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International Association of Labor Law Journals

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RETROSPECTIVE OVERVIEW OF 2013

COMPARATIVE LABOUR LAW LITERATURE

SILVIA BORELLI

UNIVERSITÀ DEGLI STUDI DI FERRARA

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MAX PLANCK INSTITUTE FOR SOCIAL LAW AND SOCIAL POLICY

LABOUR LAW BEYOND NATIONAL BORDERS: THE DEBATE IN 2013

The present article attempts to provide an overview on the essential topics presented in the 2013 issues of most journals that are members of the International Association of Labour Law Journals (IALLJ). The IALLJ promotes exchanging ideas, broadening awareness and stimulating debate among labour law experts across different countries from all continents. Currently, only a minority (7) of 25 journals are from non-European countries. However, nowadays almost all the journals exhibit some cross-national perspectives, and address supranational issues as well as those with transnational implications.[1]

The authors were not able to include all member journals of the Association, mainly due to accessibility or language barriers.[2] The 2013 overview is divided into the following sections: 1. Labour Law Reform, 2. Demographic Change, 3. Fundamental Social Rights, ILO Standards and Transnational Regulation, 4. Labour Law Effectiveness, 5. Collective Labour Law, 6. Individual Working Conditions.

[1] For a complete list see www.labourlawjournals.com.
Besides, the list of all journals 'abbreviations mentioned in this article follows at the end of the chronicle.

[2] Articles published in the *Pécs Labor Law Review* could be considered partially. The authors gratefully acknowledge the support of Gabriella Berki in accessing the Hungarian Journal and in providing translations of the Hungarian titles. Our special thanks go to the library staff of the University of Ferrara Law Faculty (Cristina Baldi) and the Max-Planck-Institute for Social Law and Social Policy in Munich (Irina Neumann) for their invaluable assistance in retrieving journals and articles, and to Jihan Kahssay for her linguistic support.

Labour Law Reforms

As in 2012, Labour Law reforms introduced after the financial and economic crisis provoked by the bankruptcy of Lehman Brothers were still discussed on the IALLJ journals in 2013.

A The «chronic delegitimisation» of Labour Law

Since 2008, European states (but not only)[3] continue to undermine the legitimacy of labour laws by claiming that these laws interfere with the efficient functioning of free markets and unduly limit the employer's freedom to manage, hire and fire without restraint.[4]

Even if several economists have tried to demonstrate that «the arguments for deregulation are not based on hard evidence of the alleged harmful effects of particular employment rights but are mainly ideological»,[5] the so-called «*aziendalizzazione*» of the labour law and industrial relations system has not stopped.[6] This phenomenon presupposes the company's rationality as the main and central point of reference at any regulatory level of labour law and industrial relations, and has gained momentum since the economic and financial crisis. The company-oriented labour law model has developed as a consequence of market globalisation that has entailed a competition among national legal orders towards lowering labour law standards, and a privatisation of labour regulation.[7]

The new values that inspire labour policies can be detected in the reforms affecting legal sources. In France, Spain and Italy, collective agreements at company level have been strengthened so that workers' rights may be dero-

[3] On Canada, see M. Coutu, "With Hugo Sinzheimer and Max Weber in Mind: The Current Crisis and the Future of Labor Law", *CLLPJ*, 2013, vol. 34, p. 605. In general, on Labour Law crisis in North America and Europe see M. Coutu, M. Le Friant, G. Murray, "Broken Paradigms: Labor Law in the Wake of Globalization and the Economic Crisis", *CLLPJ*, 2013, vol. 34, p. 565, and H. Arthurs, "Labor Law as the Law of Economic Subordination and Resistance: A Thought Experiment", *CLLPJ*, 2013, vol. 34, p. 585.

[4] M. Rodríguez-Piñero Royo, "La forza del mercato: le riforme del diritto del lavoro spagnolo durante la crisi finanziaria mondiale", *DLRI*, 2013, p. 93; T. Papadopoulos, A. Roumpakis, "The meta-regulation of European industrial relations: Power shifts, institutional dynamics and the emergence of regulatory competition", *ILR*, 2013, vol. 152, p. 256.

[5] B. Hepple, "Back to the Future: Employment Law under the Coalition Government", *ILJ*, 2013, p. 206; R. Realfonzo, "Deregolamentare per crescere? Epl, quota salari e occupazione", *RGL*, 2013, I, p. 487; J. Capaldo, A. Izurieta, "The imprudence of labour market flexibilization in a fiscally austere world", *ILR*, 2013, vol. 152, p. 1; D. Judzik, H. Sala H. "Productivity, Deunionization and Trade: Wage effects and labour share implications", *ILR*, 2013, vol. 152, p. 205; R. Torres, "Introduction: European labour markets in economic crisis", *ILR*, 2013, vol. 152, p. 167; F.L. Sell, D.C. Reinisch, "How do the Eurozone's Beveridge and Phillips curves perform in the face of global economic crisis?", *ILR*, 2013, vol. 152, p. 191; S. Sturn, "Are corporatist labour markets different? Labour market regimes and unemployment in OECD countries", *ILR*, 2013, vol. 152, p. 237; P. Tridico, "The impact of the economic crisis on EU labour markets: A comparative perspective", *ILR*, 2013, vol. 152, p. 175.

[6] V. Bavaro, "L'aziendalizzazione nell'ordine giuridico-politico del lavoro", *LD*, 2013, p. 213; G. Loy, "Oltre la flessicurezza", *RGL*, 2013, I, p. 479.

[7] V. Bavaro, *op. cit.*, note 6, p. 215; A. Perulli, "Diritti sociali fondamentali e regolazione del mercato nell'azione esterna dell'Unione europea", *RGL*, 2013, I, p. 321; T. Treu, "Le istituzioni del lavoro nell'Europa della crisi", *DLRI*, 2013, p. 597.

gated from standards set by national collective agreements.[8] Therefore, workers' rights become flexible, adaptable to each company's interests and even suppressible.[9]

In Spain, the labour law reforms that have been adopted every year since 2009, have strengthened the employer's powers.[10] For example, the probation period for open-ended employment contracts has been extended to 12-month during which dismissal without cause is allowed. The reasons that may justify a redundancy have been widened and the administrative control on redundancies has been abolished. Moreover, the rules on workers' internal flexibility have been enlarged.

EU responses to the economic and financial crisis entailed drastic cuts in public expenditure. The austerity programmes imposed by the European Commission and the European Central Bank have obliged the Member States to correct their excessive deficits. The obligation to balance revenue and expenditure in the State budget has even become a constitutional rule.[11] Moreover, the financial constraints imposed by international organisations and EU institutions heavily reduced the States' autonomies in developing their own national policies.[12] This situation has stirred up the conflict with trade unions which found themselves either almost ignored by the conservative governments (for example in Spain), or incapable of developing joint actions vis-à-vis left-wing governments (for example in France).

The budgetary restraints have had a strong impact on public administration. In the South and periphery of Europe (but even elsewhere),[13] the public sector has suffered severe cuts.[14] Simultaneously, there is a privatisation of public services.[15]

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[8] On France: A. Lyon-Caen, T. Sachs, "La legge sulla «sécurisation de l'emploi»: DNA di una riforma", *LD*, 2013, p. 435, and "L'ADN d'une réforme", *RDT*, 2013, p. 162; E. Peskine, "Les accords de maintien dans l'emploi. Ruptures et continuités", *RDT*, 2013, p. 168. On Italy: F. Martelloni, «Brève histoire italienne d'un droit du travail «en mode mineur»», *RDT*, 2013, p. 288; M. Marazza, "Reforma laboral italiana. El artículo 18, nuevo texto, del Estatuto de los trabajadores", *RL*, 2013, no. 2, p. 109; T. Treu, "Flessibilità e tutele nella riforma del lavoro", *DLRI*, 2013, p. 1; A. Alaimo, "Presente e futuro del modello sociale europeo. Lavoro, investimenti sociali e politiche di coesione", *RGL*, 2013, I, p. 253; L. Mariucci, "L'agenda desiderabile: idee per una nuova fase del diritto del lavoro", *LD*, 2013, p. 167; U. Romagnoli, "La deriva del diritto del lavoro (Perché il presente obbliga a fare i conti col passato)", *LD*, 2013, p. 3. On Spain, see footnote n.10.

[9] E. Ghera, "Il contratto di lavoro oggi: flessibilità e crisi economica", *DLRI*, 2013, p. 709; U. Romagnoli, "Diritto del lavoro e quadro economico: nessi di origine e profili evolutivi", *DLRI*, 2013, p. 594; S. Deakin, "Labour standards, social rights and the market: "Inderogability" reconsidered", *DLRI*, 2013, p. 549. For a different opinion, see R. De Luca Tamajo, "Il problema dell'inderogabilità delle regole a tutela del lavoro: passato e presente", *DLRI*, 2013, p. 715.

[10] A. Baylos Grau, "La desconstitucionalización del trabajo en la reforma laboral del 2012", *RDS*, 2013, no. 61, p. 27: F. Ferrando García, "El reforzamiento del poder de direccion tras la reforma laboral de 2012", *RDS*, 2013, no. 61, p. 71; J.M. Morales Ortega, "Movilidad geográfica y modificaciones sustanciales tras la reforma de 2012: ¿una mal entendida flexiseguridad?", *TL*, 2013, vol. 119, p. 55; M. Rodríguez-Piñero, F. Valdés Dal-Ré, M.E. Casas Baamonde, "La huida del derecho del trabajo hacia el "emprendimiento", las reformas de la Reforma Laboral de 2012 y otras reformas: la L 11/2013 y el RDL 11/2013", *RL*, 2013, no. 10, p. 1, and "La aplicación de la Reforma Laboral", *RL*, 2013, no. 12, p. 1; A.M. Romero Burillo, "La regulación de la movilidad geográfica tras las reformas laborales 2010-2012", *RDS*, 2013, no. 64, p. 43; T. Sala Franco, "Puntos críticos para un debate sobre la reforma laboral de 2012", *RL*, 2013, no. 10, p. 31.

[11] C. Pinelli, "Le misure di contrasto alla crisi dell'eurozona e il loro impatto sul modello sociale europeo", *RGL*, 2013, I, p. 231.

