AUSTERITY MEASURES AND THE REGRESSION OF SOCIAL RIGHTS: THE RECESSIONARY EFFECT IN THE RIGHT TO DIGNITY

Chelo Chacartegui

University Pompeu Fabra

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Austerity plans and labor law reforms reveal new horizons to scholars. Dignity is a right that requires a proactive attitude from the public administrations. The right to dignity runs through all rights in various forms and configurations and it is the keystone of all fundamental rights and the reason of their meaning. We are faced to a fundamental right that is articulated through the role of Labor Law in order to improve the fundamental rights of workers. Dignity is a *macro right* that must occupy a central place of today's governance to keep pace with the evolving and advancing labor regulations in a society that aspires towards the social progress. In safeguarding the dignity of workers, the resistance to overwork, mistreatments, abuses and exploitation plays a crucial role.

The purpose of this paper is to analyze the connections between the regression of social rights -as a result of the austerity measures- and the recessionary effects that the last reforms in Spain have provoked for the dignity not only as a fundamental right but also as a supreme value in our labor law regulations.

Dignity as a Macro Right

The starting point for a discussion regarding the importance of social human rights is focused on the value of dignity as a macro right that is present throughout all the legal system. The evolution of Labor Law is accompanied by the element of stability that the right of dignity provides to the firmness of the legal system. According to article 1 of the Universal Declaration of Human Rights (1948), "all human beings are born free, equal in dignity and human rights. They are endowed with reason and conscience and should act towards

one another in a spirit of brotherhood". It was Kant who designed the concept of dignity as self-respect, a crucial topic in moral philosophy in the explanations of moral motivations and in the discussions of agency and autonomy. Therefore, "Labour law should be embedded in, and help to advance, a regime of fundamental and universal human rights". (Arthurs, 2011: 23)

Some scholars have remarked the narrow distance between autonomy and dignity (Williams, 1973). In fact, the first concept is usually presented as a premise for the second one. The adoption of labour regulations geared specifically to dignify the working conditions of migrants is one example of this approach (López, 2005). Respect for dignity includes the need to protect freedom and autonomy and can be seen as an objective of the employment relationship; for this reason, the autonomy of the worker is of particular significance in the employment relationship (Toth, 2008). In this context, the fundamental rights, including social rights, have a crucial role. As Collins remarks, "some labor rights, such a as a right to work, might also have to be included in a coherent restatement of liberal principles of justice in order to provide sufficient guarantees of the primary goods" (Collins, 2011: 154).

There is a recognizable need to include labor rights in the core of our common framework in order to countervail the significant power inequalities existing between workers and employers. Thus, it's necessary one more step towards the guarantee of dignity, a concept of dignity that goes beyond the autonomy of the subjects, in order to avoid situations of exploitation or extreme degradations (Williams, 1973). In this sense, the role of the Human Rights Commissions would be to assess what are these socially determined needs, and how much money people should have in order to meet both kinds of needs (Fabre, 2000).

Dignity Mainstreaming Through the Labor Law Regulations

The concept of decent work was designed by the director of ILO Juan Somavia in the International Labor Conference in 1999. Decent work is defined as "opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity". Decent work is a broad concept that has many dimensions and scopes. Nevertheless, there is one feature that is intrinsic in the concept of decent work: it is especially focused on the most vulnerable and poorest people. The adjective decent has this connotation, referring to the aspiration of workers to have adequate working conditions. The aim of this paper is to establish some legal indicators that are in the basis of decent work.

The concept of decent work can be sterile without monitoring the results in different countries. In 2002, in his report to the 2001 International Labor Conference, Director Juan Somavia remarked that "in order to effectively promote the goal of decent work for all, the Office must be able to measure and monitor progress and deficits". With the aim to identify statistical indicators, a

group of scholars leaded by Anker designed a statistical system for measuring decent work (Anker and others, 2002). According to these authors, data availability and the relative importance of different decent work aspects vary greatly across countries and regions.

