

## The displacement of social Europe. The Spanish case\*

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### *1. Overview. Social constitutionalism and crisis in the European Union*

The economic crisis in the Eurozone has marked decisive political orientations and decisions of recent years, both at EU level and in various Member States. As we have noted in the period of the crisis, its effects have gone beyond the economic area to the legal and political, and even the constitutional level. External powers different to the classic powers of the State, particularly economic power, have redefined their role and influence in the areas of public decision making, to the point of imposing their vision on politics and law. Indeed, the political decisions that have innovated or changed the "European crisis law" have been encouraged by economic factors<sup>1</sup>.

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<sup>1</sup> F. Balaguer Callejón, *Crisis económica y crisis constitucional en Europa* in *Revista Española de Derecho constitucional*, 98, 2013, p. 91. In fact, the crisis has

However, these public crisis-influenced decisions have an immediate effect in terms of solidarity and effectiveness of social rights in the European Union.

Indeed, it is precisely for that reason that we would like to recall that in European constitutional culture the State assumes a responsibility with citizens who must be guaranteed social benefits<sup>2</sup>. In European constitutions adopted after the Second World War and later are illustrative of the commitment to the equality and social model of the state. These types of constitution express a clear political ideal and opt for a State provider of services and benefits to citizens (the Welfare State). Social rights appear in the orbit of protection that the state provides to citizens. They are rights that, as opposed to the classic individual rights arising in the context of the liberal era, express the State's commitment to the value of equality<sup>3</sup>. The constitutional recognition of social rights expresses the essential values to society and, in turn, determines a line of action for public authorities. Equality not only requires equal treatment between individual and collective subjects of rights, but because of its finalist nature, it requires the establishment of measures to correct social inequalities.

The constitutionalization of a social State is a core material element of this Constitution; on the other hand it determines the activity of public power, which shall carry out measures relating to the intervention-transformation of reality in order to achieve equal rights for all<sup>4</sup>. The State connects the social needs of citizens, holders of rights in the State, with the activity of the public authorities. Thus, in European constitutionalism, the relations between political power and

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made evident the current changes in the world. In this regard see J. Esteve, *La nueva relación entre Estado y sociedad. Aproximación al trasfondo de la crisis*, Madrid, 2013, p. 115.

<sup>2</sup> “Most constitutional systems in Europe are based upon the assumption that the State should play an active role in securing the economic and social well-being of its people” C. O’Cinneide, *Austerity and the Faded Dream of a Social Europe*, in A. Nolan (ed.), *Economic and Social Rights after the Global Financial Crisis*, Cambridge, 2014, p. 69-201.

<sup>3</sup> D. Grimm, *Types of Constitutions*, in M. Rosenfeld-A. Sajó (eds.) *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012, p. 98 and 125.

<sup>4</sup> C. de Cabo, *El Tratado constitucional europeo y el constitucionalismo del Estado social* in *Teoría y Realidad Constitucional*, 19, 2007, p. 199 at 213.

civil society change. The State assumes obligations to citizens and recognises and guarantees social rights.

However, the economic crisis in the Eurozone highlighted the huge gap that currently exists between reality and norm<sup>5</sup>, between reality and rhetoric<sup>6</sup>. The Rule of Law has been challenged by the new European economic governance<sup>7</sup>. The Rule of Law is an essential constitutional principle and decisions taken by the political authorities in the European public arena have turned against it. Not only has this basic principle of constitutionalism been challenged, but also the solidarity principle and social dimension of European Union.

In the framework of the so-called new constitutionalism, the neoliberal theory and its practices have failed to deliver economic and social development for the people in the world<sup>8</sup>. Even such neoliberal practices go beyond because they invalidate the public opinion and silence the popular resistance<sup>9</sup>. And Europe Union is not an exception. The austerity measures and restrictions on public spending have affected people incisively, generating greater inequalities and reducing their social rights. Overall, social rights are considered *weak rights*, despite being essential to the welfare state, but in this economic context they have shown even more vulnerability. The euro crisis has generated a huge gap between public institutions and citizens and, therefore, a

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<sup>5</sup> C. de Cabo, *Constitucionalismo del Estado social y Unión Europea en el contexto globalizador*, in *Revista de Derecho Constitucional Europeo*, 11, 2009; Text available at [www.ugr.es/~redce/REDCE11/articulos/01CarlosDeCabo.htm](http://www.ugr.es/~redce/REDCE11/articulos/01CarlosDeCabo.htm) (accessed 15 March 2018).

<sup>6</sup> C. O'Conneide, *supra* n. 4.

<sup>7</sup> See C. Kilpatrick, *On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe's Bailouts*, in *Oxford Journal of Legal Studies*, 2015, p. 1 at 29; B. De Witte, *Euro Crisis Responses and the EU Legal Order: Increased Institutional Variation or Constitutional Mutation?* *European Constitutional Law Review*, 11 (3), 2015, p. 434-457. See also, S. Peers *Towards a New Form of EU Law? The Use of EU Institutions outside the EU Legal Framework* *European Constitutional Law Review*, 9 (1), 2013, p. 37-72.

<sup>8</sup> See S. Gill and I. Bakker *New constitutionalism and the social reproduction of caring institutions*, in *Theoretical Medicine and Bioethics*, 27, 2006 p. 35-57.

<sup>9</sup> See among others C. B. Tansel (ed.) *States of discipline: Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order* (Transforming Capitalism), London, 2017.

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social and political problem relevant to constitutional law<sup>10</sup>. The adoption of public policies aimed at the implementation of equal and social rights has proved unnecessary, if not extravagant. It becomes evident a displacement of values and social constitutionalism and thus, the weakness of the European social model.

From the beginning of the European Project, the subordination of the social constitution to the economic constitution has been clear. However, this confrontation is opposed to the achievements of the European constitutional culture<sup>11</sup>. The logic inherent in this “public crisis decision” is not “politics”, as had been noted, but “only diplomatic bargaining and cunning power games among national government representatives and unelected technocrats”<sup>12</sup>. Thus, the crisis in the Eurozone has produced an imbalance between market and social Europe enabled by an increase soft law’s binding effects against the hard law<sup>13</sup>. New governance has produced a weaken the classical normative methods, but also a displacement of social Europe that is arguable due to different reasons<sup>14</sup>. First, this mode of action of public power is not able to provide responses to the challenges of collective

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<sup>10</sup> M. Rodrigues Canotilho, *La situación económica (y social) de los países en la crisis* in F. Balaguer Callejón, (ed.) *The dimension of the public administration in the context of globalization: La dimensión de la administración pública en el contexto de la globalización*, Madrid, 2015, p. 505.