[12] M. Rodríguez-Piñero y Bravo-Ferrer, "Globalizzazione, flessicurezza e crisi economica", *RGL*, 2013, I, p. 524.

[13] The need to cut public expenditure is detected also in Ontario (R.P. Chaykowski, R.S. Hickey, "Principles for Labour Relations Policy Reform in the Wake of the Drummond Report on Ontario's Public Services", *CLELJ*, 2013, no. 17, p. 379) and in Michigan (R.N. Block, "Recent Reforms to Public Employee Interest Arbitration in Michigan: Any Lessons for Ontario?", *CLELJ*, 2013, vol. 17, p. 393).

[14] A. Topo, "Public Sector Collective Bargaining and the Distortion of Democracy: The Italian Case", *CLLPJ*, 2013, vol. 34, p. 531; A. Viscomi, "Il pubblico impiego: evoluzione normativa e orientamenti giurisprudenziali", *DLRI*, 2013, p. 76.

[15] A. Baylos Grau, "Modello sociale e governance economica. Uno sguardo dal sud dell'Europa", *LD*, 2013, p. 599.

Legal reforms imposed by the economic governance were adopted very hastily. Several authors have pointed out contradictions among these new laws and the low quality of their legal texts.[16]

The IALLJ's journals also discussed the different methodologies to evaluate the socio-economic effects of labour law reforms.[17] Moreover, the economists discuss the quality of the methods currently used to measure the economic performance of a country.[18]

In some cases, labour law reforms have followed different patterns from the general legislative trend mentioned above. In Slovakia, for example, recent reforms have cancelled some neoliberal rules and limited the company collective agreement's power to derogate the national collective agreement.[19] In Australia, the Fair Work Act 2009 has reduced the role of individual contracting and has supported collective bargaining.[20] In Argentina, Brazil, Chile and Uruguay, the centre-left governments have restored workers' rights that the neoliberal policies of the '90s had cancelled, and enforced programmes to fight undeclared work.[21]

Finally, one should highlight the proposals to reposition the foundation of labour law, from the *capabilities* theory[22] to the proposal for a consumocratic labour law.[23]

B Social security, Health Care, and Labour Market Policies

The articles on legislative reform in the fields of social security and health care attest to the diversity of challenges facing different parts of the world: European authors remain focused on reforms, enacted under the pressure of fiscal austerity policies, that impact particular groups of the population[24] or of the workforce,[25] and on the overall

[16] M. Rusciano, L. Zoppoli, R. Santucci, "Diritti Lavori Mercati nel decennio "senza stelle" del diritto del lavoro", *DML*, 2013, p. 487; F. Valdés Dal-Ré, "La reforma laboral de 2012", *RL*, 2013, no. 2, p. 1; S. Nadalet, "La certezza del diritto nella riforma del mercato del lavoro", *LD*, 2013, p. 59.

[17] A. Baylos Grau, *op. cit.*, note 10; I. Beltrán de Heredia Ruiz, "Reformas laborales y aproximación crítica al análisis económico del derecho: la teoría de los ‚property rights' y el carácter redundante del derecho", *RDS*, 2013, no. 62, p. 123; M.D. Ferrara, "L'integrazione europea attraverso il «social test»: la clausola sociale orizzontale e le sue possibili applicazioni", *RGL*, 2013, I, p. 300; A. Viscomi, "Logiche economiche e regole giuridiche: note giuslavoristiche per un confronto interdisciplinare", *DML*, 2013, p. 546.

[18] On the unemployment rate, see N. Samba Sylla, "Measuring labour absorption problems in developing countries: Limitations of the concept of unemployment", in *ILR*, 2013, vol. 152, p. 27, and the essays published on the *Japan Labor Review*, vol. 10, no. 4, on A Statistical Approach to Labor Issues in Japan.

[19] H. Barancová, „Reform des Arbeitsrechts in der Slowakischen Republik", *ZIAS*, 2013, p. 50.

[20] M. Bray, A. Stewart, "What is distinctive about the Fair Work regime?", *AJLL*, 2013, vol. 26, p. 20.

[21] G. Bensusán, "Legislation and Labor Policy in Latin America: Crisis, Renovation, or Restoration?", *CLLPJ*, 2013, vol. 34, p. 655.

[22] S. Deakin, "Il Trattato di Lisbona, le sentenze Viking e Laval e la crisi finanziaria: in cerca di nuove basi per «l'economia sociale di mercato» europea", *RGL*, 2013, I, p. 705; R. Del Punta, "Leggendo «The idea of Justice», di Amartya Sen", *DLRI*, 2013, p. 197, and "Epistemologia breve del diritto del lavoro", *LD*, 2013, p. 37.

[23] M. Dumas, "Three Misunderstandings about Consumocratic Labor Law", *CLLPJ*, 2013, vol. 35, p. 67.

[24] For example in Italy, the pension reform of 2011 entailed special hardship for a number of workers close to retirement. For a critical appraisal s. A. Avio, "La vecchiaia della pensione?", *LD*, 2013, p. 403, and M. Cinelli, D. Garofalo, G. Tucci, "Esodati", "salvaguardati", "esclusi" nella riforma pensionistica Monti-Fornero", *DLRI*, 2013, p. 337.

[25] For the public sector workforce in the UK health service s. H. Pownall, "Neoliberalism, Austerity and the Health and Social Care Act 2012: The Coalition Government's Programme for the NHS and its Implications for the Public Sector Workforce", *ILJ*, 2013, p. 422.

trend towards downsizing the welfare state,[26] which authors have labelled the "death by a 1000 cuts".[27] By contrast, authors commenting on reforms in other hemispheres highlight the extension of social protection schemes, as in case of the Obama health-care reform[28] or the self-employed in Brazil[29] and Uruguay.[30] With the view of tackling deficiencies in social protection coverage, several authors write about conceptualizing or re-designing retirement schemes to better adapt them to the local realities in the developing and emerging countries of the global South, especially in South Africa[31] and the member States of the Southern African Development Community.[32] The concern about overcoming deficiencies of old-age protection is also present in articles regarding Latin American States where the structural reforms introduced in the past three decades in order to totally or partially privatize social security pensions have resulted in impressive shortcomings. The privatized pension systems in Peru, Mexico and Chile negatively affected the majority of workers, in particular female workers.[33] To help women compensate for their insufficient pension rights, Chile adopted specific measures in 2008 such as maternity vouchers to improve gender equality in the privatized pension system.[34]

As the unemployment crisis further escalated in vast parts of Europe, many journals analysed the strategies pursued to overcome devastating levels of unemployment.[35] French reform legislation of 2013 introduced a new "contract between generations" to connect the integration of younger members of society into the labour market with active ageing policies for older workers -[36] an approach that is closely linked to demographic change. Various authors commented on the lack of integrative labour market policies and coherent employment promotion legislation in their countries. Many European states have enacted reforms to promote employment in the framework of active labour

[26] For Italy: G.G. Balandi, "Attualità dello Stato sociale", *LD*, 2013, p. 319; M. Persiani, "Crisi economica e crisi del welfare state", *DLRI*, 2013, p. 641. For Spain: A. Baylos Grau, "La contracción del Estado social", *RDS*, 2013, no. 63, p. 11. For a review of the European social model s. J.P. Laborde, "Cosa resta del modello sociale europeo?", *LD*, 2013, p. 325.

[27] B. Hepple, *op. cit.*, note 5, p. 205; G. Coelho, P. Caro de Sousa, "La morte dei mille tagli". Nota sulla decisione della corte costituzionale portoghese in merito alla legittimità del bilancio annuale 2013", *DLRI*, 2013, p. 527. The metaphor is alluding to "ling chi" or "slow slicing"- a form of torture and execution used in China until 1905.

[28] On "Obamacare" or the "Patients' protection and Affordable Care Act" s. E. Balboni, "La sentenza Obamacare vista dalla sponda europea: il brigantino di Tocqueville ha iniziato il lungo viaggio di ritorno verso il vecchio continente dei diritti", *DLRI*, 2013, p. 241; M. Barenberg, "L'"Obamacare" nel prisma delle dottrine costituzionali della Corte Suprema: una lettura critica", *DLRI*, 2013, p. 227; S. Giubboni, "La riforma sanitaria Obama e l'"eccezionalismo" americano: due commenti sulla decisione della Corte Suprema in National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services et al.", *DLRI*, 2013, p. 221. Australia also increased protection for the most vulnerable (T. Carney, "A Trifle too Much Fiscal Rectitude in Australia?", in *ZIAS*, 2013, p. 200).

[29] R. Nagamine Costanzi, E. Duarte Barbosa, J. Da Silva Bichara, "Extending social security coverage to self-employed workers in Brazil", *ILR*, 2013, vol. 152, p. 549.

[30] V. Amarante, Y. Perazzo, "Uruguay's "single tax" social protection scheme for the self-employed", *ILR*, 2013, vol. 152, p. 559.

[31] K. Malherbe, "Retirement Reform in South Africa: The influence of International Social Security Standards and Human Rights Instruments", *IJCLLIR*, 2013, vol. 29, p. 105.

[32] N.R. Kanyongolo, "Social Security, Gender and Legal Plurality: Challenges to Harmonization in the Southern African Development Community", *IJCLLIR*, 2013, vol. 29, p. 65.

[33] For Peru, see Editorial of *Analisis laboral* no. 10/2013. For Mexico, C. Camacho Castro, G.N. Navarro Castro, "La reforma de la Seguridad Social en México", *RL*, 2013, no. 10, p. 119.

[34] P. Arellano Ortiz, "Une protection égalitaire de la retraite pour les femmes: L'exemple du Chili après la réforme de 2008", *RDCTSS*, 2013, no. 1, p. 59.

[35] *Cf.* in particular *International Labour Review*, special issue on "European Labour Markets in Economic Crisis", 2013, vol. 152, no. 2, p. 167.

[36] Loi n°2013-185 of 1st March, 2013, commented by M.C. Amauger-Lattes, I. Desbarats, "Le contrat de génération: quels leviers pour l'alliance des âges?", *RDT*, 2013, p. 331, and J.P. Laborde, "'Young versus Old' or Intergenerational Solidarity", *ELLJ*, 2013, p. 101.

market policies that included measures on education and professional qualifications and skills, focussing on vulnerable groups in the labour market. Unfortunately, the impact of these "active" labour market policies on reducing unemployment so far seems to be less promising than many had hoped.[37] Moreover, analyses of national labour market reforms recently enacted indicate that these reforms are not following a coherent design.[38] In Italy, reforms were the result of hasty legislative procedures, with limited social dialogue.[39]

II Demographic Change

Issues related to the challenges of an ageing society are a major concern in numerous articles published in the IALL journals under review.