Thus, they identified eleven groups of indicators, organised around the structure of the internal programme and strategic objectives of the ILO: 1.- Employment opportunities; 2.- Unacceptable work; 3.- Adequate earnings and productive work; 4.- Decent hours; 5.- Stability and security of work; 6. Combining work and family life; 7.- Fair treatment in employment; 8.- Safe work environment; 9.- Social protection; 10.- Social dialogue and workplace relations; 11.- Economic and social context of decent work[1].

[1] *Employment opportunities*. Six widely available indicators are suggested: labour force participation rate, employment-population ratio, unemployment rate, youth unemployment rate, time-related underemployment rate, share of wage employment in non-agricultural employment, female share of non-agricultural wage employment.
Unacceptable work. In this group, two child labour indicators, that should proxy for unacceptable work by children, are suggested. Children not in school by employment status (percent by age) and children in wage employment or self-employment activity rate (percent by age).
Adequate earnings and productive work. Two indicators are suggested to directly measure pay - inadequate pay rate and average earnings in selected occupations-, two indicators to measure aspects of inadequate pay related to hours, and one indicator to measure training as a proxy for future pay opportunities.
Decent hours. The used indicators are excessive hours of work (percent of employed, by status in employment), and time-related underemployment rate.
Stability and security of work. Two indicators are used to measure stability: tenure less than one year and temporary work.
Combining work and family life. The suggested indicators are: employment rate for women with children under compulsory school age (ratio to the rate for all women aged 20-49) and excessive hours of work.
Fair treatment in employment. The used indicators are: Occupational segregation by sex, female share of employment in managerial and administrative occupations, share of women in non-agricultural wage employment, female/male wage or earnings ratio, selected occupations and Female/male ratios or differences for other indicators.
Safe work environment.- The suggested indicators are Fatal injury rate (per 100,000 employees); Labor inspectors (Labour inspectors (inspectors per 100,000 employees); Occupational injury insurance coverage (percent of employees covered by insurance) and excessive hours of work.
Social protection. The suggested indicators are: Public social security expenditure (percent of GDP, separately for total, health services, and old-age pensions); public expenditure on needs-based cash income support (percent of GDP); beneficiaries of cash income support (percent of poor); share of population over 65 years benefiting from a pension; share of economically active population contributing to a pension fund; average monthly pension (percent of median/minimum earnings), and occupational injury insurance coverage.
Social protection. The suggested indicators are: Public social security expenditure (percent of GDP, separately for total, health services, and old-age pensions); public expenditure on needs-based cash income support (percent of GDP); beneficiaries of cash income support (percent of poor); share of population over 65 years benefiting from a pension; share of economically active population contributing to a pension fund; average monthly pension (percent of median/minimum earnings), and occupational injury insurance coverage.
Social dialogue and workplace relations. There are three suggested indicators: union density rate, collective wage bargaining coverage rate and strikes and lockouts (per 1000 employees).
Economic and social context of decent work. The eight suggested indicators are: output per employed person (PPP level); growth of output per employed person (total and manufacturing); inflation (consumer prices where available); education of adult population (adult literacy rate, adult secondary school

The Regulatory Premises of Decent Work: a Horizontal Approach to Dignity

We can identify a vertical approach of the indicators of dignity as the core of labor rights that ILO defines as fundamental. Nowadays, in our globalized economy, the International Labor Organization has maintained a body of international labor standards with the aim to promote opportunities for women and men to obtain decent work in conditions of freedom, equity, security and dignity. According to the World Commission on the Social Dimension of the Globalization, "the rules of the global economy should be aimed at improving the rights, livelihoods, security, and opportunities of people, families and communities around the world" (ILO, 2004: 143).

When we are analyzing the concept of dignity, it's essential to identify the minimum standards. In this sense, the ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work in the areas of the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). In 1995, the ILO launched a campaign to achieve universal ratification of these eight conventions. There are currently over 1,200 ratifications of these conventions, representing 86% of the possible number of ratifications.

In what regards the freedom of association and the effective recognition of the right to collective bargaining, these are rooted in the ILO Constitution and the Declaration of Philadelphia annexed to the ILO Constitution. Further protection is granted by Convention num. 87, about Freedom of Association and Protection of the Right to Organize Convention (1948) and Convention 98, about Right to Organize and Collective Bargaining Convention (1949). The ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008, noted that freedom of association and the effective recognition of the right to collective bargaining are particularly important to the attainment of all ILO strategic objectives.

