FLEXIPRECARITY: A SPANISH VERSION OF *FLEXICURITY*

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Flexiprecarity: a Spanish version of *flexicurity*.

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I. Austerity, protest and increasing inequality.

The current political and social scenario in Spain could be described by its fundamental instability. The financial and banking crisis and the austerity program have generated a large number of banking foreclosures and evictions leading to massive protests and strikes[1], as well as the ECJ ruling of March the 14 of 2013 declaring the Spanish regulation of housing debt to be abusive and therefore illegal.

The costly rescue of the banks and the cuts in the public social budget, along with wage reductions and policies of privatization in education and health care have occurred alongside numerous cases of corruption which involve basic institutions such as the monarchy and

[1] The *Indignados* movement has played an important role organizing protest. Taibo, C. (2011) *Nada será como antes. Sobre el movimiento 15-M*. Madrid: Catarata.

political parties. From the social cohesion point of view, at-risk-of-poverty rate has increased from 19,9% in 2006 to 21,1% in 2012 (provisional), particularly in the 16-64 years old population whose at-risk-of-poverty rate increased from 16,4% in 2006 to 21,0% in 2012 (provisional[2]. This extraordinary combination of factors has induced considerable social protest. The fiscal effort to sharply decrease deficits has also created tension between the central government and the regions as reflected in the emergence of the independence movement in Catalonia.

There are multiple controversial points in the 2012 labour law reform, but the most relevant is that this regulation dismembered the constitutional and international model of labour rights ratified for Spain. This legal policy is also in contradiction with the core of European Union Law on part-time, temporary contracts and parental leave, as well as with ILO Conventions, such as ILO C. 158 or C. 87 and 98. In sum, the elements of contradiction emerge not only among the hard and soft EU regulatory system but also in their connection with that domestic legal level[3]. This raises the complexity of the current labour law and the contradiction existing among levels in some cases.

The fact of linking the employment strategy version 2020 to broad guidelines for the economic policies of the Member States, and these also connected with austerity measures included in the stability programme, had as a consequence the legal reform of labour market imposed by the PP

[2] Spanish National Statistics Institute (INE) Encuesta de condiciones de vida 2012.
[3] "The crisis of the eurozone opened the way for '' disaster capitalism " moving now westwards and it become a laboratory of polices to be implemented elsewhere", Lapavitsas , C. at al. Crisis in the Eurozone , Verso, 2012, XVIII. M. Blyth, " Austerity. The history of a dangerous idea", Oxford, 2013.

government[4]. Moreover, the main employers' organisation put pressure to achieve the highest possible level of flexibility. Spanish Constitution was amended and hard domestic labour law reformed because the requirements of the EU have created a deteriorating process for labour rights without any positive indicator of contributing to solve the crisis. According to Fishman this focus on labour costs and rigidity is a failure policy maintained by policy markers, socialist and conservative, during the whole post Franco period[5].

One of the main results of the austerity programs is more inequality, as underlined by the ILO[6]. Workers on temporary contract are the most affected group by job cuts. Taking Spain as reference, 90 % of the employment losses refer to temporary workers. Youth unemployment has also increased, discriminatory practice against women worsened (Spain, Ireland and Greece) and in the male-dominated sectors women are the first to be dismissed and to suffer the higher cuts of wages[7]. The ECJ has ruled in two important cases, one on part-time regulation in Spain, that the regulation of social security contributions and benefits for part-timers violated the European Part-Time Directive[8] .

[4] See: COMMISSION STAFF WORKING PAPER Assessment of the 2011 national reform programme and stability programme for SPAIN (Brussels, 7.6.2011 SEC(2011) 718 final) and Council Recommendation of 12 July 2011 on the National Reform Programme 2011 of Spain and delivering a Council opinion on the updated Stability Programme of Spain, 2011-2014 (2011/C 212/01)

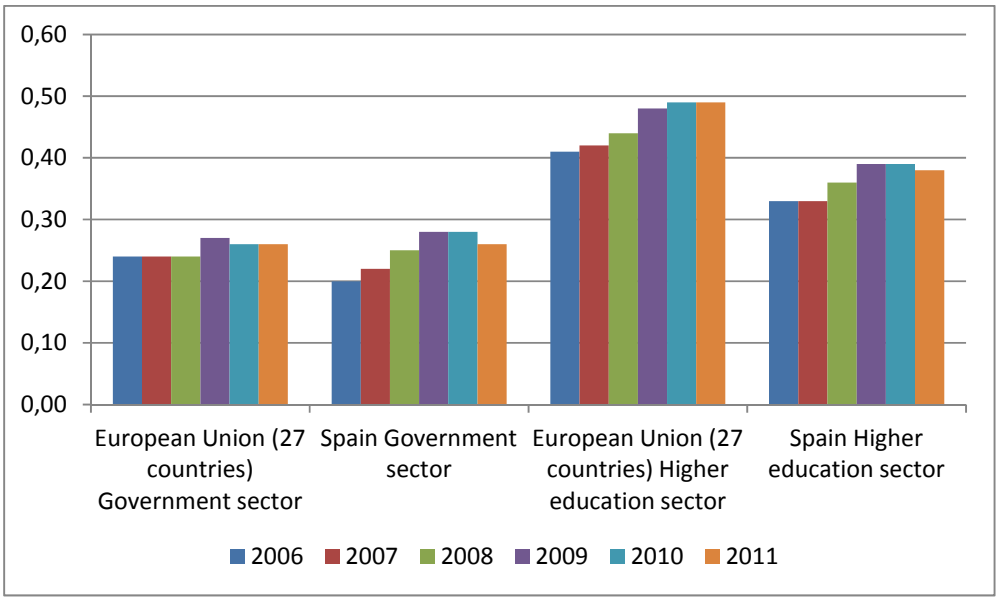
[5] Fishman, R. Anomalies of spain's economy and economic policy-making, Political economy (2012) 31, pag. 69.

[6] Work Inequalities in the Crisis: Evidence from Europe, edited by Daniel Vaughan-Whitehead, 593 pages, jointly published by the International Labour Office (ILO), Geneva, Switzerland, and Edward Elgar, Cheltenham, UK, and Northampton, MA, USA. ISBN 978-92-2-124885-9. The book includes forewords by Maria Helena André, Minister of Labour and Social Solidarity, Portugal; by Nicolas Schmit, Minister of Labour, Employment and Immigration, Luxembourg; and by Guy Ryder, Executive Director, Standards and Fundamental Rights and Principles at Work, ILO. The book founded that

[7] Ibidem

[8] Case law March 14th 2013.

On the other hand, the failure of the education system as an instrument to fight social inequality [9] and the increasing tendency to eliminate humanities studies are characteristic of some of the EU countries, Spain not being the best amongst them. Harsh cuts in R&D investment are also to be observed. This reinforces the lack of possibilities for people to develop their capabilities as humans and citizens.



Own elaboration - Source: Eurostat (Total intramural R&D expenditure by sectors of performance)[10]

In this contribution we focus on Spain, and analyse the Labour Market Reform of 2012, with special emphasis on young people and the failure of training contracts as instrument to help resolve some of the challenges presented by youth unemployment and precariousness.

The key points are related with the failure of employment policies for young people inside a general framework of market reforms which have as

[9] Esping-Andersen, G. " The incomplete revolution. Adapting to women's new roles", edit. Polity, 2009.

