

Post-crisis social rights and social security law in Spain

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Abstract: The last crisis had a strong impact in Spanish economy. As a consequence, and under recommendation of the EU, the successive Governments since 2008 till the end of 2014 have passed “emergency legislation” that affected social rights and Social Security System, introducing amendments and “cuts” on them. Contrary to what occurred in other countries (that have made Finance Acts, the budget, or even Parliamentary Acts the fundamental ways to conduct such reforms) in Spain, the Royal Decree-Law (RDL), a “legislative” type text (serving as an Act of Parliament) has prevailed. The reforms, amendments and “cuts” (in some cases) caused by the crisis have highlighted the weakness of the theory of supra-legal character of the Spanish Constitution (whose writing would be compulsory for the public authorities, and even for the Parliament). The main amendments and “cuts” have focused on fight against fraud in Social Security, unemployment benefits (contributive and non contributive levels), the revaluation or increase of pensions (“Sustainability factor in the pension System” formula has been passed by Act), retirement agreements with workers affected by redundancy plans (economic dismissal), age of retirement (that will get 67 progressively in the next years), early retirement and partial retirement, the tax burden which affects the contribution base in the general scheme (Régimen General); the technique used for rising this consist of including in the quoted base concepts (monetary, benefits in kind) that were traditionally excluded from taxation. It is true that during these years 2008 to 2014 protective measures for the unemployed and to promote self-employment have been passed by the Spanish Governments and Parliament, but they cannot dodge the fact that the social rights have been seriously affected.

Keywords: social rights, Social Security System, unemployment benefits, age of retirement, “cuts”.

1. The crisis’ impact on social rights

The following initial consideration should be made when examining the impact of the economic crisis on social rights in Spain: legislative amendments and related “cuts” did not begin with the present economic difficulties; in fact, they accelerate a process that already has precedents. Over the past decades, this has been common practice in our country’s laws. As the ILO noted, over the mid-nineties (the last century), it was apparent that most countries had begun a period of Social Security reform schemes of unprecedented scope, affecting all of its branches.

In Spain, examples of social rights reform immediately preceding the onset of the crisis may be seen in Royal Decree-Law (*Real Decreto Ley*, hereinafter RDL) 3/2004 of June 25 and Act (*Ley*, Law) 40/2007, of December 4.

The first of these, Royal Decree-Law 3/2004, changed the calculating basis of minimum and maximum limits of contributory and non contributory unemployment benefits, which was formerly the national minimum wage (*Salario Mínimo Interprofesional*, hereinafter SMI, as determined by the Government every year, taking into account variables such as inflation), for an index called IPREM (Índice

Público de Rentas de Efectos Múltiples, hereinafter IPREM), whose amount (always lower than the minimum wage) is established yearly in Budgetary Law. This indirectly led to a quantitative reduction of those unemployment benefits.

The 40/2007 Act, the last major amendment of the Social Security System prior to recognition of the crisis by the Spanish Government, although apparently improved social rights (it incorporated the so called “situations created by new family realities” into the protection of the Social Security System) brought about major reform of the contributory pension for permanent disability due to common illnesses. Until then, the basis for calculation of such pension (general formula) was to divide the contribution bases of the potential beneficiary by 112, corresponding to the 96 months prior to the contingency; the percentages would be applied to the resulting quotient based on the declared type of disability (total or absolute, the latter receiving 100 per cent of base); to summarize, the pension that was calculated prior to the reform considered the worker’s contributions to the system (PAYE, *cotizaciones*) during the period (in general) of the last eight years of activity (prior to updating the contingency) and the type of disability.

But as of the enforcement of said Act (January 2008), the determination of the pension has an additional requirement (which was already considered in the calculation of the contributory retirement pension): the total number of years that the worker contributed to the system; all of this, in order to reduce the ratio of the previously described operation [for example, in the case that the pension applicant at the date of the declaration of the disability did not reach at least fifteen years of contributions to the system, the percentage of calculation base would be 50 per 100 of the above quotient, and to this base, the percentages established for various disabilities (total or absolute) would be applied]; this amendment has been somewhat “moderated” by the so-called 40/2007 Act which considers the years that the concerned individual needs to reach the age of 65 as contributions (65 was the traditional retirement age in Spain that has been recently changed, as shall be examined in another part of this paper).