In order to achieve the elimination of all forms of forced or compulsory labor, ILO adopted the Conventions num. 29 about Forced Labour (1930) and the Convention num. 105 concerning the Abolition of Forced Labour (1957), to combat one of the cruelest forms of labor exploitation. It's usually the case of domestic workers that demands particular attention because of their conditions

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graduation rate); composition of employment by economic sector (agriculture, industry, services); income inequality (ratio of top 10 percent to bottom 10 percent, income or consumption), and poverty (percent of population subsisting on less than $1/day or less than $2/day); informal economy employment (percent of non-agricultural or urban employment).

of labor. According to the ILO, at least 15.5 million children aged 5 to 17 years were engaged in domestic work in the world (ILO, 2013). Besides violence, numerous other dangers threaten domestic workers, even in the case of children, such as sexual harassment and physical or psychological damages. Domestic work, characterized by the invisibility of workers has been recently characterized as one of the many faces of slavery or servitude (Blagbrough, 2008) because it is performed in the privacy of the employer's household, that makes workers more vulnerable to abuse by employers (Mantouvalou, 2012).

The effective abolition of child labor is a long-standing concern of the International Labor Organization. This aim involves a permanent combat that goes beyond legislating and implies the whole society. The struggle against the most abhorrent conditions of work is a priority of the ILO agenda. The Convention num. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor was adopted by the International Labor Organization in 1999.

At the same time, as the ILO has limited what it counts as core labor rights, it has also elevated them to the status of human or fundamental rights. The legal role of social rights in Europe demonstrates that "the juridical status of labor and social rights transcends the simple question of justiciability" (Fudge, 2007).

The Principles of Decent Work: a Vertical Approach to Dignity

One of the aims of decent work is to facilitate the identification of common standards for general well-being of workers. Thus, in the concept of decent work we could identify four common principles that can provide a regulatory platform for the protection of employment relations under the scenario of dignity.

Universality

The idea of universality puts the accent on the individuals that are the target group of the protection. Universality means that all people are entitled to human rights at all times. The general and worldwide applicability of the human rights is expressed in the Preamble of the Universal Declaration of Human Rights (UDHR)[2], where the Declaration is proclaimed "as a common standard of achievement for all peoples and all nations". The assumption of the conception of the human rights' universality is quite common among scholars in order to give rise to positive state obligations to regulate private conduct. This is especially important for domestic workers (Mantouvalou, 2012). The justification is found in the ideas of dignity and decommodification (Esping-Andersen, 1990), in the values of liberty and choice, and the distributive

[2] Proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

character of the human social rights. The idea of universality expresses a claim, focused on the all-inclusiveness of the UDHR and on the assumption of the notion of universality as a "normative concept, not a descriptive one". The universality in the UDHR is referred to the intentions of the norm-maker, without any doubt that "international human rights were (and are being) formulated to apply to all human beings everywhere around the world" (Brems, 2001, p. 4).

Thus, from a conceptual perspective, the human rights policy is governed by the principles of universality and indivisibility (Brandtner and Rosas, 1998). Implementing the principle of universality to the Labor Law normative system, social rights seek the protection of the weaker party, therefore all the workers are entitled to these rights, without any kind of discrimination. Consequently, the principle of universality is strongly related to that of equality and non discrimination, as essentials to guarantee the universality of human rights.

Through the decisions of the judges, human rights have been placed at the forefront of the European Union's priorities. In this sense, the European Court of Justice has played an important role in the process of constitutionalisation of the Treaties. When the European Charter of Fundamental Rights grandiosely referred to the Rights of Solidarity in Chapter IV, with this title fleshed out the conception of the workers and its representatives as fundamental social actors within the European Union.