[10] Government funds were further reduced by 25% in 2012 and 6% in 2013

consequences, “de-contractualization” of labour law (reducing the level of legal protection and increasing *de facto* unilateral adaptability to the necessities of the labour market), decentralization of collective bargaining without compensation towards better coordination, and the judicialization of the labour system compassing with protest and strikes**.**

Spain as a case allows to argue the failure of the goals set by the European Union applying austerity and makes the case that the modification of hard labour law in the way that soft European Strategies have imposed, not only has not been successful so far, but to the contrary, has created more unemployment, inequality and exodus for youth.

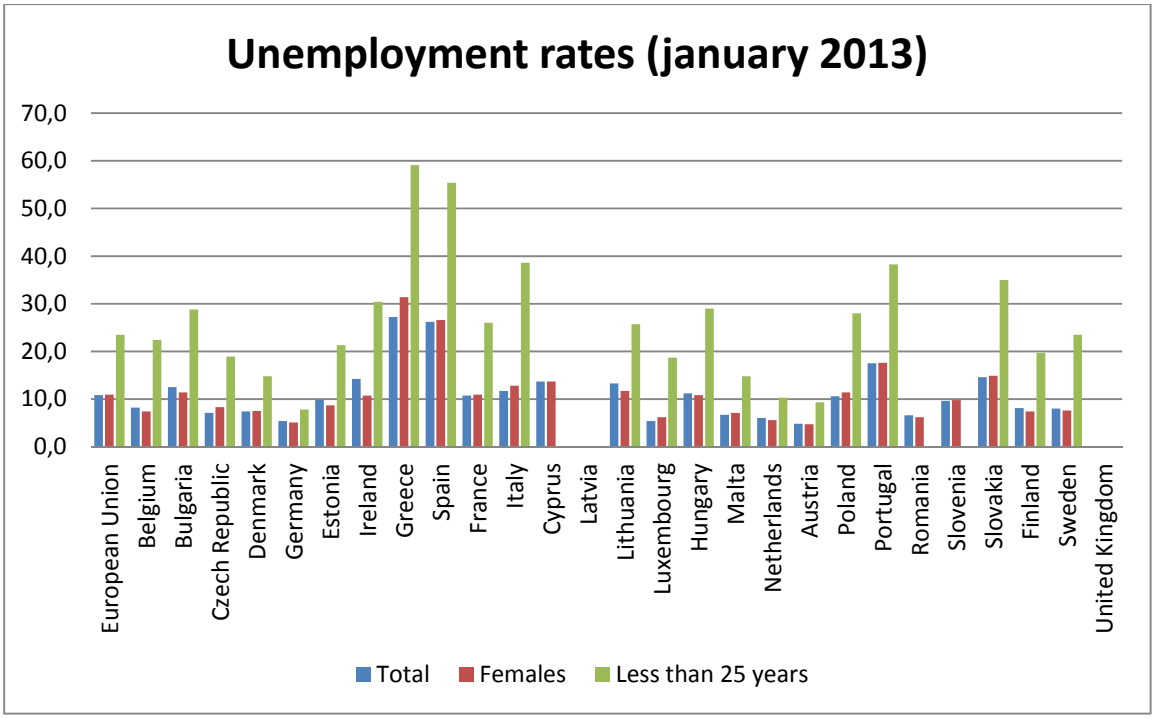
II. Employment Strategies as *flexiprecarity*: the Spanish case.

The Employment Strategies facing 2020 have forced the member States to reform labour markets with clear indications for each Member State. However, pressure for employment related legislation reform has also been put on Member States of the periphery (Portugal, Spain, Italy, Greece), trough the Memorandums of Understanding in cases of bailout countries, or through indications from the Commission or the ECB, in other cases. The problem is that the direction of the indications and the reforms asked or imposed go from being contradictory to the objectives and principles of the Employment Strategies themselves, or are plainly contradictory with international instruments, the EU Treaties [11] or

[11] Keith Ewing, for example, has argued that the Greek bailout contradicts the European Treaties, which state that the EU has to work “for sustainable development based on economic growth”, but that it will do so to promote “a highly competitive social market economy aiming at full employment", while advancing solidarity and social justice as well as "equality between men and women." (Intervention at the Congress “Resocializing Europe and the Mutualization of Risks to Workers”, University College London, 18-19 May

Constitutional law (case of collective labour law in Greece and recent judgment of the Portuguese Constitutional Court).

Within this context, Spain, in 2012, with the conservative Government of PP, has implemented the most devastating Reform of Labour market regulation of the Spanish democracy, not only from the perspective of labour rights but also of employment results. Since the Reform, unemployment rate has increased and Spain is leading European youth unemployment rates with Greece[12].



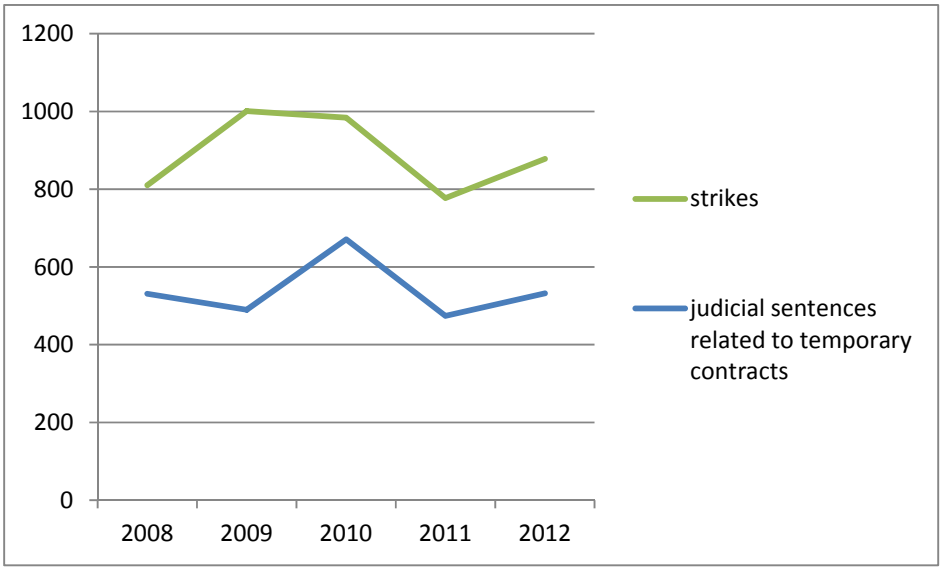
Own elaboration – Source: Eurostat

The Labour Market Reform (2012) was implemented by the Law 3/2012 of July 2012 with a lot protest and conflicts as a consequence.

2012). Moreover, the collective bargaining reform imposed by the Greek Memory of Understanding has been declared contrary to the European Social Charter by the Committee of Social Rights. Those measures have also been deemed illegal by the ILO Committee on Freedom of Association.

[12] Hurley, John; Fernández-Macías, Enrique; Storrie, Donald, "Employment polarisation and job quality in the crisis: European Jobs Monitor 2013"

Strikes and protest and judicialization have increased as elements of definition of the current scenario in Spain. There is also a claim of unconstitutionality waiting to be resolved by the Constitutional Court.