A Pension reforms to cope with increasing life expectancy

The rise in life expectancy poses serious challenges to policy makers. Spain has recently enacted a series of reforms to foster postponing retirement of senior workers. A 2012 reform impacted collective agreements by prohibiting clauses on compulsory retirement and automatic termination of the working contract upon reaching the statutory pension age.[40] A 2013 reform substantially changed the rules on anticipated retirement and partial retirement.[41] Spanish scholars in particular commented on reforms that introduced demographic factors into the pension system in order to preserve long-term financial sustainability.[42]

B Active ageing and age discrimination in employment relations

Labour markets tend to be unfriendly to senior workers who face various expressions of age discrimination. But effective protection against ageism is not that easy, as experience from various countries show.[43]

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37 H. Sarfati, "Coping with the unemployment crisis in Europe", *ILR*, 2013, vol. 152, p. 145.

38 For Spain, J.M. Arranz, C. García Serrano, V. Hernanz, "Active labour market policies in Spain: A macroeconomic evaluation", *ILR*, 2013, vol. 152, p. 327.

39 S. Sciarra, "Flessibilità e politiche attive del lavoro. Note critiche sulla riforma Monti-Fornero", *DLRI*, 2013, p. 471. On specific items of the reform, see e.g. the contributions in *DLRI*, 2013, no. 3.

40 For Spain, see J. Beltrán de Heredia Ruiz, "Ley 3/2012, jubilación forzosa y extinción del contrato: un 'termino' en un contrato indefinido?", *RL*, 2013, no. 4, p. 107.

41 For a critical analysis s. M. Rodríguez-Piñero y Bravo-Ferrer, F. Valdés Dal-Ré, M.E. Casas Baamonde, "La nueva regulación de la jubilación en el *RDL* 5/2013, de 15 de marzo, de medidas de favorecer la continuidad de la vida laboral de los trabajadores y promover el envejecimiento activo", *RL*, 2013, no. 5, p. 1.

42 *Cf.* the critical comments on Act 27/2011 (Ley 27/2011, sobre actualización, adecuación y modernización del Sistema de Seguridad Social), and the subsequent proposal presented by an expert committee in April 2013, by J.L. Monereo Pérez, J. Fernández Bernat, "El factor de sostenibilidad en España: Un nuevo paso para el cambio silencioso del modelo de pensiones públicas?", *RDS*, 2013, no. 62, p. 209; B. Estrada López, "La insoportable levedad del informe sobre el factor de sostenibilidad", *RDS*, 2013, no. 62, p. 239; A. Desdentado Bonete, "Reflexiones sobre el factor de sostenibilidad del sistema público de pensiones", *RDS*, 2013, no. 64, p. 223; M. Ramos Quintana, "La nueva ley reguladora del factor de sostenibilidad del sistema de seguridad social: Impacto y consecuencias sobre las mujeres", *RDS*, 2013, no. 64, p. 237; S. Ruesga, "Hacia donde caminar en el futuro del sistema publico de pensiones. Una reflexión al hilo del Informe del Comité de Expertos sobre el factor de sostenibilidad de pensiones (junio 2013)", *RL*, 2013, no. 7-8, p. 117.

43 For Israel: L. Lurie, "Can Unions Promote Employability? Senior Workers in Israel's Collective agreements", *ILJ*, 2013, p. 249. On developments in Germany, France and Sweden, see M. Corti, "Active Ageing e autonomia collettiva. "Non è un Paese per vecchi", ma

Age has been integrated into EU non-discrimination law as an unlawful ground of discrimination. However, the protection granted by European law has proven to be rather weak.[44] According to the European Court of Justice,[45] direct age discrimination is justifiable, and compulsory retirement is widely accepted – quite in contrast to EU active ageing strategies. In most European countries, labour law does not reflect the idea that retirement should be a personal or individual choice. It is argued that the abolition of mandatory retirement may not be the appropriate solution to all problems, but instead might create new problems in terms of employment protection and the general quality of work.[46] For Canada, Alon–Shenker discussed the difficulties in effectively eliminating age discrimination in employment relations, and proposed an alternative theoretical framework called the "Dignified Lives Approach" to overcome the shortfalls of the prevalent legal understanding in Canadian age discrimination law.[47] These shortfalls result from case law that makes it easy to justify discrimination against senior workers, e.g. in terms of training opportunities, dismissals, duration of unemployment, or coercion into early retirement.[48] This approach can be linked to overall implications of age-friendly working places throughout a worker's life, for instance the accommodation of work-places to individual needs and impairments.[49] Problems of effectively protecting the elderly workforce against age-related discrimination are also reported to occur in Australia, where anti-discrimination law has developed from a human rights basis and has only recently been integrated into labour law,[50] as well as in the UK, where mandatory retirement had been abolished in 2011.[51]

C Long-term care needs

A newly emerging issue is related to long-term care policies, which has been addressed from different angles. The division of tasks and responsibilities between the State and the families is a highly contested issue. In Switzerland, the need for long-term care is considered a special risk falling beyond the confines of traditional social contingencies; adequate provision of long-term care is associated with high costs for the public entities involved and

dovrà diventarlo presto", *LD*, 2013, p. 383. For Canada: P. Alon-Shenker, "Age is Different": Revisiting the Contemporary Understanding of Age Discrimination in the Employment Setting", *CLELJ*, 2013, vol. 17, p. 31. For Australia: B. Gaze, A. Chapman, "The Human Rights to Non-discrimination as a Legitimate Part of Workplace Law: Towards Substantive Equality at Work in Australia?", *IJCLLIR*, 2013, vol. 29, p. 355; T. MacDermott, "Affirming age: Making federal anti-discrimination regulation work for older Australians", in *AJLL*, 2013, vol. 26, p. 141.

44 M. Ramalho, "Age Discrimination, Retirement Conditions and Specific Labour Arrangements. The main trends in the application of Directive 2000/78/EC in the field of age discrimination", *ELLJ*, 2013, p. 109.

45 ECJ, C-411/05 Palacios de la Villa, (2007), European Court Reports (ECR) I-8566; C-45/09 Rosenbladt (2010), ECR I-9391; C-250/09 and C-268/09 Georgiev (2010), ECR I-11869; C-159/10 and C-160/10 Fuchs and Köhler (2011), ECLI:EU:C:2011:508; C-141/11 Hörnfeldt (2012), ECLI:EU:C:2012:421; for a special case of failure to comply with Treaty obligations see C-286/12 Commission v. Hungary (2012), ECLI:EU:C:2012:687.

46 A. Numhauser-Henning, "The EU-ban on Age-Discrimination and Older Workers: Potentials and Pitfalls", *IJCLLIR*, 2013, vol. 29, p. 391, and "Labour Law in a Greying Labour Market – in Need of a Reconceptualisation of Work and Pension Norms", *ELLJ*, 2013, p. 84.

47 P. Alon–Shenker, *op. cit.*, note 43.

48 For mandatory retirement as an issue of age discrimination, s. A. Wiesbrock, "Mandatory Retirement in the EU and the US: The Scope of Protection against Age Discrimination in Employment", *IJCLLIR*, 2013, vol. 29, p. 305.

49 K. Banks, R. Chaykowski, G. Slotsve, "The Disability Accommodation Gap in Canadian Workplaces: What Does it Mean for Law, Policy, and an Aging Population?", *CLELJ*, 2013, vol. 17, p. 295.

50 MacDermott, *op. cit.*, note 43; Gaze, Chapman, *op. cit.*, note 43.

51 L. Vickers, S. Manfredi, "Age Equality and Retirement: Squaring the Circle, commenting the sentence of the UK Supreme Court of Seldon v. Clarkson Wright and Jakes (2008) UKEAT 0063_08_1912", *ILJ*, 2013, p. 61.

with severe poverty risks for the individuals needing care and their relatives.[52] Aged care reform in Australia is an example of the difficulty in balancing cost-sharing.[53] A major problem in the provision of aged care is the lack of qualified staff and affordable care services. Many families have to rely informally on migrant care workers. The attempts to improve the labour law rights and social security of workers providing informal care in private households have been addressed prominently in Spanish journals.[54]

III Fundamental Social Rights, ILO Standards and Transnational Regulation

The legal framework of fundamental social rights is determined to a growing extent by overlapping standards contained in international and regional instruments, but also in national constitutional law. Several journals dedicated a special edition to human rights questions arising from the interaction between different levels of regulation[55] or by the implementation of international standards, like the ILO Maritime Labour Convention of 2006 that entered into force in August 2013.[56]

A Human rights and fundamental social rights protection

The threats to social cohesion in many European countries following from austerity measures have instigated an extensive debate on the protection of fundamental social rights in the European Union that has continued throughout the year 2013.[57] The extent to which fundamental social rights have been included into national constitutions varies significantly across Europe. The real impacts of these rights, especially in Eastern and Southern Europe, remain limited, and constitutional doctrine tends to declare such rights as merely moral obligations of the State rather than judicially enforceable rights.[58]

Several articles have analysed the relevance of the European Convention on Human Rights and the European

[52] I. Bischofberger, H. Landolt, „Absicherung der Pflegebedürftigkeit in der Schweiz", *ZIAS*, 2013, p. 105.

[53] T. Carney, *op. cit.*, note 28.

[54] J. Muñoz Molina, "Nueva regulación del régimen laboral y de seguridad social de los empleados del hogar", *RL*, 2013, no. 4, p. 77; M.E. Gil Pérez, "Cuidadores no profesionales y derecho a la incapacidad permanente. Problemas que se plantean", *RDS*, 2013, no. 64, p. 111. On the role of migration law in governing regular labour market access of care workers from non European countries s. F. Camas Roda, "La adecuación de la normativa de extranjería sobre empleo de los inmigrantes respecto de las reformas laborales adoptadas y de la actual situación de crisis económica", *RL*, 2013, no. 2, p. 11. For the neglected labour law rights of care workers in private households in Germany *cf.* I. Heinlein, „Kein Mindestlohn und unbegrenzte Arbeitszeit für häusliche Pflegerinnen?", in *AuR*, 2013, p. 469.

