EMPLOYMENT IN WORKER COOPERATIVES IN THE FRAMEWORK OF SPANISH COOPERATIVE LAW[1]

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SUMMARY: Abstract. 1.- Introduction. 2.- Types of employees in worker cooperatives: Worker-owners and salaried employees 3.- Working conditions in worker cooperatives 4.- Conclusions. 5.- Bibliography 6.- Legislative appendix

Abstract

Workers' cooperatives are created to provide jobs for their worker-owners. It is a formula enabling a group of people to obtain employment under a cooperative system through the creation of a jointly-owned company with democratic management, a company that can specialise in rendering any service or producing any good, as long as the principles of the cooperative are not violated.

However, some legal systems allow for the presence of salaried employees who are workers in cooperatives without being members. In this case, the working relationship between the cooperative and those employees is governed by ordinary labour law, known to be a field of law that developed in the sphere of the capital-labour conflict. In such a case, the cooperative is considered an ordinary employer; i.e., a common capitalist enterprise. This situates us before the paradox that, in the nineteenth century, workers' cooperatives were designed to surmount the exploitation suffered by wage-earners, while in the 21st century, we find - at least in form - the capital-labour relationship within these same cooperatives. In this regard, the question of employees' working conditions is also of interest, bearing in mind that a distinction must be drawn between the working conditions of the two groups mentioned above: member employees and salaried employees.

In the field of cooperative employment, comparative law offers widely divergent variations. Within the Spanish territory, there are systems in which labour law is applied to the worker-owners employed in a cooperative (Cooperatives Act of Extremadura), and systems where the working conditions of cooperative members are governed, in an absolute manner, by the self-management of the cooperative

[1] This article is based on the work BENGOETXEA ALKORTA, A. (2016), "La contribución de las cooperativas de trabajo asociado a la creación y mantenimiento de empleo", in FAJARDO GARCÍA, G. (Ed.), Aa.Vv., Cooperativa de trabajo asociado y estatuto jurídico de sus socios trabajadores, Valencia, Tirant lo Blanch.
Research for this article was undertaken by the research group on 'Social Economy and its Law' at the GEZKI institute, IT1327-19 of the Basque university system, and GIU17/052 in the University of the Basque Country, (UPV/EHU); and by the research project DER2016-78732-R, Economía social, Autogestión y Empleo (ECOSOCIAL2020), Ministerio de Economía y Competitividad.
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(Cooperatives Act of Navarre) – a self-management that should ideally be reflected in the internal regulations of the cooperative by statutes and internal rules on working conditions.

In the sphere of salaried employment, working conditions are set according to ordinary labour law: labour legislation, collective bargaining agreements and employment contracts. As stated above, in this area, the cooperative is treated as an ordinary capitalist employer, and the workers as ordinary employees.

There are several points of interest that are observable as to employment in workers' cooperatives:

- Reflection on the coexistence of workers subject to such different legal regimes within workers' cooperatives: worker-owners and salaried workers (workers who are not owners)
- Working conditions of worker-owners. It is of interest to reflect on self-management as the determinant for working conditions. On one hand, there is a risk of voluntary self-exploitation. On another hand, there is also a risk of very poor labour conditions, which facilitates the dynamics of pseudo-cooperatives, such that a principal capitalist company can create a fictitious cooperative it subcontracts at very low labour costs, legally but fraudulently covered by cooperative self-management.
- Working conditions of salaried workers. Conditions established according to labour law systems. Can cooperative principles and labour law be harmonised?

We face issues that deserve critical reflection within the broad field of legal requirements for employment in workers' cooperatives. It is a legal reflection we intend to make in developing this subject.

