The role of the Constitutional Court in Spanish industrial relations •

Introduction

The Spanish system of industrial relations is characterized by the power imbalance between social actors and the continued state interventionism through regulation. To a great extent this framework is the legacy of the authoritarian model of industrial relations embedded in the political dynamics of the dictatorship (1939-1975). Although democracy brought about the constitutional protection of collective rights in what could be understood as an attempt to boost power equilibrium among employers and employees, none of them made relevant steps to improve autonomous regulation because the institutional context did not provide any incentive for that (Köhler and Calleja, 2018).

The crisis starting in 2008 increased the state intervention in industrial relations removing any small progress done until then in terms of bargaining autonomy. The governments in office – regardless of their ideology – engaged since 2010 in continuous urgency legislation reforms without the involvement of social actors. Basically, the mechanisms legally adopted: causes for termination of employment and for unilateral modification of working conditions together with the changing of bargaining levels, were targeted to boost internal flexibility. Albeit this approach is not exclusive of Spain (see i.e. Howell, 2016) its particular institutional background has intensified the power imbalance among the actors. As a result, dialogue and negotiation become almost impossible, but in any case, unnecessary (Fernandez Rodriguez et al., 2016), making industrial relations an arena for dealing with conflicts rather than solving them.

According to the government of the moment, the 2010 labour reform was justified by the economic crisis and the need to recover economic growth and employment rates. The law 3/2012, of 6 July, that introduced the main changes of the 2012 reform explains that the measures were requested by the international economic bodies and by the EU because the previous measures did not produce the expected results. This last reform has been the most extensive for decades in Spain and has been subject to constitutional challenges as it is deemed to affect fundamental rights and the structure of industrial relations which is also framed by the Spanish Constitution (SC).

What is at stake in the 2012 labour reform is the prevalence of freedom of business or the right to collective bargaining. Nevertheless, this dichotomy in the law does not find accommodation in the constitutional text since both are protected alike. Furthermore, the guiding principles governing social and economic policies bound all public authorities as well. This suggests that there is room for the Constitutional Court to apply proportionality in its decisions. This paper explores the legality concerns brought to the upper court on occasion of the labour reform and the reasoning of the rulings, focussing on the EMU obligations undertaken by Spain. My argument is that the reasoning of the court represents a step backward for industrial relations that will have effects on the behaviour of the parts and might be determinant in weakening even further the position of labour unions.

The paper is organized in three parts. Section 1 provides the constitutional basis of collective labour rights wherefrom the system of industrial relations is structured. Section 2 analyses the constitutional reception of labour market obligations undertaken by Spain in the framework of the EMU. Section 3 discusses the constitutional rulings referred to the most recent labour reform seeking to explain the reasons underlying the court's arguments. The aim is to identify any relation between EU's obligation and the courts' rulings which will be discussed in the concluding section in terms of their impact in industrial relations.

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The role of the Constitutional Court in Spanish industrial relations

1. Constitutional basis of industrial relations

The framework of industrial relations in Spain is built by a triangle of rights: the right to unionisation and to strike (Art. 28 SC), the right to collective bargaining (Art. 37 SC), and freedom of business (Art. 38 SC). This structure has been built by the Court's decisions since 1978. The right to unionization is placed in the vertex, and freedom of business and the right to collective bargaining are the base, reflecting the equilibrium of the content. Any modification on any will cause the structure to collapse.

In legal terms, the first is a fundamental right the other two are considered 'bridge rights', meaning that public authorities are obliged to guarantee and protect through law and ordinary courts, but they fall outside the direct protection of the constitutional court. This difference, salient as it may be, is not decisive in the constitutional text as other provisions bound all citizens to respect all the constitutional rights. In this line, any law cannot contravene nor impair the content and the legal status of the rights, being them fundamental or not. The Constitutional Court is the body in charge of providing such guarantee by resolving the constitutional challenges in appeal.

The voluntary nature of the right to collective bargaining as configured by the ILO Convention 98 –ratified by Spain - has its corollary in the conclusion of binding agreements. The convention was introduced in the Spanish Constitution in order to protect the right to negotiation and reaching agreements (Valdés Dal-Ré, 2011) as an essential content of the right to unionization[1] which occupies a relevant position in the national constitutional system because:

> "the right to unionization is aimed at the protection of the two main instruments that the workers – the weakest part - do have in the social state to defend their interests against the economically stronger part, that is, the employers. Such instruments are the right to join unions and the right to strike. Moreover, the right to unionization is obviously connected with Art. 7 of the Spanish Constitution which recognizes trade unions as central in labour relations and, in general, in the economic and social life"[2].

