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European Policies towards the Protection of Domestic Workers

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1. INTRODUCTION

Nowadays, in the European context there is a debate about the legal protection of domestic workers. So the initiative for the search of normative actions destined to provide a better protection of rights to these workers has an essential place within the international demands.

The most important course of action, is the one that the International Labour Organization[1] has carried through by its C-189 Domestic Workers Convention and R-201 Domestic Workers Recommendation, both adopted on the 16th of June 2011[2].

Nevertheless, many European countries have just confirmed the convention, and others, as in the case of Spain, have not ratified it jet. In view of the above, the objective of this study is to analyse the regulation of the domestic work in the European member states, from the perspective of Comparative Law. Alongside, this work studies whether the member states have taken the measures in their own legislation, as set out in the Convention and Recommendation.

Finally, the essay will try to establish the necessary legal arrangements to transfer the good practices identified in other member states to the Spanish legislation. This obviously will contribute to eliminate the illegal employment in the domestic area and encourage the regular recruitment. At last, it will ensure that domestic workers enjoy fair terms of employment as well as decent working conditions, like workers generally.

[1] From this point forward, ILO.
[2] Both of them adopted in the General Conference of the International Labour Organization, convened at Geneva by the Governing Body of the International Labour Office, in its 100th Session on 1 June 2011.

2. THE DOMESTIC WORKERS SPECIAL EMPLOYMENT RELATIONSHIP IN THE INTERNATIONAL STAGE

The ILO by the commitment to promote decent work and protect the Fundamental Principles and Rights at Work, and accompanied by the aim of warrant the equitable development, carries out its normative function in the domestic workers employment relationship.

These measures are justified in the special labour conditions under which domestic work is carried out.

It is considered appropriate to complement the general rules with specific rules towards the domestic workers in order to provide this group with the full exercise of their rights.

C-189 Domestic Workers Convention is located within the international labour regulation. It supports a legal instrument to rule the fundamental principles and rights in this field.

Therefore, it is a legally binding international treaty that may or may not be ratified by Member States. In this way, it will only bind a country to implement its content in as long as it ratifies it.

On the other hand, the Recommendation, in this case the R-201 Domestic Workers Recommendation, will work as non-binding guideline, complementing the convention related to more specific information for its subsequent application.

In short, a convention establishes the basic principles in the regulated area, and this is what brings out the C-189 Domestic Workers Convention and its relative R-201 Domestic Workers Recommendation.

An important issue for the Labour Law is to analyse three fundamental aspects of this special employment relationship within the ILO rules, such as the subjects and participants; the configuration of the employment contract; and the autonomy and the absence of collective bargaining, for seek to critically examine Spanish legislation.

2.1. The subjects and the application area

The C-189 Domestic Workers Convention in its 1.a) article determines the object of this special employment relationship which states that *"the term domestic work means work performed in or for a household or households"*. This describes all the work made for the maintenance of one or more households. Therefore the Convention and Recommendation will apply to the workers that make tasks related to the maintenance of a household.

With regard to the people involved in this employment relationship the 1.b) article states that a domestic worker refers to any person male or female, engaged in domestic work within an employment relationship.

This article excludes from the definition the workers who do this kind of work sporadically, which rules out an important group of people who carry out this work in a casual and informal way, and as a consequence, the normative leave those outside of the formal employment´s boundaries. According to the *"within an employment relationship"* precept, it is a demand that the domestic worker make the domestic activity in the legal terms of an employment relationship.

In other words, there are certain requirements to consider a contractual relationship, for example, it has to be remunerated, voluntary, and employed under the management of another person.

Moreover, this is complemented in the article 1.c) when it determines that *"a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker"*.

But the explanation described above does not make reference to the employer, and indeed, to the person who should formalized the employment relationship and in whose home domestic services are to be provided.

It is detected that the ILO leaves up to each country normative the development of these terms, and specifically the concrete consideration of the subjects, and the object of the employment relationship.

However, it reinforces the legal guarantee of the fundamental rights, as well as setting a minimum age for workers; the prohibition of forced labour and all forms of abuse, harassment and violence, among others.