1.- Introduction

Worker cooperatives (henceforth WCs), are entities whose founding purpose is to provide work for the present and future worker-owners comprising them[3]. While other types of cooperatives are created to satisfy collective needs concerned with housing, consumption, education and other interests, the aim of the WC is to achieve self-employment for the people who give it life. Therefore, we are dealing with companies that associate people. In the case of the WC, the aim of such association is to achieve paid employment for them, which is why they are referred to as worker-owners. So, "it is precisely work that is associated (not capital, although the members also provide capital)" (GARCÍA, 2014, 115). It must thus be pointed out that WCs are woven around a nucleus of work association, where the capital provided by the worker-owners is an instrumental component. In contrast, capital companies, as their very name indicates, associate capital, and the paid employment hired turns out instrumental to the aim of achieving the profitability of the capital constituting the company.

That essential significance of employment in WCs is reflected in their strategic decisions, such that their priority is to uphold employment. In that regard, and in the present context of economic

[3] Worker cooperatives are those entities whose aim is to provide their members with jobs by means of their personal direct effort, part time or full time, by jointly organizing the production of goods or services for third parties (Art. 80.1 Cooperatives Act of Spain).

globalisation, it should be noted that, by their very nature, WCs do not relocate, as this would go against local employment, precisely their fundamental purpose[4].

This study will attempt to provide an overall view of the positive legal system of WCs in the Spanish state, bearing in mind the sixteen cooperative laws of its Autonomous Communities (for all of them, except for Canarias), as well as Spanish law. As far as the regulations of WCs are concerned, while a considerable degree of similarity can be observed between the diverse autonomous laws and state law, it is also true that the differences in some aspects are relevant (VALDÉS, 2010, 2). The study begins by seeking to show the characteristics of the two population groups within the WC: worker-owners and salaried employees. Afterwards, we will deal with the subject of working conditions in worker cooperatives. Full information about sections of the Cooperative Acts is provided in the legislative appendix at the end of this article.

2.- Types of employees in worker cooperatives: Worker-owners and salaried employees

An elementary classification of the types of employees leads us to make a distinction between salaried employees and self-employed workers. Employees can work for the private sector (for a company that pays them); or for a public institution (employment dependent on a public agency). Apart from this, self-employment can be individual, which is the case of self-employed individual workers; or associated, through a partnership agreement, and therefore collective (GAY/ BENGOETXEA, 2008, 485-486).

Worker cooperatives belong to this last category of collective self-employment arising from a partnership agreement.When focusing on those working in the WC, we must distinguish between cooperative employment and salaried employment. Thus, the actual workers of the WC are the worker-owners who constitute the company itself. Furthermore, the cooperative can operate as a conventional company and hire salaried employees[5].

2. 1 Worker-owners

These are the persons who have the dual status of owners and workers: owners because they hold a partnership agreement which gives life to the WC, and workers because they are obliged by that contract to provide their work to the cooperative that they have constituted. Of course, this is a "complex legal situation" (MONEREO, 2014, 18). This complex circumstance has given rise to in-depth debate in scientific doctrine and, to a lesser extent, in jurisprudence, with regard to the corporate, labour-related, or mixed nature of the legal relationship that binds the worker-owners to the WC.

At present, the debate seems to be settled by the categorical assertion in positive law that the relationship of worker-owners with the cooperative is corporate (Art. 80, Cooperatives Act of Spain).

[4] The WCs "combine and reconcile the responses to the challenges of globalisation with the commitment to maintain local employment" (Aa.Vv., *Social Economy in the EU*, 2012, 111).

[5] Cooperative law does not forbid hiring salaried employees. This is supported in detail by Art. 1.2 of the Workers' Statute (Royal Legislative Decree 1/1995, of 24th March): entrepreneurs are those who are natural or legal persons or jointly-owned capital receiving the supply of services involving features of salaried employment (volunteer work, subordinate labour, third-party employment, and compensation).

Sometimes, in specific autonomous legislation, the corporate nature of the link between the WC and the worker-owner is particularly emphasised[6], while other autonomous laws remain silent on the matter, and so neither deny such corporate nature nor establish the working patterns of this relationship[7].

