

## THE ROLE OF THE STATE AND INDUSTRIAL RELATIONS

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### Contents

1. The initial and lengthy centrality of State intervention
2. Globalization and its impact on previous schemes
3. Other factors, cause or effect, that impinge on the weakening of State power
4. The impact of the new reality on the role of the State in industrial relations
  - 4.1. Global trade agreements, transnational companies and social clauses
  - 4.2. Impact on labour relation's national regulations
  - 4.3. New ways of State intervention on industrial relations

### **1. The initial and lengthy centrality of State intervention**

The sovereign power of nation-states in the peak period of the industrial society has been the benchmark of the emergence and development of Labour Law as an organizing tool of subordinate work. Especially in the economically most developed countries, but also in market economies as a whole, State power has designed for decades the key institutions regulating subordinate work. Moreover, it has been also the public power that, by means of judges and courts or by means of administrative authorities' action, has controlled to a great extent the effective fulfilment of labour standards set by the State legislative power itself.

Notwithstanding that, in many occasions, all the foregoing has been carried out thanks to the impetus provided by various supranational organism, mainly as the result of the influence of the International Labour Organization, the decisive role has been played by the State in such a way that labour relations models have been set up at the national level, presenting each one their own political, economic, social and cultural peculiarities.

Considering that decisive influence, the State has become the protagonist *par excellence* in the development of the balance of interest function between workers and entrepreneurs in labour relations. Both the contents and the methods of intervention have been notably different in every country, but, in any event, it can be said that both have also shared as a common guiding thread: the decisive influence of the nation-state playing a role as the lawmaker as well as playing a role deploying orientation public policies in the evolution of the labour market.

That intervention of the State has been particularly intense when it comes to the setting of minimum standards of labour conditions aim at applying uniformly to the whole working population. In contrast with this, it cannot be said the same concerning the intervention of the State

in the design of collective labour relations. Indeed, in that particular aspect of labour relations, it can be observed different options between one country and others. Certainly, in the majority of developed economies during the expansive period of the *fordist* model of production, the intervention of trade unions and enterprise organizations have been really relevant and it has triggered an intervention, complementary to the State intervention, specially by the means a decisive collective bargaining adapting minimum legal standards to the peculiarities of the companies or the productive sectors.

The development of the trade union's activity and collective bargaining in some models have taken place on the basis of a state regulatory framework of trade-union freedom as well as collective bargaining, even in cases which reference rules for the development of other typical manifestations of collective autonomy: participation in the company, exercise of the right to strike, conciliation and arbitration proceedings. In sum, it is a model in which the State has played a major role setting the collective labour relations system. It is also possible to identify, during this long period of economic expansion in developed economies, other countries where has prevailed another model favouring a more legal abstentionism when it comes to the collective relations system design, leaving room enough to trade unions and enterprise organizations to set the previous mentioned rules, notably in the case of collective negotiation regime and labour conflicts resolutions. That said, even in models more inclined to some legal abstentionism, it is possible to observe the role of the State in the background that, in one way or another, has set up the labour collective relations system. Collective bargaining has had an decisive role in the labour collective relations system in industrialized countries influencing the labour market in the framework of a national model of collective relations, with its own peculiarities, due to the legal culture of every country and, more specifically, due to the specific model of State intervention in the collective labour relations.

## **2. Globalization and its impact over previous schemes**

Various factors have contributed to a qualitative change in the last decades in the previous overview. It cannot be denied that the panorama has grew more complicated and, in particular, it is observed an evident weakening in the capacity of the State to govern and manage completely by itself labour relations as it was accustomed to do in the past.

Among the various factors that have led to this outcome, it has been commonplace to underline one of them: the process of globalization of national economies. In all cases, trade transactions, production of goods and service provision go beyond national borders in such a way that competition amongst companies is taking place mainly in the international arena. Not only is this process of globalization influencing the business domain, but also it is leaving its mark in the labour market, employment and working conditions. Under these circumstances, the risk of social dumping increases at the international level and, accordingly, the capacity of the State to manage labour relations are reduced. It cannot be argued a withdrawal of the intervention of the State, but at the same time it is undeniable that the State finds higher technical and political difficulties to achieve that his interventions are as effective and have the same impact than they had in the past.