<sup>11</sup> P. Häberle, *Siete tesis para una teoría constitucional del mercado*, in *Revista de Derecho Constitucional Europeo*, 5, 2006, p. 11 at 31, p. 24.

<sup>12</sup> M. Ferrera, *Solidarity in Europe after the Crisis*, in *Constelations*, 21, 2 2014, p. 222 at 238, p. 224.

<sup>13</sup> See S. Garben, *The Constitutional (Im)balance between ‘the Market’ and ‘the Social’ in the European Union*, in *European Constitutional Law Review*, 13 (1), 2017, p. 23-61; M. Dawson, *New governance and the displacement of Social Europe: the case of the European Semester*”, in *European Constitutional Law Review*, 14 (1), 2018, p. 191-209; S. Garben, *The European Pillar of Social Rights: Effectively Addressing Displacement?* in *European Constitutional Law Review*, 14 (1), 2018, p. 210-230; For another perspective on the role of Hard and soft law in this matter see D. M. Trubek and L. G. Trubek *Hard and Soft Law in the Construction of Social Europe: the Role of the Open Method of Co-ordination*, in *European Law Journal*, 11 (3), 2005, p. 343–364.

<sup>14</sup> See for example, Claire Kilpatrick *The displacement of Social Europe: a productive lens of inquiry* in *European Constitutional Law Review*, 14 (1) 2018, p. 62-74; S. Garben, *The European Pillar of Social Rights: Effectively Addressing Displacement?*, op. cit. supra n. 15.

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action and legitimacy that the European Union currently holds as a political project<sup>15</sup>. Nor is it consistent with the principles and values of a social constitutionalism model, also assumed by the European Union through the European Social Model. In addition, in the framework of a globalized world, Europe needs to strengthen itself as a political actor and strengthen its basic pillars and the social pillar is one of them. It seems necessary to restore the social European component if it is to advance in the construction of a common political project.

Therefore, attending to the current situation it seems appropriate to revisit this issue and to consider the impact of the reforms and measures of the crisis on the European Social Model. From a constitutional perspective, this paper will focus on and analyse the effects of anti-crisis measures and how it is has questioned the principles of solidarity and the effectiveness of social rights, particularly in the Spanish case. The questions that could therefore sum up the subject of this investigation are the following: 1. What remains of the European social model after the crisis? Or, in other words, can the European social model remain a hallmark of Europe? 2. What happened to social rights and the value of solidarity in Europe during the crisis? 3. On a more practical level, what have been the public decisions on the crisis in Spain, and what have been the effects on social rights and equality?

In order to attempt to answer these questions I propose two basic lines of argument. First, from a theoretical perspective, I would like to recall that the European Union is a political organisation with ideology and that the European Social Model is one of the premises in the process of European construction. I would also like to recall that, as we have noted at this time, the process of European integration has been advancing as the social model has been weakening. Secondly, I will also attempt a more practical approach to explore the effects of anti-crisis measures adopted in Spain and the resulting loss of social rights.

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<sup>15</sup> M. Ferrera, *Solidarity in Europe after the Crisis*, op. cit. *supra* n. 14.

## 2. *Solidarity and the European Social Model in the context of the crisis*

In this context we should incorporate a basic premise: *the European Union is a political community with ideology*<sup>16</sup>. It is not ideologically neutral, nor is it neutral in its political choices. The process of European integration is achieved through a contradiction between the European welfare state and its economic model. The social state is the basis of European integration, but as the Union is consolidated it becomes a destroying factor of all that remains of a social state within the Member States<sup>17</sup>. This observation is more acute in the context of the measures implemented to tackle the economic crisis in the Eurozone. The effects of the rules and methods adopted in the framework of economic governance go beyond strictly macroeconomic results. There are also great cultural, political and constitutional consequences<sup>18</sup>. Citizenship disaffection, devaluation of solidarity or the emergence of social movements resisting neoliberal Europe shapes a deep social and political crisis in the European Union itself<sup>19</sup>. The European Union “seems dangerously close to losing even the minimal traits of a «community» –in symbolic, political and sociological terms”<sup>20</sup>. In social terms, as we aim to argue, *'Public decisions of the crisis'* have questioned the European social model with a break or a weakening of social pacts and commitments to social

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<sup>16</sup> C. de Cabo *supra* n. 7.

<sup>17</sup> *Ibidem*. See also, G. Maestro, *Estado de mercado y constitución económica: algunas reflexiones sobre la crisis constitucional europea* in *Revista de Derecho Constitucional Europeo*, 8, 2007, p. 43 at 73.

<sup>18</sup> See among many others: K. Tuori and K. Tuori, *The Eurozone crisis, A constitutional analysis*. Cambridge Studies in European Law and Policy. Cambridge, 2014; A. Hinarejos, *The Euro Area Crisis in Constitutional Perspective*, Oxford, 2015; K. McNamara *The Politics of Everyday Europe: Constructing Authority in the European Union*, Oxford, 2015. M. Ryner and A. Cafruny *The European Union and Global Capitalism. Origins, Development, Crisis*, London, 2016.

<sup>19</sup> For a more radical approach on social resistance to austerity trends in Europe, see among others D. J. Bailey et al. *Beyond defeat and austerity: Disrupting (the Critical Political Economy of) Neoliberal Europe*, Abingdon, 2017; C. B. Tansel (ed.) *States of discipline: Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order*, op. cit *supra*. n. 11.

<sup>20</sup> M. Ferrera, *supra* n. 17 p. 234.

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cohesion and equality that had been constructed. This is expressed in the Treaties, where the *social dimension* of the European Union is expressed in diverse forms.

Thus, if we consider the primary Law, the European Union Treaty establishes that the purposes of public authorities must aim towards full employment and social progress. In the same way, it shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men and solidarity between generations. Consistently it marks one of its objectives as the economic, social and territorial cohesion and solidarity between Member States (article 3.3 TEU). On the other hand, the 'social policies' are recognised as shared competences between the Union and the Member States, and they must be implemented under the European coordination (article 4.2 and 5.3 TEU). However one of the most important commitments to equality and social solidarity can be found in the Charter of Fundamental Rights of the EU, in particular Chapters III ('equality') and IV ('solidarity'), and, also in the European Social Charter (ESC).

