestic workers where they shared their experiences and opinions regarding the reform and how those changes affected their daily lives. During the group session, I moderated the conversation and asked specific questions addressing several themes such as wages, working schedule and their contributions to the social security system.

Data Analysis

To analyze the information obtained, I triangulate both secondary data with the responses I collected in my empirical study in order to investigate and assess the policy-impact of the SRDW 2011 reform. I analyzed the positive and negative aspects of the reform and how that policy affected domestic workers and their working conditions. I identify if the SRDW' objectives were accomplished 15 months of the reform, according to the state, trade unions and associations for domestic workers and domestic workers' expectations.

⁸ Interviews were conducted in Spanish and I provide literally translation of the responses of interest.

Chapter 1: Background of the Special Regimen for Domestic Worker

Since the creation of the SRDM in 1969, there has been a reform to the regimen in 1985. During this time, a number of attempts to modify the reform were killed due to lack of agreement between political parties and trade unions. However, SRDW reformed is finally passed in 2011, in the middle of economical turmoil, change of government and unstable social security system. This chapter provides a brief historical background of the SRDW and the changes made before the reform in 2011. Moreover, it overviews the political and socio-economic changes in Spain and further discusses how the reform came into place.

1.1 Changes in the Special Regimen for Domestic Worker since 1969

In 1969, the Spanish government established the SRDW⁹. It stipulated special conditions for domestic workers in regards to employees' contribution, affiliation and entitlement to social protection as part-time and full time workers (Gomes and Baviera, 2013). Following the need to simplify the social security framework, in 1985 the law 26/1985¹⁰ and the RD1424/1985¹¹ included some social benefits and legal contract regulations under certain conditions because domestic work was performed inside private premises and that violated constitutional rights (Leon, 2010: 2012; Gomes & Baviera, 2013). Despite the reforms made, domestic workers were not part of the Workers Bill of Rights; thus, the SRDW continued lacking entitlement and responsibilities such as unemployment benefits, absence for sickness, low retirement compensation and wages (Peterson, 2007; Tascon, 2011; Leon, 2013; Gomes & Baviera, 2013). As a way to address the dysfunctional issues in the system, the General Social Security Law was created in 1994, which aim was to homogenize the social protection of the general system.

⁹Royal Decree 2346/1969, 25 September standardizes the Special Social Security Regime for domestic workers.

¹⁰Law 26/1985 establishes urgent measures for rationalization of the structure and protective action of social security.

¹¹Royal Decree 1424/1985 regulates the legal regimen of domestic worker relationship and head of a family as employers.

Subsequent to multiple modifications and following up the demand from the European Union, the 1995 Toledo Pact¹² was accomplished with the support and consensus of the Spanish Parliament, which represented all the political interest such as members of the parliament, trade unions. The objective was to regulate social security system by making it sustainable and feasible to cover the pension according to the EU's standards (Preamble of Toledo Pact, 1995).

After those major reforms, several modifications were made, such as reformation of the Toledo Pact in 2003, which continued addressing the deficiencies of the system. At this point, the Platform of Associations for Domestic Workers (PADW) played an important role because they were involved in the policy-making process. They advised and recommended political representatives and social actors in order to address the deplorable working conditions domestic workers face in their workplace (Peterson, 2007). In the meantime, the debate continued in the parliament, trying to define whether domestic work should be recognized as a dignified job and improve the working conditions, since the current regulations were inequitable and outdated (2007; Gomes & Baviera, 2013). Followed by the 2006 agreement, policy makers considered the possibility to integrate the SRDW into the General Social Security system, with the aim to homogenize and converge both systems into one (Ruano, 2012). By 2007, several agreements continued encouraging the simplification of the special regimens and reach equity in regards to the social protection and employment relationship for the SRDW. At this stage of the process, different drives and pressures encouraged the Spanish government to reform the SRDW and improve domestic worker's rights.

¹²Preamble of the Toledo Pact 1995 establishes the beginning of the simplification and integration of the system.

1.2 Political and Socioeconomic Context

1.2.1 Motivation to change the SRDW in 2011

Before looking at the SRDW 2011 reform, it is important to take into account the political and socioeconomic factors that may have contributed to the reform, especially because it was passed at the end of the socialist government (PSOE-Partido Socialista Obrero Espanol) and was a reform that has been guaranteed since 2007 by Rodriguez Zapatero as part of the election campaign promise (Sahuquillo, 2011). However, the complexity of SRDW inclusion into the general system and the homogenization of both has been a challenge because the reform would not only address labor relations, but also would deal with the contribution system from a sector that has been working underground economic (2011).