2.2. The configuration of the employment contract

Whereas the convention does not enter formally to determine the legal terms to configure the employment contract, it does especially refers to other important factors that determine it.

The 4 article of the Convention refers to the minimum age for carrying out this occupation. Specifically requires Members to set a minimum age for domestic workers, which may not be lower than that established by national laws for workers generally

It takes particular emphasis on this measures: *"Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training"*.

Then, article 7 of the Convention refers to the conditions of the employment contract. In order to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws inclines the states to include: the starting date and, when the contract is for a specified period of time, its duration; the type of work to be performed, the remuneration, method of calculation and periodicity of payments; the normal hours of work; paid annual leave, and daily and weekly rest periods; terms and conditions regarding the termination of employment, including any period of notice by either the domestic worker or the employer.

It hence pointed out the stipulations of the salary. In that way the 11 article rules that: *"Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex"*.

As a continuation the 12.1 article establishes: *"Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned"*.

Accordingly to this, it suggests the guarantee of a minimum wage coverage, equivalent to the minimum one established in the common employment relationships, and its monthly regularity obligation.

Directly related to the formalization of the employment contracts in the domestic relationship (with the aim to regularize this type of employment) and to the guarantee of some deliverables such as the salary, it is important to mention the example of France in the European Union.

France is characterized by the adoption of economic support measures to regularize the situation of domestic workers, carrying out public policies to grant the domestic employment. Specifically there is a system called CES, by which employers are registered in an Agency which collects the social contribution of domestic workers. The payment to the workers is done with checks that can be purchased in companies, associations and local and regional authorities. So it is a social insurance that benefit the workers from deductions in social security contributions.

2.3. The autonomy and the absence of collective bargaining

It is apparent that the Convention continuously refers to the States with the objective of measure its rules and encourage the association and the collective bargaining.

The convention fosters the collective bargaining, in fact, most of the articles directly refers to the association and the collective bargaining with the representative organizations of this collective.

Nevertheless, more expressly, 3.2.a) legal clause supports *"Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect,*

promote and realize the fundamental principles and rights at work, that is to say, freedom of association and the effective recognition of the right to collective bargaining".

This shows that is necessary to materialize the right to collective bargaining as a fundamental right of all the workers.

It is also argued in the 3.3 article that *"In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing".*

This legal clause suggests that collective bargaining should to be geared to provide support and security for these types of workers, and once the Members ratify the Convention, they must drive an initiative to promote the creation of the organizations in order to eliminate any reluctance to fund welfare working conditions. Clearly thought, the most useful protection are to be found in a non-narrow legal system, ultimately the convention discusses the importance of an historically less favoured kind of work, because of the special features that characterize it[3].

Even so, it could be said that the Convention indicates some specific functions which in countries such as Spain cannot be carried out by the absence of the established subjects to perform these functions.

This argument illustrates that the right to collective bargaining is not an effective law in many countries, first of all there are no associations to it, and secondly because the states themselves are responsible for promoting social dialogue tools with the ultimate aim of building this kind of bargaining; Resulting in the failure of one of the fundamental rights at work, as well as freedom of association and the effective recognition of the right to collective bargaining.

[3] It is significant because 14.1 article rules: "*Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity".*

Finally, it is worth pointing that Belgium, Finland, Ireland, Italy and Switzerland are the only countries that have ratified the Convention in the European context, and therefore the only ones that discussed and then submit the Convention and its contents in the competent authority of its country, usually the Parliament.

After that, convention generally comes into force in that country one year after the date of ratification. Ratifying countries commit themselves to apply the convention in national law and practice and reporting its application at regular intervals.

In the European Union, Italy has developed a system based on the collective bargaining. Actually, they have a collective bargaining agreement signed by the major trade union confederations and a confederation of domestic workers. So the negotiation can be carried out, as a general rule.

However, there are some countries that have not ratified the Convention, but do contain and have developed legal mechanisms for the protection of the social rights of this workers. This is the case of France which offers valuable insights into this theme. There is an organization of domestic workers to carry out the social security of workers, and an Agency to facilitate the process.

