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Sustainability and reform of pension systems: an approach to the multilevel legal framework of policies and recommendations from the Spanish case[*]

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– DRAFT –

Abstract[†]

There is a concern about sustainability of pension systems since the late nineties in several European countries that lead them to adopt legal amendments of varying intensity. As the European Commission highlights in the White Paper on adequate, safe and sustainable pensions, population in the euro area will not vary significantly in next decades, but its age composition will do so. As a consequence, the dependency ratio will rise from an average rate of 27.6 % (2010) to 54.7 % (2060). That means that the workers/pensioners ratio will decrease from four workers for pensioner to less than two workers for pensioner. On the other hand, longer life expectancy has, as a consequence, the increase of public expenditure in pensions: from 10.2 % of GDP in 2010 in the euro area to 14 % of GDP expected for 2060. In addition, the current economic and financial crisis, which has imposed an austerity framework that impacts directly on social policies, have made more critical to rethink pension systems regulations.

Although this is a national competence with reference to the principle of subsidiarity, in the last years the European Union has considered the need to address the question. To this purpose, the European Commission, on the basis of some EU competences that

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affect domestic pension systems, is coordinating a debate amongst all the stakeholders within the framework of the Europe 2020 strategy. This discussion has been developed mainly through the Green Paper towards adequate, sustainable and safe European pension systems [COM (2010) 365 final]. One of the results of this consultation have been published in the White Paper 'An agenda for Adequate, Safe and Sustainable Pensions' [COM (2012) 55 final], in which specific recommendations are made to 16 Member States, taking into consideration also the reforms included in the Memorandum of Understanding signed with another 5 Member States.

This paper is a very first contribution of a broader work in progress that intends to develop a comparative analysis of retirement pension reform in some countries of Southern Europe. It is focused in a specific part of this research: the implementation of those recommendations in recent amendments introduced in Spain, characterized by a harsh austerity orientation whose consequence is a regression of the social protection system. However, besides the EU recommendations, the current global scenario has some other actors, such as the OECD, who are also important in the formulation of proposals on social policies that have to be considered. Therefore, there is a multilevel legal framework, composed basically by soft law instruments in its international and transnational levels, which seems to affect domestic policies. The purpose of this paper is to give an initial overview of this complex puzzle of regulatory and non-regulatory instruments.

Introduction

This paper is inserted in a broad research that I have just begun comparing pension reform in countries of Southern Europe. Concerned about the latest Spanish legal amendments relating the retirement pension, which have an important regressive orientation, I considered that, in order to analyse them appropriately, a more global approach that included different multilevel regulations and policies was needed.

Beyond the study of the technical changes of domestic rules, or its comparison with those that are taking place in some other countries, I think that it is very important to place them in the current multilevel legal scenario. International and transnational legal instruments are essential to understand and/or assess current domestic reforms guided

by an austerity orientation, to the extent that they are embedded with domestic legal sources. But there are also other instruments such as proposals or recommendations that arise from different global economic and political actors. Although there is no incorporation in the system of legal sources, my hypothesis is that they have somehow an incidence in domestic regulation level.

What I intend in this essay is to outline the overall picture of these different levels and the various regulatory and non regulatory instruments within them shaping domestic reforms of pension systems. It is a very first approach to this topic, which is a significant piece of my research. It is certainly important to analyse contents of pension reform but it is also significant to put the stress in how the processes of change are being developed. To this purpose, at this early stage of this work in progress, my aim is to establish some initial points for its discussion, as a basis for further development of the research.

Pensions are a complex subject inasmuch as different approaches are needed to get a complete and comprehensive picture of social systems. To that end, demographic, economic, actuarial, social, and legal analysis should be overlapped and integrated. The preliminary ideas outlined here are given essentially from a legal perspective. From this standpoint, as will be seen, there are important current debates in labour and social security law which are directly linked to this subject, such as the role of judges and courts in guaranteeing social rights, or the new sources of regulation and the actors who are involved in reforms, as well as the governance mechanisms that are behind.