Jurisprudence also seems to have settled the issue. As judgment of the Higher Court of Justice (STSJ) of Catalonia dated 29th July 2010 clearly explains, the main idea is that worker-owners are basically owners, as what links them to the WC is a genuine corporate civil contract. But this corporate relationship is influenced by the fact that, since they are not capitalist companies, the relationship of worker-owners with the entity that they co-own has strong labour-related connotations. This is why Spanish legislators, in successive laws, assign jurisdiction to the Labour Courts, to emphasise the contentious issues that arise between worker-owners and the WC they have created. This notwithstanding, what is certain is that the binding relationship between worker-owners and the cooperative company is corporate in nature, and any labour-related nature must be discarded as not even being concurrent with the aforementioned corporate nature[8].

In any case, the doctrinal debate revolves around the working patterns of the relationship. The relationship between worker-owners and the WC is discussed. We should understand that either these persons do not work for themselves but for the WC, or they are self-employed. Since worker-owners are joint owners of the company, the requirements for a relationship of third-party employment will never be completely fulfilled, and therefore we understand that such does not exist. Dependence is another element discussed. It is true that in large cooperatives, work is not self-managed, but dependent on the instructions issued by the WC. However, in small WCs, such dependence does not exist, and self-management is real[9].

Without denying the scientific interest of the question, it would appear that the clear establishment of the corporate nature of the relationship on the grounds of positive law entails a loss of interest in that once-fierce debate[10]. Hence, by virtue of the corporate nature of the link binding them to their WC, cooperative corporation law will apply to worker-owners, starting from the law on cooperatives, and subsequently being developed by the WC through such internal rules as statutes, internal regulations and General Assembly resolutions.

Thus, the working conditions of worker-owners are regulated by cooperative law. However, although we start from the application of cooperative and not labour law, on many occasions, cooperative legislation itself calls upon labour law, requesting its corroboration. In this matter, as far as the influence of labour law on the labour conditions of the worker-owners is concerned, cooperative legislation offers divergent models. We may encounter full self-management models for WCs that do not establish any guarantee stemming from labour law, such that working conditions are determined in internal cooperative

[6] Cooperatives Act of Andalusia, Aragón, Asturias, Cantabria, Castilla and León, Galicia, La Rioja, Madrid, Murcia and Valencia.

[7] Balearic Islands, Castilla-La Mancha, Catalonia, the Basque Country, Extremadura, Navarre.

[8] The Supreme Court has set the standard in this regard in the judgments (SSTS) of 23rd October, 2009; 13th July, 2009; 12th April, 2006; and 15th November, 2005.

[9] There are cases, such as in Aragón, the Basque Country, Cantabria, Catalonia or Valencia, in which the WC form is admitted with only two worker-owners participating.

[10] Defending the labour-based nature of the relationship, ÁLVAREZ 1975, MAIRAL, 2014, PEDRAJAS/ PRADOS, 1975, SANTIAGO, 1998.

rules of procedure, making it necessary to refer to the statutes, internal system regulations and resolutions approved by the General Assembly[11].

At the other extreme, we may find the labour rights guaranteed by law to the worker-owners fully applied[12]. And between both extremes we will encounter a variety of regulations guaranteeing certain labour rights regarding various aspects, such as minimum wage, working hours, breaks, holidays, temporary work suspensions, etc. On the jurisdictional side, legislators have clearly decided that labour courts have the competence on disputes regarding the supply of work between worker-owners and their WC[13].

2.2 Salaried employees

WCs can hire salaried employees through typical work contracts. In these cases, ordinary labour law will be fully applicable, subject to the nuance that attention will sometimes have to be paid to the specific provisions of cooperative law with respect to salaried employees. Focusing on the very nature of WCs based on cooperative self-employment, we share this categorical assertion: "it is not logical to hire salaried employees" (ALONSO, 1984, 540). As the WC is a peculiar company that lumps employment and cooperative values together, its responsibility is to provide jobs for its worker-owners, joint owners of the company they work in, under a democratic management model. When a WC hires salaried employees, it immerses itself fully in the field of labour law and, consequently, in a body of standards established around the logic of the conflict between capital and labour. In any event, all cooperative laws allow for WCs hiring employees, albeit always subject to quantitative limits, so that limits are set in proportion to the amount of cooperative employment. Thus, comparative cooperative law ranges from the hiring of salaried employees at a maximum of 25% of the hours worked per year by worker-owners (in the Basque Country) to 60% (in Cantabria)[14].