Two months prior to the reform, the ILO Convention No. 189 on Domestic Workers was held. It provided a boost to the SRDW reform and it insisted on member states to adopt better working conditions for domestic workers, since most of them are migrant women in a situation that makes them vulnerable to suffer discrimination and abuse (ILO Convention No. 189; Leon, 2013). To add to this pressure, the sustainability of the GSSS was suffering the consequences of the economic crisis. The decrease of income contribution due to the high unemployment rate and the increase of people claiming pensions were making the picture a bit more complicated. In the mean while trade union (CCOO and UGT) continued advocating until finally the SRDW was integrated to the GSSS established by the Law 27/2011, which gave domestic workers access to social protection (Leon, 2013); and eventually in November the Royal Decree 1620/2011 substituted the Royal Decree 1424/1985 by improving the employment relationship (Ruano, 2012; Gomes & Baviera, 2013).

In 2011, the purpose to integrate SRDW into GSSS was a way to rationalize the special regimens, simplify the structure of the system and consolidate them into two regimens: General Regime for dependent employees and General Regimen for self-Employed employees (Ruano, 2012; Leon, 2013). Both regulations not only satisfied the objectives of those interest groups in the parliament, but also allowed domestic workers to demand access to social security protection and enjoy job security and better working conditions (Ruano, 2012; Leon, 2013; Gomes & Baviera, 2013). In the following chapter, I provide specific details about each provision from both sphere protective action and employment relationship.

Chapter 2: Assessing the SRDW policy-impact based on the criterion established by Law 27/2011 and RD 1620/2011

In the following chapter, I assess the social protection and employment relationship spheres. At this point, employers and domestic workers comply with rights and responsibilities established by the law. However, for domestic workers the level of uncertainty and instability has increased due to changes made in their level of contribution, social access and working conditions caused by the reform. In order to investigate what are those factors, this chapter assesses the policy-impact of SRDW according to the policy criteria established by Law 27/2011 and RD 1620/2011 regarding social protection and employment relationship respectively. Moreover, this chapter further evaluates the positive and negative aspects of the SRDW before the reform and after the reform. I closely focus my analysis during the grace period (January 2012- June 2012) and the following months (July 2012- March 2013).

2.1. Identifying the positive and negative aspects of the SRDW Reform in regard to access social protection

In this chapter, I assess the positive and negative aspects focus on the following elements of the social protection such as contribution to the Social Security system, affiliation (registration and removal), and protective action. Moreover, I analyze overall how the reform impact domestic workers.

2.1.1 Contribution to the Social Security System

There are some positive and negative aspects to highlight about contributions. Law 27/2011 establishes that domestic workers and employers should contribute a total of 22 percent base on the wage domestic workers received. Domestic workers are obliged to pay 3.7 percent and

employers cover upto 18.3 percent¹³. The positive aspect of this law is that for discontinuous domestic workers¹⁴, employers are obliged to contribute to social system from the first working hour. If domestic workers only work for a couple of hours, employers have to contribute for those hours. However, the negative issues to highlight are the following: For some employers, the proceedings to register domestic worker were a bit complicate, especially for some elderly people. There were legal information that they did not how to handle (ORG2). The absent of legal assistance to fill out the paper work affected the process and response. Both employer and domestic worker had difficulty to understand the legal terms of the registration and contribution to the system (Gomes and Baviera, 2013). .

The new regulation introduced a 15- bracket scale, where domestic workers contributed according to their wages. For example, for domestic workers who were paying their own social protection, they paid the base quota of 164.60 Euros monthly, whereas now their contribution can be calculated according to their minimum monthly wage. Based on the wage, it can be approximately 173.893 Euros per month (Ameco Press, 2012). However, there are some downsides of the implementation, especially during this economic crisis. Since employers are obliged to contribute with the 18.3 percent, the cost to hire domestic workers increased. Garcia (2012) agrees with the fact that employers have to cover their share for hiring a domestic worker; however, the problem is for low-income families who require domestic service and are not able to cover the extra cost. Now hiring a domestic worker increases the family's expenses which

¹³ The law 27/2011 establishes a contribution scale of 15 brackets that will be used during the transition period until reaching homogeneity to the General Regimen by 2019.