Pension reform as a key issue in current European Welfare States

Social security law is one of the most changing fields of law as long as it is constantly being adapted to economic and social changes. Taking the Spanish case as an example, in the last 20 years, there has been at least five regulations introducing reforms of different depth: Act 24/1997, of consolidation and retrenchment of Social Security; Act 35/2002, for the founding of a gradual and flexible retirement system; Act 40/2007, on social security measures; Act 27/2011, on adaptation and modernization of Social Security system; and Act 23/2013, regulating the sustainability factor and the revaluation index of social security pensions. In this sense, there is a current broad trend

in European countries in introducing changes of different intensity in their pension systems since the beginning of the economic and financial crisis in 2008, which has been especially exacerbated by the public debt crisis.

The future of pension systems is a crucial question that has to be in a privileged position in the agenda of EU institutions and its Member States, which are facing one of the most important social problems that have to be addressed in the following years. It is a fundamental pillar of the Welfare State, a genetic feature of Europe that has to be maintained and reinforced in order to 'resocialise' Europe in the field of pensions systems (Strauss, 2013b).

Regarding this, it is important to note the EU initiatives that aim to reach adequate, safe, and sustainable pension systems in the member states, within the framework of the Europe 2020 strategy. Ageing of population, the increase of public expenditure in pensions due to longer life expectancy, and the financial crisis, led the European Commission to coordinate a debate on this issue through the Green Paper towards adequate, sustainable and safe European pension systems [COM (2010) 365 final]. As a result of this process, it was launched the White Paper 'An agenda for Adequate, Safe and Sustainable Pensions' [COM (2012) 55 final], making specific recommendations to Member States.

Retirement pensions from a multilevel legal perspective

Social security systems are genuinely a national concern, which is often mainly and exclusively regulated by governments and parliaments. However, in the current global scenario, national legal systems are not isolated but integrated into a multilevel legal framework, which makes necessary more than ever to take the different regulatory pieces into consideration.

According to López López (2009), the multilevel approach implies taking into account different territorial jurisdictions, actors and the judiciary. In this sense, it is important to note how domestic courts have increasingly used international regulations, mainly those of ILO. Three main uses of international regulations by domestic courts have been identified (Thomas, Oelz and Beaudonnet, 2004: 249). Firstly, the direct application of

the Convention or reinforcing the solution established in the domestic regulation; secondly, as a source of inspiration of judicial principles, not only in common law countries but also there when a right is recognised but not developed; and finally, the international instrument is also used to interpret domestic rules according to international principles and regulations.

The international regulatory framework

As noted above, international instruments regarding social security are a key element to assess domestic regulations, particularly when the latter are regressive. There are two main international organisations whose regulatory production must be considered: the United Nations and the ILO.

Among the UN's legal instruments, there are two ones that should be underlined. On the one hand, article 22 of the Universal Declaration of the Human Rights is a required reference, which states that 'Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'. Here is a clear link between social security as an instrument, and the dignity and free development of personality of protected subjects as the purposed goal. Consequently, the key idea that should be taken into account is that social security is an instrument to achieve and assure human dignity.

On the other hand, article 9 of the International Covenant on Economic, Social and Cultural Rights declares that 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieve progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'. It establishes, regarding the recognition of the right to social security, states the progressive nature of the institution. It can be also a useful tool to be used when analysing reforms that reduce the levels of protection, which is a common trend in Europe.

The ILO has an important and extensive normative production. It is within its framework where the most significant task in recognising and developing universal standards of the right to social security has been done. Not surprisingly, the Declaration concerning the aims and purposes of the ILO (Declaration of Philadelphia, 1944), states as an ILO obligation to promote among countries programmes, which will achieve 'the extension of social security measures to provide basic income to all in need of such protection'.

