EMPLOYMENT IN WORKER COOPERATIVES

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SUMMARY: 1.- Employment as the founding purpose of the worker cooperatives. 2.- Types of employees in the worker cooperatives. 3.- The quality of employment in the worker cooperatives 4.- Conclusions. 5.- Bibliography 6.- Legislative appendix

The workers have been restored with their dignity as free men... the joy of working is possible, strengthening the love for a job well done, which for the cooperative is the greatest chance of success

Lasserre, G. (1972), *El cooperativismo*, (translation García-Jacas, J.), Barcelona, Oikos-tau, p. 68.

1. Employment as the founding purpose of worker cooperatives

The worker cooperatives (henceforth, WC), are those whose founding purpose is to provide work for the present and future worker-members that constitute them[1].

While other types of cooperatives are created to meet needs concerned with housing, consumption, education and others, the aim of the WC is to achieve the self-employment of the people who give them life.

Therefore, we are dealing with companies that associate people and, in the case of the WC, the aim of this association is to achieve paid employment for them, which is why they are referred to as worker-members. So, "it is precisely work that is associated (not capitals, although the members also provide capital)" (GARCÍA, 2014, 115).

It must be pointed out, therefore, that the WC are woven around the nucleus of work association, where the capital provided by the worker-members is an instrumental element. On the other hand, capital companies (limited liability companies and public companies), as their very name indicates, associate capitals, and the paid employment which is contracted turns out to be instrumental to the aim of achieving the profitability of the capital that constitutes the society.

That essential significance of employment in the WC is reflected in their strategic decisions, so that the priority is to uphold employment. In that regard, in the present context of economic globalisation, it should be noted that, by their very nature, the WC do not relocate, as that would go against local employment, which is precisely their fundamental purpose[2]. What is quite different is expansive multi-location and not relocation of large cooperative groups, particularly the Mondragón Group, MCC.

Furthermore, this study will endeavour to provide an overall view of the legal positive system of the WC, bearing in mind the sixteen cooperative laws of the Autonomous Communities (all except the Canary Isles), as well as state law.

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[1] *The worker cooperatives are those whose aim it is to provide their members with jobs, by means of their personal, direct effort, part time or full time, through the joint organisation of the production of goods or services for third parties* (art. 80.1 State Law governing Cooperatives).

[2] The WC "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).

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As far as the regulations of the WC 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).

2. Types of employees in the worker cooperatives

An elementary classification of the types of employees leads us to make a distinction between paid employment and self-employment. Paid employment can be private - wage earners with an employment contract; or public - employment provided under the dependence on and on behalf of a public administration. For its part, self-employment can be individual, which is the case of the self-employed, or associated through a partnership agreement and therefore collective (GAY/ BENGOETXEA, 2008, 485-486).

The worker cooperatives (WC) fall into this last category of collective self-employment generated from a partnership agreement.

When focusing on those employed in the WC, we must distinguish between cooperative employment and paid employment. Thus, the genuine employees of the WC are the worker-members who constitute the company itself. Furthermore, the cooperative can operate as a normal conventional company and hire salaried staff[3].

2. 1 Worker-members

These are the persons who have the dual status of members and workers. Members because they hold a partnership agreement which gives life to the WC and workers because they are obliged by that contract to provide their services for the cooperative that they have constituted. Of course, this is a “complex legal situation” (MONEREO, 2014, 18).

[3]A circumstance derived from the fact that cooperative legislation does not forbid the hiring of employed workers backed up in detail by art. 1.2 of the Workers' Statute (Royal Legislative Decree 1/1995, of the 24th March): *entrepreneurs are those who are natural or legal persons or communities of property that receive the provision of services* involving notes for working days (volunteerism, dependence, employment by another and remuneration).

This complex condition has given rise to an in-depth debate on scientific doctrine and, to a lesser extent, on jurisprudence, regarding the corporate, labour-related, or mixed nature of the legal link that binds the worker-members to the WC.