¹⁴ Discontinuous domestic worker (also referred as part-time workers) is a person who works less than 72 hours each month and have multiple employers.

force employers to rescind from their services leading to other problems such as unemployment which I highlight later in this thesis (Ameco Press, 2012).

For discontinuous domestic workers who were already in the system covering their own social protection, they would not be able to pay on their own social protection anymore unless they are registered by their employers which indicates that employers have to proceed with an official written contract. Taking into account that those discontinuous domestic workers have more than one employer, this procedure tends to be a hassle not only for domestic workers, but for employers as well. Poor legal assistance and legal procedures to follow, employers decide not to register their domestic worker. According to DW1, she mentions that at some point she has to negotiate on whether she wants to keep the job or not, otherwise employers find another one willing to work under their conditions; thus a great number of domestic workers end up unprotected in any case.

Regarding incentives provided to new affiliates, it was highly criticized by employers and domestic workers who were already complying with the law. ORG1 states that many employers and domestic workers disagreed with the reduction of the contribution and declared it as unfair because the incentive only applied to new affiliates and not to everyone in general. Despite the benefits domestic workers receive by contributing to the system, the administrative procedure was complicated, especially for elderly employers. They complained to the Ombudsmen office stating that registration proceedings and the legal process were not easy to understand (Gomes and Baviera).

2.1.2 Affiliation (registration and removal) to the Social Security System

In regard to the affiliation process, the employers are obliged to register and remove domestic workers from the social security system. This process applies to full-time workers (external and internal) and discontinuous domestic workers (part-time workers). The positive aspect was for domestic workers (full-time workers) who were already in the system. In their case, their integration into the general system was automatic. For discontinuous domestic workers, who have multiple employers, they have to be registered by each employer (Ruano, 2012; Centro Pueblos Unidos; Platform of Associations for Domestic Workers; Gomes and Baviera, 2013). However, the negative aspect was that if those domestic workers were not registered in the system by the end of the grace period by their employers, they would be removed from the system and ended up unprotected.

According to the Spanish Ministry of Employment and Social Security (SMESS), it indicates that by the end of the grace period (June 2012), those who were in the previous special regime (Extinction) about 127,973 domestic workers were removed from the system. By the end of 2012, the annual statistic indicates that a total number of 353,148 domestic workers were registered in the general system (Monthly Report: December 2012). However, if the ILO estimation made for 2010 continues to be correct, where approximately 747,000 domestic workers work in Spain (ILO, 2013), there is still a total of 393,852 domestic workers unprotected, either working irregularly or jobless. According to announcement made by Carlos

Bravo¹⁵, the Active Population survey suggests that there were about 400,000 domestic workers working informally (Ameco Press, 2012).

2.1.3 Social Protection

To access social protection, domestic workers enjoy similar privileges as workers in the General System; however, there are some specialties in the implementation. For example in case of a professional accident or sickness, employers are responsible to provide domestic workers with a subsidy for temporal incapacity. The benefit will be provided from the fourth day to the eighth day after the employer reports the change to the Social Security system. The benefit is calculated base on the last month's contribution and every day domestic workers will receive 75 percent of the last payment divided by 30 days ¹⁶(Ruano, 2012). The positive aspect to highlight in this provision is that domestic workers can request temporal incapacity earlier as the fourth to eighth day. Under the legislation of 1985, domestic workers could only request their subsidy after the twenty-ninth day of illness. Relevant to the health and safety conditions, employers are obliged to provide cleaning products and adequate equipment to prevent accidents (Ruano, 2012). In case domestic workers are not registered and suffer an accident during working, they can approach special authorities to report the incident, and employers run the risk to be sanctioned between 3000 to 6000 Euros or cover the total expenses. The problem is that in order to proceeding legally, domestic workers have to make the report by themselves. However, this procedure may cause them to lose their job, which puts domestic workers in great disadvantage and makes them less likely to report the incident. In regard to the negatives aspects of the implementation of

¹⁵ He is the Secretary of the Social Security of CC.OO (Workers' Committees).