Among the different Conventions adopted by ILO, Convention 102 (1952) has to be highlighted, as it is a key instrument to develop social security. Connected with the idea of decent work, this Convention tries to harmonize the regulation of the States through the setting of minimal standards in this field. Convention 102 is founded in three main ideas: there is not a single model for social security; it is a changing institution that grows and evolves over time; and social security policies should reflect countries' social and cultural values. For these reasons, and for its aspiration to become an instrument for the design and implementation of social security law, the Convention establishes a broad and comprehensive definition that includes nine branches. For each one of these branches, minimal standards with flexible clauses are laid down, through a step-by-step extension of social security coverage by ratifying countries. Regarding old benefits, the Convention establishes as a minimum level of benefits to be paid the 40 %; the percentage of population to be at least protected should be the 50 % of all the employees; 30 years of contribution or employment as a condition for entitlement to benefits; and, finally, a duration of the benefit through the contingency.

The European regulatory framework

At a regional level, there are two main instruments in the European framework that must be included in the set of regulations: the European Social Charter and the Charter of Fundamental Rights.

The contents of the European Social Charter develop some of the ideas highlighted above when considering international instruments. Despite appearances, it is considered an effective legal instrument. Thus, article 12.2, when establishes that 'the Parties

undertake... to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security', insists in the requirement of maintaining a minimum level of protection. Or article 12.3, when settles that 'the Parties undertake... to endeavour to raise progressively the system of social security to a higher level', is establishing the principle of progressivity in that field.

On the other hand, the Charter of Fundamental Rights should be also highlighted in the sense that expresses a different legal perspective regarding social security. While ILO's approach to social security is through harmonization of the right, the EU has traditionally considered social security as an instrumental right to assure freedom of movements linked to the market. For this reason, the idea of coordination of national systems is so important. In this sense should be understood article 34.2 of the Charter of Fundamental Rights when establishing regarding social security and social assistance that 'Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices'.

The idea is to coordinate national social security systems, not replacing them with a single European system, according to rules and mechanisms settled in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004. So each member state establishes freely their social protection system, deciding who and how is protected under their legislations.

The EU as an actor in changing domestic pension systems

Although pensions are a national competence with reference to the principle of subsidiarity, in the last years the EU has considered the need to address the question, appearing as an important actor in domestic reforms. To this purpose, the European Commission, on the basis of some European competences that affect domestic pension systems, is coordinating a debate amongst all the stakeholders within the framework of the Europe 2020 strategy.

The discussion about the future of national systems has been developed mainly through the Green Paper towards adequate, sustainable and safe European pension systems

[COM (2010) 365 final]. The results of this consultation have been published in the White Paper 'An agenda for Adequate, Safe and Sustainable Pensions' [COM (2012) 55 final], in which specific recommendations are made to 16 Member States, taking into consideration also the reforms included in the Memorandum of Understanding signed with another 5 Member States, in the line of attaining a better balance between years working and years in retiring, and promoting complementary retirement saving.

The main causes argued are ageing of population, the decrease of the proportion between workers and pensioners, and finally the current economic and financial crisis. Demographic changes and projections are an element that is constantly present when rethinking pension systems, one of 'the main factors shaping pension reform across countries' (Bonoli and Shinkawa, 2005: 21). As the European Commission highlights in the White Paper, population in the euro area will not vary significantly in next decades, but its age composition will do so. As a consequence, the dependency ratio will rise in 2060 to double of 2010: from an average rate of 27.6 % to 54.7 %.

As a consequence, the workers/pensioners ratio will decrease from four workers for pensioner to less than two workers for pensioner. According to OECD (2013) there has been an important decrease (more than the 50 %) in EU27 since 1950 to 2010 (6,57 to 3,50), a trend that can be also seen in the OECD countries (from 7,22 to 4,08). The projections for 2060 indicate that this reduction of the ratio will continue, with very slight downwards adjustments (below the 50 %): in the EU27, the ratio will be reduced from 3,50 to 1,72, and in the OECD from 4,08 to 1,93. The additional life expectancy at 65, in years, comparing the periods 2010-2015 and 2060-2065, unveils an increase between 4.2 years in men and 4.6 in women in the EU27 area –4.4 years in men and 5.0 years in women in the OECD countries– (OECD, 2013). As a result, there is an increase of public expenditure in pensions. As the White Paper indicates, it will be from 10.2 % of GDP in 2010 in the euro area to 14 % of GDP expected for 2060.