3. THE DOMESTIC WORKERS SPECIAL EMPLOYMENT RELATIONSHIP IN THE SPANISH REGULATION

The 2.1.b) legal clause of the 1/1995 of 24 March Legislative Decree, approving the revised text of the Law of the Workers' Statute is approved, establishes employment service home as a working relationship with a special nature[4].

Therefore, it is outside of the common labour relations within the "not-unification" of the special labour relations, rather distant from the reality, indeed, from a distant place of the unifying intent pursued by the Labour Law towards all the special labour relations. Whilst this may be desirable, the unique circumstances that circumscribe this relationship have justified their differentiation from other relationships.

[4] Spain. Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores. *Boletín Oficial del Estado*, núm.75, de 29 de marzo de 1995, pp. 9654-9688.

So the recognition of this special employment relationship, from and through its unifying aspect with other special working relations, it only means that from a legal basis it is required a specific regulation to be developed.

For that very reason the 1620/2011 of November 14 Royal Decree regulated the employment of the special nature of domestic workers[5].

With the help of this rule and taking as central concept the employment contract of domestic workers, it seems that the Labour Law provides social protection and covers its principal function. Nevertheless it does not seek out the information about the type of legal relationships thereof derived and neither about the legal consequences around the contract.

This is a type of explanation for analyse the applicable legal framework and study the support of the recognition of the undeniable workers' rights, so it is interesting to study the guarantee of fundamental rights closely linked to the quality of life and welfare of the workers.

Furthermore, when in the international stage the ILO has adopted the measures previously mentioned, although it is expected that Spain should not take to incorporate its system, has not come the day to be ratified.

For this reason the essay studies the same three issues that have been discussed in the normative of the ILO, in the Spanish legislation.

3.1. The subjects and the application area

The subjects involved in this special employment relationship are the worker and the owner of the home, that is to say, the employer.

Regarding the first, the 1.2 article of DHFR states that the special employment relationship of domestic workers is the one that the employer and the employee arrange,

[5]Spain. Real Decreto 1620/2011, de 14 de noviembre, por medio del que se regula la relación laboral de carácter especial del servicio del hogar familiar. *Boletín Oficial del Estado*, núm. 277, de 17 de noviembre de 2011, pp. 119046-119057.
From this point forward, DHFR.

and it has to be considered dependently on its behalf, and provides services paid in the field of the family home.

Therefore, it is the individual who by a contract undertakes to provide services designed to satisfy household needs of the house´s titular person or the family, in a free, dependent, and paid way.

As regards to the employer, under 1.3 legal clause of the DHFR it shall be deemed employer the owner of the family home, as holder of the domicile or place of residence in which the domestic services are provided. So it is the individual who lives in the house, still own or lease indifferently, who formalizes a special employment relationship of domestic work which contains home services in the broad sense, as the essay will discuss below.

The object of the employment relationship and its scope form a broad concept. The 1.4.article of the DHFR states that the purpose of this special employment relationship are the rendered activities for the family home, which may take any of the forms of household chores, such as, taking care of the whole home, or some of its parts, the care and the attention of family members or people who are part of the household, and other works performed as part of the set of household chores, for example, childcare, gardening, driving and other analogous.

This proves that the object of the domestic work are, firstly the tasks for the care and maintenance of the home where a family lives, which includes indoor and outdoor areas, and hence the functions relating to the care of the subjects of the family unit.

The explanation focuses on the expansion of the object, in fact, this is not limited to the physical concept of the family home, as it has extrapolated to childcare in the transfer of the kids to school and their feeding in the personal address of the domestic worker[6]. Even doing the food shopping with money provided by the householder can be the only domestic work.

[6] This legal basis is in the Jurisprudence: *"Tribunal Superior de Justicia del País Vasco, sentencia de 9 de mayo de 2000 (AS/2000/3160)"*; And *"Tribunal Superior de Justicia de Castilla y León, sentencia de 30 de abril de 2002 (AS/2002/4222)"*.