¹⁶ Royal Decree 1596/2011 November 4, General Law on Social Security, revised text approved by Royal Legislative Decree 1/1994, of June 20, in connection with the extension of the protective action for contingencies workers included in the Special Regime of Social Security Domestic Workers.

social provision, the first element to highlight is the lack of unemployment benefits. The argument lies on the difficulties to delimited the job duties and regulate the working schedule (Leon, 2013). Due to the particularities of the job, there is a high concern by the state because unemployment benefits would open a window to make fraudulent requests by domestic workers and profit their access to this subsidy (Tascon Lopez, R (2011). If that happens, it can put at risk the sustainability and financial stability of the system (Ruano, 2012). Expert from different entities continues discussing a plausible and viable way to proceed and offer unemployment benefits in the near future (Ruano, 2012).

2.2 Identify the positive and negative aspects of the SRDW's implementation in regard to employment relationship

In this section of the chapter 2 continues assessing the advantages and disadvantages of the SRDW reform, but this time it focus on the following elements of the employment relationship such as contract, wages, and working schedules / vacation time.

2.2.1 Contract

Under the labor reform, the RD1620/2011 guarantees work security, which obligates employers to hire domestic workers directly and formally with a written contract. The contractual process facilitates the intervention of labor authorities in case of complains to inspect when domestic workers report possible abuses in their workplace (Gomes and Braviera, 2013). The regulation tries to ensure that employment public services and domestic workers' work placement agencies offer non-discriminatory services to domestic workers regardless of their background characteristics. In regard to employers responsibilities, they are entitled to offer written contract to full-time (internal and external) and part-time workers and provide the information to the

employment office. The contract needs to include wage rate (include extra time rate), working schedule and time off, vacation time and the duration of the contract and training (BOE RD 1620/2011: Chapter II Art. 5). The labor law underlines some positive aspects of the contractual process as a formal way to hire domestic workers. Even though it was included in the legislation of 1985, back then it was not obligatory; however, after the legislation of 2011, every domestic worker has to be hired formally with written contract indicating the agreements and conditions of the law (RD 1620/2011). However, in practice there are still cases where domestic worker feel powerless to demand their contract. They feel that if they insist and ask their employers to follow the legal procedure, they will not be hired (Talk Mutual, Mutual Support). Moreover, domestic workers are still in a vulnerable position during this economic crisis, where there are many domestic workers looking for jobs. They may be other domestic workers willing to work under employers' conditions and agreements such working for low salary and more hours (DW1).

2.2.2 Wage

The Royal Decree (1620/2011) establishes that employers are entitled to pay the minimum inter-professional wage equal to 641.40 Euros plus two extraordinary bonuses annually (total of 14 pays). The payment should be in cash and the employer is obliged to provide a receipt. In regard to payment in kind¹⁷, this applies to live-in domestic workers, the law allows a maximum 30 percent of the wage to be reduce on shelter and food. For domestic workers who work with multiple families, the wage has to reach at least the minimum wage. In case of wage raise, both employers and domestic workers have to agree on the increment and at this point, seniority rule is ignored and is no longer applicable in this sector (BOE: Royal Decree, 1620/2011; Gomes and

¹⁷ Payment in kind is a payment made for use of a good or service instead of cash.
<http://www.investopedia.com/terms/p/paymentinkind.asp>

Braviera, 2013). After the implementation, there are definitely positives aspects in regard to wages. The first positive aspect to emphasize was the payment in kind. Before the implementation, the payment would be up to 45 percent of the wage, whereas now the payment in kind is about 30 percent. The second aspect to highlight is the fact the law set a price floor for domestic workers. In this case, the minimum inter-professional wage can be an advantage for domestic workers who were paid less than the minimum, while for other domestic workers, setting a price floor hurt their regular wage. However, if it is analyzed closely, in general, the law causes to decrease domestic workers' wage. First, for full-time domestic workers, their wage decreases because now employers have to assume part of the contribution on the expenses of domestic workers by lowering their wages (Ameco Press, 2012). Second, the law still vague regarding 24 hours domestic workers. If those regulations apply to them, they may work 24 hours for only eight-hour paid which still unfair and unacceptable.

