OLSZTYN ECONOMIC JOURNAL
Abbrev.: Olszt. Econ. J., 2014, 9(4)

SPANISH EMPLOYMENT LEGISLATION REFORMS IN THE RECENT CRISIS – TOWARDS A NEW MODEL OF THE INDUSTRIAL RELATIONS SYSTEM

Fernando Fita Ortega

Department of Labour Law and Social Security
University of Valencia

K e y w o r d s: Spanish employment legislation, flexi-security, Spanish industrial relations system after the crisis.

A b s t r a c t

The recent crisis and its consequences have induced major changes in Spanish employment legislation which may lead into what could be recognized as a new model of the industrial relations system.

Since the early 90's, and as a reaction to globalization, the need of introducing measures for promoting adaptability and flexibility have had echoes in Spanish employment legislation. However, the crisis we are experiencing nowadays is having a greater impact upon the Spanish economy, and hence on employment regulations, than any other previous crisis.

The legislature's reaction in order to reverse the situation is leading to a new model of the industrial relations system, since this is happening in the whole European Union, where the power of collective bargaining has been undermined, and with it the role of trade unions. This has had a huge impact on the essence of Spanish labour law (*derecho del trabajo*). These regulations seek to protect employees at their working places from the managerial power of the employer, but without forgetting the need of protecting the efficiency of the enterprise. In fact, after the new legislation following the political decisions of the Spanish Government, we are closer than ever to an Employment Law (*derecho al empleo*) where the protection is focused on the citizens' ability to work, protecting them in the labour market.

The aim of this paper is to give a short description of the Spanish labour market's situation showing the most relevant data; to provide an analysis of the main measures introduced into Spanish employment legislation, and to draw some conclusions about where and why some decisions are made and what consequences they have for the industrial relations system.

REFORMA HISZPAŃSKIEGO USTAWODAWSTWA PRACY W ŚWIETLE NIEDAWNEGO KRYZYSU – NOWY MODEL STOSUNKÓW PRACY

Fernando Fita Ortega

Katedra Prawa Pracy i Ubezpieczeń Społecznych
Uniwersytet w Walencji

S ł o w a k l u c z o w e: hiszpańskie ustawodawstwo pracy, flexicurity (socjalny model zatrudnienia oparty na łatwym procesie zatrudniania oraz zwalniania pracowników, a także wysokich zabezpieczeniach socjalnych dla bezrobotnych), hiszpański model stosunków pracy po kryzysie.

Abstrakt

Niedawny kryzys i jego konsekwencje wywołały gruntowne zmiany w hiszpańskim ustawodawstwie pracy, co może doprowadzić do powstania nowego modelu stosunków pracy.

Od wczesnych lat dziewięćdziesiątych ubiegłego wieku oraz w reakcji na globalizację hiszpańskie ustawodawstwo pracy reagowało na działania sprzyjające zwiększeniu przystosowalności i elastyczności. Obecny kryzys wywiera jednak większy wpływ na hiszpańską gospodarkę, a tym samym na uregulowania prawne dotyczące zatrudnienia, niż jakikolwiek wcześniejszy. Reakcja ustawodawcy w celu odwrócenia sytuacji prowadzi do powstania nowego modelu systemu stosunków pracy, ponieważ tak się dzieje w całej Unii Europejskiej, gdzie moc układów zbiorowych została osłabiona, podobnie jak rola związków zawodowych. Miało to ogromny wpływ na istotę hiszpańskiego prawa pracy (*derecho del trabajo*). Celem regulacji jest ochrona pracowników w miejscu pracy przed władzą pracodawcy, należy jednak pamiętać o konieczności zapewnienia efektywności działania przedsiębiorstwa. Po wprowadzeniu nowego ustawodawstwa, w ślad za politycznymi decyzjami rządu, Hiszpania jest bliżej niż kiedykolwiek wprowadzenia prawa pracy (*derecho al empleo*), w którym ochrona skupia się na zdolności obywateli do pracy i ich pozycji na rynku pracy.

Celem artykułu jest krótki opis sytuacji na hiszpańskim rynku pracy i prezentacja najistotniejszych danych, analiza głównych rozwiązań wprowadzonych do hiszpańskiego ustawodawstwa pracy oraz wyciągnięcie wniosków dotyczących zakresu i powodów podejmowanych decyzji i ich konsekwencji dla systemu stosunków pracy.

Crisis and changes in Spanish Employment Legislation over the last three years (2010-2013)

Globalization of the economy has been the leitmotif for the reforms experienced in Spanish employment law over the last twenty years. In 1993 and 1994, the first reforms were adopted in Employment legislation in order to render it more flexible and adaptable to the needs of enterprises[1]. During the years 1993-1994, Spanish employment legislation started to experience pressure to implement new changes in order to draw more attention to the enterprises' needs. As the new globalization context emerged, it required better conditions to promote competition. The aim of this legislation was, therefore, that of promoting flexibility in the labour management of enterprises to stimulate their adaptation to their own economic situation as well as to the specific context of the branch of activity in which they operate[2]. However, the soul of the employment law was still present so that the reforms introduced did not change the basic character of this legislation, which was addressed mainly to introduce minimum standards of working conditions for employees in order to avoid abuses by employers.