In the framework of collective labour relations, there are no signs of deregulations on the part of States traditionally protagonist in this respect, but the existing regulations are conceived for traditional model -not a globalized one- in such a way that it can differ its capacity to make an impact.

What is more, the process of economic globalization, leaving aside some specific experiences, has not caused the emergence of entities of organizations alternative to State power. The conformation of regional or international organizations in this new scenario of globalized economy has not determined the substitution of the traditional role played by the State in the last decades. Social partners have not been able either to create spaces of interlocution at the international level that can balance the State's loss of relevance. It is noted in some territories some novel experiences in this framework of globalized economy. In some cases, different formulas of worker participation and representation are being tested within transnational companies. In addition, it is noticeable some experiences in the field of transnational collective bargaining. With regard to these cases testing transnational collective relations, its design is only to a minimum degree the result of the State intervention or international organizations. Consequently, it can be verified again the deeper complexity of the intervention of the State in the field of labour relations.

In the light of all the foregoing, notwithstanding the noticeable weakening of State intervention in order to manage labour relations, given that there is no public interlocutor at the international level, it can be considered that nation-states are still unquestionably a reference in the development of labour relations correcting the distorting effects of the law of supply and demand which are distinctive of a capitalist economy. It is true that it is required an adjustment to the new globalized scenario, it is also observed a more complex intervention and different legal methods would be needed, but we cannot overlook the preeminent role of the State in this respect.

### **3. Other factors, cause or effect, that impinge on the weakening of State power**

Even though there has been a decisive impact of globalization over recent labour relations' transformations, it is appropriate to point out the influence of other complementary factors which are also responsible for the changes we have been examining so far. In some cases, these factors are the causes intensifying the weakening process of the State intervention. In other cases, there are phenomena that, without a doubt, present a long period presence in the different models of labour relations, albeit they are growing in intensity and scope and, as a result, the strength of the previous tendency to low-key profile of the State managing labour relations. Additionally, it may well be said that there are cases those phenomena are at the same time cause and effect of this new reality we are trying to expose.

Drawing our attention in a rather simplified manner to the description of the more influential factors, we could highlight the followings.

Firstly, it should be noted the huge impact of the generalization of information and communication technologies in the last decades. These technologies, as a manifestation of the technical revolution of the post-industrial society, have expanded universally in all companies, productive sectors and countries with no exception. One of the most significant traits of such technologies, in contrast with previous technological changes, it is that they are not concentrated in certain activities or specific fields, but they have a general impact. It is also worth noting the impact of these technologies over some legal institutions and traditional rules whose effectivity is decreasing or, at least, they have some functionality. With regard to this, we just have to think about how these technologies influence the place of supply of services, the functionality of certain rules concerning working time, the intensity of pace of working times, protection instruments in the field of health and safety, procedures and instruments of control on the side of the employer and their impact on the employee's intimacy. It all provokes that labour rules, without being changed in its content, they present a different functionality and efficacy than they had in the past. What is more, these sort of changes are not restricted to labour standards of labour conditions, but they also reach collective labour relations in such a way that trade union activity is in need to adapt to this new context in the same way that collective bargaining experiments the impact of the transformations in the companies and productive sectors deriving from the intense presence of information and communication technologies. In addition, these technologies reinforce the impact of globalization. The result is, once again, a more complex functioning of the classic labour rules in this new technological scenario.