Moreover, in the case of domestic workers who work per hour and less than 70 hours per month, they were not obliged to contribute, but now under the new regulation, they have to contribute from the first working hour (Ruano, 2012). These domestic workers in particular are in a worse position, since their wage decreases tremendously and in most case, they are also more likely to be unemployed. According to domestic workers, this law favors employers more than domestic workers because employers not only have to pay domestic workers less than what they were receiving before, but on top of that employers lower domestic workers payment to cover the contribution they have to comply monthly (Talk Mutual, Mutual Support). Therefore, the implementation of the law rather than favor domestic workers, it has put them in a worse position, especially for discontinuous domestic workers (ORG1; ORG2).

2.2.3 Working Schedule / Vacation time

Last but not least, I assess the advantages and disadvantage of the regulation of the working schedule and vacation time. First, the law establishes that employers and workers should set an agreement about the working hours and guarantees two hours of break during working days. Moreover, it includes that after 36 hours of work, domestic workers are entitled to time off, for example, “Saturday afternoon or Monday morning and Sunday all day” (art. 9.5 Royal Decree 1620/2011; Gomes and Baviera, 2013). This allows domestic workers to enjoy a balance between family life and work, like the rest of workers (established under Art. 37 in the Workers’ Bill of Rights). In this part of the implementation, there are more advantages on paper, but in reality things are different. DW3 mentioned that her schedule was reduced to four hours, yet she highlighted that she was expected to do the same amount of work in less time and less paid.

In regard to vacation time, domestic workers are entitled to enjoy vacation time for a period of 30 days. They are allowed to decide when to take them, but both employer and domestic workers have to agree on the time. Domestic workers have the right to have a period of 15 consecutive days and spend them as they wish without pressure to accompany the family on vacation trips or staying with other family members in the house (ORG1). In case domestic workers decide to go with the family, the time should be compensated with equivalent time or remuneration where both parties have to agree on it and the payment cannot be lower than the regular wage they receive (BOE RD, 1620/2011; Centro Pueblos Unidos, 2011; Gomes and Baviera, 2013). Overall, the law improves the working schedule especially in setting the time off for live-in domestic workers (internal). Those domestic workers were not now allowed to enjoy time off after working 36 hour per week. Since they live with families, it was difficult to negotiate their

time off, especially during the weekends. After the implementation, they can enjoy one day off and half-day of the second day. There are still some issues to address for them, since they are live-in domestic workers. They say that “It is hard to say ‘No’, if you are an internal domestic worker because there is always something to do and employers request your help most of the time” (Talk Mutual, Mutual Support; DW1;DW3).

In addition, under the law domestic workers are allowed to 30 days vacation time. Before the implementation, domestic workers did not have so much room to decide where to spend their vacation time. In some cases, their vacation time was the family vacation time. For example, if the family decided to go out of town, domestic workers had to go with them and rather than have free time for themselves, they continued working and taking care of the family needs. Now domestic worker are free to choose whether they want to go with them or not, but under certain agreement and payment conditions. Moreover, domestic workers have more room to decide the time to take off for vacation, but it has to be a mutual agreement (ORG1: ORG2). In general, the law establishes a reasonable working schedule to benefit domestic workers; however, employers continue to find their way to take advantages of the domestic workers and abuse their power to subjugate domestic workers.

Overall, the SRDW reform has definitely improved the access to social protections and employment relations in legal terms. However, domestic workers feel that those regulations are well written on paper, those regulations do not represent the need and struggle that they face in the working place, especially when employer lower their paid and working hours. In reality domestic workers continue facing difficulties and abusive treatment on the streets. The state has trouble enforcing those regulations effectively due to the crisis and the lack of consciousness

from employers which continue taking advantage of domestic workers' helplessness. In the following chapter I discuss in depth more about the main goals not only from the state perspective, but from the trade union, association and domestic workers.

Chapter 3: Analyzing the SRDW reform according to the main goal of each interest groups

In 2011, the PSOE passed the most desired and awaited reform for domestic workers. To many, especially for trade unions, the reform was an accomplishment of their long support work for domestic workers. The rights of thousands of domestic workers working unprotected and in the informal economy were claimed and recognized. Fifteen months have passed after the SRDW reform and criticism from different groups with regard to the regulations have not waited. To analyze the regulations of the reform from different perspectives, the following chapter investigates the main goal of SRDW reform from the perspective of the state, trade unions, and associations that support domestic workers, along with domestic workers' expectations.