Own elaboration - Source: Ministry of Employment and Social Security (Estadísticas Laborales) and data of judicialization of from West-Law (cases resolved by Tribunales Superiores de Justicia)

The diagnosis of high unemployment, affecting more youth and women and, more relevant, private debt and public debt, would supposedly be resolved with this Reform, or at least part of these problems. The main goal is to increase employability and the measures to achieve that goal are structured in the following way:

** New versions of internal flexibility with extended employer´s capacity to modify working-time, geographical mobility and functional mobility. The causes to modify labour conditions set in the labour contract keep being related to economic, production or technological grounds, but the Law has “de-contractualized” the modifications because it introduces a vague definition of the causes, and the presumptions play in favour of the

employer. Both are mechanisms of unilateralization of the modification of labour conditions and judges will have an important role in the interpretation of these clauses[13].

** A second relevant aspect of the Reform is the new relation between part-time work and extra hours. The prohibition for part-time workers making extra hours has been eliminated. This created a perverse effect against equality and non discrimination on grounds of gender, being the majority of part-time workers women, and complicated even further work-life balance. Those effects were reinforced by the drastic reduction of the budget to support the attention for dependents, which affected even more work-life balance, above creating more above all (feminine) unemployment.

** The third aspect, on which we want to dwell further, refers to the precarization of labour contracts. The reform introduced more possibilities to chain temporary contracts. Contrasting with the prohibition of chains of temporary contracts set by the European Directive, the Labour Reform opens more possibilities to do this. This policy has a perverse effect on youth and women. This is also a source of judicialization for the legal system. In this sense the evolution of precariousness in Spain has had as consequence the increase of judicialization and protest as instruments of conflict emergence**.**

[13] Despite the objective of the legislator being to bar judges from judging the opportunity of the decisions of the employers, the latter are constitutionally obliged to assess the proportionality between the alleged causes and the concrete decision of the employer.

In a diachronic perspective of the precarization of the labour system, the model increases the elements of *flexiprecarity* with special emphasis in the youth.

The first phase starts during the eighties and at the beginning of the nineties, were temporary contracts are progressively seen as an instrument of job creation. They start to be generalized through two main mechanisms.

The year 1984 saw created the "*contrato coyuntural*", a temporary contract without cause, meant to promote the creation of work (*fomento de empleo*). Although the reform built in measures to refrain abuse of this form of contracting, they became the norm, and started a culture of recourse to temporary contracts.

In 1994, the possibilities to have recourse to the *contrato conyuntural* were drastically reduced (but accompanied with a generous transition regulation). However, this decision was accompanied by a reform of the other forms of temporary contracts[14], which also meant breaking the nexus between the temporary character of the contract and the temporary character of the task to be performed under the contract (softening the causes under which a temporary contract can be used).

In 1994, temporary contracting through work agencies was generally authorized. In Spain there is a specific Act regulating temporary-work agencies (Act 14/1994, of 1st June). Before this date, temporary-work agencies were considered illegal. Nowadays, Decree 10/2010, of June 16th, allows the use of temporary work agencies in the construction sector,

[14] The three main temporary contracts in the Spanish legislation are the contrato por obra y servicio (for a limited work or service), contrato eventual (for temporary change in production circumstances) and contrato de interinidad (for temporary substitution of permanent worker).

despite of the high number of accidents at work, with the Health and Safety regulations in the field of temporary-work agencies becoming weaker.

In matters related to precariousness, the reform had two main consequences. First it caused a rise in the costs of unemployment. Second, the abuse of this type of contracting provoked a diminution in the qualification of the labour force, caused by a higher rotation and the succession of temporary contracts.

In a second phase, measures were put in place, with as objective the reduction of the abuse of temporary contracts, through collective bargaining. However, some abuses, like the abuse of temporary contract for circumstances of the production (temporary and unforeseeable augmentation of production), were embedded in those collective instruments.

2007 saw the start of a movement of control and intents to turn back to standard contracts so as to lower the costs of unemployment. That period saw the creation of a contract “for the promotion of indefinite contracting” (*fomento de la contratación indefinida*). The contract entailed lower redundancy costs, and was first limited to a few categories of workers. However, the categories were broadened in the 2010 reform, with a *de facto* generalization as a result.

Finally, the labour law reform of the summer of 2012 suspended the (theoretical) three-year limit for the succession of temporary contracts, and elevated the age limit for training contracts to 30 years.

The diachronic description shows that there is a clear continuity in the regulation of temporary contracts, training contracts, part-time contracts

and agency work. For instance, coinciding with the second phase mentioned above, social partners signed the “Stability in the Employment Agreement” (*Acuerdo para la Estabilidad en el Empleo*) in 1997 to reduce the duration of training contracts from 3 to two years and also restringing the age allowed to sign it from 25 to 21 years-old. As it will be showed below, 2012 Labour Market Reform has shifted from those changes.

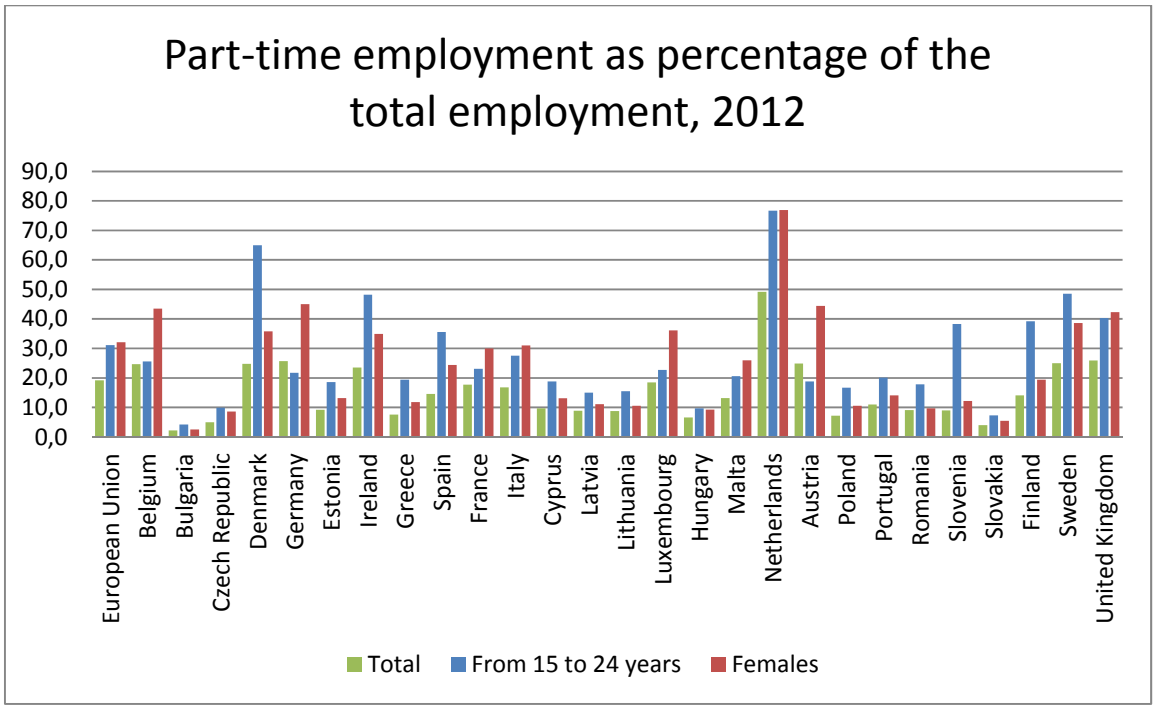
Despite keeping the figure of the standard contract and intents to reduce the abuse of temporary contracts, the actual panorama is one of relaxation of the causality of the latter form, accompanied by the violation of the principles of equality and non-discrimination (different salary scales) as well as a tendency to authorize the succession of temporary contracts, an augmentation of its use in the public sector as well a major promotion of the role of work agencies.