The current economic and financial crisis intensifies financial challenges to pension systems. According to Eurostat, during the period 2001-2012, although there has been some slightly decreases in the Euro area average, the average has been situated in a range from 12.5 and 13.8 % of GDP. If all the expenditure in social protection is considered, there can be seen a more important proportion of the GDP. According to

Eurostat data, during the period 2001-2012, the expenditure on social protection has been situated between the 26 % and the 30 % in the Euro area, which is particularly acute in the period 2009-2012 coinciding with the economic and financial crisis.

Taking this demographic and financial scenario, the White Paper distinguishes three main challenges: securing the financial sustainability of pension systems, maintaining the adequacy of pension systems and raising the participation of women and older in the work market. And to face them, different general and specific recommendations are given.

Other global actors to consider in domestic pension reform

One of the distinctive features of current pension reforms might be the impact that global economic and/or political agents have in domestic legal systems. As seen, the European debate coordinated by the Commission is a good instance of the new governance of EU through the OMC and soft law instruments. But, on the other hand it is an example of the existence of a multiplicity of actors in the global arena that influence (or at least try to influence, through different formulas) States, where political decisions of change take place by means of democratic processes.

Among these actors the OECD, the International Monetary Fund or the World Bank can be placed also as an important source of ideas, suggestions and recommendations that somehow or other impact on domestic policies. To exemplify this hypothesis, some documents from OECD can be given.

OECD has different pension policy notes and reviews, periodical reports and guidelines relating private pensions. Periodical reports such as 'Pensions at a Glance: Retirement-Income Systems in OECD and G20 Countries' (last edition 2013), or 'OECD Pensions Outlook' (last edition 2014), give some indicators in order to compare different pension policies and analyses how different pension systems are reacting to challenges they are facing. There are also some broad ideas and recommendations in order to achieve sustainability of pension system, insisting in the need of increase private pensions as a mechanism of protection. Regarding this, the OECD has different guidelines relating private pensions, such as the 'OECD roadmap for the good design of defined

contribution pension plans' (2012), the 'OECD/IOPS Good Practices on Pension Funds' Use of Alternative Investments and Derivatives' (2011), the 'OECD/ IOPS Good Practices for Pension Funds' Risk Management Systems' (2011), the 'OECD experts' reaction to recent pension developments' (2010), the 'Core Principles of Occupational Pension Regulation' (2009) or the 'OECD Guidelines for Pension Fund Governance' (2009).

It opens an interesting research point, which consists in considering the scope and depth in domestic regulations of the activity of these actors. These instruments are not embedded in the complex multilevel system of sources of law. States are not legally bond to apply or implement them. But, as will be pointed out, final amendments include some of those recommendations or pursue the goals indicated.

A set of some recommendations given to Spain

The recommendations contained in the White paper were previously included in the European Commission's Annual Growth Surveys of 2011 and 2012. The main idea is attaining a better balance between years working and years in retiring and promoting complementary retirement savings. These are the main orientations given in the White Paper, which includes a set of measures to be taken: linking retirement age to gains in life expectancy, restricting access to early retirement, supporting longer working lives and closing the pension gap between men and women.

Among the recommendations established in the European Commission's White paper, from the Spanish perspective have been especially important the restriction of early retirement, on one hand, and the need of linking the retirement age to gains in life expectancy, on the other hand. Regarding this latter, as will be seen now, some recommendations have been adopted such as the increase of the ordinary retirement age according to a higher life expectancy, the increase of the number of years of contribution needed to achieve a full pension, or the promotion of continuing working after the ordinary retirement age.

The need of reforming Spanish pension system is not a new recommendation. A decade ago, the OECD (2005), in its *Economic Survey of Spain*, insisted in this idea, focusing

in a decrease of the parameters used in order to calculate pensions so as to guarantee the viability of the system. More recently, some specific recommendations were given to Spain (OECD, 2011). Firstly, guaranteeing long-term stability of public pensions applying, as established, pension reform in order to increase the real retirement age. Secondly, restricting early retirement through new formulas to calculate pensions, which promote extending the retirement and working for more time. And finally, increasing contributions made to private pensions through incentives to population.