3.- Working conditions in worker cooperatives

Very often it is said that WCs offer stable quality and stable jobs. The Social Economy Act itself places the generation of stable quality jobs among the main guidelines for social economy entities, among which cooperatives stand out[15]. In this section, we shall endeavour to analyse the truth behind this statement.

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[11] We find such an extreme position in the Cooperatives Act of Navarre.

[12] This is the case of the Cooperatives Act of Extremadura, which, in Art. 115. 1 stipulates that working conditions of worker-owners shall be that established in the laws regulating salaried employment.

[13] Art. 2 c) of Act 36/2011, of 10th October, on Social Jurisdiction.

[14] The vast majority of autonomous laws establish a limit of 30% of hours per year as in national law. This is the case of Asturias, the Balearic Islands, Castilla-La Mancha, Castilla and León, Catalonia, Galicia, La Rioja, Madrid, Murcia, and Navarre. We find a peculiar case in Valencia, where it is established that *it is not possible to have more than ten per cent of workers with contracts of an indefinite duration calculated in relation to the total number of worker-owners, except for cooperatives that have under ten members, in which there can be workers hired in the aforementioned terms.*

[15] Art. 4 c) of Act 5/2011, of 29th March, on Social Economy.

3.1 ILO: Decent Work

The expression *decent work* has undergone substantial dissemination, especially after the Report of the Director General of the International Labour Organization (ILO), Juan Somavía, in 1999, precisely under the title of *Decent Work*. It should be pointed out that, from a terminological perspective, the original English phrase "decent work" refers to an acceptable job in accordance with common standards of reference[16]. Thus, the correctness of its translation into Spanish as *trabajo decente* is certainly arguable, as it has moral connotations which the original English expression does not contain. Therefore, it seems that its translation as *trabajo digno* would have been more accurate (GIL, 2012, 78 et seq).

Hence, decent work is a concept closely related to job quality and social justice and, in the last analysis, "condenses the historical aims of the ILO" in such a way that "it would be pertinent to speak of a rewording in simple, direct, easy-to-understand language of the message that the ILO has transmitted since it was founded" (GIL, 2012, 85).

In any case, we find ourselves before an undefined legal concept, a clear form of soft law, which does not appear in the more solemn declarations of the ILO, as in its Constitution (1919) or in the Declaration of Philadelphia (1944) (AUVERGNON, 2012, 123), although it does figure in the more recent Global Jobs Pact (1999) and in the Declaration on Social Justice for a Fair Globalization (2008). This soft-law aspect brings *decent work* closer to the ethical world, to the extent that it distances itself from the legal field, which, along with its virtual character as an international standard, leads to a perception of its weakness (SERVAIS, 2012). Obviously, if WCs wish to maintain an aura of quality employment, they must overcome the ILO's *decent work* test. In this regard, ILO Recommendation 193 rightly links decent work with cooperative work[17].

3.2 Stability in employment

Stability is often highlighted as the main indicator of quality in work. It is a principle stemming from labour law, the genuine "backbone of labour law" (BELTRAN DE HEREDIA, 2011). Thus, labour law puts considerable distance between itself and the liberal principles of *ius civilis*, from which it was emancipated, protecting the worker by impeding unjustified temporary employment and arbitrary dismissal or dismissal *ad nutum*.

If we examine the Spanish Constitution, we will observe that the principle of stability in employment is covered by the right to work provided for in Article 35.1. At the same time, this appears to clash with the freedom of enterprise established in Article 38.1 of the same text. The coexistence of both principles, in the opinion of the highest interpreting body of the Constitution, arises in such a way that both constitutional demands and international commitments establish the general principle of legal limitations to dismissal, while respecting the substantive and formal requirements to make dismissal legal. This does not mean that, as a corporate power, the authority to dismiss does not form part of the powers conceded by law to the entrepreneur for the management of his company and that, consequently, its regulation need not take into account the requirements deriving from the constitutional recognition of the freedom of enterprise and the safeguard of productivity. What is very clear, however, is that this freedom

[16] In its first version of 1999, this was understood as productive work under conditions of freedom, equity, safety and dignity, in which rights were protected, there was appropriate remuneration and social protection, and where tripartism and social dialogue were respected (GIL, 2012, 83).