[55] *Cf.* the special editions of *IJCLLIR*, 2013, vol. 29, no. 1 with contributions on "International Labour Law and Social Security Standards in relation to Regional and National systems: Impact and Shortcomings"; *IJCLLIR*, 2013, vol. 29, no. 4, p. 349 ff. on "Non-Discrimination Law and Equal Treatment of Employees"; *EuZA*, 2013, pp. 141 ff. on the relevance of the EU Charter on Fundamental Rights and the European Convention on Human Rights; *PMJK* special edition of October 2013 on the international and European legal framework of disability discrimination in employment.

[56] *Cf. RDCTSS*, 2013, no. 2, on the Maritime Labour Convention.

[57] *Cf.* in particular the special edition of *RGL* dedicated to the "European Social Model" and its legal foundations.

[58] A. Alexandrova, «Les droits sociaux dans les Constitutions des Pays d'Europe de l'Est et de la Russie», *RDCTSS*, 2013, no. 1, p. 50. For the limited potential of the Constitution of the Russian Federation in protecting against pension cuts s. O. Chesalina, "Der verfassungsrechtliche Schutz von Rentenansprüchen in Russland", *ZIAS*, 2013, p. 1.

Union Charter of Fundamental Rights for individual and collective labour relations.[59] The European Union Court of Justice has improved the protection of social rights in the field of anti-discrimination law in employment relations, with a long-standing tradition in gender equality cases, a topic debated not only for EU countries.[60] The expansion of European Union anti-discrimination protection into other grounds of discrimination, namely on age and disability, based on the Directive 2000/78/EC, has caught the attention of various authors.[61] The renewed interest in disability discrimination may be attributed to the social implications of demographic change, and to the legal implications of the UN Convention on the Rights of Persons with Disabilities and its interaction with EU law, especially since the ratification of the UN Convention by the European Union on 23 December 2010.[62]

By contrast, the potential impact of the European Social Charter (ESC) as a protective barrier against regressive labour law reforms, such as those enacted in European member states to cope with the financial crisis, is much less obvious and has been discovered only recently as an emerging topic.[63] Although its supervisory machinery is less powerful than a genuine European court, the decisions of the European Committee on Social Rights, the main supervisory body established under the European Social Charter, are increasingly important as a means to protect fundamental social rights curtailed by reform legislation. According to the Committee, most of the legislation submitted for review in collective complaints constituted a violation of the ESC. Consequently, the contested national regulations may no longer be applied by domestic courts.[64]

B ILO Standards

The protection of fundamental social rights in the field of labour law and social security is firmly imprinted in international standard-setting norms contained in various ILO conventions. Although labour law standards of the ILO and that of the EU belong to two distinct legal orders, there is a complex relationship and interaction - sometimes even an open conflict - between the different normative levels that have been highlighted in several articles,

[59] For the freedom of religion in the US and UK s. A. Fiorentino, "La liberté religieuse sur les lieux de travail: approche comparative des systèmes américain et britannique», *RDT*, 2013, p. 649. For Austria: F. Marhold, „Die Bedeutung der Grundrechtscharta und der EMRK für das österreichische Arbeitsrecht", *EuZA*, 2013, p. 146. For Netherlands: A.Ph.C.M. Jaspers, "Dutch labour law and the European Convention on Human Rights", *EuZA*, 2013, p. 161. For Germany: S. Krebber, „Die Bedeutung der Grundrechtecharta und der EMRK für das deutsche Individualarbeitsrecht", *EuZA*, 2013, p. 188; A. Seifert, „Die Bedeutung von EMRK und GRCh für das deutsche kollektive Arbeitsrecht», *EuZA*, 2013, p. 205.

[60] For Japan s. the special edition of *JLR*, 2013, vol. 10, no. 2. For Australia s. C. Sutherland, "Reframing the regulation of equal employment opportunity: The Workplace Gender Equality Act 2012", *AJLL*, 2013, vol. 26, p. 102.

[61] N. Betsch, "The Ring and Skouboe Werge Case: A reluctant acceptance of the social approach of disability", *ELLJ*, 2013, p. 135; C. Boutayeb, "Le handicap au travail selon le juge de l'Union européenne à la lumière de l'arrêt Ring et Werge", *RDT*, 2013, p. 657; E. Carrizosa Prieto, "La discriminazione fondata sulla malattia del lavoratore", *LD*, 2013, p. 283; C. Hießl, G. Boot, "The application of the EU framework for disability discrimination in 18 European Countries", *ELLJ*, 2013, p. 119; M. Mercat-Bruns, "Le jeu des discriminations multiples", *RDT*, 2013, p. 254.

[62] For the different legal sources to combat discrimination on grounds of disability, the role of the UN Convention in perceiving disability as a human rights issue, and its implementation in various national settings, *cf.* E. Kajtár, "Life outside the bubble: International and European legal framework of disability discrimination in employment", *PMJK*, 2013, vol. VI, special edition, p. 5 and the country reports on Hungary, Poland, Czech Republic, Slovakia, Croatia and Portugal published in the same edition of *PMJK*.

[63] *Cf.* for Greece: C. Deliyanni-Dimitrakou, "La Charte sociale européenne et les mesures d'austerité grecques: à propos décisions n. 65 et 66/2012 du Comité européen des droits sociaux fondamentaux", *RDT*, 2013, p. 457, concerning subminimum wages for young employees and the extension of the "probation" period from previously two to twelve months.

[64] For Spain, s. C. Salcedo Beltrán, "Incumplimiento por España de los tratados internacionales: Carta Social Europea y período de prueba", *RDS*, 2013, no. 64, p. 119.

most of which emphasize the importance and impact of international standards.[65] Major challenges faced by ILO conventions concern their low level of ratification and problems with implementation. Reasons for difficulties in effective implementation of ILO standards have been analysed with respect to child labour.[66] Maritime labour standards should be improved by the ILO Maritime Labour Convention of 2006.[67] If implementation proves to be successful, then the Convention could serve as a pilot model for regulating work relations at a global level.[68]

C Transnational Regulation

Safeguarding international standards for labour law and working conditions remains a difficult task. In view of the problems linked to global supply chains, various authors suggested to develop complementary instruments of transnational regulation, and to involve other actors like transnational unions and NGOs. They debated the potential use of social clauses in free trade agreements to promote decent work conditions, and the need to complement ILO activities by mechanisms such as codes of conduct for multinational enterprises, union-initiated international framework agreements, and the role for NGOs in establishing social responsibilities in international supply chains.[69]

IV In search of Labour Law Effectiveness

Adopting the traditional distinction between primary and secondary effectiveness,[70] we can affirm that in 2013 almost all Journals of the IALLJ have dealt with either one or the other aspect.

A Primary effectiveness

Concerning primary effectiveness, one should mention issue no. 152/3-4 of the *International Labour Review*, entirely

[65] M. Olivier, "International Labour and Social Security Standards: A Developing Country Critique", *IJCLLIR*, 2013, no. 29, p. 21; A. Seifert, "A Still Complex Relationship between the ILO and the EU: The Example of Anti-Discrimination Law", *IJCLLIR*, 2013, vol. 29, p. 39.

[66] K. Calitz, "The failure of the Minimum Age Convention to Eradicate Child Labour in Developing Countries, with Particular Reference to Southern African Development Community", *IJCLLIR*, 2013, vol. 29, p. 83; M. Kaltenborn, L. Groß, "Die Bekämpfung ausbeuterischer Kinderarbeit – völkerrechtlicher Rahmen und nationale Regulierungsansätze in Süd- und Südostasien", *ZIAS*, 2013, p. 167.

[67] F. Piniella, J.M. Silos, F. Bernal, "Who will give effect to the ILO's Maritime Labour Convention, 2006?", in *ILR*, 2013, vol. 152, p. 59. See also the special edition of the *RDCTSS*, 2013, no. 2, dedicated to the implementation of the Maritime Labour Convention in Germany, Spain, France, China, and the role of the European Union for the implementation in member States.

[68] O. Fotinopoulou Basurko, "El derecho laboral marítimo: Paradigma del futuro de las relaciones laborales terrestres en la era de la globalización económica?", *RDS*, 2013, no. 63, p. 121.

[69] J.M. Siroën, "Labour provisions in preferential trade agreements: Current practice and outlook", *ILR*, 2013, vol. 152, p. 85; M. Weiss, "International Labour Standards: A Complex Public-Private Policy Mix", *IJCLLIR*, 2013, vol. 29, p. 7; M. Anner, J. Bair, J. Blasi, "Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks", *CLLPJ*, 2013, vol. 35, p. 1; U. Mückenberger, "Civiliser l'ordre mondial? Spectre et potentiel des réseaux transnationaux de construction de normes», *RDCTSS*, 2013, no. 1, p. 30; U. Mückenberger, K. Nebe, „Formwandel von Staatlichkeit durch transnationalen sozialen Dialog", *ZIAS*, 2013, p. 82. On the theoretical dimensions of transnationality M.A. Moreau, "The Reconceptualization of the Employment Relationship and Labor Rights through Transnationality", *CLLPJ*, 2013, vol. 34, p. 679.

[70] The primary effectiveness is guaranteed by the observance of the primary rules (rules that impose prohibition and obligation). The secondary effectiveness is guaranteed by the observance of the secondary rules (rules that impose remedies and sanctions).

dedicated to informal employment.[71] The authors share the idea that the effectiveness of a labour policy depends both on the coverage of its legal provisions and the degree of compliance therewith.