3.1. From the perspective of the State

From the point of view of the state, there were three main aims to discuss: first, the integration of the SRDW into the GSSS to simplify the structure of the social security system, second, domestic work as a solution to the lack of social care provision and third aim, guarantee the sustainability of the GSSS during an economic crisis. In the following section, I explain with much detail some of the reasons hidden that motive the state to pass the SRDW reform in 2011. Moreover, I emphasize whether the state accomplished its aim or not.

3.1.1 Integration of the SRDW into the General Social Security System

One of the reasons to pass SRDW 2011 reform was to reduce the numbers of special regimens and ended with two categories: salaried employees and self employed. Moreover, the state intended to simplify the SRDW into GSSS in order to homogenize and equalize the social provisions for domestic workers as the rest of workers in the general system (Leon, 2013).

However, the fact that those special regimens were considered special was due to the exceptional characteristics of the sectors, which made the inclusion more complex. Since then different attempts failed to make the inclusion in the general system. In 2004, the issue reached the policy agenda which was highly discussed to the extent that became contradictory and difficult to define among interest groups (Peterson, 2007). Trade unions (CC.OO and UGT) organized marches and campaigns in order to demand domestic workers' rights (2007)

3.1.2 Domestic Works a solution to the lack of social care provision

In 1990s, the Spanish women entered the labor force and the Spanish government started considering family issues as part of the political agenda. As a result of “family reconciliation policies” between work and family life, the issue became a highly debated in the parliament. Domestic worker was framed from different political views left (socialist party) and right (conservative party) wing. From 1996 – 2004, the Conservative party (People's Party) treated the issue as a way supporting Spanish women to stay working. In 1999, Act 39 was created “to Promote Workers' Reconciliation of Family and Work Life”. It focused mainly on working mothers and their families, especially concerning maternity leave (Peterson, 2013).

Later on in 2002, the state passed a tax reform that entitled working mothers to receive 100 Euros monthly per child less than three years of age. The aim was to cover expenses related to childcare and maternity leave. Even though this did not address domestic workers specifically, this monthly allowance allowed working mothers to hire unemployed women informally and solve their dilemma between work and mothering responsibilities. In this case, the state tried to solve the problem by providing financial rather than investing on social daycare provision (Peterson, 2007; 2013).

While the right wing focused on the reconciliation of work and family life, the socialist party emphasized gender equality issues. During 2004 -2011, PSOE introduced policies where they highlighted the need to share family responsibilities between women and men. In 2006, the Act for Dependent Care was introduced. This policy was introduced in way to emancipate Spanish women from the responsibility to take care of their dependent family members. However, while the state was liberating Spanish women from care work, at the same time, the state was contributing to the segregation and marginalization of domestic workers in the domestic sector. PSOE emphasized on gender inequality issues, but domestic work was never addressed as a problem of inequality (Peterson 2013). In fact, domestic work has been taken for granted as a solution to the lack of state responsibility for not providing social care for children and elderly (Peterson, 2007; Leon, 2013). In 2005, domestic work was discussed in the parliament. Although policy makers touched on improving domestic workers and reformed the SRDW of 1985, domestic workers' rights was not the main priority, rather the subsidy to support families to hire domestic workers, especially for large families (familias numerosas) because it would create job opportunities for unemployed women (Peterson, 2007).

3.1.3 Guaranteeing the sustainability of the General Regimen

As result of massive unemployment, the social security system started facing an unstable situation. On the one hand, the system was losing affiliates, which resulted in less contribution to the system. On the other hand, unemployment benefits were granted to Spanish citizens as never before. In one year (2009-2010), the system lost approximately 508.616 affiliates and the number continued rising by the end of 2011 (Monthly Report: 2012). In another word this

indicated that the system collected less contribution, but more unemployment benefits were granted to Spanish citizens.

After the grace period ended (June 2012), signs of in-conformity by the state were reflected in the media such TV, newspaper and Internet. First, the contribution from those domestic workers decreased by 30 percent which is approximately 63 million Euros, and second, even though there were some positives numbers in the affiliation, there were still approximately 400,000 domestic workers working informally (Magazine Social Security Activa, 2012).

