1. The Current Situation of the Spanish Labour Market: Specific Characteristics and Proposals for Reform

With the current economic crisis in the foreground, generating much concern, debate over reform in the Spanish labour market has been particularly lively over the last few months. This short paper tries to present an overview of problems in the labour market in Spain, discussing recommendations and presenting a critical perspective from both an economic and legal approach. The scope of the new regulations and the reactions from social agents, companies and unions will also be examined.

The central problem with the Spanish economy, and of main concern to both families and the Government alike, is the high rate of unemployment (20%). As with the rest of the EU, Spain was hit by economic crisis and falling employment at the end of 2008. The rise in unemployment rates in Spain, however, was particularly dramatic.
The rate of unemployment has increased for the period of crisis, from 8.3% in 2007 to 18% in 2009 and 20% in 2010.

The graph (figure 2) illustrates the strong effect of unemployment rate on young people. While the unemployment rate among those aged between 16-29 employees which was 13.1% in 2007, it had reached 31.8% in 2010. Higher still, however, was the unemployment rate for those aged 45 and over, which saw a rise
from 6.0 % in 2007 to 14.6% in 2010. If the professional training of employees is considered, it will be observed that unemployment rates are higher for those employees who have little professional training than for those employees who have a higher amount of professional training. While the rate for this first group moved from 11.0% in 2007 to 30.0% in 2010, the rate for this second group moved from 5.0% in 2007 to 9.6 % in 2010. It should be noted that the high level of unemployment rate for foreign workers rose from 12.2 % in 2007 to 30.8 % in 2010.

The graph (figure 3) clearly shows job creation prior to the economic crisis as well as strong job destruction for the period of crisis. Almost 620,000 jobs were lost between the fourth quarter of 2007 and the quarter of 2008, building industry represented 560,000 manufacturing 225,000, agriculture 40,000 and only services sector increased 200,000 jobs. In the third quarter of 2008, a further 350,000 jobs in the building industry disappeared from the labour market in Spain. During the first stages of the crisis, job loss has focused on the building industry in particular; it is important to bear in mind that the building sector, part of a group of productive sectors, received particular attention within the Spanish economy. When the building industry fell at the start of the economic crisis, the effects of this
collapse extended to the rest of economy. In sum, the economic crisis and the fall in employment are closely connected to the fall in the building industry in 2008.

As previously noted, the high level of temporary contracts in Spain means that unemployment grows quickly and deeply when there is a crisis. This can be explained by labour regulation and the characteristics of various economic sectors. Nothing demonstrates this change more clearly than the transition from “Spanish miracle” to the highest levels of job destruction in Europe. Between 1996 and 2007, this so-called Spanish miracle witnessed the creation of 7.5 million jobs, which were a third of all jobs created for that same period in Europe (FELGUEROSO AND JIMÉNEZ).

It is important to stress that the Spanish labour market has demonstrated a high degree of flexibility and that this has allowed a quick response to the economic crisis. There is a contrary view, however, that holds that this response is a pathologic adaptation to the crisis and that our flexible labour market is negative and very far removed from European guidelines. As a consequence, the Spanish employment system is often referred to as inflexibly insecure (DEL REY GUANTER).

Often, it has been suggested that Spain has an external flexibility which makes it easier to hire or to fire employees. Indeed, all indicators of external flexibility show Spain to be at the top of the scale: hiring levels are the highest in the European Union during the pre-Crisis period, the rates of dismissal are the third highest and employment turnover is so high that it very nearly occupies the first place held by Denmark. Perhaps it would be more appropriate to conclude that our country’s illness is one of excessive external flexibility, a negative flexibility (GÓMEZ, INFANTE, RUESGA AND VALDES).

The process of dismissal is very easy in Spain because in practice it is not necessary to provide grounds for dismissal. While it is necessary to reduce external flexibility and increase internal flexibility, there also has to be an improvement in both the adaptive capacity and employment conditions (working hours, transfer and task rotation, salary, professional training and professional
category). The result would lead to a more flexible economy because of the greater possibility of achieving internal adjustments.