[17] ILO Recommendation 193, on the promotion of cooperatives (2000).

of enterprise does not include absolute contractual freedom or a principle of freedom to dismiss *ad nutum*, given the requisite concordance that must be established between Articles 35.1 and 38 of the Constitution and, above all, the principle of a social and democratic rule of law. It must be borne in mind that since STC 22/1981 dated 2nd of July, F.J.8, the Constitutional Court has pointed out that, from an individual perspective, the right to work (Art. 35.1 of the Spanish Constitution) takes specific form in "the right to stability and continuity of employment, that is to say, in the right not to be dismissed without just cause" (STC 192/2003 F.J.4).

Setting aside labour law, the cradle of stability in employment, and analysing this principle from the viewpoint of the WC, it would seem obvious that this is a principle inherent to the very nature of WCs, as these were created with the precise intention of providing employment. So, "the common aspiration, when the company is constituted, of guaranteeing stability in employment determines, objectively, the commitment to the continuity of the organization that makes it possible" (JORDAN, 2002, 40).

3.2.1 Access to employment and stability

This section endeavours to analyse stability in the respective employments of worker-owners and salaried employees from the viewpoint of their mode of access to employment. As far as cooperative employment is concerned, access to the condition of worker-owner can lead to the status of permanent or temporary worker. In principle, cooperative legislation proposes the status of worker-owner with a fixed or indefinite contract as a natural formula, as would be expected in an employment model that boasts stability, but the door is open to temporary worker-owners. In order to reinforce the principle of stability in employment, the admission of temporary worker-owners should be based on justified cause. This occurs in only three cooperative laws, which require a temporary increase in the workload of the cooperative as a motive, with a minimum time interval of six months[18].

On the other hand, the legal system of non-causal temporary worker-owner recruitment into the cooperative is quite widespread, allowed for by the other cooperative laws[19]. I find this objectionable. When that door is opened, there is a risk for the principle of stability to fly out the window, due to the non-causal recruitment of worker-owners with a corporate relationship of limited duration into the WC, however quantitatively limited[20]. There is even a case where neither causality nor a quantitative limit exists[21]. As to the salaried employees of the WC, most cooperative laws establish a system that guarantees them the right to attain the status of worker-owners.[22]

[18] This is what we may observe in the Cooperatives Act of Andalusia, Asturias and La Rioja.

[19] A situation which we can find in the laws of Castilla and León, the Basque Country, and Murcia, in the regulations specifically governing WCs. In the other autonomous laws, the non-causality of temporary workers is deduced from the system of ordinary law for members in all types of cooperatives.

[20] Most laws establish that temporary worker-owners may not number more than a fifth of the permanent worker-owners. This is the standard in Spanish law, and in the laws of Aragón, the Basque Country, Extremadura, Madrid, Navarre and Valencia. The law in Murcia sets the limit at 30%. The law in Castilla-La Mancha sets the limit at one-third of the permanent owner-workers.

[21] Cooperatives Act of Cantabria.

[22] The law of Castilla-León does not guarantee this, but merely establishes a preference.

Cooperative law usually requires that they must be permanent salaried employees[23] who have been working for the WC for more than one year[24]. On numerous occasions, it exempts these persons from the trial period required to attain the status of permanent worker-owner[25]. These guarantees in favour of the conversion of salaried employees deserve to be valued positively. Although they were previously permanent employees, their transformation into worker-owners will bring about a rise in cooperative employment and a proportional decline in salaried employment.