Based on the foregoing constitutional framework, the introduction into statutory law of provisions allowing for unilateral decisions of employers, devoid of substance the right to collective bargaining as it makes negotiations and agreements totally irrelevant. Contexts that – either *de iure* or *de facto* – impede negotiations also impair on the institutional representation of interests that the Constitution reserves to the parties in the wide socio-economic context[3]. Whereas these functions steam from the ILO conventions ratified by Spain, there is a high presumption that the labour reform introduced in 2012 might violate such international treaties that on their turn belong to the national legal order by virtue of Art. 96 SC.

Freedom of business is not absolute nor unconditioned[4]. Indeed, Art. 38 SC establishes the limits within which the public authorities can act when adopting measures that affect the economic system. As other rights and freedoms, constitutional decisions have shaped the core content of the freedom that must be preserved. Mainly, in its subjective dimension, implies the right to initiate and maintain any legal business activity. There is, therefore, a guarantee of the start and maintenance of the business activity in freedom, which implies "the recognition to individuals of a freedom of decision not only to create companies and, hence, to act in the market, but also to establish the company's own objectives and direct and plan its activity in response to its resources

[1] Art. 28 The Spanish Constitution; For all see: STC 238/2005, of 26 September 2005.
[2] Congreso de los Diputados, Synopsis of the Art. 28, available at: http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=28&tipo=2 (in Spanish)..
[3] STC 58/1985, of 30 April 1985.
[4] STC 18/2011, of 3 March 2011.

and the conditions of the market itself". Hence, it should be understood as "freedom of action, of choice by the company of its own market"[5]. Business freedom is granted even if the legislative establishes measures that affect the right, provided that the public regulations are adequate to promote an objective considered constitutionally legitimate and that the limitations that such regulations impose on the free exercise of an economic activity do not entail, due to their intensity, a deprivation of the aforementioned right". The Court has limited its control to the negative dimension reducing it to merely confirming that any restrictive measure enacted by law does not entail a limitation of the right to freedom of enterprise that may determine a practical impediment to its exercise. In other words, to analyse whether the limitation imposed by the legislative on the right to freedom of enterprise is consistent with its essential content[6].

As it will be discussed in section 3 below, about the constitutional rulings on the 2012 labour reform, there is a substantial difference in the stance adopted by the Court regarding the content of the right to collective bargaining and the freedom of business. In the latter the Court seems to be ready to protect the essential content, this is to control the content, the reasonability and the proportionality of the measure. Put differently, the Court uses legal reasoning in its decisions. Instead, for collective bargaining purposes it refuses to go into the content of the measure, just admitting the criteria, political, economic but not legal of the government.

2. Constitutional reception of the Spanish commitments with the EMU

In 2012, within the EMU's framework, Spain requested financial aid to rescue its banking sector. The agreement was set through a Memorandum of Understandings (MoU)[7], in which Spain committed to: "3) implement the labour market reforms, 4) take additional measures to increase the effectiveness of active labour market policies, 5) [..] and eliminate barriers to doing business". Furthermore, the surveillance body – the Troika –required substantial changes in wage-indexation mechanisms, decentralization of collective bargaining, and wage moderation in the public sector (Keune, 2015). All these conditions were introduced without the involvement of the social partners, through the legislative 2012 labour reform prior to the signature of the MoU, following the Council's Recommendation of 12 July 2011 resulting in the erosion of the industrial relations system (Fernandez Rodriguez et al., 2016; Garcia Blasco, 2014) and the transformation of the legal status of the right to collective bargaining from a constitutionally protected right to an option subject to the willingness of the employer.

This form of 'supranational interventionism' that in Spain is leading towards a more authoritarian model of industrial relations (Rocha, 2014), cannot only be framed in terms of EU's legitimacy to impose or intrude into national competences. It needs to be complemented with reference to the country's institutional framework and in particular its ability to protect the constitutional system in front of external threats. This is of special relevance if, as Kilpatrick shows, the EU institutions, in this case the Commission and the European Central Bank (ECB), did not directly impose an obligation to rescued Member States on how to implement conditionalities:

> "Given that the MoU is signed by the national authorities, who are also responsible for its implementation, the ultimate responsibility rests with them […] it is for the Member State to ensure that its obligations regarding fundamental rights are respected.