Therefore, the European primary law formally includes the budgets and basic social imperatives that underlie the process of European construction. However, since the beginning of the crisis, there has been a progressive deterioration of the European social model and the positions of equality and social rights of citizens. In this scenario I would like to recall that the so-called European Social Model was and indeed is still important to the European society and the European Union project. However, the fundamental elements of the European Social Model have been transformed radically, and sometimes even dismantled, although obviously they were not the cause of the crisis or budget deficits, particularly in some Member States<sup>21</sup>. In fact, currently, the impact of the economic crisis on the social dimension could be considered as an important integral part of the European project. The European Social Model is facing an existential crisis, which can be defined by three specific crises (of legitimacy, purpose, and regulation) that reflect an ever-deepening crisis in the

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<sup>21</sup> See D. Vaughan-Whitehead (ed.), *The European Social Model in Crisis Is Europe Losing Its Soul?*, Geneva, 2015.

EU<sup>22</sup>; namely, this is not a cause or a consequence of the European identity crisis, it is only another symptom.

It is true that the cost of implementing austerity measures in the European and national administrations is causing suffering within the European Union Project. However, Europe must not ignore the Social Model and solidarity as one of its main constituent elements if it is not to give up one of its hallmarks. Solidarity is a complex concept with different meanings that in the European project is shown as an essential instrument for achieving greater equality between Member States and within each State<sup>23</sup>. Therefore, European economic measures should be inspired to preserve the Social Model of the States and the Union itself, thus contributing to the development of a "social" democracy in Europe<sup>24</sup>. The anti-crisis measures have challenged the European Social Model with a break or a weakening of social pacts and commitments to social cohesion on which the EU is built and embodied in the Treaties<sup>25</sup>. However, the European Social Model is able to survive and has a huge 'ability to regenerate and resurrect itself in different guises'<sup>26</sup> and its *reconceptualisation* "is central to understanding the EU's sense of self and possible future(s)"<sup>27</sup>. Indeed, the European Union needs to revisit the concept. It needs "a new idea of social Europe" and defines a coherent notion of solidarity to make progress in political and social

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<sup>22</sup> C. Barnard, *EU Employment Law and the European Social Model: The Past, the Present and the Future*, in *Current Legal Problems*, 67, 2014 p. 199 at p. 237, p. 202.

<sup>23</sup> R. Gumbrell-McCormick and R. Hyman, "International Trade Union Solidarity and the Impact of the Crisis in European Policy Analysis", 1, 1-16 2015, Available at [www.sieps.se](http://www.sieps.se) (accessed 15 March 2018).

<sup>24</sup> A. Schillaci, *Gobierno de la economía y desarrollo democrático de la unión europea. Apuntes sobre el principio de solidaridad*, in *Revista de Derecho Constitucional Europeo*, 26, 2016. Text available at [www.ugr.es/~redce/ReDCEportada.htm](http://www.ugr.es/~redce/ReDCEportada.htm) (accessed 15 March 2018).

<sup>25</sup> J. A. Sanahuja, *Las cuatro crisis de la Unión Europea*, in M. MESA (edits), *Cambio de ciclo: crisis, resistencia y respuestas globales*. Anuario 2012-2013, Madrid, 2013, p. 51 ss.

<sup>26</sup> C. Barnard, *supra* n. 24, p.199.

<sup>27</sup> See I. Bruff *Cease to exist? The European 'social' model and the hardening of 'soft' EU law*, in CB Tansel (ed.), *States of Discipline: Authoritarian Neoliberalism and the Contested Reproduction of Capitalist Order* op. cit. *supra* n. 12, p. 149-169.

integration<sup>28</sup>. New evidence that the social dimension of the European project remains can be found in the framework of the Europe 2020 strategy. The so-called 'Horizontal social clause' offers several political actions to deepen "socialization" at EU and Member State level<sup>29</sup>. The reasons behind this survival (or more exactly its reformulation) could be due to several factors: political, social, economic, even symbolic or strategic. However, it seems clear that Europe needs to build more strong and defined its signs of identity. And the European Social Model is one of them.

The latter context could be considered as relevant that 'the Welfare State is the proposal of the European Union to the world. Without that proposal democracy loses depth and probably also the Union loses some of its meaning'<sup>30</sup>. From this premise, we find interesting economic proposals in order to strengthen the pillars of the European social model<sup>31</sup>. Accordingly, European policies must achieve economic growth without undermining the rights of people, achieving a balanced and solidarity economic model in the interests of greater equality and social cohesion. It is necessary to find ways to solve the apparent contradiction between the prevailing economic demands and the European social model. It is possible to meet the objectives of economic growth and sustainable development from a vision that

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<sup>28</sup> See F. Vandenbroucke-C. Barnard-G. De Baere,(eds.) *A European Social Union after the Crisis*, Cambridge, 2017.

<sup>29</sup> See E. Malier-D. Natali, D (eds.) with Van Dam, R. *Europe 2020: Towards a More Social EU, Work and Society*, 69, Frankfurt, 2010, p. 11.

<sup>30</sup> Economists Confronting the Crisis, *Founding Manifesto, Changing Economic Policy to Bring Europe Back: The Proposal by Economistas Frente a la Crisis* 2014, p. 1 Available at <https://economistasfrentealacrisis.files.wordpress.com/2014/03/european-manifesto-economists-confronting-the-crisis.pdf> (accessed 15 March 2016).

<sup>31</sup> These proposals are formulated around three key points: a) "European economic policy must be recovered as a means to hand Europe back to its citizens". The way out of the crisis will be complete with proposals that foster growth and job creation without sacrificing workers' rights; b) Europe's ways out of the crisis must be built upon a 'backing of a new, balanced, environmentally sustainable growth model, guaranteed by financial stability, and built upon the European Welfare State'; and c) 'Lastly, in order to prevent future crises, the EU must decisively move forward in the consolidation of European economic governance, in particular through the culmination of the Monetary Union' *Ibidem* p. 2.

strengthens the pillars of the European social model. If the European Social Model is in fact, a source of inspiration for various emerging economies, it is crucial that the European Union makes the decision to preserve a social model as an essential element of its own history<sup>32</sup>. The Union must be able to promote economic development in an increasingly social and territorially cohesive space, and should make progress on political and social integration<sup>33</sup> if it wants to keep its identity and provide leadership as a main actor in a globalized world.

### 3. *The Spanish case*

The European framework of stability and economic governance forces States, particularly in the public sector, into a rigid legal regime that aims to limit deficit and public debt. The State acts as the ultimate guarantor of achieving these objectives. Spain, as in the case of other Member States where the impact of the crisis has been very strong (Greece, Ireland, Italy and Portugal), has imposed measures in accordance with the criteria of austerity in public spending. As a result, it is not difficult to appreciate the important change in the orientation of public policies and, in particular, the reduction of social policies.