Salaried employment in WCs should be eliminated or reduced to the maximum, so that all or the vast majority of workers are worker-owners. Why? Because cooperative law is a legal field adapted to the characteristics of WCs and opposed to what occurs in labour law, applicable to salaried employees, which responds to the logic of the conflict between capital and labour[26]. Salaried employees are hired by WCs under the legal system of labour law, with the quantitative limits we have observed above in section 2.2.

Therefore, we must turn to labour law to consider the dilemma between permanent and temporary salaried employees. At this point, it is obvious that, despite it being "the function of labour law to achieve objectives of stability in employment" (CASAS, 2012, 9), this has not been true for some time.

The deterioration of labour law, with special mention of the incisive labour reform of 2012, shows us that, despite it being "the function of labour law to establish the legal framework for the protection of jobs and workers" (CASAS, 2012, 9), "decrease in the protection of the weak contracting party in the field of labour law" is very clear (CRUZ, 2012, 49)[27].

This situation arises from a public policy that deliberately, though not explicitly, engages in "the search for productivity and competitiveness only in the reduction of rights and labour costs ... and not in quality" (CASAS, 2012, 10). Although formally speaking, the temporary hiring of salaried workers must have a motive, reality is stubborn and shows us – according to the latest information available – that, of the new contracts concluded, a mere 9.3% are permanent[28]. This leads us to conclude that we are witnessing a phenomenon in which "the temporary hiring of workers, by its non-causal use, has subverted its objectives" (CASAS, 2012, 6-7).

So, since the fatal decision to install a system of non-causal temporary hiring in 1984, which the law subsequently attempted to correct without success, "temporary hiring has been a structural problem of our labour market" (CASAS, 2012, 1). Without a doubt, this is borne out by the latest information provided by Eurostat, which shows, as a 2017 average, a temporary hiring rate of 22.4% in Spain as opposed to an average of 12.2% in EU-28, only surpassed by the Montenegro labour market with 24%. The explanation for this is to be found, above all, in massive fraud, particularly in the case of hiring for specific services, often used for situations of indefinite employment.

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[23] We find an exception in the law of Galicia, which does not expressly state that they must be permanent and only makes reference to *salaried employees.*

[24] One year in the laws of Andalusia, the Basque Country, Extremadura and Navarre; two years in the laws of Aragón, Castilla and León, Galicia and Madrid; three years in the laws of the Balearic Islands and Castilla-La Mancha; five in the law of La Rioja.

[25] This is the case of the cooperative laws of the Balearic Islands, Castilla-La Mancha, the Basque Country, Extremadura, Galicia, La Rioja, Madrid and Navarre.

[26] As we have remarked above in Section 2.2.

[27] As to the ever-present critical tenor of labour authors regarding successive labour reforms, always with a view to reducing the protection of workers, we make special mention of BAYLOS (2013); CASAS (2012); CRUZ (2012); PALOMEQUE (2013); SALA (2013); and VALDÉS (2013).

[28] Data of June 2018: 2,055,762 new contracts, of which only 192,972 were permanent (www.sepe.es).

In this situation where labour law allows for temporary hiring with much greater flexibility than that deriving from its very nature, what can be expected from WCs using the temporary hiring of employees is a moderate and strict use of this legal possibility, if they really intend to prove they practice policies to achieve quality in working conditions and employment stability.

3.2.2 Impact of the crisis on employment and stability

When crisis hits a WC or, to express it in labour law terms literally adopted by cooperative law, when there are difficulties arising from economic, technical, organizational, or production-related causes or force majeure, it will require a smaller workforce. In these situations, both cooperative and labour law take measures to suspend or terminate the relationships binding the WC and the workers it employs. When WCs must face the aforementioned economic, technical, organizational, or production-related causes or force majeure[29]cooperative laws establish that the General Assembly of the WC can take measures to suspend or terminate labour relations.

None of the cooperative laws – neither Spanish law nor autonomous laws – develop the concept of these four factors (COSTAS, 2013, 1249). It was thanks to Article 51 of the Workers' Statute and the jurisprudence and doctrine of labour law that the aforementioned concepts were developed. In this particular aspect, the law on cooperatives must follow that development of labour law (VILA, 2014, 152).