A first problem, detected especially in Latin America where the level of informality is high, concerns the self-employed.[72] Since 2000, the Federal Government of Brazil has been trying to promote the registration of independent workers, developing programmes that reduce the cost of the formalization of self-employed workers.[73] A "single tax" social protection scheme has also been adopted in Uruguay.[74] In Spain, legislation on economically dependent workers has been introduced in 2007 but it has not yet produced the expected results.[75]

A second phenomenon affecting labour law effectiveness is outsourcing. When firms substitute in-house labour by subcontracted labour, they avoid the standard employment relationship, reduce labour costs and avoid employment-related responsibilities.[76] In order to implement labour law effectiveness in case of outsourcing, a joint liability scheme has been introduced in Italy. This scheme has been recently modified so that its scope has been limited and the procedure to enforce it aggravated.[77] In Turkey, a recent legislative proposal aims to extend the scope of the collective agreement covering the principal employer's employees to the subcontracted ones.[78] In Germany, outsourcing by way of service contracts has developed a new dynamic since 2002. Moreover, service contracts are used to escape regulations on temporary agency work.[79]

Labour law effectiveness is threatened as well by the neoliberal perspective that argues that high payroll tax rates and strict labour regulation foster informality. Several articles published in the IALLJ journals discuss the determinants of shadow economic activity and informal employment,[80] and the different policy approaches to informal employment.[81]

B Secondary effectiveness

Many articles also discuss the secondary effectiveness, underlining that penalties for non-compliance should be dissuasive, and that effective institutions and procedures should be set up to administer and enforce them.[82] In

[71] On the many definitions of informal employment, s. C.C. Williams, M.A. Lansky, "Informal employment in developed and developing economies: Perspectives and policy responses", *ILR*, 2013, vol. 152, p. 366.

[72] For the largely informal sectors of self-employment and family enterprises in Ghana s. O. Taiwo, "Employment choice and mobility in multi-sector labour markets: Theoretical model and evidence from Ghana", *ILR*, 2013, vol. 152, p. 469.

[73] Nagamine Costanzi et al., *op. cit.*, note 29.

[74] Amarante, Perazzo, *op. cit.*, note 30.

[75] J. Cruz Villalón, "Il lavoro autonomo economicamente dipendente in Spagna", *DML*, 2013, p. 288.

[76] C. Perraudin, N. Thèvenot, J. Valentin, "Avoiding the employment relationship: Outsourcing and labour substitution among French manufacturing firms, 1984–2003", *ILR*, 2013, vol. 152, p. 533. On the interfirm relationships see A. Ferruggia, "Le esternalizzazioni «relazionali» nel decentramento di attività dell'impresa", *RGL*, 2013, I, p. 809; A. Lyon-Caen, "Le droit sans l'entreprise", *RDT*, 2013, p. 748.

[77] D. Izzi, "La responsabilità solidale negli appalti: una tutela in declino?", *DML*, 2013, p. 635.

[78] Y.P. Soykut-Sarica, "Some Current Practices and Problems of the Principal Employer and Subcontractor Relationship in Turkey: The Case of the Shipbuilding Sector", *BCLR*, 2013, no. 83, p. 151.

[79] V. zu Dohna-Jaeger, "Die Renaissance des Werkvertrags", *AuR*, 2013, p. 238; J. Heuschmid, „Werkverträge – ein arbeitsrechtliches Problem?", *AuR*, 2013, p. 105; T. Klebe, „Scheinwerkverträge bei einem Global Player", *AuR*, 2013, p. 335.

[80] S. Commander, N. Isachenkova, Y. Rodionova, "Informal employment dynamics in Ukraine: An analytical model of informality in transition economies", *ILR*, 2013, vol. 152, p. 445; S.D. Haigner, S. Jenewein, F. Schneider, F. Wakolbinger, "Driving forces of informal labour supply and demand in Germany", *ILR*, 2013, vol. 152, p. 507; C.C. Williams, J. Padmore, "Envelope wages" in the European Union", *ILR*, 2013, vol. 152, p. 411.

[81] T. Lautala, "Kampf gegen illegale Beschäftigung auf Baustellen", *AuR*, 2013, p. 74.

[82] M. Kullmann, "The Principle of Effet Utile and Its Impact on National Methods for Enforcing the Rights of Posted Workers", *IJCLLIR*, 2013, vol. 29, p. 283; U. Rani, P. Belser, M. Oelz, S. Ranjbar, "Minimum wage coverage and compliance in developing countries", *ILR*, 2013, vol. 152, p. 381.

Mexico, secondary labour law effectiveness is affected by the privatization of labour inspection that has weakened government capacity to audit and to persuade employers.[83] In Australia, the recently inserted provisions that expose corporate controllers to personal liability where they have behaved improperly have been deeply analysed.[84]

Another topic widely discussed by the journals concerns the role of the judges.[85] Many authors note that the decline of collective industrial relations and the individualization of the employment relationship have caused a "litigation explosion": «Individual disputes are now a "more prevalent indicator of overt conflict" than collective industrial action».[86] In Spain, where the number of law suits is increasing due to the economic crisis, and where there are severe shortcomings in the judicial administration, it has been underlined that there is a risk of converting the jurisdiction into a mechanic activity where judges decide on cases in a compromising way, without any real effort to study the facts.[87]

In several European countries, Labour Law reforms have limited the judges' intervention on managerial decisions.[88] However, the legislation has sometimes been contradictory.[89]

On many journals, Labour Alternative Dispute resolution mechanisms have been discussed.[90] Frequently, conciliation, arbitration and mediation have been introduced to reduce the workload of labour judges. However, in many cases, the objective has not been reached. In Brazil, for example, the use of non-judicial structures put in place by

[83] Bensusán, *op. cit.*, note 21.

[84] H. Anderson, "Corporate insolvency and the protection of lost employee entitlements: Issues in enforcement", *AJLL*, 2013, vol. 26, p. 75. On the British insolvency law s. K. Creighton-Selvay, "Pre-packed Administrations: An Empirical Social Rights Analysis", *ILJ*, 2013, p. 85.

[85] Y. Struillou, «Le nouveau visage de la justice du travail en France», *RDT*, 2013, p. 26.

[86] R. Croucher, K.E. Joung, L. Miles, "Evaluating South-Korean legal channels for individual employment disputes through Budd and Colvin's framework", *CLLPJ*, 2013, vol. 35, p. 45; J.E. Ray, J. Rojot, "Procedural Approaches to Resolving Employees' Rights in France", *CLLPJ*, 2013, vol. 34, p. 773.

[87] F. Alemán Páez, "El proceso de trabajo tras la Ley 36/2011 reguladora de la jurisdicción social: desde la centralidad procesal absorbente a los riesgos de una „justicia defensiva", *RL*, 2013, no. 11, p. 13. On the problems that affect French courts' administration and organisation see F. Guiomard, «La justice prud'homale sous tous ses rapports», *RDT*, 2013, p. 500; A. Jeammaud, «Un état de choses irrémediable», *RDT*, 2013, p. 539; A. Lacabarats, «La réforme de la justice du travail», *RDT*, 2013, p. 536.

[88] C.L. Alfonso Mellado, "El control judicial de la modificación sustancial de condiciones, la movilidad funcional y la movilidad geográfica", *RDS*, 2013, no. 62, p. 17; M. Grévy, "Le juge, ce gêneur...", *RDT*, 2013, p. 173; D. Mangan, "Employment Tribunal Reforms to Boost the Economy", *ILJ*, 2013, p. 409; P. Tullini, "Stabilità del rapporto di lavoro e ruolo del giudice", *DML*, 2013, p. 317. In Germany, the phenomenon that certain decisions of the employer are escaping judicial control and can justify dismissals without any balancing of interests is not a consequence of law reform but of the case law developed by the Supreme Labour Court, cf. W. Däubler, "Betriebsbedingte Kündigung ohne Interessenabwägung", *AuR*, 2013, p. 9; P. Stein, "Betriebsbedingte Kündigungsgründe - Tabuzone für Arbeitsgerichte?", *AuR*, 2013, p. 243.

[89] In Spain, for example, the redundancies law reform has eliminated the ex-ante administrative authorisation, so that managerial decisions are subject to the judicial control only (A. Arufe Varela, "Defectos de técnica legislativa en la regulación de la nueva modalidad procesal de impugnación colectiva del despido colectivo: la necesidad de una reforma inaplazable", *RL*, 2013, no. 12, p. 165; F. Durán López, "Despidos económicos y control judicial", *RL*, no. 12, p. 151; M.A. Martínez-Gijón Machuca, "El nuevo procedimiento de despido colectivo tras el reglamento de desarrollo. Algunas reflexiones», *TL*, 2013, vol. 118, p. 95; E. Terradillos Ormaetxea, «Las medidas de acompañamiento social y los planes de recolocación externa en los despidos colectivos tras la reforma de 2012», *RDS*, 2013, no. 64, p. 62).

[90] F. Makela, "Acquired Expertise of Administrative Tribunals and the Standard of Judicial Review: The Case of Grievance Arbitrators and Human Rights Law", *CLELJ*, 2013, vol. 17, p. 345; L. Buratti, "Quand la conciliation n'en a plus que le nom", *RDT*, 2013, p. 743; Dessì O. (2013), "L'insostenibile leggerezza della conciliazione amministrativa", *LD*, 2013, p. 85; Vigneau C. (2013), "Le rendez-vous manqué de l'audience initiale", *RDT*, 2013, p. 745 ; see as well the essays published on vol. 34, no. 4 of *CLLPJ*. In the UK, better dispute resolution mechanisms are suggested to encourage whistleblowing claims (D. Lewis, "Resolving Whistleblowing Disputes in the Public Interest: Is Tribunal Adjudication the Best that Can be Offered?", *ILJ*, 2013, p. 35).

companies and unions to solve individual labour disputes, is extremely scarce, as well as the use of arbitration.[91]

In some countries, like South Korea, private individual employment dispute resolution mechanisms have been developed.[92] However, these mechanisms have not demonstrated to be transparent and there is no strong deterrent against non-complying employers who may be content to pay fines rather than to put rulings into effect. On the contrary, in Australia, private dispute resolution mechanisms do not take ground since the Fair Work Commission, created in 2009, is able to offer its services free of charge and operates quickly, efficiently and fairly in resolving disputes.[93] The same situation can be observed in New Zealand where about 75% of personal grievance claims are settled quickly and without any cost through publicly funded employment mediation.[94] In Germany, the labour courts are able to settle more than a third of the disputes pending within a maximum of three months. Moreover, trade unions provide their members legal counsel at no cost.[95]

C Collective Actions

Labour law effectiveness can be guaranteed as well by collective actions. Indeed, the right to strike is a fundamental instrument to protest against labour law infringement or to fight for the recognition of better working conditions.[96] As revealed by the ILO Committee of Experts' reports, not all governments find it possible to reach the ILO standard.[97] At the 101st Session of the International Labour Conference in 2012, the Employers' Group in the ILO has denied that the right to strike is guaranteed under ILO conventions, challenging the content of the right to strike in International Law.[98]

In Canada, a new model of strike regulation (the so-called "instant back-to-work" model) has been introduced by the federal government. Moreover, since 2008 the *Public Service Essential Services Act* gives the employer the unilateral power to decide which employees will stay on the job, and to increase the number of designated employees at any time.[99]

The nature and the limit of the right to strike have been discussed as well in China, after the 2010 strike at Guangdong Nanhai Honda Auto Parts Manufacturing Co. Ltd. The current law in China neither explicitly provides

[91] R. Fragale Filho, "Resolving Disputes Over Employment Rights in Brazil", *CLLPJ*, 2013, vol. 34, p. 929.