The most recent set of new employment regulations appeared in 2010 in the context of the economic crisis and the need of recovering economic competitiveness. We can affirm that with all the new measures adopted, the

[1] *Real Decreto Ley* 18/1993 (3.12.1993) that later became *Ley* 11/1994 (19.5.1994)

[2] *Ley* 11/1994 often mentions in its preamble the words competitiveness (up to three times) and adaptability (up to eight times) when explaining why the changes adopted were required.

former employment law (and the way industrial relations were regulated by the State) has been transformed dramatically; to the point that it is becoming harder and harder to recognize the original aspects that were present in the genesis of these regulations. The increasing presence of economic factors among the criteria that influences political decisions adopted in relation to the regulation of the labour market has led to such a situation. In fact, after the new legislation, and following the political decisions of the Spanish Government, we are closer than ever to an Employment Law (*derecho al empleo*) where the protection is focused on a citizen's ability to work, protecting them in the Labour Market, changing the aim of what is called *derecho del trabajo,* a regulation seeking to protect employees at their working places from the managerial power of the employer, but without forgetting the need of protecting the efficiency of the enterprise.

Before analyzing the main aspects of employment law after the new regulations, it is important to reflect on the reasons for implementing such a dramatic change. A change that has affected the pillars of the relation between employer and employees as well as the one between the employer and the worker's representatives and their instruments of action.

Reasons for a new approach to employment legislation

The economic crisis and its consequences in the labour market in terms of unemployment[3] are the common references in all of the legislative documents that are establishing a new approach to employment law.

However, it is possible to think that the crisis has been used as a pretext to establish this new model through the assumption that no other option could be adopted.

Some time ago, a debate began concerning the role played by employment law in the new economic context that has emerged in the last decades. The most interesting aspect is that this debate has not been held at the national level but at the European level because of globalization and the continued process of building a common Europe. A clear example of this is the Green Paper *Modernising labour law to meet the challenges of the 21st century*[4], presented in November 2006, whose goal was to launch a public debate in the EU on how labour law can evolve to support the Lisbon Strategy's objective of achieving sustainable growth with more and better jobs.

---

[3] According to the National Institute of Statistics (INE) the unemployment rate in 2013 stood at 26.26, with 5,977,500 persons unemployed. Eurostat shows that in 2013 it was at 26.1, only surpassed by Greece (27.5) even if for some months Spain had the highest rate of unemployment in the European Union.

[4] COM(2006) 708 final.

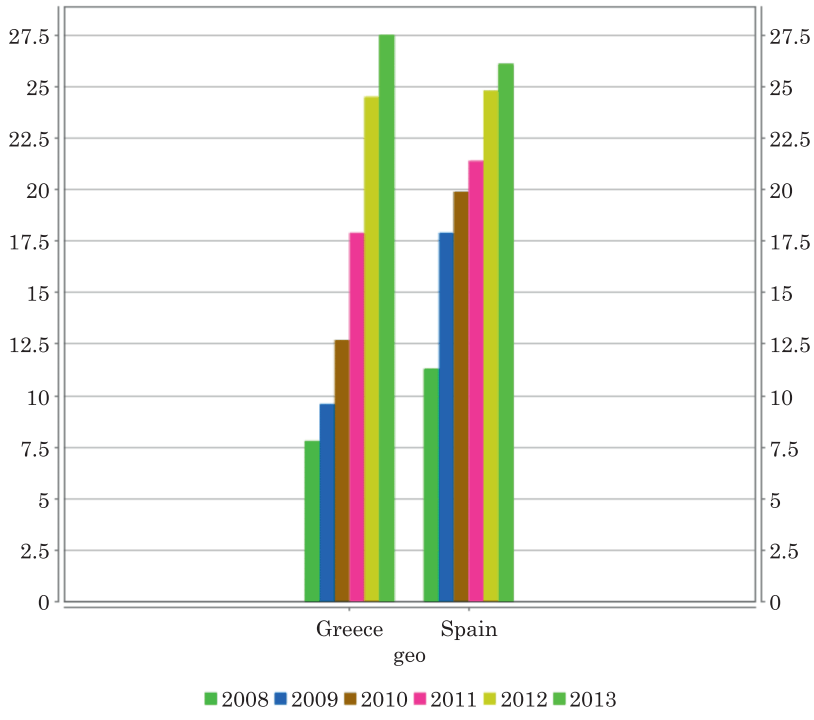

Fig. 1. Unemployment rate

Source: Eurostat

Two main aspects highlight this debate. Firstly, the connection between the economy and the labour legislation that inspires it, analyzing labour law from an economic perspective, while disregarding its social implications. Secondly, that this debate focuses on the individual labour law, disregarding collective labour law and its promotion as one of the means of increasing both flexibility and security for workers and employers[5].

How this debate has influenced Spanish employment legislation reforms can be clearly appreciated in the preamble of the legal instruments adopted in order to introduce new rules to regulate working conditions. These laws make constant reference to the need to fulfill the requirements to adapt legislation to the new context and philosophy. The fact that these requirements have been agreed upon at the European level, mainly under the *open method of coordination*[6], reinforces the political opinion of the Spanish legislature. Thus, the

[5] As it was recalled by the European Parliament resolution of 11th July 2007 on modernizing labour law to meet the challenges of the 21st century [2007/2023(INI)]

[6] The *open method of coordination* (OMC) legally adopted after the Amsterdam Treaty in force since 1999) and nowadays regulated in Title IX of the Treaty on The Functioning of the European

references to the National Reform Programme (adopted within the framework of the open method of coordination), to the Europe 2020 Strategy, to the recommendations and exigencies given at the European level in order to overcome the economic situation, are usually present in the rules implementing Spanish legal reforms in Employment legislation.

