

Introduction. Debates on Collective Bargaining in a Time of Economic Crisis: The Spanish Case in Context

JULIA LÓPEZ LÓPEZ*

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Abstract

Collective Labor Law as a mechanism of agency through workers representation has been challenged more than ever during recent last decades. The policies that have adjusted labor rights to new scenarios of economic policies have impacted collective bargaining structures and contents. The debates on centralization and de-centralization, workers participation, unions and workers strategies to countervail the erosion of labor rights have been part of the social agenda. Among the debates one very important one involves the study of the cases of the Basque Country and Catalonia. Their models of collective bargaining allow us to examine different strategies to achieve social goals through collective action with more successful results in the Basque case.

Key words

Collective rights; legal labor market reforms; de-centralization; workers participation; collective bargaining; sectoral collective agreements; new technologies; working poor; minimal guarantee

Resumen

El Derecho Colectivo del Trabajo como mecanismo de agency para las representaciones de los trabajadores ha tenido en las últimas décadas uno de los periodos más desafiantes en la consecución de sus objetivos sociales. Las políticas de ajuste a la crisis económica con nuevos escenarios políticos han impactado no solo en las estructuras de negociación colectiva sino además en los contenidos de los convenios. Debates en torno a centralización-descentralización, participación, estrategias para contrarrestar los efectos de erosión de los derechos sociales han sido parte de la agenda social. Entre los debates, el estudio que se refiere a los casos de País Vasco y Catalunya, en cuanto a las estructuras de negociación, es interesante a la hora de presentar las diferencias estratégicas y los mejores resultados en el caso vasco.

* Doctor in Law and Full Professor of Labor Law and Social Security Law. Contact details: Universitat Pompeu Fabra, Law Department. Ramon Trias Fargas, 25-27. 08005 Barcelona (Spain). Email address: julia.lopez@upf.edu. ORCID: <https://orcid.org/0000-0002-2922-4644>



Palabras clave

Derechos colectivos; reformas de las leyes del mercado laboral; descentralización; participación de los trabajadores; negociación colectiva; acuerdos colectivos sectoriales; nuevas tecnologías; trabajadores pobres; garantía de mínimos

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1. Labor market reforms and political processes of decentralization

Collective rights have been facing important challenges during recent decades because of the pressure presented by economic goals and austerity measures. Legal labor reforms at the national level imposed by European Union institutions have had as a result a decrease of labor rights and an increase in both precarious work and – as a consequence – inequality, with a major impact on matters of gender. A broad range of social and academic debates on collective labor law has been opened. Collective rights have suffered a major transformation; unions and worker representatives have had to contest aggressive labor market reforms not only at the transnational but also at the national level.

The Spanish case, inserted in this general framework, has implemented several reforms in collective bargaining, pushing actors toward a decentralization of units, reducing the ultra-activity effect and decreasing collective bargaining's sector content to the benefit of inferior units. In this sense, legal reforms of labor regulation have pursued the de-centralization of collective bargaining by shifting the negotiating units from the sectors to firms and by promoting more flexi-security arrangements.

The definition of the Spanish collective bargaining model has shifted due to a process of decentralization manifested in the regulatory intervention imposed by governmental reforms. This regulatory intervention has been accompanied by other measures – such as the reduction in the role of the “ultractivity” and the possibility for firms to “disapply” sectoral agreements – thereby magnifying the decentralization of collective bargaining strategies. Flexibility (López *et al.* 2014) and precarious work¹ have produced an increase in inequality; Spain has the highest level of precarious work in the European Union.

The capacity to reverse austerity measures by enacting alternatives within Spain's pluri-national periphery of the Basque Country and Catalonia does not effectively exist because the regulation of labor is in hands of the central State according to the constitutional text (art. 149 of the Spanish Constitution), with the Constitutional Court very actively defending the centralization of competences in labor regulation. This framework blocks the capacity of Catalonia and the Basque Country to promote legal policies that modify the direction of State regulation within their territory. Nonetheless, some efforts to reduce inequality have included popular legislative initiatives approved by the parliaments of both the Basque Country (in 2010) and Catalonia (in 2017) establishing a minimum guaranteed income.

Catalonia and the Basque Country are cases where nationalism is often understood as “independence from the Spanish state” and in which unilateral processes have played the main role in recent attempts to achieve that goal. In contrast with the Catalan process where the most centrally important actor is a publicly constituted representative institution (the Catalan Parliament), in the Basque Country two unions, ELA and LAB have prepared a Declaration on the Unilateral and Social process of independence of the Basque Country, “because [Spanish] legal reforms on labor markets and pensions have had as a consequence increasing poverty in the Basque Country. A bilateral process doesn't work and there is a lack of [Basque] regulatory power to develop social policies”. In this context the only way to intervene improving labor conditions is through collective bargaining.

Referring to units of collective bargaining by territory, frame agreements are present at the national level (III Frame agreement for employment and collective bargaining 2015, 2016, 2017 and 2018). These agreements are focused more on guaranteeing the negotiation of ultraactivity and flexibility than on structuring collective bargaining. In the Basque Country an important frame agreement (2017) was signed by the peak

¹The number of persons temporarily employed varies among EU Member States. The highest percentage of persons having a temporary contract was recorded in 2017 in Spain (26.4 %), followed by Poland (25.8 %) and Portugal (21.5 %). At the other end, the lowest shares of temporary contracts can be found in Romania (1.2 %), Lithuania (1.6 %) and Estonia (2.8 %). Source: Eurostat 2002-2017.

employers association and by ELA, LAB, CCOO and UGT to guarantee the priority of application of sector agreements signed in the Basque Country over sector agreements signed at the Spanish State level.