[92] Croucher et al., *op. cit.*, note 86.

[93] R. McCallum, J. Riley, A. Stewart, "Resolving Disputes Over Employment Rights in Australia", in *CLLPJ*, 2013, vol. 34, p. 843.

[94] P. Roth, "The Resolution of Employment Disputes in New Zealand", *CLLPJ*, 2013, vol. 34, p. 877. In Japan as well, private systems for resolving labour disputes are not well developed (R. Yamakawa, "Systems and Procedures for Resolving Labor Disputes in Japan", *CLLPJ*, 2013, vol. 34, p. 899).

[95] M. Weiss, "Dispute Resolution in German Employment and Labor Law", *CLLPJ*, 2013, vol. 34, p. 793. On the role of trade unions, work councils and labour inspection authorities in promoting compliance with labour law effectiveness, in particular in case of temporary agency work in Germany, s. P. Fütterer, "Prozessuale Möglichkeiten zur Durchsetzung des Verbots der nicht vorübergehenden Arbeitnehmerüberlassung gem. § 1 Abs. 1 S. 2 Arbeitnehmerüberlassungsgesetz (AÜG)", *AuR*, 2013, p. 119.

[96] B. Hepple, "The European right to strike revisited", *DLRI*, 2013, p. 575.

[97] K.D. Ewing, "Myth and Reality of the Right to Strike as a "Fundamental Labour Right", *IJCLLIR*, 2013, vol. 29, p. 145.

[98] L. Swepston, "Crisis in the ILO Supervisory System: Dispute over the Right to Strike", *IJCLLIR*, 2013, vol. 29, p. 199; A. Trebilcock, "An ILO viewpoint on EU developments in relation to fundamental labour principles", *EuZA*, 2013, p. 178.

[99] B. Adell, "Regulating Strikes in Essential (and Other) Services after the "New Trilogy", *CLELJ*, 2013, vol. 17, p. 413; S. Regenbogen, C.D. Pigott, "Constitutional Restrictions on the Capacity of Governments to Enact Reforms: Does Section 2(d) of the Charter Include a Right to Strike?", *CLELJ*, 2013, vol. 17, p. 449; M. Thompson, S. Slinn, "Public Sector Industrial Relations in Canada: Does It Threaten or Sustain Democracy?", *CLLPJ*, 2013, vol. 34, p. 393.

citizens with the right to strike, nor forbids it. Since strike is considered as an economic dispute between the workers and the management, without any political issues involved, the use of police force against workers' peaceful strike is illegal. However, the official trade union is seen to act on behalf of the employer's interest, and the workers prefer to support other local trade unions.[100]

In Europe, it has been noticed that the total number of strikes declined sharply from the 1980s onwards. Moreover, strikes are now unusual in the private sector.[101] Notwithstanding, due to the economic crisis, the collective disputes are currently more intense and the limits of the right to strike are still discussed.[102]

V Collective labour law

Several articles published on the ILLJA journals discuss the difficulties that trade unions and employer organisations are currently experiencing, namely the role of the trade unions, the articulation of collective bargaining and workers' participation.

A The Role of the Trade Unions

In many countries, the trade unions' action is increasingly hindered. On one side, trade unions have been progressively weakened by neo-liberal policies supported by several governments.[103] In particular, the post-communist countries of East-Central Europe are experiencing «a kind of allergy to the interference to the free market economy relations».[104] In other countries (such as Australia or Japan), there is an increased focus on

[100] C. Kai, "Legitimacy and the Legal Strikes in China: A Case Regulation of Study of the Nanhai Honda Strike", *ILCLLIR*, 2013, vol. 29, p. 133.

[101] W. Brown, "The Ending of Unauthorized Strikes in the West: Some Policy Implications for China", *ILCLLIR*, 2013, vol. 29, p. 185.

[102] For Spain s. M. Á. Martínez-Gijón Machuca, «Los servicios de seguridad y mantenimiento en caso de huelga: concepto y criterios de aplicación», *RL*, 2013, no. 2, p. 35. For Italy s. E.M. Mastinu, "La regolamentazione contrattuale del conflitto sindacale. Vecchi problemi e nuove tendenze", *RGL*, 2013, I, p. 371. For Germany s. K. Lörcher, „Aktuelle Streikrechtsverfahren vor dem Europäischen Gerichtshof für Menschenrechte", *AuR*, 2013, p. 290; H. Schröder, „Ist ein funktional differenziertes Streikrecht für Beamte iSv. Art. 11 EMRK mit dem Grundgesetz vereinbar?", *AuR*, 2013, p. 280. On the limitation of the right to strike for the German civil servants, recognised by the European Court on Human Rights as a violation of art. 11 of the European Convention of Human Rights, see B. Keller, "The Public Sector in the United States and Germany: Comparative Aspects in an Employment Relations Perspective", *CLLPJ*, 2013, vol. 34, p. 415; J. Schubert, "Public Sector Collective Bargaining and the Distortion of Democracy: Do Public Sector Unions Have "Too Much" Power? The German Perspective", *CLLPJ*, 2013, vol. 34, p. 443. On the right to strike in Church-run institutions s. J. Schubert, H. Wolter, „Fremdbestimmung des gewerkschaftlichen Streikrechts durch Kirchen – verfassungswidrig?", *AuR*, 2013, p. 285.

[103] In Turkey, recent reforms had tried to bring the industrial relations law into conformity with international norms on freedom of association and collective bargaining, but last minute interventions during the Parliamentary process altered the final regulatory balances achieved by the previous social dialogue process so that the new Act is likely to be challenged again under national and international law (T. Dereli, "Labour Relations in Turkey from the Perspective of International Norms on Freedom of Association and Collective Bargaining: An Evaluation of Turkey's New Act on Unions and the Collective Agreement", *BCLR*, 2013, no. 83, p. 181; M. Sur, "L'évolution des relations collectives de travail en Turquie", *RDCTSS*, 2013, no. 1, p. 42). The legal incoherence of the reform announced by the right-wing Canadian government is discussed by B. Langille, J. Mandryk, "Majoritarianism, Exclusivity and the "Right to Work": The Legal Incoherence of Ontario Bill 64", *CLELJ*, 2013, vol. 17, p. 475.

[104] N. Lyutov, "Challenges of the Implementation of Works Councils in Central and Eastern Europe: General Overview", *BCLR*, 2013, no. 85, p. 8.

internal workplace structures through a perspective of human resource management.[105]

On the other side, the problems of representativeness remain unsolved in many States.[106] Emblematic is the Italian case where legal rules governing representativeness are still missing. Facing this legal vacuum, the trade unions have signed three intersectoral agreements. In the meantime, the Constitutional Court has declared unlawful the rule that determines which unions may create bodies to represent workplace personnel.[107] Moreover, the legislator has authorised trade unions to sign *erga omnes* company agreements that can derogate from the national collective agreements and statutory law, without establishing the criteria to measure the representativeness of the signing unions.[108]

A problem detected in the U.K., where trade unions may not represent workers without their consent, concerns the possibility that the courts may verify the extent to which a union is representative of workers in dispute. Unions are reluctant to publicly divulge information about their membership for fear this could lead to employees being identified by employers and, potentially, being victimised or disadvantaged.[109]

B The articulation of collective bargaining

As already stated in the first part of this overview, several articles underline the growing importance of the company collective agreements. This process is caused both by labour law reforms[110] and by the decision of several employers to leave their organisations so that they can autonomously bargain at the company level.[111] According to some authors, the process of decentralising collective bargaining has developed an "individualisation" of the employment relationship,[112] a "self-made" labour law, allowing each employer to adapt labour regulation to the company's needs.[113]

In Australia, company collective agreements have been considered a panacea for the complexity of the workplace relations system. However, some authors have denounced the multi-faceted nature of complexity in enterprise agreements.[114] Other authors have underlined the advantages of a centralized bargaining structure,

[105] K. Townsend, A. Wilkinson, J. Burgess, K. Brown, "Has Australia's Road to Workplace Partnership Reached a Dead End?", *IJCLLIR*, 2013, vol. 29, p. 239; vol. 10, no. 1 of the *Japan Labor Review* 2013 on "Has the Japanese Employment System Changed?".

[106] For France: J. Freyssinet, « Qui doit faire confiance aux négociateurs interprofessionnels ? », *RDT*, 2013, p. 156; M.A. Souriac, « La vigilance, condition nécessaire à la confiance », *RDT*, 2013, p. 159. For Spain: A. Baylos Grau, "Dialogando dalla Spagna sulla rappresentatività sindacale e la costituzionalità democratica in Italia", *DML*, 2013, p. 693.

[107] See the essays published on issue no. 2 and 3 of *DML* 2013, on issue no. 4 of *LD* 2013 and on issue no. 4 of *DLRI* 2013.

[108] L. Imberti, "A proposito dell'articolo 8 della legge n. 148/2011: le deroghe si fanno, ma non si dicono", *DLRI*, 2013, p. 255; L. Fassina, "Costituzione e articolo 8 della legge n. 148/2011: il fascino «indiscreto» di una norma irragionevole", *RGL*, 2013, I, p. 617.

[109] M. Doherty, "When You Ain't Got Nothin', You Got Nothin' to Lose...Union Recognition Laws, Voluntarism and the Anglo Model", *ILJ*, 2013, p. 369.

[110] In Spain, the scholars discuss about the new legal rules that forbid clauses stating that a collective agreement remains effective after its expiration (so-called, *ultraactividad*). See the essays published on issue no. 61 of *RDS*, on issues no. 1, 3, 6, 9, 11 and 12 of *RL*, on vol. 120 of *TL*.