Which are the key points of the policy designed at the European level then? The central idea of this policy is about overcoming the crisis and the excessive rates of unemployment in Europe. In order to do this, European institutions have focused on the promotion of a legal framework able to foster productivity and competitiveness. In the area of employment legislation, the political options for reaching that aim have been promoting flexi-security and introducing measures to ensure costs developments in line with productivity.

a) Promoting flexi-security. Flexi-security was defined by the European Commission as an integrated strategy to enhance flexibility and security at the same time in the labour market[7]. This approach attempted to correct former policies aimed at increasing either flexibility for enterprises or security for workers and, as a result, neutralizing or contradicting each other. Flexi-security is, therefore, a balanced mixture of flexibility and security promoted to increase adaptability, employment and social cohesion, so that enterprises and workers can both benefit from flexibility[8] and from security[9].

b) Measures to ensure costs developments in line with productivity. After pointing out that progress will be assessed on the basis of wage and productivity developments and competitiveness, the Conclusions of the European Council of April 2011 declared that the reforms to foster competitiveness will give particular attention to adopt measures to ensure costs developments in line with productivity, such as:

– review the wage setting arrangements, and, where necessary, the degree of centralization in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process;

Union, was created as part of employment policy and the Luxembourg process. OMC is a key instrument of the European Employment Strategy providing a new framework for cooperation between the Member States, directing national policies towards certain common objectives.

[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security.* COM(2007) 359 final.

[8] Not limited to give more freedom for companies to recruit or dismiss or render more flexible work organizations so that they can be capable of quickly and effectively mastering new productive needs and skills. Flexibility in this context aims as well to promote the successful moves – „transitions" – during one's life course: from school to work, from one job to another, between unemployment or inactivity and work, and from work to retirement.

[9] Understood in terms of equipping people with the skills that enable them to progress in their working lives – which points out the importance of training opportunities – and helping them find new employment. It is also about adequate unemployment benefits to facilitate transitions.

– ensure that wage settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of public sector wages).

The main aspects of recent Spanish reforms on employment legislation

The Spanish legislature has adopted a considerable number of labour reforms in the last three years following the political criteria adopted at the European level. These reforms attempt to implement flexi-security and introduce measures to foster competitiveness that, it is said, will lead to increased employment rates within the European Union.

It is interesting to note that not only political criteria adopted by European Institutions have been of great influence in all of these reforms. In the preamble of *Ley 3/2012* it is recognized that the reforms implemented were due to the existing pressures for adopting further reforms. Pressures carried out, in the context of an economic crisis, by World and European economic institutions, international markets restless about the Spanish labour market, and the Spanish employment reality[10].

In this context Spanish labour reforms have focused on achieving the goals proposed: implement flexi-security and link wages to productivity.

The first thing that should be pointed out in relation to Spanish policies about flexicurity (more recently renamed flexi-security) is that they have focused on flexibility rather than on security.

Recent reforms have tried to implement flexibility in all its aspects: internal and external, and in the latter, both flexibility of engagement and flexibility of dismissals.

Flexibility of engagement

The new regulations have acted on this aspect providing new temporary contracts of employment and modifying the legislation of Temporary Work Agencies.

---

[10] Imbalances and Growth September 2013, prepared by staff of the International Monetary Fund (http://www.imf.org/external/np/g20/pdf/map2013/map2013.pdf) In this document further structural reforms of labour and product markets are required to support growth and make the labor market more job-friendly and inclusive. In this document the need to reduce wages is highlighted and asks for further reforms to promote bargaining arrangements more responsive to economic conditions and reduce labour market duality.

Introducing flexibility on temporary contracts was used in the early 80's of the last century as a measure for creating employment in an adverse economic environment which provoked increases in unemployment rates. This policy was repeatedly said to be wrong as it created a duality between employees under temporary contracts with low protection (often held by young people) and employees under permanent contracts with higher standards of protection. Since the 90's this duality was said to be a problem more than a solution and some measures started to be adopted in order to reduce the number of employees under temporary contracts. However, Spain has been for a long time the country in the European Union with the highest rate of temporary contracts (arriving at a rate of 34% in 2006). Most recently, since 2009 and because of the crisis[11], Poland has overtaken Spain in Figure 2.