The comprehension of solidarity emerging from these provisions materializes a concept of workers as bearers of rights and provides them protection in front of the normative system. Nevertheless, the universality principle is being threatened by the fragmentation materialized in different statuses of the workforce. Recent labor law reforms in Spain are consolidating this segmentation of rights between young and mature workers or between typical and atypical workers. Nevertheless, youth unemployment rates in Spain are dramatically high, more than 50% in the first term of 2013. Spain has taken action to promote higher employment participation for this age group, but increased substantially the precariousness of the contracts.

In Spain, the recent policy focus has been on increasing the number of young people undertaking apprenticeships and other similar forms of training under existing work-based training schemes. To be more specific, the Spanish new regulation has extended the age of the "young workers" for celebrating the apprenticeship contracts until 30 years, but this contract doesn't guarantee young workers the interoccupational minimum wage (SMI) and does not provide them with necessary skills and stable employment. Furthermore, no measures have been implemented in order to support young people's transition from school to work or to reintegrate them into education, training or employment and there is a general lack of evaluation of youth employment measures. The Public Employment Services should develop job itineraries

which combine orientation services and training, addressed to young people and long-term unemployed people of over 45 years of age and workers from the construction sector. However, no such measures came into force insofar.

On the other hand, the Spanish Government has created a new kind of contract ("contrato de emprendedores", or contract for support to entrepreneurs) whose more dubious point is its one year period of probation that allows employers to fire at will during the first year of employment. This contract can be used by companies with a maximum of 50 workers and it can be celebrated with young workers between 16 and 30 years. This type of contract basically reproduces the abrogated French *Contrat nouvelle embauche*[3] that was considered contrary to ILO Convention No. 158 on termination of working contracts by the judgment dated 6 July 2007 by the Paris Court of Appeal[4]. In addition, the ILO's Committee -supervising the application of international labor standards- was informed of this judgment on the merits of the case[5] and observed that 'the length that is normally considered reasonable in France for qualifying periods of employment does not exceed six months'. This period of six months is exactly the same that article 14 of the Spanish Workers' Statute fixes for the period of probation.

Actually, the "contrato de emprendedores" (contract for support to entrepreneurs) in Spain is waiting for the judgment of the Spanish Constitutional Court. The complainants maintained that Spanish Law 3/2012 was not in conformity with Article 4 of Convention No. 158, under which the employment of a worker shall not be terminated unless there is a valid reason for such termination.

Sufficiency

Nowadays, there is a trend to include "countable rights" in the core of the right of dignity. In this sense, article 34 of the Charter of Fundamental Rights of the European Union guarantees a minimum level of benefits, and states that "in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

[3] Proposed by prime minister Dominique de Villepin and that came into force by ordinance on August 2, 2005.

[4] In this judgement, dated 6 July 2007, the Court found (inter alia) that, during the two-year period, the Contrat Nouvelle Embauches deprives employees of the essential part of their rights with respect to termination and that having regard to the principle of proportionality it is not possible to consider the two-year period to be reasonable; accordingly, this instrument cannot take advantage of the implied benefit of the temporary derogation from the application of Convention No. 158.

[5] REPRESENTATION (article 24) - FRANCE - C87, C98, C111, C158 – 2007.

The principle of sufficiency is oriented to satisfy the basic needs of workers and their families, particularly by guaranteeing the maintenance of their purchasing power in relation to a series of specific basic products. Wages have traditionally served to measure this element of sufficiency, despite the fact that some significant comparative contrasts may be noticed among labor law systems. Considering this aim, the ILO Convention num. 131 concerning Minimum Wage Fixing[6] provides the indicators to measure the concept of sufficiency. Thus, according to article 3 of the Convention, the Governments shall take into account: a) the general level of wages in the country; b) the cost of living; c) social security benefits, and d) the relative living standards of other social groups. On the other hand, the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, take account of economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Social protection benefits also represent an important indicator to measure decent work from the prism of sufficiency. Thus, the primary function of social rights is to provide the conditions for substantive market access on the part of individuals, thereby promoting individual freedom, but also enhancing for society the benefits of the mobilization of economic resource through the market. In this sense, the concept of capabilities that Brown, Deakin and Wilkinson elaborate stands for a vigorous set of social rights which include substantive labor rights such as the right to a minimum wage and maternity pay (Brown, Deakin and Wilkinson, 2004). Nevertheless, the level of sufficiency is a question that each government determines under the framework for budgetary surveillance (Alarcón Caracuel, 1999).