It is found that the object of this relationship extends continuously, unlike in the common labour relations, this one does not only regulates the limitations in the physical space of the home, and it also applies to functions that are derived from it.

On the other hand, regarding the care, the DHFR includes a new definition of family people when it states “that are part of domestic and family environment” , from which it is deduced that it is no longer necessary to live together in the home to provide a personal care service.

In short, the relaxation of laws relating to the object not always carries a protective function in relation to it, and it does not cover all possible situations; what really does is allow to settle no specific limits to the work of domestic workers, and because of this it covers the exercise of this work with legal uncertainty when it comes to claim their rights.

3.2. The configuration of the employment contract

Prior to DHFR, the specific regulation of this activity was reflected in the 1424/1985 of 1 August Royal Decree[7]. Well, the legislation originally configured the employment contract as temporary, and unless proved otherwise, it was held for a year. Nowadays, that presumption has been corrected and it has been also provided with stability by removing the non-causal annual temporary contracts and through the subjection to the Spanish Workers Regulation, so it shall be presumed as undefined.

In addition, the expiration of the contract could be taken for withdrawal of the employer with an only requirement of 7 days ahead of time notice. If the worker had works for more than a year, the deadline should be of 20 days. It must be accompanied with an indemnity of seven days per year of service with the limit of 6 monthly installments. And in case the dismissal dismiss was unfair, the compensation would be 20 days limited to a maximum of 12 months.

Against this, the current regulation has not led to major advances in the field. Firstly, the employer may close the employment contract in its own withdrawal with a compensation of 12 days' wages per year of service, with a limit of 6 monthly, and shall inform in a

[7] Spain. Real Decreto 1424/1985, de 1 de agosto, por el que se regula la relación laboral de carácter especial del Servicio Doméstico. *Boletín Oficial del Estado*, 13 de agosto de 1985, núm. 193, pp. 25617-25618.

written document and maintain the pre-announcement of 20 days when worked more than year. Secondly, the compensation of 20 days is kept with a limit of 12 months in case the dismissal is wrongful.

Making a comparison with the Spanish Workers Regulation, this one does not rule the "withdrawal" condition, and it proves to there is a great disparity between the compensation due in case of a withdrawal and the one corresponding in case of wrongful dismissal.

Thus, to withdraw or to remove a domestic worker for the company implies a more cost effective regulation for the employer.

In conclusion, there is a figure with a dual realization, which is clearly more advantageous for one part. That way, when the employer wants to divert the domestic worker from the professional activity, it may well happen that the employer chooses the withdrawal as it being a cheaper way to end this relationship.

3.3. The autonomy and the absence of collective bargaining

This section is referred to the employment contract as the main source of the work legal relationship. The 3 article of DHFR rules that the rights and obligations concerning this employment relationship will be governed by the goodwill of the parts manifested in the employment contract, which must respect the law orders and the collective bargaining agreement.

The rule seems to be very basic and it is necessary to say that the absence of collective bargaining is a main feature in this sector. This spreads the importance of the employment contract as the main source of employment and causes a big margin of autonomy (since this autonomy does not have large limits, as there is no collective agreement), which unfortunately provokes the autonomy of the employer.

Therefore, the situation in which the working part is when the work contract has to formalize and determine the working conditions of its provision is precarious.

It must be taken as a key element the absence of a way to enhance or guarantee the rights of the workers against the employer, in particular, the lack of collective bargaining.

Although some of the sources of the employment relationship are collective bargaining agreement[8] and the 2 legal clause of the Spanish Workers Regulation attributes to the special character labour relations the recognition of the basic rights enshrined in the Spanish Constitution, such as freedom of association, the collective bargaining is a figure that is even under construction.

What does the absence of this legal element mean? It is obvious the importance that the collective bargaining has had in the labour relations throughout history.

Labours Law´s protective function is destined to equalize and correct the imbalance situations of the subjects of the employment relationship, and hence constitutes one of the main features of this discipline.