The Spanish regressive reform of retirement pension

There are different taxonomies to classify different instruments of individual pension systems, such as those proposed by the OECD (2013) or the World Bank (1994), which try to reduce difficulties in classifying and comparing pension systems. Both offer three different categories, which are slightly different in its nature (compulsory or free), the subject who manages it (public or private) and the mechanism (from public budgets with a redistributive aim, by contributions made by workers and/or employers). In the Spanish case there are three different levels of retirement protection: a non-contributory pension (which is aimed to provide a basic income), a contributory pension (a PAYG system), and a private and free pension (which is possible to be created, funded and managed collectively between workers and employers, or in a private and individual way). The most important system qualitatively and quantitatively is the second one, which is what have suffered the most relevant reforms.

The Spanish retirement pension has suffered changes of different magnitude during the first years of the current decade. From 2011 to 2013, there have been parametric changes characterized by a harsh austerity orientation that pursues as a main objective the sustainability of the social protection system, in a context of one of the highest and deepest economic and social crisis that Spain has ever faced. Two developments render account of this. On the one hand the movement of '*indignados*', which took place during May 2011. On the other hand the controversial amendment to Art 135 of the Spanish Constitution that took place in August 2011 in a very quick way, which introduced the principle of budgetary stability.

There are three different elements that constitute the comprehensive reform package. As will be seen, the trend and specific contents are aligned with the recommendations developed above. The first one is Act 27/2011, of August 1, on adaptation and modernization of Social Security system. As the main reforms in this ground that have taken place in Spain, it was passed after achieving previously a social and political consensus with the revision of Toledo's Pact and the signing of the Social and Economic Agreement on the growth, employment and retirement pensions between the Government and the social partners.

Among the many changes included in this norm, there are some of them regarding the retirement pension, which should be emphasized. Firstly, one of the main changes introduced by this Act was the increase of the retirement age from 65 to 67. It was designed to be gradual, in a transitional period of 15 years (from 2013 to 2027) and the age of 65 is still maintained if a high contribution period was made (38,5 years, when the ordinary period is 15 years). Secondly, another important change is related calculating the final amount of the pension. Before the reform, it was the result of the average of contributions during the last 15 years; the reform increase gradually this period in 10 years, reaching the 25 final years. A rate according the period of time that the beneficiary has been contributing to the system is applied to the previous amount, which is from 50 % (with 15 years of contribution) until 100 % (37 years of contribution after the transitional period from the 35 years established previously). Relating this, the norm promoted the voluntary extension of working life increasing the rate applicable to obtain the pension.
And finally, the early retirement was also modified considering the changes on the ordinary retirement age and the total periods of contribution required in those cases, increasing the age from 61 to 63.

The following two elements of the regressive reform package take place in a context of a serious sovereign debt crisis in Spain. The credit line obtained by Spain in June 2012, in order to prevent a full EU bailout for the country, is a clear example of the seriousness of the economic situation. It also generates more controls on macroeconomics parameters and it is in this framework that pension reforms have to be analysed. Relating this, as the World Social Protection Report 2014/15 points out, 'countries under severe pressure from financial markets, such as Italy and

Spain…introduced reforms that were more far-reaching than in countries where the debt crisis was less acute' (ILO, 2014: 137).

The second element of the legal package is the Royal Decree-Law 5/2013, of March 15, which introduced measures to promote the extension of working life among elder workers and promote active ageing. Unlike the previous norm, this one was passed without social dialogue and without the procedures of political consensus established in the Toledo's Pact on social security. It was not only the content that was controversial for some political and social sector, but also the specific legal instrument used, reserved to the Government for cases of urgent need. This norm introduced a new regulation on the compatibility between retirement pension and work, which includes a decrease in employers' contribution for elder workers. On the other hand, requirements to access to partial and early retirement are tightened.