At present, the debate seems to be settled by the categorical assertion in positive law that *the relationship of the worker-members with the cooperative is corporate* (art. 80 cooperative State Law). On occasions, in autonomous legislation, the corporate nature of the link between the WC and the worker-member4 is particularly emphasised, while the remaining autonomous laws remain silent, so they do not deny the corporate nature nor do they establish the working patterns of this relationship5..

Jurisprudence also seems to have settled the issue. So, we can read that "the worker-members of the Worker Cooperatives are basically members, as what links them to the Cooperative is a genuine civil contract but this corporate relationship is influenced by the fact that, as they are not capitalist societies their relationship with the entity of which they are members has strong labour-related connotations. These points of industrial activity are what have made the Spanish legislator, in successive laws, assign jurisdiction to the Labour Courts and Tribunals in order to be aware of the contentious issues that arise between the Worker Cooperatives and the worker-members in this facet. Nevertheless… what is certain is that the obligational relationship between cooperative members and the company has a corporate nature, and any labour-related nature must be discarded, not even as being concurrent with the aforementioned corporate nature" (STSJ Catalonia 29th July, 2010)6.

4. Laws governing cooperatives in Andalusia, Aragón, Asturias, Cantabria, Castilla and León, Galicia, La Rioja, Madrid, Murcia and Valencia.
5. Cases in the Balearic Isles, Castilla- La Mancha, Catalonia, The Basque Country, Extremadura, Navarre.
6. The Supreme Court has set the standard in this regard in the SSTS of the 23rd October, 2009; 13th July, 2009; 12th April, 2006;15th November, 2005.

In any event, the doctrinal debate revolves around the working patterns or not of the relationship. The employment relationship between the worker-members and the WC is discussed in the sense that it should be understood that they do not work for themselves but for the WC. However, as the worker-members are joint owners of the company, although only in part, the relationship of being employed by another will never be complete and therefore we understand that it does not exist, at least in its full capacity. Subordination is another element that is also discussed. It is true that in large cooperatives, work is not on a self-employed basis but dependent or subordinate to the instructions issued by the WC. But in the small WC such dependence does not exist[7].

Without denying the scientific interest of the question, it would appear that the clear establishment of the corporate nature of the relationship, on the part of positive law, entails a loss of interest in that once fierce debate[8].

Therefore, by virtue of the corporate nature of the link that binds them to their WC, the cooperative corporation law will be applicable to the worker-members, based on the law on cooperatives which is applicable and developed as internal rules of procedure of the WC through the statutes, internal regulations and resolutions of the General Assembly.

If we take into consideration that indisputable application of cooperative law and not labour law, there are occasions when cooperative legislation itself resorts to the right to work, requesting its collaboration. In this matter, as far as the influence of labour law on the labour conditions of the worker-members is concerned, cooperative legislation offers divergent models.

Thus, we can find the full self-management model of the WC themselves without establishing any guarantee stemming from labour law, so the working conditions will be established in the internal cooperative rules of procedure and it will be necessary to refer to the statutes, internal regime regulations and agreements reached at the General Assembly9.

[7]There are cases such as Aragón, Cantabria, The Basque Country or Valencia, in which the WC is admitted with only two worker members.

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

[9]We find that extreme position in the law governing the cooperatives of Navarre.

At the other extreme, we find the full application of labour rights guaranteed by law to the worker-members 10.. And between the extremes we can find a variety of regulations that guarantee certain labour rights regarding various aspects such as the national minimum wage, the working day, breaks, fiestas, holidays, suspensions, leaves of absence or transfer of business.

On the jurisdictional side, the legislator has clearly opted to provide the labour courts with knowledge of the disputes arising between the worker-members and their WC regarding the supply of labour[11].

2.2 Wage earners

The WC can hire wage earners, by means of work contracts so that, in those cases the ordinary and full application of labour law will be implemented. With the nuance that, on occasions, attention will have to be paid to the specific provisions of cooperative legislation with respect to wage earners.

We share the categorical assertion, denying the fundamental premise, that, when we study the WC and, depending on its very nature, "it is not logical to hire wage earners" (ALONSO, 1984, 540).