In this context, the deprivation of this feature increases the arbitrariness of the employers in the establishment of working conditions, breaking the guarantee of the legal certainty. The legal certainly and efficacy of the legal system depends not only on the technical criteria of the content of the employment contract or the applicable rules, but also the process of making them determines that assurance.

It is necessary to note that this does not mean only that workers must know what legal criteria can and should follow. Workers should participate in the establishment of these legal criteria. Otherwise, the domestic's workers´ rules would be petrifying, given the lack of a collective organization for these workers limits the possibility to respond effectively to the conflicts that may arise.

Precisely, an immovable law did not involve legal certainty. It is the collective bargaining which projects the legal certainty. This argument supports that legal certainty is the element that feeds the fundamental rights in the labour relations.

Furthermore, the absence of collective bargaining preserves indefinitely the criteria of the employer in regulating this employment relationship, and the lack of collective bargaining

[8] It is curious that so provides the DHFR in the 3.c) article when it dictates that the rights and obligations concerning to this special employment relationship shall be governed by collective agreements.

shows the short of legal certainty, since it involves uncertainty about whether the fundamental rights are fully guaranteed.

Finally, the essay points out the disagreement with the doctrinal line that precedents that despite the new regulation in the DHFR leaves an ample space to autonomy, when in part, is applicable the common law of the Spanish Workers Regulation, although there is no a full equality, it is able to discuss of a true professional status rights of these workers.[9]

4. THE CONSEQUENCES OF THE DEFICIENT LEGISLATION OF THE DOMESTIC WORKERS: WORKING POVERTY

As shown in the present study, both international rules from the ILO, and the Spanish national legislation, they do not gather in quality job. In spite of been designed for equal labour and fundamental rights of all the workers in the labour market, they have been encouraged from a protective and restorative perspective.

In fact, they have not incurred in the need for them to be developed as active policies to a new system that does not unite the special labour relations, which does not allow to end with the negative consequences that emerge from the domestic workers´ employment relationship, such as working poverty.

Often the concept of working poverty is linked to the lack of incomes or to the low pay. That is why this essay identifies certain legal aspects in the domestic workers employment relationship, as elements that contribute to an increase in the workers of this collective who can suffer poverty.

As seen above, the unequal situation of the parts in the negotiation of working conditions, brings that in practice the employers pay the minimum wage to the domestic workers, and it will be the market, the scarcity or the abundance of domestic workers the factor which will determine the final amount of salary[10].

[9] VELA DÍAZ, R. *El nuevo régimen de las personas empleadas del hogar*. Murcia: Ed. Laborum, 2012, pp. 51-52.
[10] RODRIGUEZ SANZ DE GALDEANO, B. *El derecho del trabajo ante la feminización de la pobreza*. Albacete: Ed. Bomarzo, 2013, p. 51.

So an important issue for the poverty of this collective, is the regulation of the remuneration. The 8.1 article of the DHFR affirms that the minimum wage, set annually by the Government, is applicable in the scope of this special employment relationship.

Nowadays, the 1106/2014 of 26 December Royal Decree establishes the minimum wage for 2015 the amount of the minimum wage depends on how it is set has to be the following values: minimum daily wage 21,62€; monthly minimum wage 648,60€; And annual minimum wage 9.080,40€ .

The application of the minimum wage only strengthens the specified threshold, in line with the general figure of the DHFR it determines that this salary can be improved through individual or collective agreement. Consequently, the determination of the remuneration is commended to the individual agreement between the parts, it cannot exist any collective agreement, without representative organizations.

Related to this, it is relevant to show that for the year 2014 the increase of the minimum wage was extremely small, in particular it was 21.51€/day, 645.30€/month, and 9034.20€/year.

On the other hand, the same legal clause in its second paragraph establishes about the pay in kind that, by such concepts may deduct the percentage agreed by the parts, only when the monthly minimum wage is guaranteed in cash. The pay in kind regime is equated to the one in the Spanish Workers Regulation, which in its 26 legal clause define that this cannot exceed the 30% of the salary, and must also ensure the payment of the minimum wage in cash.