The austerity measures in Spain were formally justified, according to the preamble of the Royal Decree 3/2012, by the economic context which made it preferable to adopt wage policies contributing to the priority objective of economic recovery and job creation. Nevertheless, when we analyze the data of the Statistical Agency of the Employment Ministry, the unemployment rate in Spain increased to 27.20 percent in the first quarter of 2013 from 26.02 percent in the fourth quarter of 2012. Thus, the aspirations –and, of course, the economic consequences- of the Royal Decree 3/2012 are very different from the initial purposes. In other words, the last neo-liberal reforms in Spain have facilitated the increase of the hierarchy forms of governance inside the firms and a clear triumph of the unilateral power to modify different working conditions (López, 2011) but have failed to resolve the country's persistently high unemployment (Fishman, 2012: 69).

[6] Convention num. 131 concerning Minimum Wage Fixing, with Special Reference to Developing Countries (1970).

Some examples could be illustrative to see the significant cuts that the Spanish Government carried out during 2012. On one hand, Law 3/2013 gives the employer the possibility of decrease wages through two different ways. The economic, technical, organizational and production-related causes can justify substantial modification of working conditions on the basis of article 41 of the Worker's Statute. One of the conditions that the employer can unilaterally modify is the wage's amount, while the consultation procedures with the workers representatives have been reduced from a minimum of 30 days to a maximum of 15 days. On the other hand, it is possible to change the wage's amount fixed in the collective agreements –previously, this provision referred exclusively to the inapplicability of the salary structure.

In relation to the unemployment benefits, the calculation of the amount has also suffered substantial reductions. Before the 2012 Labor Law Reforms, it was 70 per cent of the reference earnings for a maximum period of 6 months, then it became 60 per cent of reference earnings for the remaining period of the benefits. This last percentage has decreased to the 50 per cent after the Royal Decree 20/2012[7]. In addition, before the 2012 regulations, the Workers aged 52 or more were entitled to prolonged unemployment benefits at a flat rate of 75 per cent of the minimum wage. Nowadays, this age has increased to 55 years, and the direct consequence is that the coverage of the vulnerable persons has decrease substantially.

As the Observation of the Committee of Experts on the Application of ILO Conventions and Recommendations (CEACR) remarked about the last Spanish regulations[8], "the purchasing power of the interoccupational minimum wage (SMI) has been decreasing every year since 2010 and the SMI has corresponded to an increasingly small proportion of the average wage since 2007" and recalls that the Spanish minimum wage is one of the lowest in the "EU15", without this situation being justified by differences in hourly productivity levels. According with this observation, the Committee notes the remarks made by the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT) in communications dated 13 and 31 August 2012, respectively. At the end of the report, the Committee hopes that the Government will take into account the needs of workers and their families, "and not just the objectives of economic policy, when undertaking the annual adjustment of the minimum wage in future, avoiding depreciations in the purchasing power of the interoccupational minimum wage (SMI), and that it will fully involve the social partners, on an equal footing, in decision-making in this field".

Equality

[7] Reference earnings correspond to the average gross earnings over the last 6 months.
[8] Adopted in 2012 and published 102nd ILC session (2013)

Another crucial premise for decent work is the guarantee of equality and non discrimination principle. Equality at work therefore is not just about prohibiting discrimination; it is about changing the status quo and transforming the workplace to make it more inclusive (ILO, 2007: 10). ILO points to the need for better enforcement of legislation against discrimination, as well as non-regulatory initiatives by governments and enterprises. As a result, ILO's commitment to combating discrimination and promoting equal treatment and opportunities at the workplace has been a priority from the holistic human rights approach that offers the concept of decent work (MacNaughton & Frey, 2011).

The Declaration of Philadelphia, adopted by the International Labour Conference in 1944 and now part of the ILO Constitution, recalls that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom. In addition, Convention No. 111 defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation", and allows additional criteria to be included after consultation by the governments concerned with employers' and workers' organizations.