As the WC is a peculiar company that unites employment and cooperative values, its responsibility is to employ worker-members, joint owners of the company they work in, with a democratic management model. When an WC hires wage earners, it becomes fully immersed in the right to work and, consequently, in a body of standards established around the logic of the conflict between capital and labour.

[10] This is the case of the Law governing the cooperatives in Extremadura, which in art. 115. 1 stipulates that *the legal working regime of the worker members shall be that established in the State laws and regulations which regulate the employment relationship arising from the employment contract.*

[11] Art. 2 c) of Law 36/2011, of the 10th October, governing Social Jurisdiction

In any event, all cooperative laws allow the recruitment of employees on the part of the WC, although always subject to quantitative limits, so that limits are set in proportion to the amount of cooperative employment.

Thus, we are presented with a range that goes from the hiring of workers at a maximum of 25% of the hours worked per year by the worker members (in the Basque Country) to 60% (in Cantabria)[12].

3. The quality of employment in the Worker Cooperatives

It is systematically insisted that the WC offer stable quality jobs. The Social Economy Law itself situates *the generation of stable quality jobs13.* among the main guides for social economy entities, among which the cooperatives stand out. In this section, we shall endeavour to analyse the truth behind this statement.

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 Organisation (ILO), Juan Somavía, in 1999, precisely under the title of "decent work".

[12]The vast majority of the autonomous laws establish a limit of 30% of hours per year as in the State law. This is the case of Asturias, the Balearic Isles, 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 indefinite duration, calculated with respect to the total number of worker members except cooperatives that have under ten members and in which there can be a worker hired in the aforementioned terms.*

[13] Art. 4 c) of Law 5/2011, of the 29th March, of Social Economy.

It should be pointed out that[14], from a terminological perspective, the original English phrase, *decent work*, refers to an acceptable job in accordance with the common standards of reference. Thus, the correctness of its translation into Spanish as "decent work" is certainly arguable, as it lacks moral connotations which the original English expression does not contain. Therefore, it seems that its translation as "dignified work" would have been more accurate (GIL, 2012, 78 and the following pages).

So, decent work is a concept that is closely related to job quality, social justice and, ultimately, "decent work 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 event, we find ourselves before an undefined legal concept, a clear manifestation of *soft law*, which does not appear in the more solemn declarations of the ILO, as does its Constitution (1919), or the Declaration of Philadelphia (1944) (AUVERGNON, 2012, 123), although it does so in the more recent Global Job Pacts (1999) and the Declaration on Social Justice for a Fair Globalisation (2008).

This soft-law feature brings "decent work" closer to the ethical world, in the same proportion as it distances it from the legal environment, which leads one to the evaluation, together with its virtuality as an international standard, of its weakness (SERVAIS, 2012).

In any event, it is obvious that if the WC wish to maintain the aura of quality employment, they must overcome the ILO's "decent work" test. In this regard, the ILO Recommendation 193 aptly links decent work with cooperative work[15].

3.2 Stability in employment

Stability is often highlighted as a principal indicator of quality in work. It is a question of a principle that is spawned by labour law, the genuine "backbone of the right to work" (BELTRAN DE HEREDIA, 2011). So, the right to work distances itself considerably from the *ius civile* liberal

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

[15]Recommendation 193, regarding the promotion of cooperatives (2000).

principles, from which it emancipated itself, on protecting the worker by impeding non-causal temporary employment and free dismissal or dismissal *ad nutum*.

If we examine the Spanish Constitution, we will observe that the principle of stability in employment is covered in the right to work provided for in article 35.1. At the same time, it appears to clash with the freedom of enterprise established in article 38.1 of the same text. The cohabitation of both principles, in the words of the maximum interpreter of the Constitution, arises in such a way that “both constitutional demands and international commitments establish the general principle of legal limitation on dismissal, as well as respecting the substantive and formal requirements with the aim of making dismissal legal. This does not mean that, as a corporate power, the authority to dismiss does not form part of the powers conceded by legislation to the entrepreneur for the management of his company and that, consequently, its regulation does not need to take into account the requirements derived from the constitutional recognition of the freedom of enterprise and of the safeguarding of productivity, but what is very clear is that this freedom of enterprise does not include absolute contractual freedom nor a principle of freedom to dismiss ad nutum, given the requisite concordance that must be established between articles 35.1 and 38 CE and, above all, the principle of social and democratic rule of law. It must be borne in mind that since our STC 22/1981, of July 2nd, Fi 8, we have pointed out that, from an individual perspective, the right to work (art. 35.1 CE) takes concrete form in "the right to stability and continuity of employment, that is, in the right not to be dismissed without just cause" (STC 192/2003 F.J.4).