It had to eliminate the possible abusive behaviour of the employer by the payment in kind, a very important issue in cases which the domestic work is internal. Even so, the pay in kind is consider difficult to execute, so eliminating its legal ground would seem to be more effective.

Furthermore, the wage increases should be established by agreement between the parts, and only when there is no agreement, there will apply an annual increase equal to the wage increase agreed in the collective bargaining.

The legal situation that normally leads to the zero wage increase for the lack of an agreement between the parts, and hence the obstacles to determine (in this case due to the

lack of collective organizations on both sides) the more representative bargaining parts to negotiate collective agreements.

Finally, with regard to the extra pays, is fixed that the worker has the right to perceive two extra payments per year, in proportion to the time worked. Its amount shall be agreed by the parts, and it must be sufficient to ensure the cash payment of the amount of the minimum wage calculated annually, at least. It could be said that it does not implant any minimum amount. Besides, it states that the annual minimum wage in cash should ensure 9.080,40€. But this provision leaves a way open, in fact, the amount of these extra pays could be the minimum necessary for complement the annual minimum wage.

As an example, it can be considered that a domestic worker working full time for pay 700€ a month and having8.400€ as an annual salary. The annual minimum wage in 2015 is of 9.080,40€, so the difference is in 680,40€, based on that each extra pay would be the amount of 340,2€.

This example shows that the amount which complements the annual minimum wage is not even the corresponding to one month of the base salary of the domestic worker. However, this rule has been established with a general nature in the field of common labour relations by the collective bargaining[11].

Unlike common labour relations, it is a right susceptible of determination, from it is able to deduce that in the case of domestic workers there is not configured as a own right protected under the law.

In conclusion, the legal rules for domestic workers, based on its special nature status, cannot afford a deficient legislation that justifies the precariousness of the collective.

From a legal perspective and a comprehensive approach, it is important not to discriminate the abilities that come from the monetary capacity. The monetary factor is essential to determine the extent of working poverty that means that the factor relating to

[11] Even in sectors that despite its essential characteristics, such as its feminization and its low required qualification (they are also two representative elements of the domestic employment relationship), it is guarantee the right to receive two extra payments equivalent to a monthly pay plus the antiquity at work. See in this sense, the IV. Collective Agreement of Private Old Age Centres of Vizcaya for the 2013-2015 period, in the 23.c) legal clause.

the capabilities of the people derive from their work must be understood with a value proportional to the first.

It cannot be ignored that the economic assets result in tangible, social, cultural and educational development, directly connected with the welfare of the workers. That is why the Labour Law may and must work and have impact upon them.

5. CONCLUSIONS

As is well expressed in the first section of this essay, the aim of this is to establish the necessary mechanisms to adhere the good practices or legal precepts detected in an international level into the Spanish Work Legislation.

The first conclusion to be drawn is the identification of the collective bargaining as a way to contribute to the improvement in the protection of labour rights of the domestic workers, and the equalization of all these collective to the one that Spanish Workers Regulation offers.

It is relevant to highlight the importance that could have the creation and configuration of a collective organization of domestic workers to eradicate all the negative characteristics of the domestic workers´ employment relationship. With a primary function: the materialization of the collective bargaining, and therefore the guarantee of the same labour rights that characterizes a common employment relationship.

On the one hand, it is concluded that is necessary to contribute to this aim in an international stage. The ILO could encourage more explicitly the creation of these collective bargaining figures, since both the convention and the recommendation continually refer to the contribution of them.

On the other hand, the Spanish Legal system could work to incorporate initiatives as the ones implemented in other European countries, taking as example the French and the Italian Systems to introduce some facilities for the workers and the employers, concretely to protect their fundamental rights and the legality of the domestic work.

Thus, would come to the achievement of a more protectionist legislation, which will be able to reduce two the harmful consequences that this collective suffers, such as working poverty and its impact on women.

It has been proven that this special legal regimen breaks with the objective that Labour Law has historically followed, trying to unify the labour relations. Rather, it is not unifying labour relations from the moment that legitimizes a domestic workers legal regime, which does not fully guarantee a fundamental tool for matching labour forces in the workplace.