The graph (figure 4) presents data relating to the rate of temporary contracts in Spain. The chart shows that in Spain the employment adjustment has focused on temporary workers, with their number decreasing by 1.5 million from the third quarter of 2007. The rate of temporary contracts dropped to 25.4% for the last quarter of 2009.

Figure 4: Temporary rate (annual average) in Spain. Source: Author’s calculations based on INE Statistics.

In spite of the changes made to labour market policy over the last few decades, the problems of labour market remain the same. For more than twenty years, the Spanish labour market has been suffering major problems such as the strong segmentation of workers between indefinite and temporary employment contracts; the lack of internal flexibility within companies; an overly rigid collective bargaining system which is too centralized in some cases and insufficiently coordinated in others.

There have been, it needs to be stressed, several labour market reforms over the last few decades. The most important of these were approved in 1984, 1994, 1997-2002 and 2006. In 1984, the main reform focused on temporary employment; since then the use of temporary contracts as a flexible instrument has come to be a
relevant characteristic of labour market. After that, the reform in 1994 addressed the increase of internal flexibility in companies and played a fundamental role in collective bargaining. The reform of 1997 next reduced dismissal costs (objective and unfair dismissal). In 2002, the main labour market reform designed a dismissal procedure in which the employer could admit unfair dismissal and make an extra severance payment to the employee and, in thus doing so, avoid legal procedures. Finally, the 2006 labour reform introduced some measures to control the illegal use of temporary contracts.

During the period 2009-2010, different reform proposal were put forward by both economists and lawyers that drew upon an extensive body of literature on the subject. Often, a common assumption among such literature is that a reduction in the percentage of temporary contracts is necessary. It is not clear, however, how this could be achieved within the Spanish labour market.

One of the most controversial and unpopular reform proposals has been the single permanent labor contract (which makes no distinction between temporary and permanent contracts). The simplification of the current offer of labor contracts was suggested by a prestigious group of economists in April of 2009 (DOLADO); this reform movement came to be named after the number of signatories to the proposal- the 100. Under this proposal, except for interim contracts which were intended for the replacement of workers on temporary leave, all other fixed-term contract types would be scrapped. At the same time, a single permanent labor contract, with severance pay that increases with seniority, would also be introduced for all new hires. This would unify the grounds for dismissal, maintaining judicial protection for discriminatory dismissals. As well as this, it would create a single type of work contract with “kinder” severance regulations in the case of termination, with the condition that the worker signing the contract receive adequate training.

In order to present a clear and strong reply to the proposed single permanent labor contract, 700 Professors of Labour Law and Economy and Trade Unions signed a Declaration on June, 2009. The general consensus behind this Declaration was that the economic crisis has not occurred as a result of labour regulation.
In the view of the these scholars the consequences of the crisis economics’ have had a negative effect on employment, the current economic and international crisis occurred as a result of growth in the banking sector that was deregulated and not subject to enough control. Consensus opinion holds that there is no relationship between the current crisis and labour regulation and that it does not make sense to use the current situation to reduce or eliminate social rights.

Most Labor Law and trade union scholars are absolutely opposed to the single permanent labor contract because they believe that it will not generate more employment. Indeed, they mention other economic analyses which point out that the current crisis is not caused by the labour regulation and labour reform is not likely to help in avoiding the adjustment in employment (RODRIGUEZ PIÑERO Y BRAVO FERRER). The single contract will help to eliminate dualization or turnover in the labour market but will only replace those contracts with others. The separation between an indefinite contract for actually workers, and a single contract for all new contracts, could generate a new dualization between actually employed workers and new workers. What is more, compensation for dismissal increases according the seniority of the employee dismissed, and this could generate strategic behavior from companies seeking to avoid the increase in compensation due to extinction replacing employees with others (GOERLICH).