Leaving the right to work, the cradle of stability in employment, on one side and analysing this principle from the perspective of the WC, it would appear to be obvious that it is a principle inherent in its own nature, as the WC 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 organisation that makes it possible” (JORDAN, 2002, 40).

3.2.1 Access to employment and stability

This section endeavours to analyse stability in employment of worker members and wage earners respectively from the perspective of their means of access to employment.

3.2.1.1 Access to employment of worker members

As far as cooperative employment is concerned, access to the condition of worker member can lead to the situation of permanent or temporary worker-member.

In principle, cooperative legislation proposes as a natural formula the condition of worker member with a fixed or indefinite contract, as would be expected in a model of employment that boasts stability, but the door is opened to temporary worker members.

In order to reinforce the principle of stability in employment, the admission of temporary worker members should be causal. This is what occurs in only three cooperative regulations, which require the concurrence of a cause of temporary increase in the workload of the cooperative, with a minimum time dimension of 6 months[16]..

On the other hand, we find the legal regime of the non-causal incorporation of temporary worker members into the cooperative allowed by the rest of the cooperative regulations objectionable[17]. When that door is opened, there is a risk that the principle of stability may fly out of the window, on allowing for non-causal incorporation into the WC, although quantitatively limited, of worker members with a corporate relationship of a certain duration[18]. There is even a case in which there is neither causality nor a quantitative limit[19]..

3.2.1.2 The Access of wage earners to the condition of worker members

Most cooperative laws establish a regime that guarantees[20], the wage earners of the WC the right to attain the condition of worker members.

Cooperative law usually requires that those who have occupied a post for more than one

[16]The case of the laws governing cooperatives in Andalusia, Asturias and La Rioja.

[17]A situation which, in the specific regulation of the WC, we can find in the law of Castilla and León, the Basque Country and Murcia. In the rest of the autonomous laws, the non-causality of temporary members is deduced from the members' common system in all types of cooperatives.

[18]Most laws establish that temporary members may not constitute more than a fifth of the permanent worker members. This is the case in State laws and the laws of Aragón, the Basque Country, Castilla La-Mancha, Extremadura, Madrid, Navarre and Valencia. The Law in Murcia sets the limit at30%.

[19]The law governing cooperatives in Cantabria.

[20]The law in Castilla León does not guarantee but merely establishes a preference.

year[21], should be regarded as permanent[22] wage earners and, on numerous occasions, it exempts these persons from the trial period[23] needed to attain the condition of permanent worker member.

These guarantees which are in favour of wage earners deserve to be valued positively. Although they were previously regarded as permanent employees, their conversion to worker members will entail a rise in cooperative employment and a proportional decline in wage employment, the presence in the WC of which must be eliminated or reduced to the maximum so that all or the vast majority of those employed are recognised as being worker members. The staff to whom the law governing cooperatives will be applied, legal ground adapted to the characteristics of the WC, as opposed to what occurs with labour law, applicable to wage earners, which responds to the logic of the conflict between capital and labour[24]..

3.2.1.3 The Access of wage earners to employment

Wage earners are hired by the WC under the legal regime of labour law, with the quantitative limits we have observed above in section 2.2.

Therefore, we must turn to the right to work to consider the disjunctive between the permanent and temporary recruitment of wage earners. At this point, it is obvious that, despite the fact that "it is the function of the labour law to achieve objectives of stability in employment" (CASAS, 2012, 9), this has not been the case for some time.