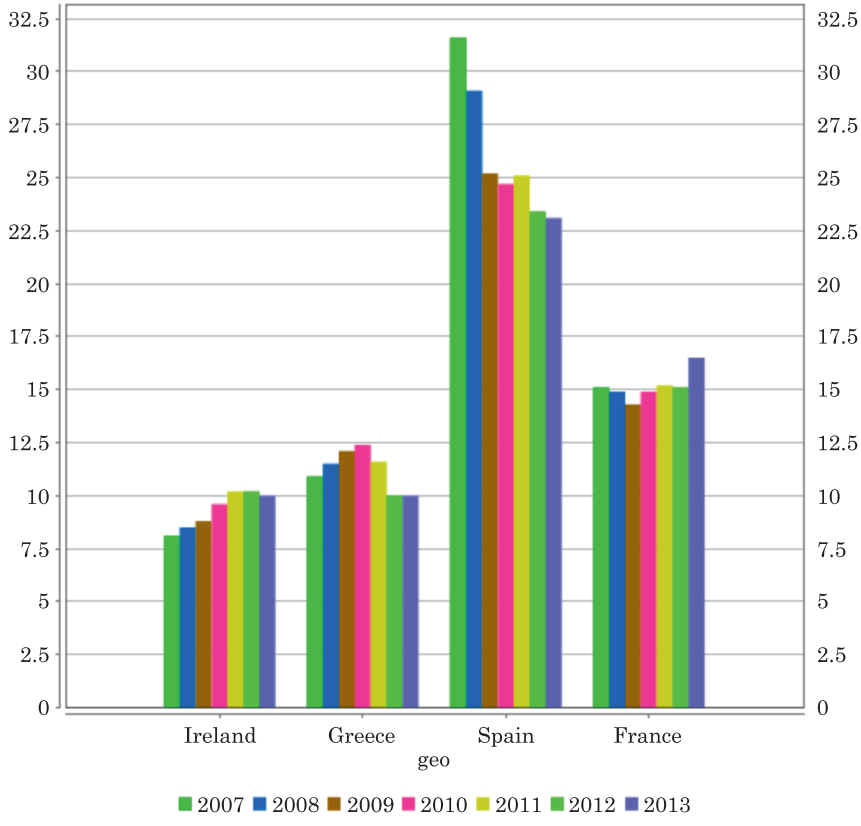

Fig. 2. Employees with s contract of limited duration (annual average)
Source: Eurostat

[11] As extinguish temporary employment contracts is the easiest and cheapest way of reducing the plaintiff and fixing it to the new necessities.

Despite the Spanish legislature's declared concern about the high rate of temporay contracts and its negative consequences, the fact is that the option of the legislature has been to increase the opportunities for enterprises to use temporary contracts as the crisis has become deeper. Hence, new temporary forms of contracts of employment have been introduced in order to foster employment, giving employers the opportunity of using fixed-term employment contracts not based on objective reasons.

In Spanish labour legislation there are three main kinds of temporary contracts:

a) Fixed-term contracts based on objective reasons, addressed to attend certain temporary organizational and productive circumstances in the enterprise. These contracts are possible just for performing temporary activities.

b) Fixed-term contracts not based on objective reasons, whose purpose is to promote employment of certain groups of people, offering the employers the possibility to hire under temporary contracts as it is the employers' desire to avoid hiring under indefinite contracts of employment. These contracts are not related to any need for temporary activities for the enterprise and can be used for covering their permanent activity.

c) Training contracts, addressed to help certain category of workers to enter into the labour market and, at the same time, to give additional training to them.

In relation to these, recent reforms have:

a) Introduced some limits to the first category in order to adapt Spanish legislation to the Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work. One of the purposes of this Directive is to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or similar relationships. It establishes the obligation to member States to introduce one or more of the measures described[12] in order to prevent abuse arising from the use of successive fixed-term employment contracts or similar relationships. The Spanish legislature has decided to fix a maximum period of time for these kind of contracts[13] and has limited the number of renewals for such contracts or similar relationships[14]. Furthermore, in order to discourage the abuse of these

[12] Those possible measures consist in identifying: (a) objective reasons justifying the renewal of such contracts or relationships; (b) the maximum total duration of successive fixed-term employment contracts or relationships; (c) the number of renewals of such contracts or relationships.

[13] Maximum of three year for *contratos de obra o servicio* that can be extended up to four years by branch collective agreements.

[14] Maximum of 24 month within a period of 30 for fixed term contracts so that automatic conversion into permanent contacts would occur if the same employee stays longer under temporary contract in the enterprise or group of enterprises, even if carrying out his work throughout a Temporary Work Agency. It does not apply in some cases, as in the case of *contrato de obra* or training (apprenticeship) contracts. The rule, established in 2006, was suspended until December

kinds of contracts the indemnity to be paid in case of termination of the contract has risen from 8 days of salary per year of service up to 12 days.

b) Increased the possibilities for hiring under temporary contracts. As employers are reluctant to employ under indefinite contracts of employment, the possibility of temporary employment contracts not based on objective reasons has been used again as a tool for lowering unemployment rates, despite the many criticisms of this policy (used since 1984) in the past. Thus, a new contract for employment of this kind has appeared: *contrato primer empleo jóven* (first youth job contract). *Real Decreto-ley* 4/2013. The legislature introduced this new contract on the 22nd of February in order to stimulate a first job experience to those unemployed people under 30 that have no work experience longer than three months. If these requirements are fulfilled, this contract could be arranged with a minimum duration of three months and a maximum of six months. If branch collective agreements arise, the contracts could last up to twelve months.

c) Introduced flexibility in training contracts, so that they may by used as a tool for reducing unemployment. Taking into consideration that these contracts can be of huge interest to employers as they are temporary by their nature (their original goal was to give opportunities for initial training to those who do not have work experience related to their educational or professional background), their working conditions are better for employers because, basically, they are cheaper[15].

This can be clearly appreciated in the 2012 reforms (*Real Decreto-ley* 3/2012, 10 of February and *Ley* 3/2012, 6 of July). From this moment onwards the apprenticeship contract (*contrato para la formación y el* aprendizaje), which was initially conceived to help young people to create their professional career, is clearly being used as an instrument to foster employment. Under the above mentioned regulations, this contract can be formalized with workers under 30 years old, until the unemployment rate in Spain falls under 15%.