2. The 2010 Labour Market Reform: a brief description

The 2010 labour market reform was approved by the Law 35/2010 (officially published on September 18 th: www.boe.es). As will seen, this Law is a very miscellaneous legal text that amends more than 20 articles of different labor laws, affecting such diverse issues as fixed-term contracts, redundancies, lay-offs, unilateral changes of working conditions, collective agreement opening clauses, employment agencies and temporary work agencies.

There are two main problems that this reform is trying to tackle. The first of these is a persistent two-tiered employment system (this is structural and has been with us for decades) while the second problem is high unemployment, especially among the young people (also an old stalwart of the Spanish economy which has made a
recent return with the current crisis). The most serious consequence of these effects is that many of these young people dropped out attracted by the decade-long boom of the construction industry. There are also some reform measures intended to deal with this acute problem.

### 2.1. Measures to reduce duality in the labour market

The two-tiered employment system was created in the Eighties, when fixed-term contracts were more or less liberalized as a response to persistent unemployment. This situation contrasted with a rigid regulation both of internal flexibility and of the proper motives for redundancy and dismissal of permanent employees. As a result of the reforms of the 1980s, employers mostly understood flexibility in terms of numerical flexibility, which was not obtained by making permanent employees redundant, but preferably through employment/termination of temporary or fixed-term employees. The high level of fixed-term employment in Spain is said to be one of the causes for low investment in training by companies. Although there have been several legislative reforms over the past fifteen years which have tried to address the problem of the dual labor market, the results have been insignificant.

Generally speaking, employers may choose between fixed-term contracts or contracts for an indefinite duration. Fixed-term contracts may be entered into only under certain circumstances defined by the law and which all depend on demonstrating that there is cause of temporality: the substitution of an employee, a definite and temporal task, etc. Practice over the last two decades, however, has proven that employers have interpreted those circumstances very broadly and neither unions nor employees have been able to effectively fight against this broad interpretation. Action taken by the labor inspectorate or by employees before the courts has not been effective either.

Now the Government proposes a number of measures that intend (a) to make fixed-term contracts less attractive to employers and, correspondingly, (b) to attain more flexibility regarding permanent employees. The implicit trade-off is therefore that fixed-term contracts will be more rigid and permanent employment
will be more flexible (with regard to changing working conditions or even as to making employees redundant.

Type (a) measures are the following:

(1) An increase in the severance payout for fixed-term employees; from the current 8 days to the future 12 days’ worth of salary per year worked. As we will see below, redundancy payments are the same amount (taking into account the public subsidy) for permanent employees. Thus the reform equalizes the cost of terminating a fixed-term and a permanent contract (provided, in the latter case, that the company has a proper motive for redundancy; otherwise the cost may raise to 33 days or 45 days’ worth of salary per year worked). The problem with this measure is that the increase will not be immediately implemented: the 12-day severance payment will apply to fixed-term contracts entered into after the end of 2014. Such a slow pace is difficult to understand, because the equalization of termination costs of temporary and permanent employees is an important step in the right direction.

(2) The new law establishes a maximum period of 3 years for the most popular temporary contract (the contract for a definite task). This period may be extended by collective agreement by up to a further year more. The impact of this measure in subcontracting, especially in the building industry, is likely to be huge. However, if you allow for the fact that severance costs on companies will be the same, even if you terminate a fixed-term contract or a permanent contract (with a proper motive for redundancy), the limit may urge companies to seek permanent contracts that are terminated (due to redundancy) when the task or service ends.

(3) The new law makes it easier for a temporary employee to attain permanent status where he/she has been working on two or more fixed-term contracts for at least 24 months. In that they have had to demonstrate that they have had the same job and the same employer. From now on, with this condition no longer there, a change of job or functions, or even of employer in the
same group or because of a transfer of undertaking, will not affect the right to become permanent.