Secondly, it cannot be overlooked the strong presence in many countries of the so-called informal economy, that is, to be precise, informal employment. It is true that the term informal employment encompass very different realities. Besides, it is understood differently in one country or others. In any event, this term cover at least two diverse phenomena, notwithstanding they can be closely linked in certain occasions. On the one hand, this term is referred to labour activities that escape from the control exercised by labour rules enacted by the State. As a result, that labour activities are developed in the framework of irregular employment that does not comply with labour minimum standards. On the other, it refers to self-employment situations that are also apart from State intervention in the management of labour market. Both phenomena are an expression of informal employment and not only do they affect individual labour relations, but also they have an impact on trade union's activity as well as collective bargaining. It is indisputable that informal employment is a common feature in some countries a long time ago. This circumstance shares space with the new scenario of a globalized economy and, in addition, informal employment is increasing a percentage in relation with the total. Some have raised a major concern about that the high rate of salaried workers, which is considered as one the most characteristic traits of a developed economy, can be reduced progressively in some labour markets, especially enhanced by new ways of labour organizations, network enterprises schemes and the implementation of information and communication technologies. All these factors enable some more extended forms of self-employment without altering productivity, efficiency and enterprise productivity. Naturally, if this tendency is verified, we will be witnessing a more complex State intervention in the management of labour market.

Thirdly, it is necessary to underline the increase of small and very small size companies in many national economies. Again, this is an embedded phenomenon in some countries that is being generalized to all productive sectors. At first sight, this phenomenon is apparently contradictory inasmuch as it could be assumed that in a more and more generalized globalized economy with a high presence of transnational companies it should lead to an increase of medium size companies - considering the number of employees-. Nevertheless, the emerging process is actually the opposite provided that globalization favours flexible ways of organizing a company. Consequently, the success of sum of network enterprises, productive decentralisation and information and communication technologies is resulting in the incorporation of small size enterprise organization models. Traditionally, the typical form of legal intervention on labour relations was conceived to be applied to big and medium size companies. At any rate, it is beyond dispute that the fact that very small companies are gaining weight will cause create serious difficulties when it comes to the application of the traditional model of collective labour relations and these difficulties will also arise in some new phenomena emerging in some labour relation models. In particular, it is necessary to determine the impact of all that on the rules promoting trade union's activity and on the tendency to favour collective bargaining that, due to its nature, requires a minimum number of workers to function adequately.

Finally, it should be mentioned that a globalized economy works in a context where economic turbulences are emphasized and, notably, where the average period of product and services exploitation, companies' life expectancy and the duration of contractual liaison between employer and employees are reduced. Moreover, it is also clear a significant rise in non-standard labour schemes, part-time work recruitment and a reduction of permanent work's duration. The general outcome is a growth in job rotation within the occupied population with high flows of entries and withdrawal to employment and unemployment. The traditional model of workers' and trade union's participation within the companies is built on the basis of generally stable employment workforce. On the contrary, when we are facing a different situation where employees are aware that their expectations to continue in the companies is lower, their implication in collective participative process decreases and it is more complex to apply certain traditional labour relation models and it is also difficult to maintain new models of collective bargaining focused on the company.

#### **4. The impact of the new reality on the role of the State in labour relations**

Having into account the most important transformations occurred within labour relations due to globalisation, it comes to assessing the implications for the State to manage the labour market and, particularly, collective labour relations. And so, the potentially new perspectives traditional labour law guidelines would develop.

Not only would it be desirable to identify the changes taking place, but to implement some new political proposals to face the new situation.

#### **4.1 Global trade agreements, transnational companies and social clauses**

The first question to deal with relates to the fact that a global economy is not a simple outcome of undertaking activities in the field of transnational trade. Much of it has to do with the approval of a transnational Free Trade Agreement between more than two big economic areas, such as the present negotiation between Europe and The United States of America, as well as other in the Pacific area. At the beginning, WTO did have a great influence on the liberalization of these transnational agreements, especially on commercial trade activity and their customs systems, but it also affected many other aspects of economy functioning in a globalization model, among which employment and labour conditions must be highlighted, especially when we talk about agreements in different countries with diverse models of labour and Union relations.

That is precisely why this type of agreements includes some social clauses, even though their real influence has been rather modest up to now. Furthermore, these social clauses are sometimes written ambiguously and not always accompanied by any mechanisms of control.

In this context it would be necessary to get to know how different countries have introduced these social clauses in their own national regulations and their effectiveness inside the Free Trade Agreements as well as the impulse role of national economies on them. The first task to undertake would be a deep insight into the contents of these clauses in order to provide them with a higher effectiveness degree. A comparative study could be useful to detect their commitment to bring forward some superior weigh within a global economy and the measures to be taken to avoid social dumping. In this sense it could be quite interesting to analyse transnational posting of workers through countries where free commercial trade are applicable, to check in what way the implementation of free trade areas improve the number of workers moving from one country to another.