On the other hand, flexibility in engagement has also been the reason for modifying legislation of Temporary Work Agencies. Following the recommendations adopted at the European level about the need for action in job matching services, in 2012 the possibility for Temporary Work Agencies to

---

2013 (by *Real Decreto-Le*y 10/2011, 26 of August) as a consequence of the crisis. Later, *Real Decreto-Ley* 3/2012, 12 in February and Ley 3/2012, 8 in July, reduced this suspension until December 2012 so that from the first of January 2013 it will again be in force.

[15] In the case of the apprenticeship contract (*contrato para la formación y el* aprendizaje) not less than minimum wage but proportionally to working time, what, considering that it cannot be lower than 75% during its first year nor 85% during the second, and that minimum wage in Spain is 645.30 € for 2013 and 2014, means a minimum wage of 483.97 € during the first year of the contract and 548,50 € in the second. In case of the practical training contract (*contrato en prácticas*) wages can't be less than 60 or 75% of the wage established in the collective agreement for the activity.

operate as placement agencies was regulated. As Spanish Public Employment Services have been revealed to be insufficient to activate employment in the labour market, the Spanish legislature has given more competencies to Temporary Work Agencies to energize them.

But this has not been the only reform in the legislation concerning Temporary Work Agencies. In fact, in 2013 more changes had been passed eliminating restrictions about the contracts of employment firms can arrange with workers, so that since February 2013, it has been possible for firms to sign more contracts of apprenticeship (*contrato para la formación y el aprendizaje*) and since July 2013 firms may sign a new type of contract *Primer Empleo Joven*. The inclusion of these contracts in the list of contracts available for Temporary Works Agencies has lightened the restriction affecting the cases in which it could be possible for Temporary Works Agencies to facilitate workers. Traditionally these firms suffered a limitation related to the nature of the job to be filled with agency employees. It could only be done for temporary needs of activity (so only fixed-term contracts based on objective reasons could be used). Now this is not always the case, as the new contracts Temporary Works Agencies can arrange can be both fixed-term contracts based on objective reasons and not based on objective reasons. It is possible to conclude, then, that after the new regulation the profile of Temporary Work Agencies as placement agencies has grown; including two contacts that aim to promote employment.

Flexibility of management (internal flexibility)

Achieving internal flexibility is one of the main declared purposes in all the different laws reforming employment legislation. The changes have affected, among others, the following aspects (that have been pointed out as the basic foundations concerning internal flexibility): working time, functional mobility, geographical mobility[16] and wages. In all these cases the scope of legislation is to provide a means to adapt working conditions applicable to the enterprise to external and internal changes.

Working time. According to the European Economic and Social Committee[17], working time flexibility is about the distribution of normal weekly working time as established by collective agreements and/or by law over a longer time period. In the logic of the win-win situation in which flexi-

[16] That is to say, the possibility for employer to change employees' location.

[17] Opinion of the European Economic and Social Committee on „Flexicurity (Internal flexibility dimension – Collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)". O.J.C 256/108, 27 October 2007.

security is presented, the positive effects of both parts of the employment relationship have been described. In that sense, it is said that working time flexibility can strengthen an enterprises' productivity and competitiveness, letting companies adjust to the demand for personnel fluctuations and to fully utilize capital investments, by making use of overtime, the flexible scheduling of working hours over predefined time frames, shift work, etc.

Furthermore, the European Economic and Social Committee points out that working time flexibility can have positive effects on employees, as it can also be about the distribution of working time over an individual's working life and about the work-life balance (but not about the length of the standard working week). In that way employees can enjoy possibilities to positively combine work and non-work activities, by making use of flexi-time arrangements, working time accounts, parental or educational leaves, options to switch between fulltime and part-time work, etc.

Reforms adopted in Spanish legislation since 2012 have focused on the first aspect of working time flexibility, so that the second aspect (the benefit of employees) has remained the same. The main ways in which this flexibility has been promoted are:

a) Letting the employer irregularly distribute 10% of annual working time. The only requirements are with respect to the minimum resting periods and a period of notice of five days. Before this reform, this irregular distribution could be done but only if agreed to in collective agreement or special agreement with employee;s representatives.

b) Promoting the possibility for reducing working time[18] (and wages) in case of economic or productivity difficulties for the enterprise. This should be used instead of redundancies for these causes, so that the existing need of activity could be shared between all workers, even if that means less activity and salary for all of them.

c) Increasing employers' prerogatives for modifying working time conditions applicable to the enterprise. The flexibility introduced with the reforms have affected different aspects of this power, basically:

– which conditions can be modified,
– when this managerial prerogative can be exercised,
– the procedure to follow.

Before the reform it wasn't possible to modify the duration of working time established in statutory collective agreements (regulated in *Estatuto de los Trabajadores*), whereas now it is possible in order to facilitate the adaptation of working conditions established in the agreements to the actual needs of the enterprise. After the reform, this option is completely possible and it never

[18] Non less than 10% and 70% as a maximum.

matters if working conditions are established in branch collective agreements or the collective agreement of the enterprise. They may still be modified.

About the requirements to introduce these modifications: the option has been that of introducing objective circumstances when these changes can be adopted, so that if the concrete causes remain the same as they were previously (economic, productive, technical and organizational) a more accurate definition of them has been established. This is done when the working time being modified is fixed in statutory collective agreements. In such cases, the economic cause is presumed to be the main cause when during two consecutive terms the level of ordinary incomes or revenue is lower than what was experienced in the same term of the previous year. With this rule, the legislature tries to avoid the uncertain decision of Courts when analyzing the concurrence of this cause, which is particularly problematic in cases in which economic reasons are alleged.