Type (b) measures are the following:

(1) Motives for redundancy are defined in a more liberal way. From now on, it ought to be enough for the company to prove that the intended redundancy or collective dismissal is minimally based on reasonable grounds (economic, organizational, technological or productive). If the business motive is sufficient, employers may expect to pay just 12 days’ worth of the salary per year worked. Extending the reasons for redundancy has a direct economic impact on the costs of restructuring the workforce: the employer may reasonably expect to pay each employee made redundant 12 days’ salary per year worked, instead of 45 (or 33: see below) days’ salary per year work. However, the precise interpretation of the new legal text rests with the judiciary (for individual redundancies) and with the labor administrations (that must authorize or refuse collective dismissals in case of lack of collective agreement between the company and the employees’ representatives). Therefore, the real impact of this new definition will depend to a large extent on how the judges or public administrations will construe it.

(2) The Spanish Salary Guarantee Fund (Fondo de Garantía Salarial) will subsidize 40 per cent of the legal redundancy payment, now at 20 days’ salary per year worked: the public institution will pay 8 days per year, while the company will just pay 12 days per year. It is not clear whether the Salary Guarantee Fund will also subsidize 8 days’ salary worked per year in cases of unfair dismissal: here the legal wording is rather confusing and should be improved by the political parties in Parliament, since this a matter of great importance. (The Government’s plan is that in 2012 a so-called Capitalization Fund will be in operation; from then on the 8-day-per-year subsidy will be paid not by the Salary Guarantee Institution but by that specific Fund. In the near future, the Government
plans to regulate the new “Capitalization Fund, the very idea of which comes from Austria’s employees pension fund [Abfertigung]. If this new Fund begins to operate in 2012, it will replace the role of the Salary Guarantee Fund in subsidizing severance payments).

(3) If the company does not have a proper motive for redundancy, they should expect to pay the unfair dismissal compensation of 45 days’ worth of salary worked per year. However, since 1997 the law has allowed companies to enter into permanent contracts that feature a reduced unfair dismissal compensation of 33 days’ worth of salary per year worked. While this “special” contract was still limited to certain groups in the labor market, the current reform almost makes this “special” contract the rule; under this kind of contract, companies will be permitted to hire almost anyone who is registered as unemployed.

2.2. **Enhance tools for achieving internal flexibility within companies**

Labour reform has reduced the role of collective agreement at a sectoral level and has conferred major power at a company level. As such, it allows firm-level agreements reached by workers and employers to prevail upon higher-level agreements. However, this is allowed when any company shows evidence of serious difficulty in paying the salaries set at a sectoral level. Some scholars have pointed out that this change has been very positive in that it has led to a more flexible adaptation among companies to the individual economic realities they face. Likewise, they consider that the economic situation and perspectives of a company could be detrimental at a sectoral level agreement and may even affect employment within this company (MERCADER). In contrast to this opinion, the main trade unions’ representatives feel that with these measures “collective agreements have suffered a death blow”.

The labor market reform of September 2010 has taken a first step to reform the collective bargaining. However, this reform should be completed. This need for additional measures was acknowledged in the Social and Economic Agreement of 2 February 2011. In this agreement the social partners committed to presenting an
agreement for the reform of the system of collective bargaining before the deadline of March 19, 2011. So far today, trade unions and companies have defending absolutely conflicting interests. It will be very interesting to analyze the scope of this collective bargaining reform and its effects.

The new legal framework for temporary lay-offs is also less rigid, especially when it comes to temporarily reducing working hours. The new law tries to avoid dismissals by making less traumatic adjustments more attractive to employers. Generally, the new law tries to encourage internal flexibility, calling for conciliation and even arbitration of labor disputes concerning geographical mobility, changes in working conditions, etc., with a view to avoiding dismissals and permanent redundancies. It is important to insist on the idea that the agreement with the employee representatives is critical to the success of most business demands for internal flexibility.

The amendments related to geographical mobility and substantial changes procedures are not really significant. The most noticeable of the amendments is the need to submit to conciliation in case of disagreement between the parties at a company level who are negotiating substantial change of conditions established in collective agreements. The law also contemplates the possibility that the parties involved submit their dispute to arbitration. The culture of arbitration is, however, almost nonexistent in Spain.