In Spain the economic crisis has had hard and very intense effects on social and labour levels, and it has lasted a very long time. The start date is well-known, (2008) but, despite the latest forecasts of economic growth predicted for Spain until 2018<sup>34</sup> the end is still uncertain. It is an economic crisis that has been faced by governments of different political hue: the social-democratic PSOE led by Mr Rodríguez Zapatero (2008-2011) and the conservative political party (*Partido Popular*) led by Mr Rajoy (Nov 2011-2016), and where government measures to manage the crisis have been very diverse. Indeed, the

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<sup>32</sup> D. Vaughan-Whitehead *supra* n. 23.

<sup>33</sup> L. Tsoukalis *The Unhappy State of the Union. Europe Needs a New Grand Bargain*, London, 2014.

<sup>34</sup> European Commission, Directorate-General for Economic and Financial Affairs, *European Economic Forecast. Autumn 2016*, Institutional Paper, 038/November 2016, p. 88-90. Available at [http://ec.europa.eu/economy\\_finance/publications/eeip/pdf/ip038\\_en.pdf](http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip038_en.pdf) (accessed 15 March 2018).

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economic and fiscal stimulus policies for individuals and companies of the first years gave way to a tough policy of spending cuts in all sectors of public activity later on. Also during this period the labour market was submitted to a deep, questionable and obligatory reform.

The following pages try to analyses of main policy and legal reforms undertaken by successive governments in Spain during the crisis in the Euro zone. First, the analysis develops an overview of the economic, legal and even constitutional measures adopted during this period. Secondly, the case study focuses on three specific sectors: health, education and the labour market. In this way, we will try to demonstrate how European economic law has prevailed over the European social pillar and the social constitutionalism latent in the member states. The impact the main anti-crisis measures adopted by the Spanish authorities could be summarized as follows.

### *3.1. Overview of anti-crisis measures and austerity policies in Spain*

When in 2008 the Spanish public authorities were facing the economic Euro crisis in their Country, they put in place policies that were intended to revive the economy and soften the effects of the crisis in families and business through increased public spending and some tax reduction. In the framework of these policies, among the most emblematic measures there was a provision of two thousand five hundred Euros for each new birth or adoption; a reduction of four hundred Euros of personal income tax was approved, and the elimination of a Wealth Tax was agreed. In May 2009, the government approved a new package of fiscal stimulus measures designed to lower the tax burden on small and medium enterprises (SME) and to promote the purchase of housing and automobiles. However, this did not only fail to control the crisis situation; on the contrary: the macroeconomic data of an Economy in recession encouraged the adoption of measures for saving and control of public spending.

Indeed, according to official data provided by the Spanish Government there would be an immediate and clear impact on financial and economic activity as a result of the crisis. A decrease of three point seven per cent of GDP in 2009 and a significant increase in

the unemployment rate: from eight point six per cent of the active population in 2007 to seventeen point seven per cent in May 2009 and twenty-two point five per cent in 2011 (reaching the maximum rate of twenty six point three per cent in 2013). On the other hand, the reduction in tax revenue and increased public spending would generate a deficit of eight point nine per cent of GDP in 2011, compared to the existing surplus of one point nine per cent of GDP in 2007). Public debt increased to sixty-eight point five per cent of GDP in 2011, compared to data recorded in previous years, for example forty point two per cent in 2008. Faced with this data, the austerity policy programme began.

In May 2010, the formulae adopted by the Spanish authorities combined measures to limit public spending with tax collection methods by raising personal income tax rates and value added tax. In both cases, economic pressure was placed on the middle and working classes. There was an attempt to control costs by reducing the wages of civil servants and freezing pensions (Royal Decree-Law 8/2010 on 20 May 2010). In June of that year the first labour reform of the crisis was implemented (Decree-Law No.10/2010, on 16 June). The anti-crisis measures taken have also been particularly aggressive towards families and care within certain groups, such as children and the elderly. A paradigmatic example is the freezing of the application of Act 39/2006 to promote Personal Autonomy and Care for Dependents. In addition, important cuts in financial support for families and child benefits were approved. Thus, social rights that had represented a real achievement for people in recent years in Spain were left with no real content. Despite the harshness of these measures, the economic situation in Spain was not controlled, and the adoption of additional measures was required.

In summer 2011, a private communication from the European Central Bank (ECB) caused changes in the economic decisions of the Spanish Government. Indeed, at the peak of the Eurozone crisis, the letter sent on 5 August by Former ECB President Jean-Claude Trichet to the then Spanish Prime Minister Zapatero set out a detailed number of conditions to reduce public spending in exchange for the purchase

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of sovereign debt<sup>35</sup>. As of that moment, the economy was dominating the Spanish political scene, taking precedent over any other matter. The market was imposing on politics and law, with the situation of economic recession radically changing priorities. Spain was committed, together with other countries in the Eurozone, to ensuring the budgetary discipline imposed by the Troika through the European Central Bank.

The first measure adopted at a constitutional level was approved: the crisis was institutionalised in Article 135 of the Spanish Constitution via a parliamentary proposal on 23 August, published in the Official State Gazette on 27 September. Indeed, in the context of the commitments adopted at European level for the Eurozone, the second reform of the Spanish Constitution was approved. As in the case of other Member States, Germany (2009) and France (2011) and, later, Italy (2012), membership of the European Union promoted the content of a constitutional reform. It would be a more European than national constitutional reform<sup>36</sup>, in which Spain introduced the legal principle of budgetary stability<sup>37</sup> as a 'structural value and limit on the capacity for the State to act' (Preamble of the reform Constitution). The technical imprecision of the wording and the excessive urgency in the processing of the reform were the object of much dogmatic and political criticism<sup>38</sup>. The questions arising from its approval regarding

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<sup>35</sup> The letter was not disclosed until November 2013, when it appeared as part of the memoirs of Former Spanish Prime Minister Zapatero. For more on the political and social impact of this revelation, see for example *El País*, 26-28 November 2013, [http://politica.elpais.com/politica/2013/11/28/actualidad/1385632542\\_805034.html](http://politica.elpais.com/politica/2013/11/28/actualidad/1385632542_805034.html)

<sup>36</sup> See J. Pérez Royo, *La reforma del artículo 135 CE*, in *Revista Española de Derecho Constitucional*, 93, 2011, p. 198 at 203, p. 199.

<sup>37</sup> The principle of budgetary stability was already recognised in the *General Budgetary Stability Law (Ley General Presupuestaria) Law 15/2006, of 26 May, amending Law 18/2001, of 12 December*.