This panorama finds its historical roots in the moment when labour policy started to be inspired by the belief that temporary contracts are a source of job creation. From there starts the opening of temporary contracts to the permanent necessities of employers and the generalization of temporary contracts.

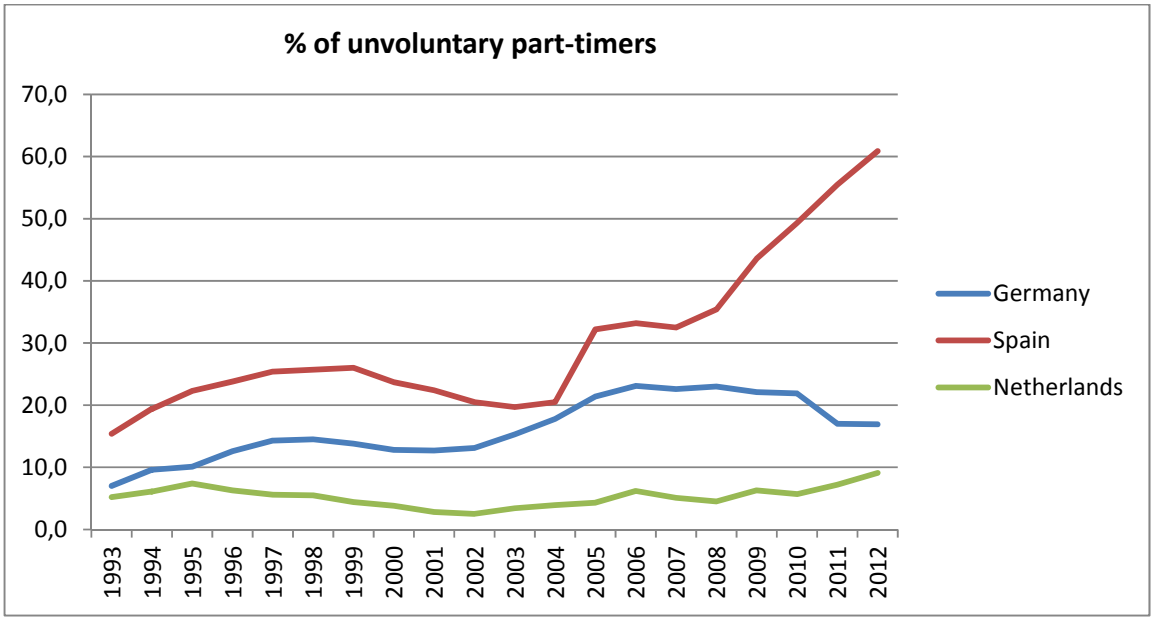
Furthermore, part-time work sees itself consolidated as a form of precarious work, due to the accumulation of two factors: the unclear frontier between part-time and full-time work and the lowering of social security rights part-time work entails. We also notice a wrong understanding of the EU Directive on part-time work in the understanding of the voluntary character of part-time work.

Precarious work is identified as a problematic area also in relation with other forms of contracts or work. In Spain, it is very frequent to detect precarious work in part-time work, fixed-term work, temporary-work agencies, outsourcing, subcontracted labour, on-call work, domestic workers and telecommuting.

More and more, a category of precarious work is identified in relation with working poor, not only in case of part-time work, but also in case of full-time work, given the low Spanish minimum wage. Also seen as problematic is the recourse to “scholarships” to cover the needs of companies and public bodies, with even lower salaries and exclusion of some social rights. Another diffuse problematic is that in the hiring of new workers, there is a tendency to contract them under worse conditions than older workers doing the same type of job.



Own elaboration - Source: Eurostat



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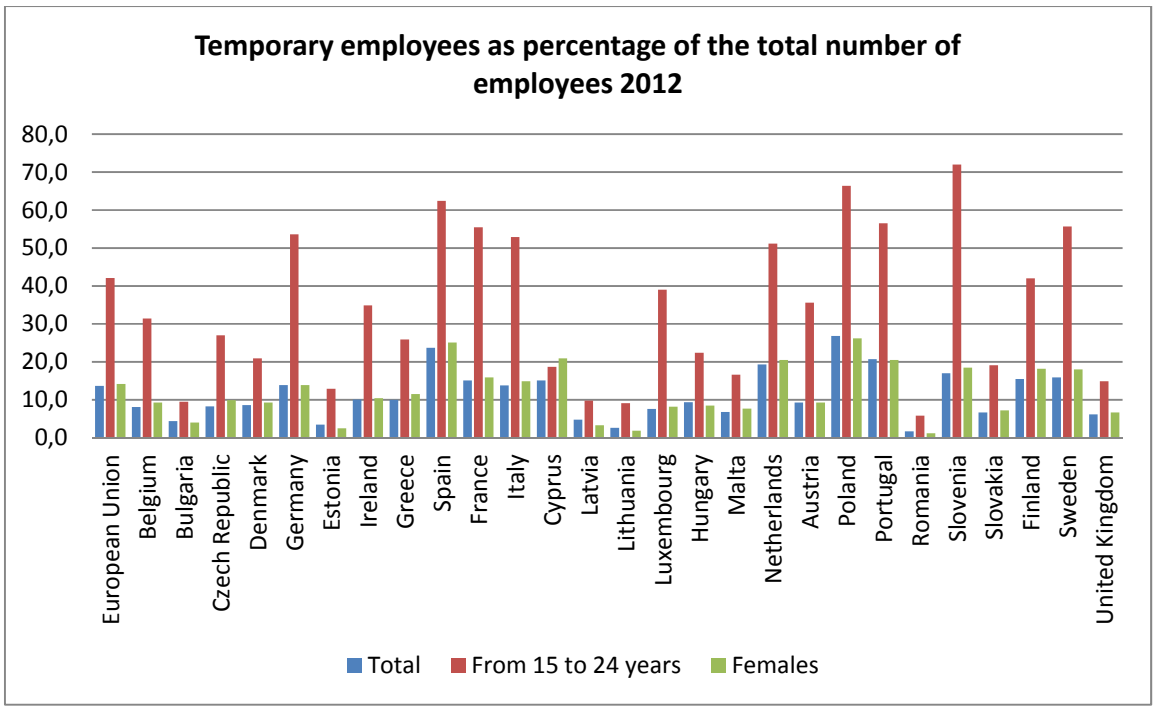
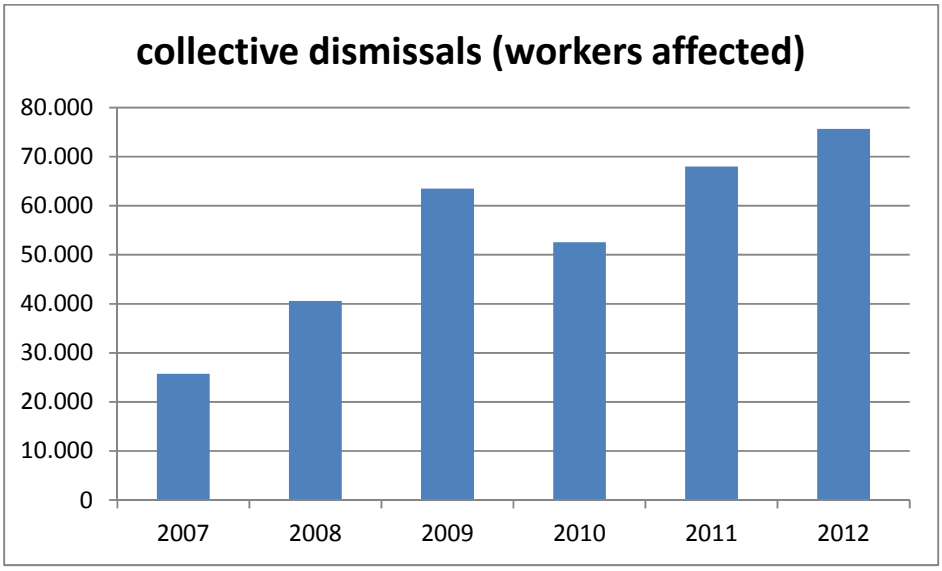