In contrast, the Catalan frame agreement (2015-2017) collected a series of measures that essentially replicated weak national agreements, calling for the negotiation of ultractivity situations and flexibility. There are no references in this agreement to collective bargaining structures and de-centralization. In Labor regulation, in both cases collective bargaining is far from having constructed a fully autonomous space for regulation, but the frame agreements of the Basque Country approximate this goal much more strongly than those to be found in the Catalan case.

2. Debates on participation, collective bargaining levels and contents of collective bargaining

This volume also collects debates about participation and collective rights in the Spanish case, analyzing these themes from a European Union and comparative perspective. The main debates on Spain's labor market reforms concerns the model of flexibility implemented in the Spanish case and the impact of the reforms on collective bargaining rights.

Miguel Rodríguez-Piñero in his contribution on collective bargaining asks whether labor law reforms have been oriented more toward objectives of economic policy than labor law content itself. Rodríguez-Piñero argues that the current legal framework has converted collective bargaining "into an instrument of economic policy, with weaker collective agreements, allowing a general wage devaluation. This experience shows the vulnerability of collective labor law to external pressures. The temptation of using instruments of social dumping can be strong, producing changes in collective labor law that impose a model of collective bargaining unbalanced towards management's interests".

Juan Pablo Landa contributes to this volume the results of his research on structures of worker participation and models of governance by corporations. Models of representation, including union and non-union representation of workers is studied from the perspective of levels of negotiation. Landa argues for the advantage of relying on a multiplicity of forms of worker representation: "[T]he role of workers in the governance of European companies should be based on the combination of participation instruments in the making of strategic decisions of the enterprise, as well as in those related to the efficient organisation of work and improvement of the internal plant productivity; with the techniques of collective union bargaining at the level adequate to establish minimum contractual work conditions (negotiated at cross border level) and those specific for each company or plant, in accordance with the prevailing negotiating structure in the country of location".

Sergio Canalda's contribution focuses on *The Paradox between the European Pillar of Social Rights and EU Economic Governance: Spanish Reforms to Wage-Setting Institutions and the Working Poor*. The main argument of the author concerns the paradox posed by the relationship between the goals and the measures approved for example in the European Pillar of Social Rights, "among the principles and rights enshrined in the EPSR, the Commission has included the right of workers to be paid fair wages. However, in the context of EU Economic Governance, the EU country-specific recommendations steer national wage-setting institutions in the opposite direction". This paradox is inducing an increase in the working poor rate.

Alex de le Court's article on *Stabilizing Collective Agreements in Continental Europe: How Contract Law Principles Reinforce the Right to Collective Bargaining* reveals "that states share common concerns around maintaining a certain balance between negotiating parties, whether through consolidating the respective models of collective bargaining or via correcting dysfunctions introduced by emergency measures. Those solutions can be embedded in the international definition of the right to collective

bargaining, revealing the importance of a holistic vision on regulations underpinning the European collective bargaining model”.

Edurne Terradillos in her article makes specific proposals regarding the capacity of trade unions to represent the interests of all workers in company restructuring operations, particularly with reference to the case of companies that do not have elected workers’ representatives. She notes that “the method used in this work is focused on a comparison between the rules trade unions have to negotiate and the treatment of trade unions as representatives of workers”.

Jaime Cabeza has researched on *Representation, Trade Union Activity and Technologies*. His work points out that despite the important research in the field of new technologies “less attention has been devoted to the realm of trade union activity, representation, participation and involvement rights, collective bargaining and industrial action. All that huge field has to be re-thought from the point of view of the technological footprint as well. It is a discussion about strategies and adaptation to the current ways of information and communication. Consequently, a problem of adaptation of labor relations players to those channels”.

Eusebi Colas and Josep Fargas’s contribution on *Guaranteed Minimum Income: New Spaces for Trade Union Action* underlines that “after the last Great Recession and austerity policies imposed by the Troika on many countries, among which is Spain, the traditional mechanism of fixing minimum wages has become less effective on many occasions. Nonetheless, it has been argued that trade unions are following various new paths in order to guarantee minimum wages, both in Spain and in comparative labor law, and these share several common trends”.

Finally, Montserrat Solé has participated in the volume studying *Coordination vs regulation. State functions in industrial relations: the cases of Norway and Spain*. This study focuses on the functions of the state as a factor limiting or enhancing the ability of social actors to participate in the design of these national systems. It compares the role of the state in Norway and Spain as far as regulation and coordination are concerned. The coordination function is compared at two different levels: bipartite cooperation and tripartite cooperation seeking to understand how coordination at the upper level might influence the lower level.

This volume contributes to placing collective bargaining debates within a more general framework of the study of collective action in the pursuit of goals of decent work based in fundamental rights (López 2019). The articles found here locate changes in collective bargaining within the political and economic contexts that have shaped – and been reshaped by – shifts in collective bargaining itself.

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