[5] STC 96/2013, of 23 April 2013; STC 225/1993, of 8 July 8 1993; STC 96 / 2002, of 25 April 2002.
[6] STC 53/2014, of 10 April 2014, STC 35/2016, of 3 March 2016; STC 89/2017, of 4 July 2017
[7] Memorandum of Understanding on Financial Sector Policy Conditionality, 20 July 2012, Spain available at: http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf

> The final decision on concrete measures to be taken at national level is adopted by the concerned Member States, acting in accordance with their constitutional requirements" (Kilpatrick, 2014:395)

According to the CJEU's decision in *Pringle*, neither the MoUs nor the ESM[8] itself fall within EU law. Instead these mechanisms respond to the voluntary nature of the signatories' Member States to commit to a stronger stability of the common currency through the establishment of a financial source in case of difficulties. This decision suggests two elements for analysis. First, the voluntary nature implies that the Spanish state should be well aware in advance of the conditions for the assistance and thus should have made the decision – political and legal – to access the financial aid after evaluating the consequences of the conditionality for the national system, including the rights of the workers.

Second, the Spanish MoU was signed in the context of the European Financial Stability Facility (EFSF) Framework which - as well as its successor, the European Stability Mechanism (ESM)Treaty – provide that the rules of the financial assistance and the monitoring compliance must be fully consistent with the TFEU and the acts of EU law[9]. Hence, it is a matter under the signatory state's responsibility to make sure that the national measures adopted in the MoU pursuant the EFSF agreement comply with the EU law. This obligation entails a double check for the signatory state that goes beyond the respect for the distribution of competences and the application of the principle of subsidiarity; it also must take into account the relation between national and EU law.

The principle of hierarchy that places EU law above national law is not absolute. EU's accession does not equal to the nullification of the Member State; it retains among others, the competences that have not been transferred to the Union, the power to withdraw from the EU as well as the ratification of treaties' amendments. Where these powers emanate from the constitutional system of the Member State, as is the Spanish case, it follows that the instrument remains its fundamental set of governance and control rules that encounter due protection at treaties level, mainly in Arts. 4.2, 48.4, 48.6, 49, 50.1, 54 TEU. These TEU provisions grant that the constitutional structures of Member States are maintained. Furthermore, the values enshrined by the constitutional traditions of Member States become principles – thus legal norms (Von Bogdandy, 2006) - of the Union law according to Art. 2 TEU read in conjunction with Art. 6.3 TFEU. Therefore, it can be argued that constitutional texts become the bridge between EU and national law inasmuch as the former act as the tool for assessing the validity of the norms implemented at any level. Accordingly, the principle of hierarchy has to be interpreted in the sense of preventing that any law, norm or pact can contravene neither EU law nor national constitutions. It is from this perspective that the Spanish state has the responsibility to comply at the same time with its constitutional system and with EU law.

Obviously, one has to think that the conditions for the accession to the financial aid were settled in advance and accepted by the Spanish government in office at that moment. It is less clear whether the appropriate controls on the legality of governments' acts when making common decisions, were carried out by the Spanish institutions. In particular Art. 94.d SC establishes that the Spanish Congress and Senate must approve prior to the signature, any international commitment undertaken by the government that implies financial obligations, hence the MoU required such an approval which was passed after the signature, without any major debate nor amendments by the majority of the representatives. The government also had the possibility to request to the Constitutional Court a previous assessment of the legality of the agreement, but

[8] The Spanish MoU was signed in the context of the EFSF Framework Agreement funding programme that now is used within the ESM Framework.

[9] Preamble Recital (2), EFSF Framework Agrement Consolidated Version, available at: https://www.esm.europa.eu/sites/default/files/20111019_efsf_framework_agreement_en.pdf

such a request was never carried out. And, finally political representatives in the Congress or Senate, or any judge dealing with matters derived from the MoU might request a constitutional control of the agreement but was not done. For that reason, the legality of the MoU and its constitutional appropriateness could not be assessed by the Court. To this end, it should be pointed out that the Constitutional review cannot be initiated *ex officio* by the Court. All this suggests that the institutions in charge of controls pursuant to law have adopted a passive pace or have not been interested in raising an internal and external political conflict.