As result, the state had to take new measures in order to increase the contribution and maintain the sustainability of the already weak system; it modified the SRDW and changed the 15-bracket scale to 8-bracket scale in December of 2012 (BOE). Since this thesis focuses only the reform of 2011, it does not go into much detail about the new modifications of 2012.

3.2. From the perspective of trade unions

Concerning trade unions (CC.OO and UGT), in the section the thesis addresses, the main aim such equalizing social benefits and improving employment relationship. Even though some of benefits were granted it was a good beginning, but there were still a long journey to go because the reform still left out unemployment benefits out of the benefit package and other issues were questionable and vague.

3.2.1 Equalizing Social Benefits and Improving Employment Relationship

As part of the claim of social benefits, trade unions were fighting for the equalization of domestic workers' benefits to the rest of workers in the general system. As a result of the reform, domestic workers gained access to temporal incapacity, maternity leave and pensions (BOE, RD 1620/2011). However, the unemployment benefits were still unable to be granted due to the peculiarity of the sector. Moreover, trade unions considered important that the number of affiliates increased in the last year and continued increasing gradually (SMESS Report, 2012). By March 2013, the number of affiliates reaches to 423,668 domestic workers in the system. This indicates that gradually the number of domestic workers are protected and at the same time contributing to the system.

Then of the employment relationships, there was great progress, especially on the contractual process, wage and working schedule (resting hours). Making the written contract an obligation, it protects domestic workers and provides greater legal security of working conditions. In addition to that, setting a minimum wage grants domestic workers to receive a decent pay and the possibility to evaluate their wage annually (BOE) and domestic workers have the right to ask for resting hours after working 36 hours, especially for live-in domestic workers. From the perspective of trade unions, the reform gave new emphasis to changes that favor domestic workers in the long run. The trade unions underlined that the reform has allowed domestic workers to move from job insecurity and social protection to a minimum guarantee of rights (ACSUR, 2012). However, trade unions add that they are aware of the limitations of the implementation and still need time to consolidate those regulations and enforce them effectively (2012).

3.3. From the perspective of associations that support domestic workers and domestic workers

The following section discusses some of the aims from the perspective of the associations: first, improving protective action, job security and working conditions for domestic workers, and second, reducing incidents of exploitation and abusive situation for domestic workers. Associations such as Caritas' Organization, Center Pueblos Unidos (United Town's Center) and other associations that defend and protect domestic workers' rights were met after the reform. Moreover, it provides insights of the reform from the perspectives of domestic workers. According to PADW, under the legal framework, the reform of 2011 took a big step forward in granting social benefits and improving working conditions for domestic workers, considering that this sector has been working under precarious conditions for a long time. However, in practice the reform has not made the positive impact that they expect for domestic workers.

3.3.1. Improving Protective Action, Job Security and Working conditions

It is important to understand that the country is facing a deep economic crisis, which affects the economies of the families and consequently harms domestic workers (ORG1). Moreover, ORG2 indicates that working conditions have gotten worse not only because of the high unemployment rate in the sector. Now domestic workers have more competition, and employers take this as an opportunity to offer a miserable salary (ORG2). Moreover, both ORG1 and ORG2 add that their wages have been reduced and domestic workers are obliged to pay their contribution to the social security system. In April 2013, the PADW from Granada gathered to show their discontent with the reform, they condemned that their wages have reduced by 60 percent and that their working condition had gotten worse since 2011 (Noticias EFE, 2013). To second this, DW1 shares the following:

The law hasn't helped me in anything. On the contrary, the reform affected me. My paid was less and my working hours too. I worked for 4 hours, but my 'patrona' (employer) expected me to do the same work as if I was working 8 hours. (Unemployed, Bolivian).

Last, ORG2 adds that Spain is going through hard times and the trend on the streets shows that any job is a privilege to have; however, people are losing the idea that having a decent and dignified job under good conditions is a right. It is outrageous what is happening on the streets and unfortunately our domestic workers are vulnerable and exposed to abuse and mistreatment (ORG2).