Own elaboration - Source: Eurostat

** The fourth point to be identified in the Reform is the new regulatory frame to facilitate dismissals. Broader grounds, following the logic behind the reform of the grounds for internal flexibility, with presumptions favouring employers and reducing even payment for wrongful dismissal, have had again as impact the “de-contractualization” of employment and has increased the rate of unemployment. Again, this will also be a new aspect of judicialization. Increasing unemployment rate is the consequence of this policies.



Own elaboration - Source: Ministry of Employment and Social Security: Estadísiticas Sociolaborales

** The fifth aspect to point out in the 2012 Reform is the weakening of collective bargaining. This increases inequality. The Reform promoted decentralization of collective bargaining, displaced the unit of negotiation towards the company and weakened greatly the sectorial level. But the new

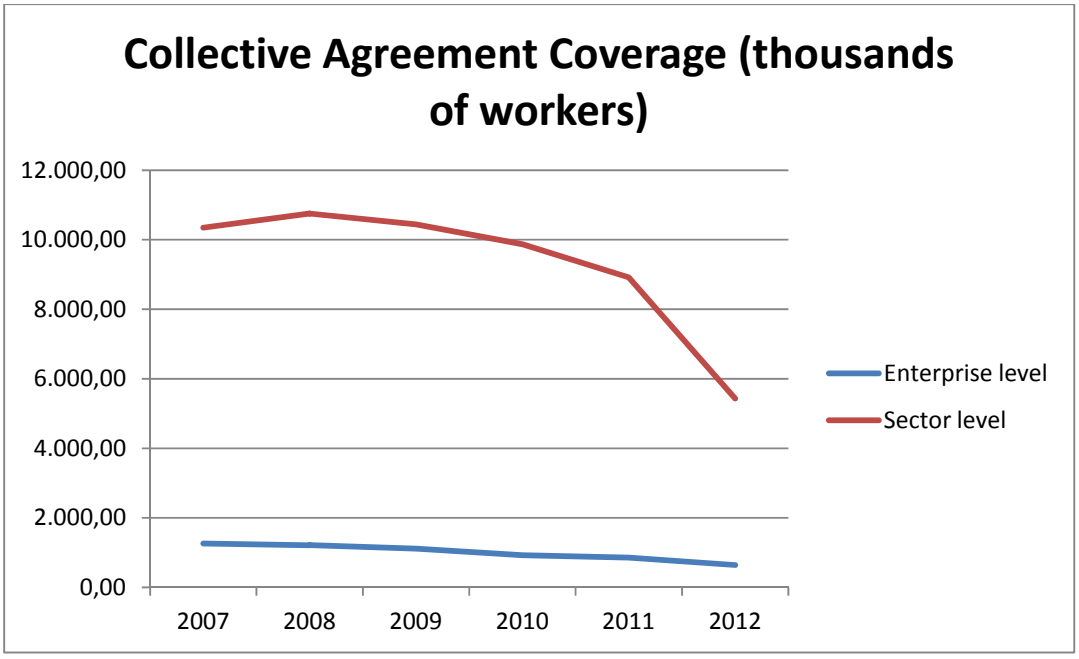
law lacks any measure to guarantee a coordination system of collective bargaining. This will have perverse effect in terms of inequality, and will provoke a race-to-the bottom in terms of labour costs (which actually is one of the unofficial political objectives of the reform, under pressure of the indications of European institutions, the IMF and the OECD to enhance competitiveness).

In this new policy, the collective bargaining unit of the company is the main reference and it becomes possible to suspend the application of a sectorial collective agreement under certain circumstances (again, related to the same grounds needed for internal flexibility and collective dismissal, creating a problem of priorities between the different measures, ultimately favouring dismissals as a way to adapt to changing circumstances).

February 2013 saw 245 suspensions of sectorial agreements, being 32% more than in January, affecting 62% more workers.

It also limited the applicability of collective agreements after their expiration to one year, giving the employers a powerful tool for pressure during negotiations of new collective agreements, given that after that one year period of “ultra-activity”, the collective agreements decays and less favourable conditions of higher level agreements, and in their absence (most of the cases), minimum wage and minimum standards of the Labour Law start applying

All those changes provoked an important decrease in collective agreement coverage, as shown in the next graph.

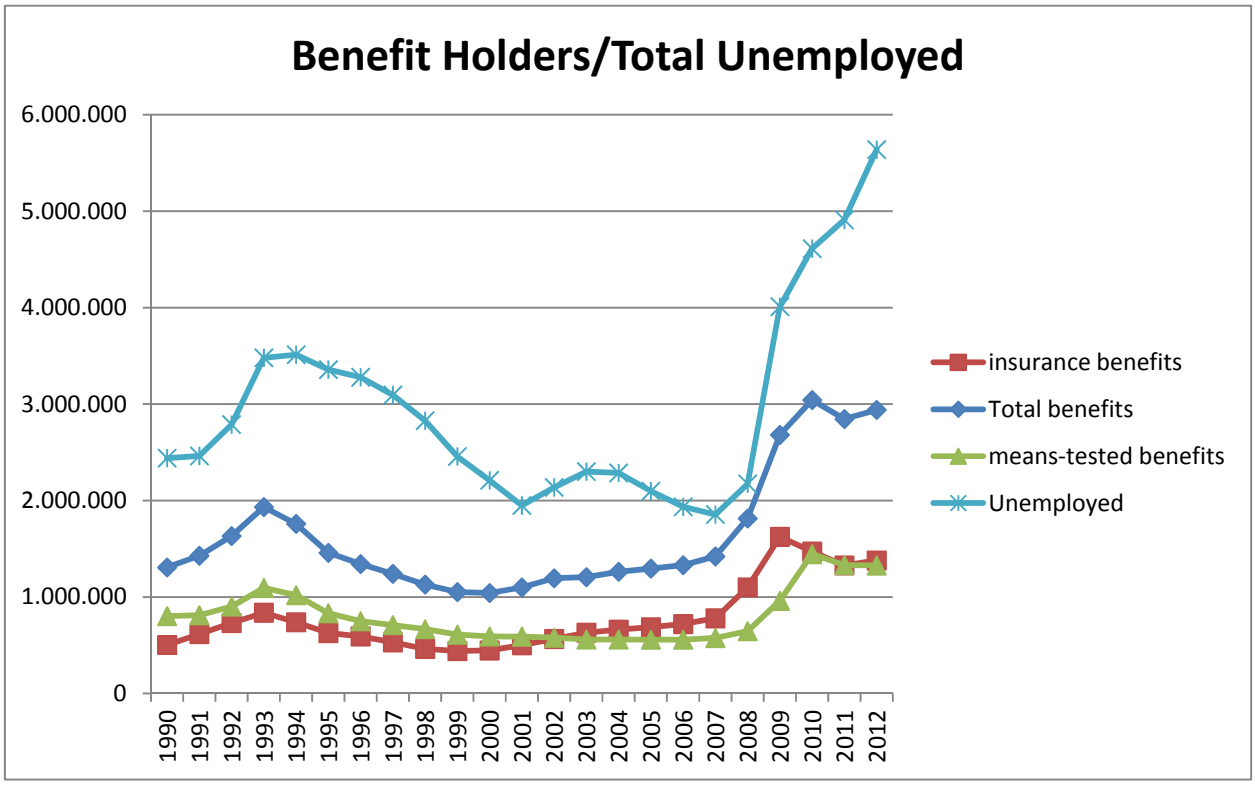


Own elaboration - Source: Ministry of Employment and Social Security. Estadísiticas Sociolaborales