3. Constitutional rulings

Three relevant cases for the purposes of this paper were raised about the constitutional flaws of the 2012 labour reform. The first one – Auto STC 43/2014, of 12 February 2014 – questioned the urgency procedure of the reform. As it has been mentioned above, since 2010 urgency legislation has been the preferred mechanism regardless of the ideology of the government in office, to introduce labour market reforms. This tool is provided for in Art. 86 SC for situations of "extreme and urgent need" and is subject to constitutional control in order to avoid arbitrariness or abusiveness. This notwithstanding, the Constitutional Court has repeatedly limited itself to make such verification and has refused to refer to the substance of the case. The Court has justified its previous decisions on two legal bases; first, that the Government is the constitutional holder of the urgency legislative power. It is, furthermore, the responsible for the political direction of the State and therefore urgency responds to a mere political judgment[10]. Second, since urgency legislation is to be upheld, repealed or modified by the parliament, it corresponds to the legislature the substantiation of the appropriateness thereof.

The parliamentary control of the government, however, is relatively difficult due to the Spanish political two-parties structure and electoral system that favours comfortable majorities (Colomer, 2008): all labour reforms mentioned here have been passed in the parliamentary processes without major modifications. The 2012 reform was upheld without any amendment thanks to the absolute majority of the ruling party. This being the case, it is of a logical nature to question whether the urgency is justified or if this practice is intended to undermine the parliamentary character of the political form of the State as defined in Art. 1.3 SC. Such were the grounds for the constitutional challenge raised by a Labour Court in Madrid whereon the lower judge claimed that the reasons for urgency did not encounter justification within the content of the reform. It being the case that the expected resolution would be in line with the Court's previous judgements referred to as above, this time the upper judges took a different stance. In essence, the Court's did not refrain from deciding on the convenience of the measures, but fully assumed the government's arguments as deployed in the preamble of the act.

It is important to mention, that in this decision there is a dissenting vote of three judges (of a total of twelve that form the Constitutional Court) who consider that the reasons for the urgency given by the government are not sufficiently proved. The labour reform affects a basic institution of the state, the system of industrial relations, and consequently the government had to prove the urgency. Falling this, it is for the Constitutional Court to analyse the measures and question their fit in the constitutional text.

The kind of political acquiescence shown by the majority of the judges was the interpretative prelude of the resolutions on the reform that would come later and that explain the reasons that have facilitated the introduction of major changes in the Spanish industrial relations system. The second relevant case this paper deals with was raised by the Parliament of the autonomous region of Navarra who challenged two elements of the reform: the possibility of employers to unilaterally opting-out of the collective agreed working conditions and the decentralization of the collective bargaining by setting the prevalence of the company agreement. The legal foundations for the

[10] STC 29/1982, of 31 May 1982; STC 18/2016, of 4 February 2016.

claim were that both measures impaired the right to collective bargaining and the right to unionization.

In its decision STC 119/2014, of 15 august 2014, the findings of the Court to dismiss the appeal were grounded on the economic situation of the country and the need to allow the necessary flexibility to the companies to redress their organizational and economic concerns "as it is done in several European countries through the attribution to collective agreements of limited personal applicability". To this purpose the legislature, in the Court's opinion, has the power to restrict the scope for collective autonomy if the aim is to secure business competitiveness or if the legislative aim is "to impede that the collective autonomy might frustrate the legitimate objective of creating stable employment". With that in mind, so the Court's argument continues, the constitutional protection recognized to labour rights in the past has to yield in the current economic context in favour of the right to freedom of enterprise also constitutionally enshrined in Art. 38 SC. Therefore, the Court inverts its previous jurisprudence on the structure of rights under the SC. The Court had in the past systematically ruled that the right to unionization is a fundamental right while the freedom of enterprise was not fundamental.

Again, this decision has a dissenting vote of three judges, this time a severe critical vote against the majority. Their reasoning goes further than the majority's as it takes into account the broader content of the Constitution. Art. 1 establishes Spain as a social state. All activities of the public authorities are bound by this condition, including governments acts and Constitutional arguments meaning that the Court should take into account the consequences changing the prevalence of collective bargaining levels for the society as a whole. Another element to be considered by the Court should have been the effects on the exercise of other rights equally recognized and constitutionally protected. In sum: the dissenting vote considers that the modification of bargaining level is incompatible with the collective autonomy enshrined in Art. 37.1 CE. This leads the critic judges to consider that the Court has failed to play its role as interpreter of the Constitution because its arguments are "based and supported by simple criteria of ordinary legality". Given that the right to collective bargaining and freedom of business operate at the same level, the arguments of the decision should be grounded on proportionality and impartiality. Instead, the Court has changed the constitutional structure of industrial relations by giving to freedom of business unlimited power at the cost of collective autonomy, negatively affecting the social dimension of the state.