Of course, the drift from the right to work, where special mention must be made of the incisive labour reform of 2012, shows us that, despite the fact that "it is the function of the labour law to establish the legal framework for the protection of jobs and workers" (CASAS, 2012, 9), a

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

[22] We find an exception in the Law in Galicia, which does not expressly state that the worker members must be permanent and it only makes reference to the *salaried personnel*.
23 This is the case of the cooperative laws in the Balearic Isles; Castilla La-Mancha, the Basque Country, Extremadura,

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

[24]As we have commented above in section 2.2.

"decrease in the tutelage of the weak contracting party in the field of the right to work" is very clear (CRUZ, 2012, 49)[25]

The situation arises, in the context of the present economic recession and unemployment situation, from a public policy that deliberately though not explicitly seeks "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 workers must be causal, reality is stubborn and it shows us, according to the latest information available, that, of the new contracts concluded, a mere 6.4% [26] are permanent. This leads us to conclude that we are facing a phenomenon: "the temporary hiring of workers, which in its non-causal use, has subverted its objectives" (CASAS, 2012, 6-7).

So, from the negative decision to install a system of non-causal temporary recruitment, in 1984, which it was subsequently intended to timidly correct but without success, "temporary recruitment is a structural problem of our labour market" (CASAS, 2012, 1). Without any doubt, this is borne out by the latest information provided by Eurostat, which shows, as an average in 2013, a temporary recruitment of 23.1% in the Spanish State as opposed to an average of 13.8% in the EU-28, only surpassed by the Polish labour market with 26.9%.

The explanation is to be found above all in a massive fraud, particularly in the case of hiring for a particular job or service, often used for indefinite employment requirements.

In the face of this situation, where the right to work allows for temporary recruitment with much greater flexibility than that derived from its very nature, what can be expected is a

[25]In the ever-present critical tone of the ius laboris doctrine regarding the successive labour reforms, always with a view to reducing the protection of workers, we can make special mention of BAYLOS (2013); CASAS (2012); CRUZ (2012); PALOMEQUE (2013); SALA (2013); and VALDÉS (2013).

[26]Data from August 2014, 1,135,109 newly concluded employment contracts of which only 72,955 were permanent (www.sepe.es).

containment on the part of the WC when it comes to hiring temporary salaried employees, if they intend to show themselves as best practice companies with respect to quality and stability of employment.

3.2.2 The crisis regarding employment and stability

When an WC finds itself in crisis or, to express it in *ius laboris* terms, literally adopted by cooperative law in the face of difficulties arising from *economic, technical, organisational, or production-related causes,* it will see its need for a workforce impaired. In these situations, the law, both cooperative and labour, takes measures to suspend and terminate the relationship which unites the WC with the people it employs.

3.2.2.1 The crisis regarding cooperative employment

Cooperative law, in the case of the aforementioned economic, technical, organisational or productivity-related motives, foresees the adoption on the part of the General Assembly of the WC of measures taken regarding the suspension or termination of employment.

None of the autonomous cooperative laws nor the state law develop the concept of those four elements (COSTAS, 2013, 1249). It was thanks to Article 51 of the Statute of Workers Rights, and the jurisprudence and the doctrine of the right to work, that the aforementioned concepts were developed. And, in this particular aspect, the law on cooperatives must endorse that *ius laboris* construction (VILA, 2014, 152).

As we have stressed at the beginning of this study (section 1), employment is the fundamental purpose of the WC and not market profits. Therefore, when the aforementioned causes 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 fact, this desirable *modus operandi* of the WC

should also be observed in the field of paid employment. (VILA, 2014, 154).

Thus, the Assemblies of the WC often reach agreements on the increase in working hours, the reduction in remuneration, and in general a worsening of working conditions as a necessary sacrifice to conserve employment.

A harsh measure but qualitatively different from termination is the temporary suspension from work of the cooperative employee. Thus, the regulation of cooperatives foresees the aforementioned measure when the same circumstances present themselves (economic, technical, organisational or productivity-related) and give rise to the obligatory abstention from work of the worker members (termination of employment)[27]. Although the causes are the same as those which entail both temporary suspension and obligatory abstention from work, attention must be paid to the seriousness of the cause with a view to choosing one option or another. In some cases, in order to allow suspension, it is even required that the situation should jeopardise the business viability of the WC[28].