The Spanish Constitution makes a specific reference to the equality principle in Article 14, which states that "all Spanish citizens are equal before the law, so that there may be no discrimination by reason of birth, sex, race, religion, opinion or any other personal or social condition or situation". This provision has a special position within the text of the Constitution, which accounts for its particular significance: it is located within Chapter II, concerning "Fundamental Rights and Public Liberties". For the Spanish constitutional jurisprudence, the principle of equality should have a horizontal effect within the contract of employment, as a limit on contractual autonomy and on the employer's power of direction. In this sense, an arbitrary difference in treatment can be seen as harmful to the dignity of the worker if this difference lacks in any reasonable justification.

Regardless of this formal regulation, the fact is that Spanish women workers may experience disadvantages in the workplace, such as performing part-time work, as a cause of being caregivers at various points in their work life. Women are somewhat more likely to be in part-time work than men –more than the 80% of part-time workers are women[9]-. With regard to gender equality, the Spanish Law 3/2007 for Effective Equality between Women and Men enforced in 2007, states in article 43 that positive actions for increasing women's employment, as well as measures for the effective application of the equal treatment and non-discrimination principle can be established by means of collective bargaining.

[9] Labor Statistics Report. Ministry of Employment (2012).

Nevertheless, Labor Law reforms in Spain are increasing the existing inequalities between men and women, reinforcing gender inequalities in employment and pay. Thus, the Spanish regulations consolidate "penalties" for this type of contracts in terms of wages, employee benefits and access to social protection.

In addition, the 2012 Labor Reforms regulations of part-time work have opened the door to the possibility of doing overtime hours. Overtime refers to all hours worked in excess of the normal hours. Irregular and unpredictable working hours can constitute a form of indirect discrimination, because those workers working non-standard and irregular schedules can be *de facto* be expelled from the labor market. In such cases, we have to taking into account the provisions of the ILO Convention No. 175, which aims to protect part-time workers against the risk of discrimination that they might suffer in comparison to comparable full-time workers. Thus, the Convention calls for measures to be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers. Equality of opportunity and treatment for part-time workers in relation to comparable full-time workers is the key issue in this Convention.

In the field of collective bargaining, trade unions and employers' associations are abandoning work–family reconciliation on their agenda. Evidence from the United States and Spain suggests that the horizontal occupation component of the gender pay gap explains up to 53 per cent of the total net wage gap (ILO, 2012). In addition, the number of equality plans has alarming decreased more than the 25% during the first twelve months after the law 3/2012 came into force. After the Labor Law reforms in 2012, internal flexibility, including working time flexibility, is higher. The Law 3/2012 established that employers can manage a 10% of working time that can be distributed irregularly throughout the year.

On the other hand, additional limits for the exercise to parental leaves have been adopted by the new regulations, based on economic, organizational or productive reasons alleged by the employer. Thus, the employer has the capacity to empty out this kind of rights, ignoring that "the ultimate objective of reconciliation of work, private and family life for working parents, and equality between men and women with regard to labour market opportunities and treatment at work, must be borne in mind when establishing the form, duration and conditions of parental leave" (European Court of Human Rights, Case of Constatin Markin v. Russia, 22 March 2012).

Democracy

In the judgment of the National Union of Belgian Police v. Belgium (27 October 1975), the European Court of Human Rights set forth the main principles

concerning trade union freedom[10], safeguarding the freedom to protect the occupational interests of trade union members (article 11 of the European Convention of Human Rights, 1950). Almost thirty years after, the Court remarked the proactive role of the State in order to "ensure that trade union members are not prevented or restrained from". Scholars who have analyzed the core function of unions have underlined that they are, in essence, "a complex amalgam of multiple objectives and potentialities, but political action and engagement is clearly one of them" (Lester, 2011: 330).

The collective rights have been present since the origins of Labor Law, but one of the most important challenges in labor relations in recent decades proceeds from strategies that unions have developed in order to face globalization (López, Chacartegui & G. Cantón, 2011). Nevertheless, the collective rights of workers – particularly materialized in the consultation and participation rights- have suffered from a democratic deficit that is made up under the formal coverage of the austerity measures in Spain. The collective agreement in micro-units – overall at the enterprise level- will have priority over sector agreements on certain issues, including wage and working time, putting into question the collective autonomy of the parties, workers and employers' representatives (Art 84.2 Statute of Workers).