The third case analysed here is decision STC 8/2015, of 22 January 2015. In this occasion the claimants held that the decentralization of collective bargaining and the possibility of the employers to unilaterally change the working conditions devoid of substance such rights, but included that the limitation imposed on the ordinary courts for assessing the causes of dismissals violates the right to an effective legal remedy, protected as a fundamental right in Art. 24 SC. First thing to note is the delay in giving the decision. The appeal was raised the 5th October 2012, the same date as the previous appeal discussed above and well before the appeal that caused the first decision. There is no logical explanation on why two appeals referring to the same law and on very similar grounds have been dealt with by the Court separately.

As it may be expectable, the Court's reasoning is based in its previous decision insisting on the need to safeguard the purpose of the reform as expressed by the government in the preamble of the law. This is, the economic situation of the country and the need to facilitate employers' chances to labour flexibility. Despite the dissenting vote of three judges, as in the previous cases, the majority of the Court believe that the legal reform is proportionate and reasonable to the aim pursued by the legislature which is to avoid job destruction. In this ruling, published in 2015 three years after the legal reform was enacted, the Court seems to be unaware that in the year of the reform and subsequent the unemployment rate raised 2% each year. Certainly, constitutional adjudication differs from the legal adjudication in that what is to be interpreted is a Constitution which is a political document. Nevertheless, this circumstance should not impede the Court to

cross-examine legislative decisions in terms of social reality, bearing in mind the social element inserted into the Spanish Constitution.

In this third decision, the bone of contention is the extension of causes to justify layoffs in order to avoid uncertainty in employers' decisions that implies the correlative effect of reducing the judicial control for unfair dismissal (Cruz Villalón, 2012). The judiciary, in the past, adjudicate considering the proportionality, reasonableness or adequacy of the measure adopted by the employer. From now on, according to the preamble of the law, the judges might only take into account whether the causes exist or not. Such a limitation of the judicial decision based on competitiveness or economic performance of the company is outside the constitutionally legitimate purposes and creates a problematic situation with regards to the right to an effective legal remedy as claimants plead. Furthermore, it collides with national procedural law on labour matters that lays down the reasoned judgement on the appraisal of the evidences[11] as the legal safeguards for a fair trial.

The Constitutional Court found this limitation of the judiciary to determine whether just cause exists did not violate the right to a legal remedy because the worker is not being prevented to access justice. The argument is that the measure neither blurs the extinctive causes, nor increases employers' discretion. Conversely, the Court considers that it suppresses spaces of uncertainty in the interpretation and application of the legal provisions. Since the latter are open in their content and abstract in their objectives, this could lead to difficulties in proving that the extinction decision served to preserve or favour the competitive position of the company in the market or to help preventing a negative evolution of the company or improve its situation. Full and effective judicial control over the measure adopted by the employer is done over the concurrence of the case, as well as the reasonableness of the extinctive decision adopted, turning the exercise of the power into a regulated and, therefore, non-discretionary action, in order to avoid a tortuous business use of the power granted.

The dissenting vote of one of the judges, however, points out that the real problem is whether the trial is fair, and fairness can only be assessed through a motivated resolution. The new law removes motivation; therefore, as the dissenting vote puts it, this provision should have been repealed.

If we understand a constitutional system as the legal foundations of any given legal order it follows that the substance of the constitutional rights must be unique and uniform. Certainly, the accessory or non-essential content of these rights can be accommodated to the economic environment. But this malleability is not predictable of its essential content, which, by its own configuration, must be endowed with a stability protected from the fluctuations of political and economic conjunctures[12]. Furthermore, in terms of legality and ultimately of democracy, it is to be questioned whether a constitutional system might operate two different standards of constitutional review, one for normal times and one in times of crisis (Kilpatrick, 2015).