The procedure is now more flexible too, as the introduction of modifications can be agreed even if there are not worker's representatives to negotiate and because there is not the need to reach an agreement with them (which was previously necessary to modify conditions established in statutory collective agreements). In this case, a complex procedure of mediation and arbitration has been established.

Functional and geographical mobility. Functional mobility refers to using the worker's capacity to perform different tasks when needed. For achieving that goal, the management of employees has been increased by changing the classification system so that instead of using the criteria of a professional category, now a wider (as it can integrate different categories) concept of a professional group is adopted. The only limits to this mobility are with respect to academic and professional qualifications and the employee's dignity. In any case, some economic and professional rights for the employees are still applicable[19]. This managerial prerogative has other related limits, on the one hand, to justify a technical or organizational need and, on the other hand, the period of time this change can last (the indispensable time to attend to the technical and organizational need). The previous requirement related to the unpredictable character of the need has disappeared. No changes have been introduced related neither to the causes nor the procedure for modifying an employee's task, consisting in the latter case of notifying the decision to the worker's representatives in case of a variation that goes outside the professional group.

On the other hand, geographical mobility allows the enterprise to move employees from one undertaking to another, adapting the employee to the

[19] Like the right to be promoted in certain circumstances and the right to receive the salary related to the tasks now carried out unless this would be inferior to the previous one (with some particularities).

needs required in its premises. In this aspect the flexibility introduced has affected the procedure, contemplating how to deal with the required consultation with employees in cases where there are no worker's representatives.

Wages flexibility. Two main ideas can be found in the introduction of wage flexibility. First is that of connecting salary to productivity. The second deals with the need to adjust wages to the specific circumstances of the enterprise. The first aspect was the object of a reform in 1994, when the seniority supplement[20] was no longer obligatory. But it has also been the object of recent reforms as the indexation of salaries to the cost of living has been undermined with the new rules of collective agreements.

The technique of indexation was frequently used by branch collective agreements in order to preserve the economic capacity of salaries, allowing them to avoid losing purchasing power. As this system of fixing wages was not always suitable for enterprises included in the field of application of the collective bargaining, in 1994 was introduced a rule allowing enterprises not to apply economic conditions negotiated in the branch collective agreement. However, as the application of this rule was conditioned on the previsions of the branch collective agreements and they established strict requirements, in practice it was quite complicated to succeed in not applying such salary conditions. Hence, reforms introduced since 2010 have affected this aspect, introducing new rules affecting the relations with collective agreements of different levels. In that way, the degree of centralization of collective bargaining has been reduced. So that if before branch collective agreements at a provincial level were the most important in terms of employees affected by them, the aim is to put collective bargaining at the level of the enterprise in the core of procedures establishing working conditions (not only salary).

Different possibilities can be found nowadays in order to reassure flexibility in wages. On the one hand, the possibility exists for the employer to modify salary conditions not derived from statutory collective agreements. The recent modifications allow to modify not only the remuneration system applicable in the enterprise, but also the quantity of the different components of salary. The procedure for doing so has also been modified in order to make this possibility easier.

However, on the other hand, it may be the possibility of avoiding the application of statutory collective agreements. This can be achieved by two means. First, there is the procedure for not applying working conditions[21]

[20] A supplementary pay related to the years employed within the company.

[21] Before the recent reform, contracts were only in relation to salary but now they also regard other working conditions such as working time; daily hours, or even functions.

established in the collective agreement (branch or enterprise)[22]. Secondly, since the recent reforms, it is possible to negotiate a collective agreement at the level of the enterprise for certain matters[23] even if a branch collective agreement is on application, which supposes an extraordinary change in the regulation of articulation of collective agreements at different levels. If it was not possible previously to modify an existing collective agreement by any other collective agreement, now collective agreements negotiated at the level of the enterprise have this capability.

Flexibility of dismissal

The introduction of flexibility in dismissals is derived from two declared considerations. One consists of reducing the duality between employees with indefinite contracts of employment covered with certain standards of protection against dismissal, and those with temporary contracts of employment with less protection against dismissal. The other consideration deals with the need to implement flexibility in the management of enterprises in order to protect their productivity.

In the first aspect, several things have been done. The reduction of indemnity in case of wrongful dismissal has been justified in these terms, even if the process of how it has been done basically renders cheaper wrongful dismissals to all employees regardless of the character of their contracts (open-ended or fixed-tem). We can draw that conclusion because, with the reform introduced, Spanish legislator has eliminated the obligation to pay *salarios de tramitación*[24] in cases of wrongful dismissals when the employer option is not for reinstatement but for paying indemnity. Furthermore, the reform does not affect the way of calculating indemnities for dismissal (based on the seniority of the employee) but only the quantities to consider in order to calculate it[25]. Another reform adopted in order to reduce duality and foster open-ended contracts was to create a new contract (*contrato indefinido de apoyo a los emprendedores*) that introduces a probationary period of one year[26].

[22] There is also the new possibility of not applying working conditions negotiated in enterprise collective agreements, as before this possibility only existed for branch collective agreements.

[23] Quantity of salary; retribution of overtime and shift-work; daily work and planning of holidays; classification system among others.