The history of the attempts to establish the rules on employee information, consultation and involvement is closely linked to the history of the European Community itself. In fact, this subject has been at the heart of the discussions on European social policy, the European social model and the preferred type of economic and social development in Europe[11]. Certain decisions have a significant effect on the interests of employees and, for this reason, must be the subject of information and consultation of the employees' appointed representatives as soon as possible. Thus, the Commission has committed to the fundamental principles regarding the need to ensure adequate safeguards at European level for the information and consultation of employees which motivated its original proposals in this area. It has been one of the most important ways to empower workers in the crucial matters of the company´s existence.

According to the Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), employers and employees' representatives must work in a spirit of cooperation and with due regard for each other's rights and obligations. This Directive is

[10] Article 11 (freedom of assembly and association) of the European Convention of Human Rights states that "everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests".
[11] See the Communication from the Commission on Worker Information and Consultation [COM/95/547 Final].

part of the Community framework intended to support and complement the action taken by Member States in the field of information and consultation of employees. According to Article 6, related to the content of the agreement, "the central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1)".

Far for the European provisions, the Spanish Labor Law Reform of 2012 has provoked the decentralization and atomization of collective bargaining, especially in the form of firms agreements and it has the consequence that "collective bargaining lose a central organizational control" (Hepple, 2011: 39). This has been aggravated by a correlative intensification of the organizational authority, the strengthening of the managerial prerogatives and the amplification of the employers' *ius variandi*. After Law 3/2012 came into force, workers have had to either sign personal contracts and surrender their trade union rights or accept a smaller salary increase. In other words, this new articulation of the collective agreements at the lower or inferior levels has increased the individual autonomy as an instrument to impose unilaterally the working conditions by the employers.

Alternatively, the path towards reaching a material democracy is being pursued through social mobilizations, protests and demonstrations of workers and, in general, of the citizens in the streets. In fact, it's the quality of democratic life in the companies that is put into question. According to Robert Fishman, "the question is not whether a society has encountered a specific solution to challenges of public policy and social justice but whether it affords citizens an engaging public arena within which they may contemplate, discuss if they wish, and ultimately choose among competing views, alternatives and proposals" (Fishman, 2004: 3).

Conclusion

In order to advance towards a redistributive justice, it's expected that the right to dignity accompanies the evolution of Labor Law in order to improve the basic rights of persons in the workplace. Nevertheless, the last regulations based on austerity measures increased the hierarchy in the workplace and made it easier and cheaper to dismiss workers, unilaterally changing their conditions of work and cutting their wages. Spain is a good example of it, with substantial impacts on relevant labor regulations after the last reforms of February 2012. Definitely, these measures did not secure any improvement in the creation of new jobs, but led to an unquestionable the erosion of labor rights core standards.

Spanish Government has created a new kind of contract ("contrato de emprendedores", or contract for support to entrepreneurs) whose more dubious point is its one year period of probation that allows employers to fire at will during the first year of employment. In relation to measures to encourage internal flexibility, the law allows opting out from collective bargaining if the enterprise records a drop in its revenues or sales for six consecutive months. Finally, dismissing a worker for economic reasons is now considered valid when a company foresees a loss, or experiences a persistent drop (defined as occurring for nine consecutive months) in its revenues or sales.

When we take into account the main principle that accompanies the right to dignity, we can see the democratic deficit that labor reforms in Spain have accomplished. Segmentation and precariousness have blurred the principle of universality, creating different status of protection or simply excluding workers from the umbrella of Labor Law. The principle of sufficiency has suffered important alterations as a consequence of the new schemes of collective bargaining, as an acutely diminution of the salaries. Enormous asymmetries have been consolidated in relation to the principle of equal treatment on the grounds of gender. In sum, the rights of participation and consultation of workers –as a genuine expression of the democracy inside the companies- have suffered one of the most important attacks in the recent history of the democratic labor relations in Spain.