[111] M. Le Friant, "Collective Autonomy: Hope or Danger?", *CLLPJ*, 2013, vol. 34, p. 627.

[112] I.R. Feria Basilio, "La intangibilidad del convenio colectivo tras la reforma laboral 2010-2013", *RL*, 2013, no. 6, p. 47.

[113] L. Mariucci, "Contratto e contrattazione collettiva oggi", *LD*, 2013, p. 23; M. Rusciano, "Lettura e rilettura dell'art. 39 della Costituzione", *DML*, 2013, p. 263.

[114] C. Sutherland, "Mapping complexity in Australian enterprise agreements: A multi-dimensional approach", *AJLL*, 2013, vol. 26, p. 50.

namely the standardization of many terms and the stability of labour relations,[115] the respect for the equality principle,[116] and the promotion of fair competition between enterprises.[117]

Another important topic discussed on the ILLJA journals concerns the role of collective bargaining in public administration. Starting from a classic study on unionism in the public sector,[118] several articles criticise the argument according to which «public sector collective bargaining based on the private sector model may result in distortions of democracy» by shifting governmental resources disproportionately toward public employee compensation.[119] In several countries, however, the collective labour rights of public employees are still limited. In Japan, for example, public employee organizations have the right to collective bargaining on certain subjects, but still lack the right to conclude collective bargaining agreements. Moreover, non-industrial public employee unions cannot engage in industrial actions.[120] In Germany, civil servants may join unions or interest organizations but may not bargain collectively or go on strike.[121]

In many countries where public sector collective bargaining is authorised, it has been marginalized by recent reforms. In Greece, the adjustments of the Memoranda in the field of collective agreements have, for example, affected the bargaining power of the public sector trade unions.[122] In Italy, the reform of the public administration of 2009 reduced the scope of collective bargaining, challenged union prerogatives in the sector, strengthened employers' and managerial powers, and diminished the resources and degree of freedom of decentralized negotiations.[123] In Spain, since 2012, the rights guaranteed by the collective agreement can even be suspended or modified by the public administration when it is necessary to cut public expenditure or reduce public debt.[124]

115 J.B. Rose, "Reforming the Structure of Collective Bargaining: Lessons from the Construction Industry", *CLELJ*, 2013, vol. 17, p. 403.

116 Feria Basilio, *op. cit.*, note 112.

117 J. Gorelli Hernández, "Nuevas reglas de concurrencia de convenios: la prioridad aplicativa del convenio de empresa", in *RL*, 2013, no. 9, p. 35.

118 H.H. Wellington, R.K. Winter, *The unions and the cities*, The Brookings Institution: Washington, 1971.

119 See the essay published on vol. 34, no. 2 of *CLLPJ*.

120 K. Koshiro, "Does Public Sector Collective bargaining Distort Democracy in Japan?", *CLLPL*, 2013, vol. 34, p. 307; R. Yamakawa, "Japan's Collective Labor Relations Law in the Public Sector: Constitutional Conflict Between Union Rights and Democracy", *CLLPJ*, 2013, vol. 34, p. 349.

121 Keller, *op. cit.*, note 102.

122 D. Kremalis, "Public Sector Collective Bargaining and the Distortion of Democracy: Do Public Sector Unions Have "Too Much" Power?", *CLLPJ*, 2013, vol. 34, p. 479. In Greece, unions are considered as vectors of "collective clientelism", influencing human resources management, incentive systems, and coordination and evaluation mechanisms (T.N. Tsekos, "Structural, Functional, and Cultural Aspects of the Greek Public Administration and Their Effects on Public Employees' Collective Action", *CLLPJ*, 2013, vol. 34, p. 457).

123 L. Bordogna, "Employment Relations and Union Action in the Italian Public Services - Is There a Case of Distortion of Democracy?", *CLLPJ*, 2013, vol. 34, p. 507; G. D'Alessio, "Le prospettive di modifica del quadro legislativo in materia di lavoro pubblico", *DML*, 2013, p. 603; A. Topo, *op. cit.*, note 14.

124 C.L. Alfonso Mellado, "La reforma de la negociación colectiva en la Ley 3/2012: especial referencia a la negociación y la inaplicación de los convenios", *RL*, 2013, no. 3, p. 15; S. De Soto Rioja, "Legislación presupuestaria y autonomía colectiva en el sector público", *TL*, 2013, vol. 120, p. 509; I. Marin Alonso, "La progresiva desprotección del trabajador público frente al trabajador común: de las singularidades de la regulación individual y colectiva al desmantelamiento del derecho a la negociación colectiva", *RL*, 2013, no. 4, p. 29.

C Workers' Participation

Several articles on the ILLJA journals have focused on workers' participation. In some countries, the rights of information and consultation have been strengthened but remain ineffective.[125] EU reform legislation in the area of company law has placed the German model of co-determination at enterprise level under pressure.[126] In the East of Europe (e.g. Estonia, Czech Republic and Romania), employees' representatives still play a marginal role in shaping employment and social relations.[127] However, the 'Europeanization' of national legal orders has occasionally strengthened the system of employee participation, for instance in Poland.[128]

Finally, some authors have underlined that in several central and eastern European countries (e.g. in Poland and Russia), trade unions consider work councils to be competitors.[129] In some cases, this is due to the overlap of functions between work councils and trade unions.[130]

VI Dimensions of Individual Working Conditions Beyond Decent Work

Throughout 2013, all labour law journals continued to debate issues concerning the persisting erosion of the standard labour contract and standard working conditions, understood in Europe as a long-term or permanent contractual arrangement with adequate pay[131] to secure one's living.[132] Ample space is dedicated to the "broken paradigms"[133]

[125] On Australia s. Townsend *et al.*, *op. cit.*, note 105. On France s. Q. Urban, « La représentation des salariés dans les conseils des sociétés par actions : « Quel progrès » ? », *RDT*, 2013, p. 689. On Italy s. C. Zoli, "La partecipazione dei lavoratori in Italia tra vecchi e nuovi modelli", *DML*, 2013, p. 557. On Spain s. F. Valdés Dal-Ré, "La participación de los trabajadores en la empresa: el marco constitucional", *RL*, 2013, no. 11, p. 1.

[126] A. Junker, „Grundfreiheiten, Gesellschaftsrecht und Mitbestimmung – Bleibt die europäische Entwicklung Treiber des Reformbedarfs?", *EuZA*, 2013, p. 223.

[127] See the essay published on *BCLR*, 2013, no. 85.

[128] L. Mitrus, "Works Councils in Poland: Problems of Informing and Consulting Employees", *BCLR*, 2013, no. 85, p. 151. On the contrary, in Belarus, lack of legislative regulation on workers' participation almost leads to lack of industrial democracy in important issues as key managerial decisions dealing with labour and social-economic conditions of work (E. Volk, K. Tomashevski, "The Problems of Workers' Representation in the Republic of Belarus and Some Possible Ways to Resolve Them", *BCLR*, 2013, no. 85, p. 11).

[129] N. Lyutov, E. Gerasimova, "Non-trade Union Employees' Representation in Russia", *BCLR*, 2013, no. 85, p. 183.

[130] M. Vinković, "Works Councils in Croatia: A Form of the Protection of Workers' Rights and/or the Employer's Interest?", *BCLR*, 2013, no. 85, p. 37.

[131] The issue of adequate wage has different dimensions, including minimum wage, wage linked to productivity and wages in case of informal employment. In particular on national minimum wage policies which also involve fundamental rights to fair working conditions, s. A. Aumann, "Ausgewählte Probleme des polnischen Mindestlohns", *ZIAS*, 2013, p. 18; Rani *et al.*, *op. cit.*, note 82. For the German debate s. T. Lakies, „Gesetzlicher Mindestlohn: Zur Legitimation der Staatsintervention gegen Niedriglöhne", *AuR*, 2013, p. 69. For wage regulation in Spain, s. J.C. García Quiñones, "El régimen jurídico de la retribución en el ordenamiento español: herencias y tendencias", *RL*, 2013, no. 1, p. 33.

[132] *Cf.* in particular the special edition dedicated to "Flexicurity and Job Insecurity" of *RGL*, 2013, I, p. 479.

[133] See *ex multis*: Coutu *et al.*, *op. cit.* note 3; for Latin America: Bensusán, *op. cit.*, note 21 (with special emphasis on Argentina, Brazil, Uruguay, Chile, and Mexico).

linked to the attacks to job stability both by the proliferation of fix-term contracts,[134] temporary agency work[135] and other forms of precarious work, and in particular by the reduction in job protection regulations governing the termination of employment contracts.[136] Some journals also paid attention to specific issues that may need further reflection, such as the special status of the work of prisoners,[137] and the scope of contractual obligations of employees during and after employment, namely confidentiality[138] as well as the use of social media.[139] The case of "whistleblowing" is a re-emerging issue that attracted some attention in 2013.[140]

With regard to the dimensions of working conditions beyond decent work two topics deserve to be highlighted: safety and health in the workplace on the one hand, and work-life-balance on the other, in particular of workers with caring responsibilities. In the past, health and safety at work and the duty of the employer to take care of the

[134] On fix-term contracts see the analysis of the ECJ case law on such contracts in the public sector by E. Mazuyer, « La jurisprudence de la CJUE relative aux contrats à durée déterminée dans le secteur public », *RDT*, 2013, p. 681. For Spain: J.A.N. Bernad, Más de una década de cambios en la sucesión de contratos temporales: de la estabilidad en el empleo a la flexibilidad (2001-2012), *RL* 2013, no. 3, pp. 63; for Italy: L. Menghini, "Lavoro pubblico e contratti flessibili dopo i decreti e le clamorose pronunce del 2013: con risorse insufficienti continuano i colpi di scena", *DML*, 2013, p. 501. For Germany: A. Junker, „Europarechtliche und verfassungsrechtliche Fragen des deutschen Befristungsrechts", *EuZA*, 2013, p. 3 (with special emphasis on European law and constitutional law implications).