Cooperative legislation stresses the requirement that the obligatory abstention from work of the worker members (equivalent to dismissals), should only be regarded as an unavoidable evil with a view to preserving the continuity of the WC themselves (COSTAS, 2013, 1249-1250; VILA, 2014, 155).

Thus, the law governing cooperatives conditions the adoption of resolutions of obligatory abstention from work of worker members, on the part of the General Assembly of the WC and makes the measure necessary to maintain the business viability of the cooperative itself[29] In two cases, and we believe quite rightly, the legal regime is accentuated when referring to the seriousness

[27]Particularly the State Laws and those of Aragón, Asturias, the Balearic Isles, Castilla La-Mancha, Castilla and León, Catalonia, the Basque Country, Extremadura, Galicia, La Rioja, and Murcia.

[28]The Laws of Aragón and Murcia. In the case of the Law in Catalonia, they must be causes that have a *substantial effect on the good working order of the cooperative*.

[29]An element which is covered in most cooperative rules and regulations: the State law governing cooperatives and the autonomous laws of Andalusia, Aragón, Asturias, The Balearic Isles, 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 over the viability risk of the WC.

of the aforementioned economic, organisational, technical or productivity-related causesa[30].

With regard to the abstention from work, the worker member sees that both relationships are terminated, the corporate one and that of employment.

3.2.2.2 The crisis regarding paid employment

As far as wage earners are concerned, the right to work allows the WC to resort to various internal flexibility measures, such as geographic mobility, functional mobility, a substantial modification of working conditions (which includes wage cuts), non-application of the collective agreement, the reduction of working hours and suspension of employment relationships.

What happens is that the labour law does not guarantee that those alternative measures to dismissal should be applied preferentially, so such law should be the means last to be resorted to, so that, in the face of enabling economic, technical, organisational or productivity-related causes, the WC could opt freely between the modification of working conditions or dismissal. Furthermore, dismissal itself has been made easier31 and cheaper32 by the Labour Reform of 2012.

Jurisprudence corroborates the trivialisation of dismissals and of the principle of stability in employment brought about by the contemporary labour law: "in accordance with the law in force, it is not for the national courts to evaluate the causes of economic redundancies or carry out a test of proportionality in technical/legal terms, which entails an appraisal of the absolute necessity of the decision taken, but to pass a more limited judgement as to the existence of the cause or the alleged causes, its belonging to the legal type described in article 51 ET and the suitability of the alleged cause in terms of business management with a view to justifying the agreed dismissals" (STS of the 20th September, 2013).

3.3 The quality of working conditions

[30]An element which is covered in most cooperative rules and regulations: the State law governing cooperatives and the autonomous laws of Andalusia, Aragón, Asturias, The Balearic Isles, 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 over the viability risk of the WC.

[31]On eliminating the historic requirement for administrative authorisation for collective redundancies.

[32]So that the amount of the indemnity for wrongful dismissal should be reduced from 45 to 33 days of wages per year worked.

Leaving the specific question of employment on one side, it is necessary to make a brief comment on the quality of working conditions in the WC.

Above, we have seen the heterogeneity of the cooperative rules and regulations regarding the working arrangements of the cooperative members, with respect to incorporation of guarantees originating from the labour law (section 2.1).

When the option taken is for the self-management of the WC, regarding working conditions, there is a risk of permitting situations of self-exploitation (GARCÍA, 2014, 107-108; MOLINA, 2014, 56).

It seems excessive to suggest that it is essential that the worker members should respect the labour law regime en bloc. So, where is the insurmountable barrier? 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 regarding the fundamental principles and rights at work to all the workers of the cooperatives without any distinction whatsoever; (b) ensure that cooperatives cannot be created or used to evade labour laws or to establish disguised employment relationships, and fight against the pseudo-cooperatives that violate workers' rights ensuring that labour legislation is applied in all companies* (Recommendation 193/2000 ILO).