It is common knowledge that there are certain loyalty practices from a social point of view among global trade transnational undertakings where an interesting experience of social corporative responsibility is being carried out. It would be advisable to study whether this responsibility comes from the undertakings themselves with workers representatives understanding or free trade agreements and national political measures on global economy mean a progressive development of these good practices. In the same way, the connection between these elements and the evolution of transnational collective bargaining, hand out some supportive measures.

Another issue to address in this context regards to the State intervention on the requirements demanded to foreign investments and their connection with labour mobility. Nowadays there are some attempts to establish some sort of structural funds to compensate undertakings for labour impacts in certain areas or sectors due to modifications and changes occurred within the enterprise as a consequence of the implementation of this new “scenario” of free trade originated by the transnational agreements. Production and workers are many times compelled to move from some territories to others and it is necessary to tackle the question of workers reduction searching for public measures to be put forward to secure the situation and reduce the negative effects for undertakings under these conditions.

#### **4.2. Impact on national labour relations**

The effects of this global process on collective labour relations are particularly noticeable: on one hand realising how traditional rules have been transformed because of this new reality in a different setting and on the other hand working to introduce some innovations in national regulations.

Singularly important is to verify what is happening in terms of participation in the undertaking organization and in settled legal institutions as collective workers representation.

There must not be forgotten to pay attention to collective bargaining in this area: the tendency to maintain or change workers percentage to be ruled under collective bargaining; negotiation structures transformation particularly focused on the proposals to address the undertaking as a preferential space to develop collective bargaining; where it exists, this is the natural space to improve sectorial collective bargaining and keep alive the process of individual negotiation about labour relations; the comparative law vision regarding the compulsory elements of what has been negotiated, the “erga omnes” efficacy of collective bargaining and finally the definite role of judges on their fulfilment.

When it comes to speak about strike and other expressions of labour dispute, it is essential to know the point of view of the legislative power, if more or less interventionist; the relationship between the use of strike as a control method of workers movements in a context of transnational scenario and to what extent national collective bargaining applies to posting workers. It will necessarily be useful to see how the legislative deals with the problem of work stoppage in case of public services essential to the community. Here, consumer’s reaction to this question must be taken into consideration.

Lastly, it is also important to analyse how different national models of arbitration procedure try to solve some labour disputes, specifically the ones trying to promote them and whether they accept the questions when they take place in a transnational context.

### **4.3. New ways of State intervention on industrial relations**

As we all know, the most classical forms of legal State intervention on labour law have taken place putting into force some minimum legal standards of working conditions, in such a way that the most common juridical technique has consisted of establishing a block of some necessary rules that cannot be changed by the contracting parties, commonly named under the expression “hard law”. Although more frequently used for individual labour relations, from the initial engagement till the extinction of the employment contract, including working conditions, it has also had a long way within the area of collective working relations, where the use of “hard law” rules has been intensive as well.

By contrast, some experiences of “soft law” have been appearing and spreading lately in different ways, such as diagnosis reports, positioning, recommendations, instructions, good practices in certain areas attempting to extend to some other ones, outcome evaluations, etc.

Under this perspective, to test the evolution of State intervention through this hard law technique to verify if there has been either a decrease or any changes in public intervention about its use and efficiency would be of great interest.

Furthermore, the same analysis should be carried out about the “soft law” experience to check the depletion degree and its real impact on working relations.

In the end, the question laid before is in what way mutual influences can be identified between both techniques, hard and soft law, and if so they acts as alternative, to trade one against the other, or, on the contrary, must be considerate complementary options that enhance each other.

As a consequence of the aforementioned, it is clearly visible that a deep insight into the new State tools used to allow the parties of the labour relations to face the new challenges must be done as soon as possible: green economy; digital economy, professional training, young people integration, social inclusion, balance between working and family life time, active ageing, migration, etc.