All these changes have also to be seen against a background of high unemployment and reduction of "passive" unemployment protection within a context of an already inadequate coverage. The year 2012 saw a reduction of coverage of the means-tested unemployment protection benefits, which was already far from reaching to all unemployed, being limited in time and linked to minimal previous contribution periods. But the replacement rate of unemployment insurance benefits was also reduced to 50% of the previous wage from the 6th month onwards, with minimal benefits close to or in some individual cases even below the at-risk-of-poverty threshold[15]. A temporary means-tested unemployment benefits program, called plan PREPARA, destined for some of those falling out of

[15] Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad, BOE14/07/2012

the “classic” means-tested benefit system, extended every 6 months, and put in place in 2009 (under the name PRODI), has also seen its coverage reduced, mainly to some categories of unemployed with family charges[16].



Own elaboration – Source: Encuesta de Población Activa and Ministry of Employment and Social Security, Estadísticas socio-laborales

[16] Real Decreto-ley 23/2012, de 24 de agosto, por el que se prorroga el programa de recualificación profesional de las personas que agoten su protección por desempleo.

III. The challenges of youth unemployment: flexibility without security (as training).

Concerning the challenges of Europe 2020, amongst the Recommendations for Spain 2012, the European Union states "unemployment has reached a record height, and employability and labour market segmentation constitute significant bottlenecks. Problems in education system incite low levels of achievement at secondary level, too many students leaving school early and a vocational training system insufficiently tailored to market needs".[17] The EU recommends increasing the effectiveness of active labour market policies by improving their targeting, by increasing the use of training, advisory and job matching services, by strengthening their links with passive policies and by strengthening coordination between the national and regional employments services, including sharing information about job vacancies". There is a clear description of the goals.

Regarding youth access to the labour market, the EU launched the Europe 2020 flagship initiative "Youth on the Move",[18] where a quality framework for traineeships was proposed for the first time.

However, this quality framework was not announced before the EU Commission's Communication "Towards a job-rich recovery" [19] in April 2012. In the Commission Staff Working Document "Quality Framework for Traineeships" [20] accompanying the former, the EU acknowledges the

[17] Recommendation for a COUNCIL RECOMMENDATION on the National Reform Programme 2012 of Spain and delivering a Council opinion on the Stability Programme for Spain, 2012-2015. COM (2912) 310 final
[18] COM(2010)477 final, 15.09.2010
[19] COM(2012) 173 final 18.4.2012
[20] SWD(2012) 99 final 18.4.2012

traineeships as “a work practice including an educational component (either as part of a study curriculum or not) which is limited in time. The purpose of these traineeships is to help the trainee's education to work transition by providing the practical experience, knowledge and skills that complete his/her theoretical education”. It differs from the apprenticeships as long as the former are part of higher education programs and the latter concerns “systematic, long-term training of a technical occupation with alternating periods at the workplace and in an educational institution or a training centre”.

In the Communication “Moving Youth into Employment” of December 2012[21] the Commission maintains that traineeships can help to improve young people's employability. In the second-stage consultation[22] of the social partners at EU level “Towards a Quality Framework on Traineeships”, some elements are thought to be considered for inclusion in the framework, amongst which figure: (1) the open-market traineeships should not be longer than a specified period, for example six months, but mandatory post-graduation professional training (e.g. for lawyers) should be exempted as these tend to be highly regulated; (2) successive traineeships with the same employer should be limited (for instance, by restricting the possibility of a new traineeship agreement between the same parties within a certain period following the expiry of the previous agreement); (3) social protection coverage should be clarified between the trainee and the host organisation; (4) related to remuneration, Commission says that if there is a mutual benefit in terms of knowledge transfer and learning, an unpaid traineeship may be appropriate.

[21] COM(2012) 727 final 5.12.2012
[22] COM(2012) 728 final 5.12.2012

On the other hand, the Communication "Moving Youth into Employment" also announced a European Alliance for Apprenticeships to improve the quality and supply of apprenticeships. Three groups of success factors for apprenticeship schemes were categorised into: (1) it is need effective partnerships between vocational education and training schools / institutions and companies and the involvement of social partners to ensure that the skills learnt keep pace with needs; (2) that both the qualification gained and the learning process should be of high quality to exploit the full potential of apprenticeships; and (3) apprenticeships should be well integrated within the national or regional education and training system and based on a clear regulatory framework.

Spain has implemented this soft law strategy through the modification of the Workers´ Statute, by Law 3/2012, the Royal Regulation 1529/2012 of November 8[23] and Royal Legislative Decree 4/2013 of February 22,[24] in a way totally incoherent with the goals of reducing youth unemployment, market segmentation and improvement of the quality of both traineeships and apprenticeships.

In Spain there are two kind of training contracts: firstly, the "*contrato en prácticas*" which corresponds with the traineeship model, i.e. providing work experience to people having just acquired certain qualifications, and secondly, the *"contrato para la formación y el aprendizaje*" corresponding with the apprenticeship, or "dual" training model, combining on-the-job training with education modules given in the "classic" education system or

[23] BOE November 9 of 2012.
[24] BOE February 22 of 2013

through long-life learning programs (but with the possibility for the company to also provide for the latter).

Concerning the *contrato para la formación*, the main point is that the 2012 Reform sets a model of training not linked with the idea of employability, integrated in the broader concept of education. Despite the Law defining the model as a dual model of training and education, it does not guarantee any training. The main reference is in fact the notion of adaptability to the workplace and the employers´ needs and this has converted all these policies in a flexibility policy more than an employability policy.

To the *contrato para la formación* are attached reductions of employers´ contributions to social security, 100% for companies under 250 workers and 75% for greater companies.

The lack of equilibrium between training and work is the consequence of the regulation. Despite the new art. 4 of the Workers Statute, which declares, among the basic rights of workers, the right to professional promotion and training, which are understood as adaptability to modifications in the workplace and employability, those principles are not reflected in the regulation of training contracts.

The profile of the new *contrato para la formación* is framed by art. 11.2 of the Workers´ Statute. It is destined for young workers, between 16 and 25 years [25], with a lack of degree or professional qualification

[25] It is important to refer to the 9th transitory section of the 3/2012 Law which provides that the 25-year limit is brought to 30 as long as the unemployment rate is not below 15%. This is another clear indication that those contracts are not primarily intended to promote employability, but a conjunctural labour market supply flexibilization measure through promotion of creation of precarious employment.

certificate[26]. Previous professional experience is not taken into account, not even previous experience in the same company[27], which again points towards the focus on employers´ needs rather than employability.