As we have stressed in the introduction to this study, employment, not market profit, is the fundamental purpose of the WC. Therefore, when the aforementioned factors exert pressure on cooperative employment, it is to be expected that the WC should always endeavour to adopt measures of internal flexibility, relegating the termination of cooperative employment to the condition of *ultima ratio*. In effect, this desirable WC modus operandi should also be observable in the field of salaried employment (VILA, 2014, 154). Thus, WC Assemblies often reach agreements on increasing working hours, reducing compensation, and, in general, worsening working conditions as a necessary sacrifice to preserve employment.

A harsh measure, albeit qualitatively different from termination, is temporary work suspension of the worker-owner. Thus, cooperative law contemplates suspension as a way of confronting the same circumstances (economic, technical, organizational, or production-related causes or force majeure) possibly leading to termination of employment[30]. Although the causes leading to both temporary suspension and termination of work are the same, attention must be paid to the severity of the cause as the key to choosing termination over suspension. In some cases, to allow for mere suspension, it is even required for the situation to jeopardise the business feasibility of the WC[31].

Cooperative legislation stresses the requirement that worker-owner job terminations (equivalent to dismissals) should be considered an unavoidable evil only with a view to preserving the continuity of the WCs themselves (COSTAS, 2013, 1249-1250; VILA, 2014, 155). Cooperative law attributes the adoption of resolutions to terminate the jobs of worker-owners to the WC General Assembly only when

[29] The Cooperatives Act of Aragón adds company succession to the causes.
[30] Particularly in Spanish law and in the laws of Aragón, Asturias, the Balearic Islands, Castilla-La Mancha, Castilla and León, Catalonia, the Basque Country, Extremadura, Galicia, La Rioja, and Murcia.
[31] The laws of Aragón and Murcia. In the law of Catalonia, these must be causes that substantially affect the proper operation of the cooperative.

this is a measure necessary to maintain the business feasibility of the cooperative itself[32]. In two cases, the legal regime is, we believe, quite rightly accentuated when referring to the severity of the aforementioned economic, technical, organizational, or production-related causes or force majeure[33].

When termination occurs, both relationships of the worker-owner are terminated: the corporate relationship and the labour relationship. As far as salaried employees are concerned, labour law allows WCs to resort to various internal flexibility measures, such as geographic mobility, functional mobility, substantial modification of working conditions (including wage cuts), non-application of the collective bargaining agreement, reduction of working hours, and temporary work suspensions.

What happens is that labour law does not guarantee that those measures alternative to dismissal should be applied preferentially, such that dismissal is the last means resorted to. This is why, to deal with economic, technical, organizational or production-related causes or force majeure, WCs are able to opt freely between modifying working conditions or dismissal. Furthermore, dismissal itself has been made easier[34] and cheaper[35] by the Labour Reform of 2012.

Jurisprudence corroborates the trivialization of dismissals and of the principle of stability in employment brought about by the current labour law. STS dated 20th September 2013 affirms that, in accordance with the law in force, it is not for the national courts to evaluate the causes of economic dismissals or test for proportionality in technical/legal terms, which entails appraising the absolute necessity of the decision taken, but rather, they pass more limited judgments as to the existence of the cause or alleged causes, their belonging to the legal type described in Article 51 of the Workers' Statute, and the suitability of the alleged cause in terms of business management, with a view to justifying the dismissals resolved.

3.3 The quality of working conditions

Above, we have seen the heterogeneity of cooperative laws regarding the working conditions of worker-owners with respect to the inclusion or non-inclusion of guarantees originating from labour law (Section 2.1). When the option taken is for WC self-management, there is a risk of permitting situations of self-exploitation with regard to working conditions (GARCÍA, 2014, 107-108; MOLINA, 2014, 56).

It seems excessive to suggest it is essential that the worker-owner should respect the labour law system en bloc. So, where is the insurmountable barrier that the working conditions of the worker-owners can not cross? We understand that we must look for it in the standards established by the ILO, particularly, with respect to the concept of "decent work" (GARCÍA, 2014, 116).