3.3.2. Reducing incidents of exploitation and abuse to domestic workers

Despite the positive aspects of the reform, legislation continues to have many setbacks that lead to abuse and exploitation. The association Territorio Domestico (Domestic Territory) indicates rather than reducing incident of abuse, the discrepancies in the law give room to justify the abuse. During “Talk Mutual, Mutual Support” at Center Pueblos Unidos (CPU), a domestic worker shares that employers use any excuse to take advantage of their service. For example, employers use the “trial time” to make domestic workers work almost for free. DW3 mentioned:

I worked all day. I cleaned the bathrooms, I made the beds, I ironed some clothes, but when told her that what documents I needed to formalize the contract, she refused to hire me under a written contract and she immediately kicked me out of her house paying me the hour less than 5 Euros (unemployed, Paraguayan).

Others agree with her and emphasize their frustration and sadness. For the time being, associations are looking in to this matter and inform the community about the incidents to be aware. In order to address those issues, Center Pueblos Unidos (CPU) calls domestic workers to be informed about their rights and responsibilities. On the one hand, CPU provides legal advice

and informs domestic worker what do in case of a difficult situation with employers and empowered them to demand their rights as workers. On the other hand, CPU also provides assistance to find jobs, and workshops in training and employment and job orientation. PADW emphasizes that the lack of dissemination of the information by the authorities increases the uncertainty and the future of domestic workers.

Conclusion

This thesis assesses the policy impact of the SRDW 2011 reform on domestic workers based on the criteria established by the law 27/2011 and RD 1620/2011. It focuses on the spheres of social protection and employment relationship. For sphere of social protection, the positive aspects of the regulation were definitely the protective actions. In this case, domestic worker are granted to better social protections such as temporary incapacity in case of sickness or accident. However, domestic workers are not granted with unemployment benefits. According to ORG1 and ORG2 agree that unemployment benefits are not going to be feasible and viable any time soon due to the peculiarity of the sector and the state's concern to open a window of fraudulent claims of the subsidy. Concerning the regulation of contribution, it faces some challenges in the implementation, especially administrative procedure. The absence of legal advice and the level of uncertainty discourage employers to register their domestic workers. In the case, discontinuous domestic workers who were able to be in the system paying their own contribution, but if they are not register for their employers, domestic workers are unprotected in any case.

In regard to employment relationship, the overall legal framework benefits domestic workers in the legal sphere. Nevertheless, in reality domestic workers' working conditions got worse and make domestic workers more exposed to abusive situations by employers. Moreover, the minimum wage set a floor price to hire a domestic worker. Yet the condition of the economy force domestic workers to perform their work for a cheaper price. Therefore, the impact of the SRDW 2011 reform hinder domestic workers and contribute to lower their wages and working schedule even more than what they were before. In conclusion, the policy impact of the SRDW

2011 reform negatively affected domestic workers. It is important to take into account the socio-economic factors that affect the implementation of the policy. However, there were several issues that continues to be important in order to enforce the policy effectively and that is the poor enforcement mechanisms to apply the regulation accordingly, for example the weak inspection labor, capacity building to handle the needs of both employers and domestic workers and dissemination campaign to increase awareness about the regulations and benefits that everyone can enjoy if both employers and domestic workers comply with their responsibilities.

Limitation

While conducting this field study, there is some limitation that I encountered. First, during the process of conducting the study, the modification of the SRDW 2011 reform made in December 2012 started to be implemented in April 2013. There were some variations to the regulation that I did not include in this thesis. However, the policy impact of current change would not be so much different, especially because according to ORG1 and ORG2 expressed their concerns about the negative effect on the working condition and job security. ORG2 highlighted that “rather than improving the domestic workers’ rights and social recognition, those new regulations are taking us back where were before the SRDW 2011 reform”. Another limitation was the sample size. It perhaps indicates similar irregularities, however, with the small sample, I would be able to draw general conclusion. This study is a small snapshot of the big issue associations for domestic workers, along with domestic workers are facing currently in Spain.

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Appendix

Association/Domestic worker	Interviewee	Place and date of Interview
Caritas' Espanola	Member of the organization responsible of Promotion of Rights and Solidarity Economy	Madrid April 28 th , 2013
Center Pueblos Unidos (United Town's Center)	Member of the organization responsible of employment and legal assistance	Madrid April 26 th , 2013
DW1	Colombian	Madrid April 29 th , 2013
DW2	Bolivian	Madrid April 29 th , 2013
DW3	Paraguayan	Madrid April 29 th , 2013

Focus Group (Talk Mutual, Mutual Support): It was composed for 5 domestic workers. All of them Latin American. Ages range from 25-45 years. Unemployed looking for job.