There is no limit of age for people with disabilities and vulnerable groups. The minimal duration is one year and the maximum 3 years, with the possibility, in function of the necessities of the company, to lower the minimal duration to 6 months.

When the worker finishes the training contract, he can be hired by the same company for another job or for a different training, or for another company of the group. This involves in fact a chain of contract precariousness for these workers. These different durations are quite extended and create a long period of time during which young workers have precarious work conditions.

Referring to the training element of the contract, the Law sets that the working time cannot exceed 75% the first year and 85% after this. This contract does not allow extra hours. The worker can receive the training in training centres, the education system or in the company itself. The regulation developing the law even allows the employer to set up additional training programs adapted to its own necessities, even if they do not lead to an official degree or training certificate.

Control is organized through the Public Employment Services, who have to authorize the training programs given by the company, and to whom the training contracts are communicated. It is dubious however to

[26] The latter is an official recognition of the acquisition of a certain level of profesional skills in function of different profesional cateogries

[27] JUAN LÓPEZ GANDÍA, "Los contratos formativos y a tiempo parcial tras la reforma laboral de 2012", *Revista de Derecho Social*, n° 57 (2012), 89

what extent those services will be able to control the effective content of the training, given their lack of funding and the huge amount of workload brought by a rate of 27% unemployment.

Temporary work agencies are also allowed to celebrate those contracts, introducing all the problems concerning responsibility in triangular work-relation within the training contract system[28]. This also waters down the efficacy of the control by the Public Employment Services, as those have no direct contact with the "final" employer any more, the Agency being responsible for the adequacy of the contract with the corresponding training or education.

It is also striking that there is no link between duration of training and the duration of the contract, in the sense that the law and its regulatory development do not provide for the end of the training as a termination ground, decoupling once more the cause of the temporality of the contract with its purported objective and tipping the balance towards the necessities of the employer.

Labour conditions of this contract are precarious, the wage is proportional to working time, salary cannot be below the minimal wage (for a full-time) but can be adapted in proportion to the working hours.

The *contrato para la formación* gives right to Social Security, including

[28] On the matter, see Chacártegui, C., "New trends in the use of temporary agency work: the consolidation of social dumping", paper presented at the Congress Resocializing Europe and the Mutualization of Risks to Workers, University College London, 18-19 May 2012; or "Resocialising temporary agency work through a theory of 'reinforced' employers' liability"in Countouris, N., and Freedland, M. (eds.), *Resocializing Europe in a Time of Crisis*, Cambridge University Press, forthcoming in November 2013

unemployment benefits.

The other training contract, or, more specifically, traineeship contract, called "*contrato de trabajo en prácticas*", has a maximum duration of 2 years. It is destined for workers having obtained a degree or professional training certificate (possibly through the previous training contract). This temporary contract (that at its expiration can give way to another, general, temporary contract), gives right to a minimum salary of 60% (75% the second year) of the salary of the workers with a job of the same characteristics. The only requirement is that the job permits to acquire the practical capacities connected to the degree or training certificate that has been obtained, but without a specific control system or further training guarantees.

Finally, the Royal Legislative Decree 4/2013 of February 22 not only did not correct the precariousness of the "dual" training contracts (*contrato para la formación*) but also permitted that one person could be contracted again by the same or distinct company with a traineeship contract (*contrato en prácticas*) if that person obtains a postgraduate degree or training certificate after the signature of the first contract, extending the chain of precariousness even more.

The regulation of training contracts has set a framework not in line with European objectives, with a clear lack of employability elements and which condemns youth to be hired during a long time under these forms of precarious contracts. The duration of these contracts, without a realistic element of training, implies that they lack a real cause**.** We cannot yet see

an increase in judicialization, but what a brief analysis of jurisprudence shows is that most cases brought before the courts relate to the absence of reality of the training component and the use of the contract to cover exclusively productive necessities of the employer.

This has also to be seen against a background of severe cuts, not only in the “classic” higher and professional education system, but also in the several training programs offered within the frame of active labour market policies and managed through understaffed and underfinanced Public Employment Services. Within a history of one of the lowest European percentages of GDP dedicated to unemployment protection, 2012 saw cuts of 21% in active labour market policies (a cut of 1.550.000 €), within which training funds were cut by 34%[29]. The ALMP budget of 2013 will further decrease with 34%[30], but mainly due to a decrease of hiring subventions through social contribution reductions, while funds destined to training are cut by 0,4%, which cannot be seen as positive after the cuts of 2012, and the fact that part of the transference of the funds to Autonomous Communities, which assume competences in matters of ALMP´s are conditioned by their observance of (impossible) deficit limits theoretically fixed at 0,6%. ALMP´s funds are thus used as a means to help forcing austerity.

Finally, from a comparative perspective, the Spanish regulation should also be contrasted with the German training contract, which has

[29] As critiziced by the two most important Spanish unions, UGT and CC.OO, http://www.ccoo.es/csccoo/menu.do?Areas:Empleo:Actualidad:361670

[30] Ley 17/2012, de 27 de diciembre, de Presupuestos Generales del Estado para el año 2013, BOE 28/12/2012

been presented as inspiration for the implementation of the dual vocational training system in Spain.

The German regulation[31] tightens the training contract expressly and closely to the duration of the education period, the obtaining of the corresponding qualification title being, for example, an express ground of automatic termination of the contract. Extension is only possible in case of failing the final qualification exams or, in exceptional cases at the request of the worker. Dismissal is only possible with cause (in reference to open-ended contract dismissal causes, like personal conduct or economic grounds). In absence of cause, damages have to be paid (notice, costs of new solicitation, difference in salary,…). The addressee of the training contract is also more strictly defined: it is open to people attending "classes" in an institution of professional education, which, again, tightly links the contract with the acquisition of professional qualifications.

Finally, the law also makes the employer responsible for the successful training of its pupil-worker, and details further the content of this obligation, including control of the acquisition of the required knowledge. The employer is even obliged to go further than mere "training", as he must also improve the "character" of the pupil, above all when he is still not of adult age. The pupil can claim damages in case of non fulfilment of the obligation to successfully train.

This very brief overview shows that the Spanish regulation itself could give much more guarantees as to its effective use for the promotion of the employability of the worker.

[31] Lakies, T. and Malottke, A., *Berufsbildungsgesetz*. Bund-Verlag, Frankfurt, 2011

IV. Employability as right to work

The regulation of training contracts fails as way to increase employability for youth, as a consequence of the lack of balance between work and training. Moreover, the combination of age requirements and excessive duration of those contracts creates the potential for a long period of precarious work.

As we explain in this paper, Spanish regulation of training contracts has to be seen as considering them as a previous stage to the temporary contracts and as an instrument of flexibility: young people contracted through traineeship or apprenticeship are later contracted as temporary workers. It affects their stability and as consequence of that, their employability. As the report "Working conditions in the European Union: Employment security and employability"[32] showed, there is a negative correlation between objective job insecurity and employability, "higher insecurity is linked to lower employability", and on-the-job employability is higher in countries where participation in lifelong learning programmes is higher.

On the other hand, there is an inadequate control of the quality of training and this is another element of precariousness. It is also important to observe that those contracts are "expensive" because of the financial support given to employers in terms of reduction of social security contributions, which represent a transfer of responsibility of the company to

[32] Eurofound (2008) Working conditions in the European Union: Employment security and employability. Available in http://www.eurofound.europa.eu/publications/htmlfiles/ef0836.htm

the public budget, when research points towards the lack of effectiveness of those instruments in terms of employment creation[33].