<sup>38</sup> See the arguments behind the constitutional complaint filed in the Constitutional Court (*Recurso de amparo*) against parliamentary agreements on the constitutional reform process. Court order 9/2012, 13 January 2012 (Official State Gazette on 11 February 2012).

the sustainability of the welfare state were also notable<sup>39</sup>. Nonetheless, constitutional reform would not just be the symbolic beginning<sup>40</sup>. The reality was a confirmation of the weakness of the welfare state in situations of economic crisis. Indeed, the new government emerged from the December 2011 elections to face the harsh economic conditions imposed by ECOFIN and assumed in the Memorandum of Understanding signed on 23 July 2012 (Official State Gazette of 10 December) The high degree of intervention in the Spanish economy and the economic and financial objectives set by Brussels and Frankfurt forced immediate changes to the banking sector, public spending and the labour market. Austerity, controlled public spending, efficiency and competitiveness were incorporated as principles to inspire the proposals for reform of the Spanish public sector<sup>41</sup>. The presence of these criteria in the acting of all government (state, regional and local) have had direct negative effects on the provision of basic social rights such as education, health and social benefits, not to mention the labour conditions of working people.

### *3.2. The main legal measures against the crisis in the sectors of health, education and the labour market*

The following pages analyse the main legal anti-crisis measures adopted in these sectors crucial for people: health, education and the labour market. This is presented chronologically along with the

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<sup>39</sup> See G. Cámara Villar, *La reforma del artículo 135 CE*, in *Revista Española de Derecho Constitucional*, 93, 2011, p. 180. E. Álvarez Conde, *La reforma del artículo 135 CE*, in *Revista Española de Derecho Constitucional*, 93, 2011, p. 161.

<sup>40</sup> In subsequent decisions the Constitutional Court upholds the constitutionality of the measures taken under the principle of budgetary stability. See among other Judgement 215/2014, 18 December 2014; 81/2015, 30 April, 101/2016, 25 May; 43/2017, 27 April or 101/2017, 20 July. In this regard, see C. Fasone, *Constitutional Courts Facing the Euro Crisis Italy, Portugal and Spain in a Comparative Perspective*. In *EUI Working Paper MWP 2014/25*, Text available at [http://cadmus.eui.eu/bitstream/handle/1814/33859/MWP\\_WP\\_2014\\_25.pdf](http://cadmus.eui.eu/bitstream/handle/1814/33859/MWP_WP_2014_25.pdf).

<sup>41</sup> *Comisión para la Reforma de las Administraciones Públicas*, (CORA) Report, 19 June 2013, Madrid, 2013. Available at <http://transparencia.gob.es/transparencia/dam/jcr:b1c69477-9882-41a5-9f6d-5cbb46fa12b4/reforma-AAPP.PDF> (accessed 15 March 2018).

contradictions that are noticed from the assumptions of social constitutionalism. To this end, we will recall the legislative reforms adopted during the crisis in Spain and the main judicial decisions affecting them.

a) *In the health sector*, conditions or limited access to health care, which eliminate the universal and free nature of the Spanish system (health co-payment, several conditions on access by non-nationals) were established. The right to health protection is recognised by the Spanish Constitution under article 43, on the Rights and Duties of Citizens. It specifically establishes that 'The right to health protection is recognised' (paragraph 1) and 'it is incumbent upon the public authorities to organize and watch over public health by means of preventive measures and the necessary benefits and services'. Therefore, the social State recognises the right of all people to health care, and all competent public authorities (Central Government and the Autonomous Communities) are obliged to guarantee this right. Due to the characteristics of the Spanish territorial system, the National Health System (NHS) is composed of a complex set of rules of differing natures and territorial scopes<sup>42</sup>. Since the decade of the eighties the health system had been built on these constitutional rules and, in particular, on two basic principles: universal coverage and free health services. However, both principles were broken by the implementation of the first crisis management measures in this sector.

In fact, austerity measures promoting the reform of the health care system affected access as well as benefits and quality. On the one hand, the quantity and quality of health care was reduced by the first measures. Also the introduction of the controversial health co-payment was damaging to users of the system. The extraordinary measures to reduce the public deficit introduced by Royal Decree-Law No. 8/2010

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<sup>42</sup> See among others M. León Alonso, *La protección constitucional de la salud en el marco del Estado social y democrático de Derecho*, Doctoral thesis, Salamanca 2009, [http://gredos.usal.es/jspui/bitstream/10366/18595/1/DDPG\\_Proteccion%20constitucional%20salud.pdf](http://gredos.usal.es/jspui/bitstream/10366/18595/1/DDPG_Proteccion%20constitucional%20salud.pdf) (accessed 15 March 2018); Y. Gómez Sánchez, *Constitución Española y Salud: fundamentos y dilemas de desarrollo del SNS*, Madrid, 2012 Available at [http://e-spacio.uned.es/fez/eserv/bibliuned:500644/n6.11\\_Constitucion\\_Espanola\\_y\\_salud.pdf](http://e-spacio.uned.es/fez/eserv/bibliuned:500644/n6.11_Constitucion_Espanola_y_salud.pdf) (accessed 15 March 2018),

on 20 May, affecting numbers and wages of public workers, inevitably included National Health System workers. There was a lowering and freezing of wages, a reduction in employment and in opportunities for access by new specialised health workers (especially marked among new doctors and nurses).

Besides these measures to reduce the expenses of sanitary personnel, in parallel, measures directed at rationalising (reducing) expenses relating to sanitary material pharmaceutical products were adopted. The strongest and most criticised measures would consist of reducing the number of free medicines for patients, previously entirely supported by the NHS. The known health co-payment now required each patient to provide at least 10 per cent of pharmaceutical expenditure, although with the percentage being limited to a fixed amount per month based on income<sup>43</sup>. With this measure, the gratuity of the system was broken.

According to the data examined, the negative effects of these first measures on the quality of public service and the effectiveness of the right to health protection were immediate: the number of beds per inhabitant decreased considerably (Three point three per each inhabitant in 2007 to two point one per each inhabitant in 2011); waiting lists for certain types of surgery increased, compared to the desirable trend initiated in the years before the crisis; and citizens now had to be involved in direct spending on medicines<sup>44</sup>.

In addition, the complexity of the territorial system of powers relating to healthcare between the State and the Autonomous Communities provided a difficult map for the exercise of this right on an equal basis in Spanish territory as a whole. Reasonable differences in the exercise of this or any other fundamental right are admitted within the framework of the territorial model. Indeed, according to an established doctrine and constitutional jurisprudence, equality does not

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<sup>43</sup> Royal Decree-Law No.4/2010, 26 March 2010 for the rationalisation of pharmaceutical expenditure charged to the National Healthcare System).

<sup>44</sup> See J. Lladós Vila and T. Freixes, Study *The impact of the crisis on fundamental rights across Member States of the EU- Country report on Spain*, Document requested by the Committee on Civil, Liberties, Justice and Home Affairs, Brussels 2015, Document available at: [www.europarl.europa.eu/studies](http://www.europarl.europa.eu/studies) (accessed 145 March 2018), p. 36-40.