4. Conclusions

When we study the subject of employment in the worker cooperatives, we must take into account the paramount importance of the fact that we are in the presence of companies whose existence is motivated precisely by their founding purpose of providing the worker members who constitute them with employment.

Employment in the WC revolves around the peculiar legal status of worker-members. The relationship between these persons and their WC is corporate and the obligation to supply work arises from the corporate contract of each worker member. So, what we have are people with the dual condition of joint owners of the WC, on the basis of their capital injection, and, at the same

time workers in it.

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

In the event of negative, economic, technical, organisational or productivity-related causes which reduce the workload in an WC, it would be appropriate to endeavour to overcome the situation through the adoption of internal flexibility such as the increase in working hours, a reduction in remuneration, temporary suspension from work, etc. The cooperative laws very aptly take up the idea that the obligatory abstention from work of worker members, equivalent to dismissal, is only valid when the situation is so serious that the measure is regarded as being necessary to maintain the viability of the cooperative enterprise.

Apart from cooperative employment, reflected in the worker members, the WC can hire salaried personnel whose employment relationship regulates the right to work. In those cases, the WC acts in legal transactions as a conventional company that hires employees.

Paid employment, whose legal regulation is to be found in the sphere of the conflict between capital and labour, undermines the nature of the WC based on the collective commitment of the worker members.

If the WC need personnel other than the permanent worker members, they can resort to temporary worker members. If they take on salaried personnel, they enter a terrain, the right to work, which in principle is alien to the law on cooperatives with the dysfunctions it may entail bearing in mind that the contemporary drift of the right to work shows a systematic and progressive reduction in workers' rights.

In any event, it is reasonable to expect that the WC will not act in the style of less scrupulous companies and hire temporary wage earners in precarious conditions or proceed to free dismissal and indemnity of workers.

As far as the quality of cooperative employment is concerned and the conditions regarding

the work provided by the worker members, the cooperative rules and regulations are very heterogeneous and they range from pure self-management to the application of the right to work to the worker members, in principle, alien to the law governing cooperatives, to which some cooperative laws refer.

Self-management can entail self-exploitation and in terms of an inalienable minimum threshold, ILO's idea of “decent work”, which revolves around the common standards of reference in a given context, could prove very appropriate.

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LEGISLATIVE APPENDIX: LAWS GOVERNING COOPERATIVES

State Law governing cooperatives, Law 27/1999, of the 16th July.

Law governing cooperatives in Andalusia, Law 14/2011, of the 23rd December.

Law governing cooperatives in Aragón, Law 9/1998, of the 22nd December.

Law governing cooperatives in Asturias, Law 4/2010, of the 29th June.

Law governing cooperatives in the Balearic Islands, Law 1/2003, of the 20th March.

Law governing cooperatives in Cantabria, Law 6/2013, of the 6th November.

Law governing cooperatives in Castilla La-Mancha, Law 20/2002, of the 14th November.

Law governing cooperatives in Castilla and León, Law 4/2002, of the 11th April.

Law governing cooperatives in Catalonia, Law 18/2002, of the 5th July.

Law governing cooperatives in the Basque Country, Law 4/1993, of the 24th June.

Law governing cooperatives in Extremadura, Law 2/1998, of the 26th March.

Law governing cooperatives in Galicia, Law 5/1998, of the 18th December.

Law governing cooperatives in La Rioja, Law 4/2001, of the 2nd July.

Law governing cooperatives in Madrid, Law 4/1999, of the 30th March.

Law governing cooperatives in Murcia, Law 8/2006, of the 16th November.

Law governing cooperatives in Navarre, Law 14/2006, of the 11th December.

Law governing cooperatives inValencia, Law 8/2003, of the 24th March.

1 *The worker cooperatives are those whose aim it is to provide their members with jobs, by means of their personal, direct effort, part time or full time, through the joint organisation of the production of goods or services for third parties* (art. 80.1 State Law governing Cooperatives).
2 The WC "combine and reconcile the responses to the challenges of globalisation with the commitment to maintain local employment"