The autonomy of the Labour Law cannot justify the absence of guarantees in this area. It should follow a procedure similar to the common labour relations, where the collective bargaining has been directed to protect its nature, where predominate the collective will and the interests of all the workers over the individual interests. This will be significant to contrast the equity positions of the parts in the employment relationship. In addition, this legislative gap even guarantees the existence of holders subject of collective bargaining right, which is recognized in the 37.1 legal clause of the Spanish Constitution.

Indeed, there is a new challenge for Labour Law: promote a figure that allows domestic workers to organize collectively, and another for the employers´ representation with the aim to carry out collective bargaining. In reference to this, a collective agreement will be established that protects and reformulates the fundamental rights of domestic workers from the equality principle.

6. BIBLIOGRAPHY

6.1. Bibliography

- ALMENDROS GONZÁLEZ, M.A. *La protección social de la familia.* Valencia: Ed. Tirant lo Blanch, 2005.
- DE CABO, G., GONZÁLEZ, A. y ROCES, P. *La presencia de las mujeres en el empleo irregular.* Madrid: Ed. Centro de Estudios Económicos, 2005.
- GODOY, L. *Entender la pobreza desde la perspectiva de género*. Santiago de Chile: Ed. CEPAL-UNIFEM, 2004.
- GREGORIO GIRL, C. "Procesos migratorios y desigualdad de género", in GARCIA MINA, A. y CARRASCO, M.J., *Cuestiones de género en el fenómeno de las migraciones*, Madrid: Ed. Universidad Pontificia Comillas, 2002.
- RODRIGUEZ FERNANDEZ, M.L. "Efectos de la crisis económica sobre el trabajo de las mujeres", in *Revista Relaciones Laborales: Revista crítica de teoría y práctica,* núm. 1, enero 2014, pp. 69-83.
- RODRIGUEZ SANZ DE GALDEANO, B. *El derecho del trabajo ante la feminización de la pobreza.* Albacete: Ed. Bomarzo, 2013.
- VELA DÍAZ, R. *El nuevo régimen de las personas empleadas del hogar*. Murcia: Ed. Laborum, 2012.

6.2. Legislation

- C-189 Domestic Workers Convention. *The General Conference of the International Labour Organization.* 16th of June 2011.
- R-201 Domestic Workers Recommendation. *The General Conference of the International Labour Organization.* 16th of June 2011.
- España. Constitución Española. *Boletín Oficial del Estado.* núm. 311, de 29 de diciembre de 1978, pp. 29313-29424.
- España. Real Decreto 1106/2014, de 26 de diciembre, por el que se fija el salario mínimo interprofesional para 2015. *Boletín Oficial del Estado*, 27 de diciembre de 2014, núm. 313, pp. 105840-105842.
- España. Real Decreto 1046/2013, de 27 de diciembre, por el que se fija el salario mínimo interprofesional para 2014. *Boletín Oficial del Estado,* 30 de diciembre

de 2013, núm. 312, pp. 106560-106561.

- España. Real Decreto 1620/2011, de 14 de noviembre, por medio del que se regula la relación laboral de carácter especial del servicio del hogar familiar. *Boletín Oficial del Estado*, núm. 277, de 17 de noviembre de 2011, pp. 119046-119057.
- España. Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores. *Boletín Oficial del Estado,* núm.75, de 29 de marzo de 1995, pp. 9654-9688.
- España. Real Decreto 1424/1985, de 1 de agosto, por el que se regula la relación laboral de carácter especial del Servicio Doméstico. *Boletín Oficial del Estado*, núm. 193, de 13 de agosto de 1985, pp. 25617-25618.
- IV. Convenio Colectivo de Centros Privados de la Tercera Edad de Vizcaya 2013-2015.

6.3. Jurisprudence

- Tribunal Superior de Justicia del País Vasco, sentencia de 9 de mayo de 2000 (AS/2000/3160)
- Tribunal Superior de Justicia de Castilla y León, Burgos, sentencia de 30 de abril de 2002 (AS/2002/4222).