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mean identity or homogeneity in subjective positions of all people in all parts of the territory; rather, it means the guarantee of an equal basic core for all matters fixed by the central State from which non-substantial differences are possible within the conditions of the exercising of the rights in each Autonomous Community<sup>45</sup>. However, these minimum conditions for all would not be respected by the Autonomous Community of Catalonia when introducing the co-payment of one euro per prescription for *all* users of the Catalan health system. This measure has been declared contrary to the constitution (*Constitutional Court, Judgment 71/2014, 6 May*).

Another measure taken in the context of the crisis, and of great interest in this matter, affected holders of the right to healthcare. In effect, the Government redefined these through the concept of *insured* and *beneficiary* and linked healthcare to the Social Security system. Thus, in practice, the limitations of access to the system now fell on irregular and non-resident immigrants, who were only guaranteed healthcare in emergency situations (serious illness or accidents) and specific groups of people (pregnancy, childbirth and postnatal care, and minors). The political reactions opposed to this rule were immediate because it was considered contrary to equality and especially adverse for the most vulnerable groups. Among the scientific doctrine, critics have also been numerous because this measure limited the holders of a right by means of *emergency legislation*, through decree law (Royal Decree-Law No. 16/2012), whose suitability is constitutionally questionable<sup>46</sup>.

Four years after coming into force, *Constitutional Court Judgment 139/2016, 21 July* confirms the constitutionality of these measures. The social and economic content of the right to healthcare

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<sup>45</sup> *Constitutional Court sentences 37/1981, 16 November; 37/1987, 26 March, 52/1988, 24 March.*

<sup>46</sup> Among others see V. Aguado i Cudolà - Prado Pérez, *Derecho a la protección de la salud y exclusión de la asistencia sanitaria: la crisis económica como pretexto para la limitación del acceso a los servicios y prestaciones del estado del bienestar*, *Revista Vasca de Administración Pública*, 99-100, 2014, p. 87 at 110, p. 89-93; J. Cantero Martínez, *Constitución y derecho a la protección de la salud. ¿Existe algún límite frente a los recortes sanitarios?*, *Revista CESCO de Derecho de Consumo*, 8, 2013, p. 1 at p. 26, p. 24-26. Available at [www.revista.uclm.es/index.php/cesco](http://www.revista.uclm.es/index.php/cesco) (last accessed 15 March 2018).

and the context of crisis in which the regulation was approved are the central arguments of the judicial decision. The Court also relied on its precedents (*Constitutional Court Judgment 236/2007, legal ground 4*) and the jurisprudence of the Court of Justice of the European Union (CJEU) (Judgment of the Court, First Chamber of 14 June 2016) to affirm: 'The legislature may take into account the data of their legal and administrative situation in Spain, and therefore, require foreign authorisation of stay or residence as a requirement for the exercise of some constitutional rights'. The purpose of the rule in question is none other than the 'preservation of constitutionally protected interests, such as the maintenance of the public health system, without ignoring the possibilities of the system at a time of intense economic complications, observing the distinction between foreigners with residence permits and those without' (*Constitutional Court Judgment 139/2016, legal ground 12*).

However, we share the opinion expressed in the dissenting opinion to this judgment opposing this legal interpretation based on budgetary constraints. Firstly, it departs from its precedents with a weak argument that removes the rights to healthcare, life and physical integrity on the basis of 'eventual cost savings'<sup>47</sup>. Secondly, it argues against well-established case law from the European Court of Human Rights, to which the Spanish courts are linked, interpreting the content of fundamental rights<sup>48</sup>. Thirdly, and most importantly, because the suppression of the universality of the right to healthcare produces a reversibility of a social right and, therefore, requires a strong, sufficient and reasoned motivation that does not appear in the one made by the majority of the Court. In the context of the Welfare State it seems necessary that an eventual reversibility of a social right already achieved must be sufficiently motivated as it supposes deprives the person of social achievement (see Dissenting opinion, grounds II and III).

b) *In the education sector*, changes have negatively impacted on the quality of public education and restricted equal access and exercise to this right. According to the line of international and European

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<sup>47</sup> *Court order 239/2012, 12 December, legal ground 5; 114/2014, 8 April, ground 8 and 54/2016, 1 Mars, ground 5*.

<sup>48</sup> *Judgment ECHR cases D. v UK* 2 May 1997; *Panaïtescu v. Romania* 10 April 2012; *Valentin Câmpeanu v. Romania*, 17 July 2014; *Brincat et al. v. Malta*, 24 July 2014, among others.

treaties (article 26 Universal Declaration of Human Rights, 2 European Human Rights Convention or 14 EU Charter of Fundamental Rights of the European Union, among other texts), the Spanish Constitution includes the right of education with a double dimension: on the one hand, as a right of liberty and, on the other hand, as a social right which obliges the State to provide the public service of education (article 27 SC)<sup>49</sup>. In accordance with its social dimension, the Constitution obliges the Spanish public powers (State and Autonomous Communities) to provide the public service according to the principles of universality, quality and gratuity. These basic requirements for the enjoyment of the right and the provision of the public service have also been identified with the four *a*'s: affordability, accessibility, acceptability and adaptability<sup>50</sup>. However, these principles have been called into question in the wake of the economic crisis. Certainly the changes have adversely affected the quality of public education and restricted equal access to it for all individuals<sup>51</sup>.

As in the health sector (and also in the labour sector, as will be discussed below), changes in the education system were adopted through emergency legislation (royal decree), politically justified by the public spending rationalization and savings commitments. However, at the legal level, we can again observe the numerous use (and 'abuse') of emergency legislation in this period which confirms the enormous role of the government vis-à-vis parliament in this economic context<sup>52</sup>. The rules were barely debated by parliament. Classical parliamentary

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<sup>49</sup> Cf. Vidal Prado, *Educación y austeridad*, 1, *Lex social: Revista de los derechos sociales*, 1 2014, p. 21 at 33, p. 29 ss.

<sup>50</sup> Cf. L. Cotino, *El Derecho a la educación como derecho fundamental especial atención a su dimensión social prestacional* Madrid, 2012.

<sup>51</sup> See among others A. Aguilar Calahorra, La dimensión del Estado y las Administraciones Públicas en España, in *Revista de Derecho Constitucional Europeo*, 20 2013. Available at [www.ugr.es/~redce/REDCE20/articulos/02\\_A\\_AGUILAR.htm](http://www.ugr.es/~redce/REDCE20/articulos/02_A_AGUILAR.htm) (accessed 15 March 2018); A. Boto Álvarez, *Medidas anti-crisis y reforma de las Administraciones: ¿quid de los servicios públicos?*, 2014 at [www.academia.edu/7137933/Medidas\\_anti-crisis\\_y\\_reforma\\_de\\_las\\_Administraciones\\_quid\\_de\\_los\\_servicios\\_publicos](http://www.academia.edu/7137933/Medidas_anti-crisis_y_reforma_de_las_Administraciones_quid_de_los_servicios_publicos) (accessed 15 March 2018).