[24] The *lucrum cessans* calculated since the day the employer adopted his decision to dismiss till the day in which the employee was notified for the first time the qualification of that decision being wrongful. This normally represented the highest amount of money to perceive for employees whose seniority in the enterprise was not long.

[25] From 45 days of salary per year of service with the maximum of 42 months of pay, to 33 days of salary per year of service with the maximum of 33 months of pay.

[26] This contract can only be adopted by enterprises of less than 50 employees.

In order to introduce more flexibility in the management of dismissals and redundancies, the procedure has been changed (eliminating the need of administrative authorization in case of redundancies). A modification of the effects in case of failure to comply the procedure requirements in some cases of dismissals has also taken place (as it happens in case of objective dismissals, changing the qualification from unfair dismissal to wrongful[27]). Finally, circumstances allowing dismissals and redundancies on grounds of economical reasons have been clarified[28].

Is it possible to talk about a new model of the industrial relations system in Spain?

All measures adopted over the last years are clearly aiming to strengthen the managerial employer's prerogatives, that is to say, they are all focused on flexibility, whereas little legislation for security appears in the recent reforms of the Spanish employment law. However, the increasing relevance of flexibility in employment legislation is not enough to talk about a new model of industrial relations system. It is the role reserved to collective rights and social dialogue in this context of flexibility what can determine the change of model of industrial relations in Spain. And we can affirm that this model does not respect the main ideas supporting the flexi-security policy[29].

---

[27] In case of wrongful dismissal there is the option (normally the employer's option) to choose between reinstatement or extinguishing the contract and paying indemnity. In case of unfair dismissal reinstatement is compulsory.

[28] According to the law, there will exist an economic cause if during three consecutive terms the level of ordinary incomes or revenues of each term is lower than the same term of the previous year.

[29] The importance of social dialogue has been highlighted by the European institutions when talking about the approach to flexi-security. According the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Towards Common Principles of Flexicurity: More and better jobs through flexibility and security [COM(2007) 359 final], „active involvement of social partners is key to ensure that flexicurity delivers benefits for all. It is also essential that all stakeholders involved are prepared to accept and take responsibility for change. Integrated flexicurity policies are often found in countries where the dialogue – and above all the trust – between social partners, and between social partners and public authorities, has played an important role. Social partners are best placed to address the needs of employers and workers and detect synergies between them, for example in work organization or in the design and implementation of lifelong learning strategies. Social partners' support for the core objectives of the Lisbon Strategy is an important asset; translating this support into concrete policy initiatives is a responsibility of governments and social partners alike. A comprehensive flexicurity approach – as opposed to separate policy measures – is arguably the best way to ensure that social partners engage in a comprehensive debate on adaptability".

In the opinion of the European Economic and Social Committee on „Flexicurity (Internal flexibility dimension – Collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets)" [O.J.. C 256/108, 27 October 2007] this organ affirms that

Collective rights have experienced a progressive weakening in the recent reforms[30], adopted without any dialogue with social agents. This has especially happened with the right to collective bargaining as it has experienced important changes. The first important change concerns the function of collective agreements. Traditionally, this was a way of managing conflict by proportioning rules to solve it in terms of establishing working conditions and other compromises. It was also an instrument to adapt those working conditions to the enterprise and a way to avoid social dumping. The new rules regulating collective bargaining (as it is said in *Ley* 3/2012, 6 of July) wanted collective bargaining not to be an obstacle to the process of adaptation of working conditions to the situation of the enterprise. Therefore, the only scope for collective bargaining nowadays seems to be an instrument to the service of adaptability, losing the other functions they traditionally used to display. The main aspects that have lead into these new situations are:

a) During these years of changes in legislation, alternative bodies for consultation to the employees have been created al the level of undertaking. It is true that they operate in the case of an absence of statutory workers' representatives, but these new bodies can adopt decisions in order to modify agreements reached at a higher level by the latter.

b) The regime for avoiding the application of branch statutory collective agreements has changed as previously analized. Therefore; a) more matters have been introduced in the list of the questions able to be modified by agreement at the enterprise level (earlier it only concerned salary); b) the causes leading to these modifications are broader (earlier it only concerned economic reasons, but now it also concerns technical, productive or organizational reasons); c) the procedure is now more flexible and the possibility to block the employer's option of introducing variations has been removed.

c) The collective bargaining has been decentralized to the level of the enterprise, where the strength of workers' representatives is weaker due to the proximity of the employer and his managerial powers. As we have seen, in some relevant aspects relating to working conditions there is the priority of applications of collective agreements negotiated at the enterprise level.

---

strengthening industrial relations systems at European and national levels is essential for any discussion on flexicurity. A strong and vital social dialogue where the social partners actively participate and are able to negotiate, influence and take responsibility for the definition and components of flexicurity and evaluation of its outcomes is a key element.

[30] We cannot forget that one of the main criticisms of the *Green Paper. Modernising labour law to meet the challenges of the 21st century* [COM(2006) 708 final] was precisely that it completely forgot about the collective rights of workers. It is also important to bear in mind that collective rights, such as collective bargaining and the right to strike have suffered strong limitations after the judgments of the Court of Justice of the European Union in the cases *Viking* (Case C-438/05) and *Laval* (Case C-341/05) and the Court of European Free Trade Association in case *STX Norway Offshore* (Case E-2/11).

d) The rule of ultra-activity of collective agreements has been dramatically changed in order to encourage the renegotiation of a collective agreement before its expiration date, seeking to avoid a „petrification" of the working conditions established in the agreement and excessive delay in its renegotiation. This rule had an important effect on workers' representatives by allowing them to negotiate without pressure, as the working conditions stipulated in the expired collective agreement were still of application until a new collective agreement could be concluded (so that in the case of no new agreement, the conditions of the previous one were still applicable). Nowadays, with the new legislation, it is recognized that there is one year of „ultra-activity" after which the collective bargaining at a superior level will be applicable. If there is no applicable agreement, the basic rules of employment law (Statutory provisions) would be applicable instead, which would imply an important loss of working conditions for employees as the minimum standards are traditionally improved by collective agreements.