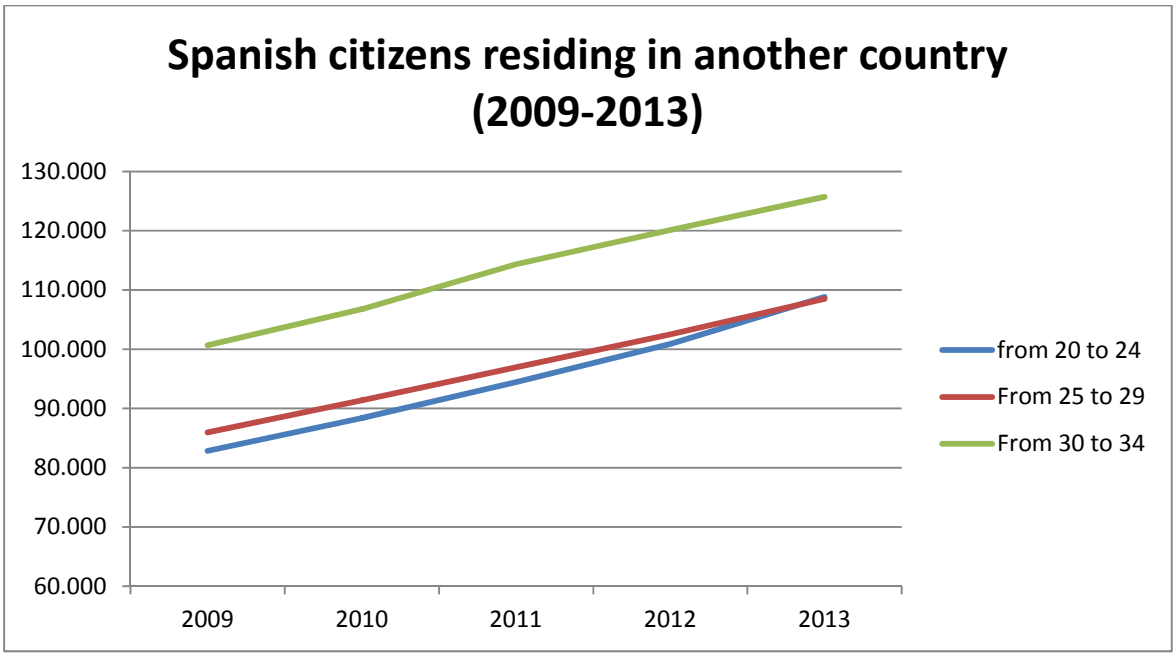
V. Conclusions

In sum, the Labour Law Reform (2012) has created deeper "de-contractualization", weakening the causes of internal flexibility and dismissal. The result has been increased unemployment, less collective bargaining coverage and more gender inequality. The process of unilateralization in applying flexibility and changing labour conditions set in the labour contract have as consequence the de-contractualization of the employment relation. Precarious work will be a consolidated trend for youth and emigration will increase. The judicialization and protests will increase as indicators of disagreement.

Moreover, as the following graph shows, 2012 Labour Law Reform has not shifted the exodus of youth who have to emigrate to find new employment opportunities. At the contrary, emigration amongst the youngest (20-24) has increased. The migration of skilled workers towards Germany or United Kingdom is indeed downgrading the workforce's employability of the labour markets of origin, i.e. Spain, Greece or Italy.

[33] MARX., I., „Job subsidies and cut in employers´social security contributions: the verdict of empirical evaluations studies", *International Labor Review*, n°1, 2001, 69- ; Ammermüller, A., Zwick, T., Boockmann, B. and Maier, M., "Do hiring subsidies reduce unemployment among the elderly? Evidence from two natural experiments", ZEW Discussion Papers, No. 07-001, 2007, http://hdl.handle.net/10419/2455 (last visit, 11/4/2013); ; It is interesting to point out that according to the ILO, "generalized subsidies that target young people mainly on the basis on their age" instead of addressing "specific labour market disadvantages faced by young people", (and this is the case of the current Spanish regulation), "are unlikely to have a long-term impact on their employment and earnings […], contributing to labour market distortions in terms of deadweight and substitution effects", see ILO, *The youth employment crisis: Time for action*, Report V in the context of the 101st session of the International Labour Conference, Geneva, 2012, 58-59

Those consequences are completely contradictory with the hypothetical goal of the reform.



Own elaboration - Source: Spanish National Statistics Institute (INE) Padrón de Españoles Residentes en el Extranjero (PERE). Serie 2009-2013

Finally, looking at the future, a list of questions related the Spanish model of *flexiprecarity* has to be taken into account. Some are related to the content of social security rights, other are related to workers' rights:

1) Generally, jurisprudence is quite restrictive concerning the possibility to convert temporary contracts in standard contracts in cases of succession of short-term or temporary contracts, due to a restrictive construction of the notion of abuse of process the succession entails. It has also the tendency to confirm and consolidate the deformation of the causes to conclude temporary contracts (a good example is the "liberalization" of some causes in case of contracting by public authorities), which can be seen as contrary to the right to stable work.

2) Regarding subcontractors and temporary-work agencies, it is necessary to clarify the employment relationship in order to determine the employer's responsibilities. In the field of health and security at work, there are cases where it is impossible to identify the figure of the employer and this renders the enforcement of legal rights of this kind of workers difficult.

3) There is a high level of temporary contracts in the public sector, combined with the even broader application of the temporary contracting causes referred to in point 1).

4) There is no respect of the principle of proportionality of social rights in part-time work, which has been confirmed recently by the ECJ and the Spanish Constitutional Court, without the government having yet proposed new legislation. The content of benefits and the right to accede to some benefits, like unemployment benefits, are linked to the acquisition of a certain number of work days. The result is that part-time workers have to work longer than full-time workers to accumulate basic "days" used for benefit calculation.

5) The former is combined with a deficient definition of the notion of part-time work (in some cases, working one or two hours less than the normal work time can be seen as sufficient to be considered as a part-time worker). Moreover, there is also the possibility to count the hours worked in supplement of the normal work-time as extra time,

not counting them towards building up full-time days with respect to access to social security rights.

6) Part-time work is voluntary in principle. However, the facts show that once having chosen for part-time work it is extremely difficult to go back to full-time work, due to a wrong implementation of the European directive in understanding the notion of voluntary character.

7) More generally, the equality principle in order to ensure the rights of specific groups of workers is not guaranteed. There are many evidences in the field of social protection. This is the case of domestic workers, because they do not have unemployment benefits, without a reasonable justification to exclude this kind of workers from the general rules. Taking into account that domestic work is basically done by women (98%), it can be considered as an indirect discrimination included in the Spanish regulations

8) There are clear problems of implementation of health and safety principles in matters of agency workers (identification of responsible employer, etc…)

9) Special attention should be given to limiting the chaining of training contracts with general temporary contracts

10) An effective control of the training given by employers should be established

As a conclusion, one could say that the model of *flexiprecarity* in the Spanish case can be defined as a model which de-contractualized labour law, increased discontent (protests, strikes and judicialization), precariousness, unemployment and inequality, and runs contrary to the few elements of security that an already highly flexibilizing European model recommends. That Spanish model, put within the wider context of the Spanish cases, reinforces Mark Blyth´s claim that "austerity doesn´t work"[34].

[34] M. Blyth, " Austerity. The history of a dangerous idea", Oxford, 2013.