<sup>52</sup> See A. M. Carmona Contreras, *El decreto-ley en tiempos de crisis*, in *Revista catalana de dret públic*, 47, 2013, p. 1 at p. 20, p. 14.

activity focused on the discussion and debate of legislation was weak, with the government politically managing and regulating the crisis. In any case, this weakness of the Spanish parliament vis-à-vis the government has been identified as a common feature among the parliaments of the European debtor countries, as opposed to the greater strength of parliaments of the European creditor countries<sup>53</sup>.

In these circumstances, and in the education sector, the first and most important measure was introduced by Royal Decree-Law No. 14/2012 on 20 April, which fell directly on teachers, impoverishing their working conditions through increases in working hours and salary reductions, along with increases in teacher/student ratios. The consequences of this measure are clear: the loss of the working conditions of the workers in this sector and the deterioration of the quality of education and the academic performance of students<sup>54</sup>. Moreover, the budget for grants and scholarships was reduced. Financial assistance destined to ensure training at all educational levels were cut by making the academic and income requirements for obtaining scholarships stricter.

However, the effects associated with these budget cuts raise doubts in terms of ensuring equal access to this right. In order to achieve this objective, and according to consistent case-law, public authorities should ensure the existence of scholarships and financial aid. It is true that study aids (educational scholarship or grants) are not an instrument of social, rather educational and academic policy<sup>55</sup>. Nonetheless, we believe that the criteria used to review scholarship and grants policy was not due to changes in the Government's educational policy. Instead, it seems that economic cuts for scholarships and study aids were due almost exclusively to the implementation of austerity measures and savings in public spending. The economic policy implemented 'to contribute to achieving the mandatory objective of budgetary stability deriving from the constitutional framework and the

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<sup>53</sup> See S. Ragone, *La incidencia de la crisis en la distribución interna del poder entre parlamentos y gobiernos nacionales*, in *Revista de Derecho Constitucional Europeo*, 24, 2015 Available at [www.ugr.es/~redce/REDCE24/articulos/03\\_RAGONE.htm](http://www.ugr.es/~redce/REDCE24/articulos/03_RAGONE.htm) (accessed 15 March 2016).

<sup>54</sup> See J. Lladós Vila and T. Freixes, *supra* n 46, pp. 26-28.

<sup>55</sup> C. Vidal Prado, *supra* n. 51, p. 32.

European Union' according to the reasons stated in the Government (Royal Decree law No.14/2012).

In short, access to and enjoyment of the right to education at all levels has worsened, as the reality of recent years in Spain shows. OECD reports reveal remarkable data and information: a) The ratio of students per teacher is below the OECD average at all levels of education b) public funding has seen some reductions due to the economic crisis, although expenditure per student continues to be above the OECD average; c) High dropout and youth unemployment rates d) the performance of 15-year-olds was just below the OECD average (PISA 2012) and has remained unchanged over the years (PISA 2015). The conclusions are clear. Spanish educational system policies require efforts focused on quality of education and training to all<sup>56</sup>. Therefore, faced with the trend in recent years, educational policies must achieve an important social function of the State: to correct the social and economic inequalities of students and to guarantee the equality of opportunities for the enjoyment of a quality education.

c) On the other hand, along with the macroeconomic measures taken in order to reduce Spanish public spending, the Troika imposed 'structural reforms' *in the labour market* as additional measures to improve the functioning of the labour market and increase employment. In this sector, as has been pointed out previously, the following measures were immediately adopted, beginning with freezing the wages of public workers, but in general, worsening the employment conditions of workers in general through increasing working hours and reducing salaries and the flexibility of the labour market. The necessary reform of the production model, based for decades on the real estate sector, has been practically left out of political debate. Instead, as can be seen, it has fallen on the workers, through the loss of previously-established rights<sup>57</sup>.

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<sup>56</sup> OECD *Education policy Outlook: Spain*, (2014) Available at [www.oecd.org/edu/highlightsspain.htm](http://www.oecd.org/edu/highlightsspain.htm) (accessed 15 March 2018). See also OECD PISA 2015 Results. (Volume I and II), Published on December 06, PISA, (OECD Publishing 2016), Available at [www.oecd-ilibrary.org/education/pisa\\_19963777](http://www.oecd-ilibrary.org/education/pisa_19963777) (accessed 15 March 2015).

<sup>57</sup> Cf. A.Baylos Grau and F. Trillo Párraga, *El impacto de las medidas anti-crisis y la situación social y laboral: España* (Comité Económico y Social Europeo

In response to obligations with Europe, two labour market reforms were implemented. The first was approved in June 2010 (Decree Law 10/2010, on 16 June, confirmed by Act 35/2010, 17 September). Among new changes, attention may be drawn to two measures: a) The introduction of flexibility within companies through changes in working conditions: adjustment or reduction of working hours and schedules motivated by economic, technical, organizational or production reasons; b) Dismissal for economic reasons was established, and severance payments were reduced. These first measures were presented as temporary instruments to adjust labour relations, deriving from the economic crisis. However, the changes produced by this labour legislation on workers' conditions have been consolidated in subsequent reforms that deepen the tendency to place employees in weakened positions against employers. In addition, this legislation implies an important impairment in the rights acquired by the workers.

In any case, the most intense and controversial labour reform was approved in February 2012<sup>58</sup>. Due to the inefficiency of the labour reform of 2010, this reform was a new attempt to promote job creation and correct the excessive duality and precariousness of the Spanish labour market. However, it did not achieve its purpose. The alarming unemployment data for subsequent years is proof of this failure. The unemployment rate stood at twenty six point nine per cent in the first quarter of 2013, at twenty five point nine per cent in the same period in 2014 and twenty three point seven per cent in 2015, according to official data published on the Spanish Active Population Survey. Instead, the second labour reform of the crisis has had a huge and direct impact on the individual labour rights of workers (Working hours, schedules, work shifts, training, conciliation between work and family life or syndication, among others) and the collective rights of workers (right to collective bargaining).

In the labour law of the crisis, 'work' is no longer considered as a right and an end in itself, to be understood as a means to achieve employment growth. Work is one more element of the production

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2013) Available at [www.eesc.europa.eu/resources/docs/qe-31-12-352-es-c.pdf](http://www.eesc.europa.eu/resources/docs/qe-31-12-352-es-c.pdf) (Accessed 15 March 2018).