Hence, the last element of the regressive legal package is Act 23/2013, of December 23, which establishes the sustainability factor and the revaluation index of social security pensions. The sustainability factor enables to link the amount of retirement pensions to pensioners' life expectancy at 67 years old. It is expected to begin be applied in 2019 and will be reviewed each five years. Doing so, the retirement pension will be lower if life expectancy increases in order to assure sustainability of pension systems. According to Monereo and Bernat (2013: 235) the sustainability factor 'represents one more step towards a quiet shift of public pension's scheme'.

On the other hand, pensions' revaluations will not be made each year according to consumers' price index but with the new revaluation index, which take into consideration inter-annual variation of incomes, contributory pensions and expenditure of the system. There is established a minimum amount to revaluate pensions (0,25 %) and a maximum (consumers' price index + 0,5 %).

As a consequence of these latest reforms in Spain, especially those introduced during the conservative Government of *Partido Popular*, are a good instance of a 'clear regression', although facing parametric changes without purport of becoming permanent but provisional, 'at least in appearance' (Suárez Corujo, 2014, 264). According to Olarte Encabo (2015: 214), this complete puzzle 'reveal the vulnerability

of the rights of social security' from two points of view. On the one hand, from a legal side, the idea of pension as a right is 'blurring'; on the other hand, from a political side, because these are constitutional rights whose content is not specified and lawmakers can develop them relatively freely.

The tensions between economic policies and social rights

There is a key point to consider in further research: that is the tensions existing, and the need for a fair balance, between economic policies and social rights. In the EU, sustainable pensions are a goal that appears attached to growth-friendly fiscal consolidation and, particularly, among other similar instruments, to the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Compact). In this line, in a domestic level, a good instance of this (new) increased economic pressure can be seen in the controversial amendment to Article 135 of the Spanish Constitution, which introduced the principle of budgetary stability.

Facing this, it raises the question of what an adequate pension should be. The goal of sustainability is pursued at the expense of reducing the levels of social protection. In this sense, the appropriateness of retirement pensions should be aligned to the idea of 'decent retirement income' (Strauss, 2013a: 311). Along this, the principle of 'recognoscibility' of legal institutions should be considered. That means that changes in pension system are not fully free. To the extent that it is a constitutional right that is developed by the law maker, there is a limit consisting in the fact that the institution can still be recognised as such by a certain society in a certain historical moment.

To that aim, international and European regulatory frameworks are very important. The idea of human dignity as a goal to achieve through the right to social security, and the principle of progressivity, should be used as arguments to counterbalance that legal measure which increases vulnerability of the protected subjects.

In the multilevel legal scenario that I have tried to describe in the previous pages, not only different territories but also different actors must be considered, among which Courts and Judges and social partners has to be stressed in order to obtain a better balance between economic and social goals.

The role of domestic judicial bodies in recognising social rights

Indeed, domestic Judges and Courts can become also important actors in defining the final picture of pension systems. There are some good recent examples of this in some European countries that are experiencing austerity measures, such as Portugal and Italy.

In the late 2013, the Portuguese Constitutional Court found unconstitutional a Decree that tried to reduce 10 % the pensions of retired civil servants in order to equate them to the rest of workers. According to the Court, that measure was contrary to the principle of legitimate expectations, which protect facts legally defined in the past. In this case, the Court highlighted that these pensioners 'built their life expectancies on the basis of the amount of these pensions'. That is not the only remarkable decision of Portuguese Constitutional Court. Some months before, it ruled the unconstitutionality of a measure, contained in the public budgets for 2013, which withdraw extra pays to public servants and pensioners. A similar measure took place in Spain in 2012. The Government decided to withdraw extra pays to public servants. In our case, the *Audiencia Nacional* raised before the Spanish Constitutional Court the question whether this measure was constitutional. However, it has not ruled a decision yet.

Recently, the Italian Constitutional Court Judgment 70/2015, of 10 March 2015, has declared unconstitutional the decision adopted in 2011 by Monti's Government of freezing those retirement pensions exceeding 1,400.00 €. As a consequence, there is a great concern in Italy because it means a great cost that can prevent the country to target the fiscal deficit. It shows the big interaction between public economy and pension systems. How the economic field can shape and condition the rights field.