In that regard, we fully coincide with the standpoint of the ILO itself, along the lines of: (a) promoting the application of the core labour standards of the ILO and of the ILO Declaration on fundamental principles and rights at work for all workers of cooperatives without any distinction whatsoever; and (b) ensuring that cooperatives cannot be created or used to evade labour laws or to establish employment relationships in disguise, and fighting against pseudo-cooperatives that violate

[32] An element covered in most cooperative laws: Spanish law and the laws of Andalusia, Aragón, Asturias, the Balearic Islands, Cantabria, Castilla-La Mancha, Castilla and León, Catalonia, the Basque Country, Extremadura, La Rioja, Madrid and Murcia. The laws of Galicia, Navarre and Valencia remain silent on WC feasibility risks.

[33] The laws of Euskadi and Extremadura.

[34] On eliminating the historical requirement for administrative authorization for collective dismissals.

[35] The amount of the indemnity for wrongful dismissal was reduced from 45 to 33 days of wages per year in service.

workers' rights by ensuring that labour legislation is applied in all companies[36] (Recommendation 193/2000 ILO).

4.- Conclusions

When we study the subject of employment in workers' cooperatives, we must consider the paramount importance of the fact that we are dealing with companies whose existence is motivated precisely by their founding purpose of providing the worker-owners who incorporate them with employment. Employment in WCs revolves around the peculiar legal status of worker-owners. The relationship between these persons and their WC is corporate and the obligation to supply work arises from the corporate contract of each worker-owner. So, what we have are people with the dual status of joint owners of the WC on the basis of their capital contribution, while being workers in it.

The duration of the corporate and labour relationship is normally indefinite, but there may be temporary worker-owners. For the sake of the WC itself, and in order to assert its strength, the existence of temporary workers should only be permitted in the case of causes that justify such temporary nature, a condition required by few autonomous laws, with most laws being satisfied with establishing quantitative limits in proportion to permanent labour in cooperatives.

In the event of crisis motivated by economic, technical, organizational or production-related causes or force majeure leading to a workload reduction in a WC, it would be appropriate to attempt to overcome the situation by adopting internal flexibility measures, such as increased working hours, a reduction in pay, temporary work suspension, and so forth.

Cooperative laws very aptly take up the idea that terminating the jobs of worker-owners, equivalent to dismissal, is only valid when the situation is as serious as to regard the measure as necessary to maintaining the feasibility of the cooperative enterprise. Apart from cooperative employment represented by the worker-owners, WCs can hire salaried employees whose labour relationship is governed by labour law. In those cases, the WC acts as a conventional company that hires employees. Salaried employment, the legal regulation for which arises from the sphere of the capital-labour conflict, undermines the nature of WCs, based as they are on the collective commitment of worker-owners.

Should the WC need personnel other than its permanent worker-owners, it can resort to temporary worker-owners. If it hires salaried employees, it enters the field of labour law, which in principle is alien to cooperative law, with the dysfunctions this may entail, bearing in mind that the contemporary evolution of labour law shows a systematic and progressive reduction in workers' rights. In any event, it is reasonable to expect that WCs will not act in the manner of less scrupulous companies, hiring temporary salaried employees under precarious conditions or proceeding to arbitrary dismissals without just cause.

As regards the quality of cooperative employment and the working conditions of worker-owners, cooperative laws are very heterogeneous, ranging from pure self-management to the application of labour law to the worker-owners. Self-management can entail self-exploitation. In terms of inalienable minimum thresholds, ILO's concept of decent work, which revolves around common standards of reference in given contexts, could prove very appropriate.

Cooperative law must be very vigilant in fighting the authentic risk of pseudo-cooperatives. This is a phenomenon we may observe when a principal capitalist company creates a fictitious cooperative it

[36] I agree with application of labour legislation to salaried employees, subject to respect for self-management with regard to worker-owners.

subcontracts at very low labour costs to the detriment of its worker-owners, legally but fraudulently covered by cooperative self-management.

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LEGISLATIVE APPENDIX: COOPERATIVE LAWS

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