4. Conclusions

The constitutional decisions on the 2012 labour reform highlight the political underpinning of the Spanish institutional context, including the Constitutional Court, as the main concern for the appropriate safeguarding of legality. On the one side, the incessant appeal to the legislature's discretion badly encompasses with the main function that the constitutional body is entrusted with: the judicial review. Bearing in mind that the measures were adopted by the government unilaterally, such deference places the Court as a body of support for the political decisions rather

[11] Art. 97 *Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social* (Act on Labour Procedure).
[12] STC 8/2015, Dissenting vote of three Judges, 2nd recital.

than the independent and impartial institution it is expected to be. In adopting this position, it undermines the role of the Congress as the control body of government's acts (Delledonne, 2014).

None of these flaws should come as a surprise if due regard is paid to the process of appointment of the judges to the Constitutional Court. The Court is formed by 12 magistrates of which four are chosen by the Congress and four by the Senate by a qualified majority. Two are assigned by the government and two by the General Council of Judiciary. The members are appointed for a period of nine years and shall be renewed by third parties every three years, as stipulated in Art. 159 SC. In the two-parties Spanish political system, the appointment of new members is contingent on the electoral majorities and on the parties' strategies and power to impose their choices. The result is a highly politicized Court (Magone,2009; Garupa et al.,2013) of changing ideology that at the time of deciding on the labour reform was formed by a conservative majority (7 conservative judges vs 5 liberal judges).

All in all, the Spanish Court's rulings have reintroduced into the legal system the managerial prerogatives balanced to economic outcomes, resulting in the transformation of the constitutional protection from persons to economic interests. Translated into the industrial relations system this means that the triangular structure has collapsed. The conditions for recovery given the institutional framework here described are not conducive to optimistic expectations. The doctrinal interpretation alongside the above decisions has shifted the Spanish constitutional standards whereby industrial relations were governed, by introducing the economic element as the measuring parameter to which the content of the constitutional text should be fitted in. The changing nature of the economic situation implies the installation of legal uncertainty within the core structure of the Spanish legal system since, presumably, the future rulings will be accommodated to the country's economic development and political course. As a leading judge put it, the problem is to find out the limits of the employers' powers and how these can be legally assessed (Aramendi, 2012).

To a certain degree, these decisions bear a high resemblance to the CJEU's rulings in Viking and Laval cases in that economic freedoms take a relevant role vis-à-vis of fundamental rights. In terms of methodology it can be argued, however, that the interpretation given in Spain goes even further than that of the CJEU's since there is not a proper balance among the rights at stake. Whether the Spanish Court has been influenced by the CJEU might be debatable, but as De Witte (2011) points out, it should not be overlooked given the EU's economic framework, its impact on the Spanish decision-making process and the politicization of the Spanish High Court.

What has been pointed out so far seeks to explain how the changes operated in the Spanish industrial system primarily hinge on the national institutional framework which is highly influenced by the political system. Although EMU's membership has contributed to boost the political underpinning of the system to the detriment of its democratic control, the Spanish context nuances the affirmation that EU's restricts the capacity of the States to resist to outside intrusion (Feigl, 2014). If one looks on how the development of the labour reform process has been carried out, it is possible to hold that the Spanish state has opposed no resistance to external interference. On the contrary, it has been used as a strategy on the governments' hands "to escape parliamentary oversight and avoid having to justify themselves internally" (Innerarity,2015:175).

Within this perspective, the changes in the Spanish industrial relations system cannot be termed as the unavoidable consequence of EMU's membership. The explicit introduction of council's recommendations in the preamble of the law is probably a salient example. The labour reform 2012 was implemented within the MoU context, which is a funding agreement between the Spanish state and a private financing institution outside EU law. Moreover, neither recommendations nor opinions are of a binding nature since the EU has only coordination competences in economic matters. Accordingly, the introduction into the Spanish legal order can be explained within the deficiencies of its institutional context when it comes to using the powers

to control government's acts i.e through parliament or through constitutional review, that can alter constitutional basic principles in matters that have not been transferred to the EU (De Witte, 2011).

The greatest emphasis on EU's requirements found in the 2012 reform is not accidental and highlights the convergence of targets between the conservative party and the EU, this is: placing the economic policies above and outside the reach of constitutional control. For the Spanish government in office the requirements of the Troika were in line with their electoral programme[13] and became "also the opportunity seized by the PP to transform the organizational and distributional dynamics of the labour market and to pursue a longer-term ambition of reshaping the structure of political contestation" (Cioffi & Dubin, 2016:441). With regard to this point, it is undeniable that for employers in big corporations, who exert a great influence in Spanish industrial relations, EU pressures on the government were in line with their interests.

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