[135] On temporary agency work see the special edition of the *BCLR*, 2013, no. 82, confronting the different approach followed by the United States and European States (Belgium, Germany, Netherlands, Poland, Sweden and UK) that had to implement the European Directive on Temporary Agency Work (2008/104/EC). For Italy s. A. Riccardi, "La redefinizione dei limiti di accesso alla somministrazione a tempo determinato", *RGL*, 2013, I, p.759. On the impact of migrant labour s. I. Campbell, J.C. Tham, "Labour market deregulation and temporary migrant labour schemes: An analysis of the 457 visa program", *AJLL*, 2013, vol. 26, p. 239. Empirical research on the impact of temporary agency work on the German labour market suggests that employment subsidies for permanent contracts had no notable effects on overall employment levels, but that wage gaps between regular and temporary work were widening (M. Garz, "Employment and wages in Germany since the 2004 deregulation of the temporary agency industry", *ILR*, 2013, vol. 152, p. 307).

[136] On the decline in job stability s. P. Lokiec, A. Perulli, H. Collins, M. Rönnmar, « Entretiens sur le droit du licenciement pour motif économique », *RDT*, 2013, p. 425. For Spain: I. Baviera, "Employment Stability in Spanish Labor Law: Between Regulatory Tradition and Social Reality", *CLLPJ*, 2013, vol. 34, p. 677; E. Guerrero Vizuete, «Estabilidad en el empleo y reforma laboral: la debilitación de un princípio», *RDS*, 2013, no. 61, p. 95; A. Guamán Hernández, O. Leclerc, « À propos d'un État qui licencie pour motif économique. Radioscopie d'une cure d'amaigrissement », *RDT*, 2013, p. 505 (on redundancies in the public sector). For the UK: J. Howe, "Poles Apart? The Contestation between the Ideas of No Fault Dismissal and Unfair Dismissal for Protecting Job Security", ILJ, 2013, p. 122. On the limits on dismissal on grounds of temporary incapacity for work see S. Rodríguez Escanciano, "El control de la incapacidad temporal: su incidencia sobre la contención del gasto público y el aumento de la productividad empresarial", *TL*, 2013, vol. 118, p. 113.

[137] The work of prisoners is closely linked to human rights issues, s. P. Auvergnon, « Droit du travail et prison : le changement maintenant ? », *RDT*, 2013, p. 309; Z. Farkas, "A fogvatartottak foglalkoztatásának dilemmái (Dilemmas of the Employment of Prisoners)", *PMJK*, 2013, no. 2, p. 29.

[138] On non-compete clauses s. W. Van Caenegem, "Employee Know-How, Non-Compete Clauses and Job Mobility across Civil and Common Law Systems", *IJCLLIR*, 2013, vol. 29, p. 219. On Australia: C. Dent, "The (potential) regulatory function of contractual clauses. Restraints of trade and confidential information in employment contracts", *AJLL*, 2013, vol. 26, p. 1. On Hungary: E. Kajtár, "Pénzt vagy munkát? A versenytilalmi megállapodás szabályozása (Money or Work – on Anti-competition Agreements)", *PMJK*, 2013, no. 2, p. 63.

[139] Developments in Australia suggest that conduct outside work involving the use of social media may adversely affect the employment relationship (L. Thornthwaite, "Social media, unfair dismissal and the regulation of employees' conduct outside work", *AJLL*, 2013, vol. 26, p. 164).

[140] In 2013, E. Snowden's disclosure of illegal practices of his former employer brought whistleblowing issues to the attention of a broader public. For a comparative analysis s. G. Forst, „Whistleblowing im internationalen Vergleich – Was kann Deutschland von seinen Nachbarn lernen?", *EuZA*, 2013, p. 37. Issues of whistleblowing are discussed for Australia (P. Rozen, "'Buts it's not safe!': Legal redress for workers who are victimized for raising a safety issue at work", *AJLL*, 2013, vol. 26, p. 326), France (M. Véricel, « Institution d'un droit d'alerte en matière de santé publique et d'environnement », *RDT*, 2013, p. 415) , and the UK (D. Lewis, *op.cit*, note 90).

prevention of work related health risks have received only marginal attention as a labour policy topic. This has changed in recent times, and the right to enjoy occupational health and safety has emerged as a human rights issue.[141] Dramatic socio-economic and ecologic changes call for a reexamination of health related labour rights in the work environment: Healthy ageing can be easily hampered by time pressure and a growing work-load imposed on employees – not only in the public service -, by the worsening of relations at the workplace (e.g. bullying),[142] neglecting sick leave during times of economic recession and increased job insecurity, and by failing to accommodate workplace environment for an ageing workforce as such.[143] Health risks may also result from workplace harassment in its different forms.[144]

For the physical and mental health of employees and their well-being throughout an ever longer working life, policies aimed at improving work-life and work-family balance are a topic of utmost importance for both men and women. The measures dealt with in various journals include the regulation of working time and working hours,[145] teleworking,[146] the right to request more flexible working arrangements in order to accommodate care responsibilities -[147] distinct from involuntary part-time work -[148] as well as leave entitlements[149] supported by special social security guarantees.[150] There is still much ambivalence as to the appropriate role of the state in shaping this type of interactions between work and care.

[141] For this approach s. J. Hilgert, "The Future of Workplace Health and Safety as a Fundamental Human Right", *CLLPJ*, 2013, vol. 34, p. 715. For Australia: E. Windholz, "The harmonisation of Australia's occupational health and safety laws: Much ado about nothing?", *AJLL*, 2013, vol. 26, p. 185.

[142] For destructive workplace behavior in Australia: C. Kelly, "An Inquiry into workplace bullying in Australia: Report of the Standing Committee on Education and Employment – Workplace Bullying: We Just want It to Stop", *AJLL*, 2013, vol. 26, p. 224.

[143] On the psycho-social risks at the workplace in Japan: L. Lerouge, « Les risques psychosociaux au travail à la loupe du droit japonais », *RDT*, 2013, p. 723; Y. Otsuka, Y. Horita, "Statistics on Suicides of Japanese Workers", *JLR*, 2013, vol. 10, no. 4, p. 44 (concerning suicide statistics). On the work-related health risks from a gender perspective s. B.M. Orciani, "La tutela della salute e della sicurezza nei luoghi di lavoro: uno sguardo di genere alle fonti dell'UE", *RGL*, 2013, I, p. 407.

[144] For the protection against harassment s. the comparative studies by L. Lerouge, L.C. Hébert, "The Law of Workplace Harassment of the United States, France, and the European Union: Comparative Analysis after the Adoption of France's New Sexual Harassment Law", *CLLPJ*, 2013, vol. 35, p. 93; M. Corti, I. Solanke, C. Ferreiro, « Le harcèlement sexuel: droit italien, droit anglais, droit espagnol », *RDT*, 2013, p. 353. For Japan: I. Mizushima, "Workplace Health, Mental Health, and the Law", *JLR*, 2013, vol. 10, no. 3, p. 40.

[145] On the fundamental right to reconcile work and family responsibilities in Spain as a constitutional law barrier against unilaterally imposed flexibilisation of working time arrangements, s. M.A. Ballester Pastor, "La flexibilidad en la gestión del tiempo de trabajo: Jornada y distribución del tiempo de trabajo", *RDS*, 2013, no. 62, p. 53.

[146] Although teleworking and other forms of "home office work" can help to reconcile work and family responsibilities, they can also entail longer working hours and gaps in occupational accidents compensation. For developments in Japan s. A. Sato, "Teleworking and Changing Workplaces", *JLR*, 2013, vol. 10, no. 3, p. 56; H. Ikezoe, "Diversification of "the Workplace" and Problems with Labor Law", *JLR*, 2013, vol. 10, no. 3, p. 70. For France: Y. Lasfargue, « Les salariés sont mieux protégés par l'Accord national interprofessionnel de 2005 que par la loi 2012 sur le télétravail », *RDT*, 2013, p. 9.

[147] For Australia: A. Chapman, "Is the Right to Request Flexibility under the Fair Work Act Enforceable?", *AJLL*, 2013, vol. 26, p. 118. For Japan: A. Kawaguchi, "Equal Employment Opportunity Act and Work-Life Balance: Do Work-Family Balance Policies Contribute to Achieving Gender Equality?", *JLR*, 2013, vol. 10, no. 2, p. 35.

[148] For involuntary part-time work in France s. C. Lefranc-Hamoniaux, E. Serverin, « Nouvelle réglementation du travail à temps partiel: une précarité moindre ? », in *RDT*, 2013, p. 451.

[149] For annual and family leave entitlements in Western Europe, the United States, Canada, Australia, Japan and the Republic of Korea s. R.N. Block, J.Y. Park, Y.K. Kang, "Statutory leave entitlements across developed countries: Why US workers lose out on work-family balance", *ILR*, 2013, vol. 152, p. 125. For France: M.J. Serrano García, "Los permisos vinculados al cuidado de los hijos en Francia", *RL*, 2013, no. 6, p. 87. For Spain: L. Mella Mendéz, "El cuidado de menores afectados por cáncer u otra enfermedad grave: análisis crítica de la regulación laboral y de seguridad social", *RL*, 2013, no. 1, p. 89.

[150] For Spain: F. Fernández Prol, "Trabajadores a tiempo parcial y protección social. Novedades en materia de cotización y reformulación de las reglas de cómputo de los períodos carenciales", *RDS*, 2013, no. 64, p. 87.

LIST OF ABBREVIATIONS OF IALL JOURNALS

Análisis laboral = AL

Arbeit und Recht = AuR

Australian Journal of Labour Law = AJLL

Bulletin of Comparative Labour Relations = BCLR

Canadian Labour & Employment Law Journal = CLELJ

Comparative Labor Law & Policy Journal = CLLPJ

Diritti Mercati Lavori = DML

Europäische Zeitschrift für Arbeitsrecht = EuZA

European Labour Law Journal = ELLJ

Giornale di Diritto del Lavoro e delle Relazioni Industriali = DLRI

Industrial Law Journal (UK) = ILJ

International Journal of Comparative Labour Law & Industrial Relations = IJCLLIR

International Labour Review = ILR

Japan Law Review = JLR

Lavoro e Diritto = LD

Pécsi Munkajogi Közlemények (Pecs Labour Law Journal) = PMJK

Relaciones Laborales = RL

Revista de Derecho Social = RDS

Revue de Droit Comparé du Travail et de la Sécurité Sociale = RDCTSS

Revue de Droit du Travail = RDT

Rivista Giuridica del Lavoro e della Previdenza Sociale = RGL

Temas laborales = TL

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