<sup>58</sup> Decree law No. 3/2012, confirmed by Act No. 3/2012, 6 July.

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system, where the focus of interest shifts from workers and their working conditions to the employer. The employer now has a recognised dominant position in employment relationships, determining the working conditions of the worker to an even greater extent<sup>59</sup>. The internal and external flexibility of labour relations have been accentuated. The right to collective bargaining was modified both in its structure and in its content. This legislative power decision was subject to constitutional review.

Indeed, one of the most striking and controversial changes brought about by this reform is the non-application of the conditions agreed in a Collective Agreement via a unilateral decision of either party. In practice, this means the absence of social dialogue in the adoption of decisions of great significance for workers. Despite doubts about the constitutionality of this measure, the Constitutional Court confirmed the action of the labour legislator, noting that it does not affect the rights to collective bargaining (article 37 SC) or freedom of association (article 38 SC)<sup>60</sup>. The opinion of the majority of the court is based on the legislator's capacity to define the right to collective bargaining and the situation of economic and labour crisis that justifies a legal measure aimed at job growth.

However, we share the doctrinal opinions and arguments of the dissenting opinions that accompany both judgments for two reasons: firstly, because the argument of the majority of the Tribunal departs from its interpretive line to not confirm the essential content of the right as a limit to the freedom of the lawmaker and, secondly, because this decision is inconsistent with the mandates of the Welfare State<sup>61</sup>. In addition, these arguments were not presented after a rigorous judgment on the suitability, necessity and proportionality of the measures that would justify, if necessary, the impairment of consolidated labour rights<sup>62</sup>. In short, trying to justify the loss of social rights based almost exclusively on the economic situation is legally weak but also

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<sup>59</sup> See M. Rodríguez-Piñero y Bravo-Ferrer et al., *La nueva reforma laboral*, in *Relaciones laborales: Revista crítica de teoría y práctica*, 5, 2012 p. 1-39, p. 2.

<sup>60</sup> *Constitutional Court Judgment 119/2014*, 16 July and 8/2015, 22 January.

<sup>61</sup> *Constitutional Court Judgment 11/2016* and *8/2015*. Dissenting opinions.

<sup>62</sup> See P. Requejo, *El papel de la crisis económica en la argumentación del Tribunal Constitucional. Comentario a la STC 119/2014*, in *Teoría y Realidad Constitucional*, 36, 2015 p. 417 at 437, p. 430, 434.

dangerous, as it openly admits the weakness of the Social State against the demands of the Market and the Economy. This once again confirms the important role and predominance of the economic Constitution compared to the constitutional mandates of the Welfare State.

In summary, Spain, along with other Member States, has been subject to the incorporation of a regressive trend in social and labour rights. Labour market reforms have generated harsh effects on the social and labour rights of workers and, therefore, against the European Social Charter<sup>63</sup>. In the employment market, the Eurozone crisis has significantly reduced the possibility of improving the working conditions of workers, and has failed to promote employment, at least in adequate working conditions. The European system of industrial relations should not be governed solely by criteria of productivity or competitiveness. The labour market should not be so flexible as to make the European social protection model unrecognizable<sup>64</sup>. The measures taken by the Spanish authorities have generated increases in the levels of inequality that continue to grow, although of the job destruction stage seems already complete<sup>65</sup>. At present, the Spanish labour market continues to maintain high rates of long-term unemployment and a divided labour market, with workers earning less and labour and social rights reduced.

#### 4. Conclusions

To conclude, I will attempt to recall, from a constitutional perspective, the severe impact of European and national crisis-related economic policy on the European social model and the values of equality and solidarity. The demands of austerity and reductions in

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<sup>63</sup> C. Barnard, *L'effet de la crise sur le droit du travail au Royaume-Uni: Révolution ou Evolution?*, in *Revue de Droit Comparé du travail et de la sécurité sociale*, 2, 2012, p. 96 at p. 105 and C. Barnard, *supra* n. 28; S. Claumaert and I. Shömann, *The protection of fundamental social rights in times of crisis: A trade union battlefield*, in *Arbeitsvölkerrecht*, 2013, p. 239 at 256.

<sup>64</sup> Cf. B. Morata and M.T. Díaz Aznarte, *Reforma laboral en España: precariedad, desigualdad social y funcionamiento del mercado de trabajo*, in *Estudios Socio-Jurídicos*, 15(2) 2013, p. 41 at 71, p. 44.

<sup>65</sup> *Report OCDE*, Nov 2016.

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public spending have prompted intensive reforms in the labour market and the public sector in Member States such as Spain, which have been hit hard by the economic crisis. The former has made the labour market more flexible at the expense of the rights of workers, and the latter has weakened the public sector in areas directly linked to basic rights such as education, healthcare and social benefits. The anti-crisis measures have been taken to correct economic imbalances, restore confidence and achieve economic growth. Nevertheless, the negative consequences generated in terms of social rights and the principle of equality cannot be assumable from a constitutional perspective.

In my opinion, ways must be sought to achieve a balance between the constitutional principles of efficiency, rationality and quality in public administration and the guarantee of the rights of citizenship. The direct consequences of the anti-crisis measures analysed show a situation hardly compatible with the European Social Model and social constitutionalism. The State has ceased to assume part of its responsibility to citizens in the interest of greater economic growth. However, overcoming the crisis cannot be at the cost of the social model assumed by European constitutionalism and solidarity as an integrating principle within the European project.

If the perception was true that the current economic situation has stabilized, perhaps the question now is to adjust political trends in a line more consistent with social constitutionalism; in short, the European social model as one of the essential pillars of the European project should not be abandoned, rather strengthened as a way to achieve economic growth without undermining rights and the principle of solidarity. This should be one of its key components of the European Union to define and strengthen its position as a political actor in the face of the challenges of globalization.

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**ABSTRACT:** The economic crisis that has visited many European countries since 2008, and the austerity policies adopted in the framework of the new economic governance of the European Union, which emerged at the beginning of the second decade of the present century, it is throws into question the very existence of the Welfare

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State and with that the commitment to equality and the realization of social rights inherent to the European Social Model.

In this context, the paper focuses on, and seeks to analyze, the constitutional consequences of the economic crisis on the realisation of the social rights of citizens and the values of equality and solidarity in the European Unión. The investigation asks firstly, what remains of the European social model after the crisis and, on a more practical level, what effects have the decisions of the Spanish authorities throughout the crisis years had on social rights and solidarity.

**KEYWORDS:** European Social Model, solidarity, Eurozone crisis, welfare state, Spain

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