2.3. **Offer greater opportunities to those people who find themselves out of work, especially young people. Making training contracts more attractive to companies**

Another important part of the reform tries to fight unemployment, especially youth unemployment. As for the special measures aimed at the problematic situation of young people without qualifications, the new law practically removes the social security cost of the apprentice’s employment contract: for contracts entered into during 2010 and 2011, the Government will subsidize the social security taxes of both employer and employee. During 2010 and 2011, it will be possible to enter into an apprentice’s contract if the employee is younger than 25 (afterwards, the employee must be younger than 21). Employing young people
(16-30 years old) with a difficult employment outlook, on contracts other than the apprentice’s, is also subsidized by the Government (€ 800 per year during 3 years).

Other measures to combat unemployment in general concern intermediation services in the labor market. On the one hand, the new law allows private employment agencies to operate for profit, though they must obtain administrative authorization from the public employment service. On the other hand, the reform amends the law on temporary-work agencies. If the main aim is to implement the Directive 2008/104, a mention should be made of the law’s intent to curtail all restrictions and prohibitions on these temporary-work agencies by the end of 2010.

It should be noted that some new rules in the reform are too open to interpretation by the judiciary and labor administrations. This is especially the case with the new definition of proper motives for redundancy: if we are dealing with individual redundancies, it will be up to judges to resolve the lack of agreement between definitions if we are dealing with collective dismissals, the lack of agreement between company and unions must be solved by an administrative decision. In all events, it will be up to the 17 Autonomous Communities to choose a liberal or a strict approach to redundancies. This particular uncertainty may lead employers to continue choosing the expensive (although certain) option if they reduce their workforce- the option of paying compensation for unfair dismissal. This amounts to 33 or 45 days’ worth of salary; or 25 or 37 if the Salarial Guarantee Fund also subsidizes unfair dismissals (which is far from clear).

There have been a great many different reactions to labour reform. Firstly, trade unions called a general strike on 29 September of 2010. While it is obvious that trade unions don’t agreed with these measures adopted by the Government, it is clearer trade unions are very resistant to any reform, and in particular, those measures which are focused on collective agreements.

Secondly, as previously explained, the measures of internal flexibility are insufficient and there are serious doubts about their results. Labour reform should have paid more attention to this issue due to its importance for companies in general and small companies in particular.
Finally, the reduction of the cost of dismissal, or external flexibility appears to be the central goal of this reform. It has been demonstrated in this paper that our labor market has external flexibility when there is an economic crisis and that enterprises don’t have too many obstacles in dismissing employees. The data shows this problematic reality quite clearly.

As previously mentioned, the Spanish government defined this reform as substantial; as a reform that goes beyond simply providing a response to the current economic situation. This means a strong change which introduces new measures which focus on the main problems of the labour market and avoid repeating mistakes made in the past. However, we need to ask ourselves if this reform will lead to greater internal flexibility for companies and whether it will allow enterprises to quickly respond to the economic crisis without dismissing employees. May we expect enterprises to use legal procedure to carry out economic dismissal when these enterprises have economic problems or it is possible that these same use the unfair dismissal without legal procedure?

It seems clear that it is much too soon to anticipate the effects of this reform. In fact, the most relevant results of any reform are those which nobody could have foreseen. For example, the relevant extension of temporary workers which took place after previous reforms. However, it is important to bear in mind that thirty years ago, working meant having a permanent contract and a single job until retirement, where as nowadays the labour market has very different characteristics. As such, everyone - Government, trade unions, companies and workers- need to have their needs addressed if labour regulation is to avoid being framed according to theories which belong in the past.

References:


FELGUEROSO, F. y JIMÉNEZ, S. (2009), Sobre la propuesta para la reactivación laboral en España, en AA.VV. (Ed. V. Gómez), La reforma laboral en España, Fundación José Ortega y Gasset, pp. 63-88.