References

Alarcón Caracuel, M.R. (1999). La Seguridad Social en España. Aranzadi Eds. Pamplona.

Arthurs, H. (2011) "Labour Law After Labour", in Davidov and. Langille (eds), The Idea of Labour Law, Oxford University Press.

Anker, R., Chernyshev, I., Egger, P., Mehran, F. and Ritter, J., (2002) Measuring Decent Work with Statistical Indicators, Policy Integration Department Statistical Development and Analysis Group, International Labour Office. Geneva.

Blagbrough, J. (2012). "Child Domestic Labour: A Modern Form of Slavery", Children and Society, num. 3, 2008.

Brems, E. (2001). Human rights: universality and diversity, Volume 66 van International studies in human rights, Martinus Nijhoff Publishers.

Brandtner, B. & Rosas, A. (1998). Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice, Eur J Int Law (1998) 9 (3): 468-490.

Brown, J., Deakin, S. & Wilkinson, B., (2004). "Capabilities, Social Rights and European Market Integration", in Europe and the Politics of Capabilities 205, 205 (Robert Salais & Robert Villeneuve eds.).

Collins, H., (2011). 'Theories of Rights as Justifications for Labour Law', in Davidov and. Langille (eds), The Idea of Labour Law, Oxford University Press.

Fabre, C. (2000), "The Dignity of Rights", Oxford J Legal Studies (2000) 20 (2): 271.

Esping-Andersen, Gosta. (1990). The Three Worlds of Welfare Capitalism. Princeton University Press.

Fishman, R. M. (2004). Democracy's Voices: Social Ties and the Quality of Public Life in Spain. Ithaca, NY: Cornell University Press.

Fisman, R.M. (2012). Anomalies of Spain's Economy and Economic Policy-Making. Contributions to Political Economy (2012) 31, 67–76.

Fudge, J., (2007) "The New Discourse of Labor Rights: from Social to Fundamental Rights?", 29 Comp. Lab. L. & Pol'y J. 29

Hepple, B. (2011) "Factors Influencing the Making and Transformation of Labour Law in Europe", in Davidov and. Langille (eds), The Idea of Labour Law, Oxford University Press.

ILO (2004). "A Fair Globalization: Creating opportunities for all, Report of the World Commission on the Social Dimension of Globalization", Geneva, 2004.

ILO (2007). "Equality at work: Tackling the challenges. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work". International Labor Office, Geneva, 2007.

ILO (2012). "Global Employment Trends for Women". International Labour Organization, Geneva, 2011.

ILO (2013). "Domestic workers across the world: Global and regional statistics and the extent of legal protection", International Labour Organization, Geneva, 2013.

Lester, G., (2011). Beyond Collective Bargaining: Modern Unions as Agents of Social Solidarity, in Davidov and. Langille (eds), The Idea of Labour Law, Oxford University Press.

López, J. (2005). "Una Mirada a los Derechos Sociales de los Inmigrantes desde su Dignidad", Estudios de Derecho Judicial, num. 76, 2005.

López, J., Chacartegui, C. & G. Cantón, C. (2011) "From Conflict to Regulation: The Transformative Function of Labor Law", in Davidov and. Langille (eds), The Idea of Labour Law, Oxford University Press.

López, J. (2011). "Elementos de definición del modelo de relaciones laborales por las normas de OIT y comunitarias: la desestabilización por la Reforma Laboral (2012)", Revista de Derecho Social, núm. 57/2012.

MacNaughton & Frey (2011). Decent Work for All: A Holistic Human Rights Approach. 26 Am. U. Int'l L. Rev. 441

Mantouvalou, V. (2012). "The Many Faces of Slavery: The Example of Domestic Work", Global Dialogue, Volume 14, Number 2.

Toth, M.A., The Right to Dignity at Work: Reflections on Article 26 of the Revised European Social Charter, 29 Comp. Lab. L. & Pol'y J. 275

Williams, B (1973) The idea of equality in Williams, B (1973) Problems of the Self Cambridge, Cambridge University Press.-