Beyond the European framework, some Constitutional Courts from Central and South America has directly invoked the principle of progressivity. For instance, the Constitutional Court of Costa Rica, in decision 2009-10553, regarding the rights to work, wages and social security, stresses the need of applying the principle of progressivity, trying to avoid regressive measures related economic, social and cultural rights, or the most broad and important case law of the Constitutional Court of Colombia (see Calvo Chaves, 2011).

The role of the European Committee of Social Rights

At a transnational level, within the Council of Europe, the European Committee of Social Rights can develop an important role as supervisory body of the European Social Charter (Belorgey, 2007: 353-358). Initially, its functions consisted in analyse national reports and adopt conclusions, but after the 1995 additional Protocol to the Social Charter, it also have the competence to solve collective complaint, raised by national or international unions, through decisions. In this last case, the State party must accept the Committee jurisdiction.

Decision on the merits adopted by the ECSR 7 December 2012, in the case Panhellenic Federation of Pensioners of the public electricity corporation (POS-DEI) vs. Greece, Collective complaint No. 79/2012, is a good instance of the ECSR role. Regarding the measures adopted but the Greek government, applying the Memorandum of Understanding, the ECSR ruled:

> '63. Firstly, the Committee recalls that reductions in the benefits available in a national social security system will not automatically constitute a violation of Article 12§3 (Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11).
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> 64. However, the Committee considers that, even when reasons pertaining to the economic situation of a state party make it impossible for a state to maintain their social security system at the level that it had previously attained, it is necessary by virtue of the requirements of Article 12§3 for that state party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security. This requirement stems from the commitment of state parties to 'endeavour to raise progressively the system of social security to a higher level' which is expressly set out in the text of Article 12§3, and is distinct from the requirement set out in the last part of Article 12§2 to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security (for the 1961 Charter, the International Labour Convention No. 102 Concerning Minimum Standards of Social Security)'

Spain has ratified neither the revised European Social Charter nor the 1995 Additional Protocol on collective complaints, so social partners cannot use this useful mechanism. However, the ratification of the original Charter makes it applicable and it is important to note how domestic courts have applied the ECSR jurisprudence (Cardona Rubert, 2015: 108).

The role of social partners

Finally, as Schludi (2005: 225-229) has pointed out, concertation is a 'condition for successful implementation of pension reforms'. This concertation can take place between government and other political parties, between government and unions, or finally between these three actors: government, political parties, and unions. However, it takes place in most of the cases between government and unions than with other political parties.

A need for consensus certainly is needed in processes of reform in order to implement them. The problem, as Eurofound (2013) indicates, is that financial crisis has had as a consequence that social partners' influence on pension reforms has been diminished. A good example is what happened in the Spanish case. Although the first big element of the recent reform package was agreed by the government, political parties and social partners in 2011, the two ones were decided by the current conservative government and the parliament, taking advantage of its absolute majority. Direct influence of social partners in pension reform is detected in those countries which a strong tradition of social dialogue. Additionally, the report stresses that in this cases the lack of immediate budget constraints gave social partners more opportunities to negotiate.

Some provisional conclusions for further research

At this point of this work in progress, there are some initial points which can be helpful in the following stages of the research.

There are different multilevel legal instruments regarding pensions. Along them, there appear other soft law or hybrid instruments, which are created by a constellation of

different actors that have not powers to legislate. The final outcome, at a domestic level, is many times, as the Spanish case shows, quite similar to these set of recommendations derived from global political and/or economic actors. The point which needs to be deepened is related to the interaction of all these instruments and whether there is a direct casual relation between them.

Facing the regressive consequences of these reforms, two additional questions have to be deepened. On the one hand, strong arguments to substantiate the implementation of the principle of progressivity are needed. Unless some European States, such Spain, do not cease their austerity policies, which led to a serious decrease of social protection levels, their model of social protection, a genetic feature of Europe, will be seriously declined. On the other hand, it is needed to rethink balances between governance of social rights in the EU and governance of economic and monetary union. In this sense, as Strauss (2003b: 350) has pointed out, it is needed 'the socialization of pension risk…[as] the starting point for a debate about an adequate income for all through the fair-mutualisation of pensions in Europe'.

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