It is possible to conclude, after all these considerations, that the outstanding idea of providing more and better jobs to employees, which is what flexi-security is said to be addressing, seems to be far from reality at the Spanish level with these new internal rules adopted during these years of crisis.

Translated by Author
Proofreading by MICHAEL THOENE

Accepted for print 30.12.2014

References

BAYLOS GARU A., PEREZ REY J. 2009. *El despido o la violencia del poder privado*. Ed. Trotta, Madrid.

BAYLOS GARU A., PEREZ REY J. 2013. *La deconstitucionalización del trabajo en la reforma laboral de 2012*. Revista de Derecho Social, 61.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Towards Common Principles of Flexicurity: More and better jobs through flexibility and security. 2007. COM(2007) 359 final. On line: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0359:FIN:EN:PDF.

Communication from the Commission. EUROPE 2020. A strategy for smart, sustainable and inclusive growth. 2010. COM(2010) 2020 final. On line: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020 from=ES.

DOLADO J. 2012. *The Pros and Cons of the Latest Labour Market Reform in Spain*. Spanish Labour Law and Employment Relations Journal, 1(1–2): 22–30. On line: http://www.uc3m.es/sllerj.

DUBLIN K.A. 2012. *Coalitions Against Change: The (Real) Politics of Labor Market Reform in Spain*. Spanish Labour Law and Employment Relations Journal, 1(1–2): 47–63. On line: http://www.uc3m.es/sllerj.

European Parliament resolution of 11th July 2007 on modernising labour law to meet the challenges of the 21st century [2007/2023(INI)]. 2007. European Parliament. On line: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20TA%20P6-TA-2007-0339%200%20DOC%20XML%20V0//EN.

Gómez Abelleira F.J. 2012. *Handbook on Spanish Employment Law*. Ed. Tecnos, Madrid.

Gómez Abelleira F.J. 2012. *The Spanish Labour Reform and the Courts: Employment Adjustment and the Search for Legal Certainty*. Spanish Labour Law and Employment Relations Journal, 1(1–2): 31–46. On line: http://www.uc3m.es/sllerj.

Green Paper. Modernising labour law to meet the challenges of the 21st century. 2006. COM(2006) 708 final. On line: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf.

Imbalances and Growth. Update of Staff Sustainability Assessments for G-20. Mutual Assessment Process. 2013. Prepared by staff of the International Monetary Fund. On line: http://www.imf.org/external/np/g20/pdf/map2013/map2013.pdf .

Manicini G.F. 2004. *L'incidenza del diritto comunitario sul dirito del lavoro degli Stati Membri*. Democrazia e costituzionalismo nell'Unine Europea. Il Mulino. Bologna.

Mercader Uguina J.R. 2012. *Care Crosses the River: the 2012 Spanish Labor Reform*. Spanish Labour Law and Employment Relations Journal, 1(1–2): 4–21. On line: http://www.uc3m.es/sllerj.

Muñoz Ruiz A.B. 2012. *Notes on Spanish Labour and Employment Regulations: Termination With and Without Cause Under the Workers' Statute*. Spanish Labour Law and Employment Relations Journal, 1(1–2): 83–86. On line: http://www.uc3m.es/sllerj.

Navarro Nieto F. 2012. *Collective Bargaining in Spain: the Reform of the Regulatory Framework*. E-Journal of International and Comparative Labour Studies, 1(3–4). On line: http://adapt.it/EJCLS/index.php/ejcls_adapt/article/view/36.

Opinion of the European Economic and Social Committee on: Flexicurity (Internal flexibility dimension – Collective bargaining and the role of social dialogue as instruments for regulating and reforming labour markets). 2007. Official Journal of the European Union, C 256: 108–113. On line: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007AE0999&from=EN

Radelli C.M. 2003. *The open method of coordination: a new governance architecture for the European Union?* Swedish Institute for European Policy Studies. Rapport 1. On line: http://eucenter.wisc.edu/OMC/Papers/radaelli.pdf .

Rodríguez Fernandez M.L. 2014. *Imperativos económicos frente a derechos fundamentales. Un nuevo paradigma de relaciones laborales*. Revista de Derecho Social, 65.

Romagnoli U. 2013. *Derecho laboral y marco normativo: nexos de origen y perfiles económicos*. Revista de Derecho Social, 64.

Terradillos Ormaetxea E. 2009. *La modernización del Derecho Laboral en Europa a través del MAC: La emergencia de otro modelo social europeo?* Estudios sobre la estrategia europea de la flexiseguridad: una aproximación crttica. Coord. J.P. Landa Zapirain. Bomarzo, Albacete.

Valdes Dal-Re F. 2012. *Flexibilité interne et réforme du marché du travail: Le cas espagnol*. Revue de droit comparé du travail et de la sécurité sociale. REVUE, 2.