A second point to be considered before starting to examine the impact of the economic crisis on social rights is the source used to interpret and implement the reforms or “cuts” in Spain. Contrary to what occurred in other countries (that have made Finance Acts, the budget, or even Parliamentary Acts the fundamental ways to conduct such reforms) in Spain, the Royal Decree-Law (RDL), a “legislative” type text (serving as an Act of Parliament) has prevailed. These may be passed by the Government (Executive Power), but are constitutionally reserved for emergency situations (although the generous interpretation by the Spanish Constitutional Court of “emergency” or “urgency” means in the considered cases has removed some of the “immediacy”).

Moreover, the regulations approved by Royal Decree Law would be imposed on any other laws, including those passed by the different Parliaments of the Autonomous Regions (*Comunidades Autónomas*; Spain is divided into 17 administrative regions that have competence in executing their own Labour Law), which could not contradict the provisions therein; this has been affirmed by the Spanish Constitutional Court (Sentences 219/2013, of December 19, and 5/2014, of January 16).

It is true that the frequent use of this rigorous legislative technique has been tempered by two means: a) (occasionally) prior negotiation with the social partners of all or part of the contents of a potential RDL and b) subsequent acceptance by the Parliament of the Royal Decree Act as a bill in order to consider its contents, enrich them and pass the improved text as a subsequent law. It should be noted that a) they have been used by the Spanish Governments to implement a number of changes in Social Security Law, where the intervention of social partners was relevant; this has not occurred in the case of changes in Employment Law, where the agreement was the exception and the executive decision was the rule.

But still, the indiscriminate use by the Spanish Government (of any ideology, left or right) of RDL may suggest a lack of democracy when adopting measures to mitigate the crisis situation (the Constitution only reserves the possibility of validating the RDL text adopted by the Executive to the Congress of Deputies); the frequent and indiscriminate resource of RDL by the Government may suggest that the important issue of recognition and extension of social rights has often been “stolen” in parliamentary debate. Regarding this, possibly the only defense that may be made by the Spanish executive branch in response to the continuous legislative urgency to channel the restrictive reforms or “cuts” on social rights is to recall that the EU often acts similarly, with the guidelines for the “fight” against the crisis

mainly coming from their executive (and not particularly democratically designed) agencies (in fact, from the Commission).

A third consideration when studying the impact of the crisis on social rights in Spain relates to the “changes” that the different measures adopted (which we shall examine in the following pages) have had on our legal system. For a particular sector of Spanish Labor Law experts, we are on a “de-constitutionalization” process (see for example, based on the work of Professor Baylos Grau, the contribution of Leticia Díez Sánchez in *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights’ Challenges*, EUI Working Paper Law 2014/05). We do not agree with this approach to the issue, at least with its radical exposition. Yet we consider it important to note that the reforms, amendments and “cuts” (in some cases) caused by the crisis have highlighted the weakness of the theory of the supra-legal nature of the Spanish Constitution (whose writing would be compulsory for the public authorities, and even for the Parliament), a theory that years ago was successfully formulated by an important jurist (Eduardo García Enterría). The crisis has also “discovered” the problem that the members of the Judiciary Power must control the adjustment of Acts and public rules to the same Constitution. In this time of crisis, the sovereignty of the Parliament and even of the Government has become a main principle in Spanish Law. In resolution, the crisis has also highlighted the “programmatic” nature of many of the constitutional articles, or at least has showed that the regulation on social rights is carried out in terms of “minimum and maximum”. Obviously, it is an urgent task to solve these “problems” so as to reinforce the Constitutional rules, and clearly, these solutions must be “legal” (that is, technical).

Finally, in this paper we shall not discuss the numerous changes that have been introduced or attempted to be introduced in the Spanish healthcare system. First, because they would require another doctrinal article and secondly because Spain’s competence in healthcare issues lies in the Autonomous Communities (the Constitution reserves the State the determination of its healthcare system “foundation”), which increases the chances of reform in different directions. We only note that these changes have been generally directed in the following directions: to “cuts” in medication subsidies and in the number of financed medications; in reducing outpatient clinics and services and towards the introduction by some Autonomous Regions of fees (in reduced amounts) for the use of healthcare services, an initiative which has been slowed down by the Constitutional Court (see for example Sentence 136/2012 of June 19, 71/2014, of May 6). It should be noted that the changes referred to in the Spanish healthcare system have been studied in some doctrinal assessments, that quote several sentences of the courts (e.g., Maribel González Pascual, in *Social Rights in Times Crisis in the Eurozone of: The Role of Fundamental Rights’ Challenges*, op cit pgs 98/100).

2. Unemployment protection system

An initial set of legislative measures taken in connection with the economic crisis has affected unemployment protection. At this point we shall distinguish between those measures taken to ameliorate the situation of the unemployed, measures to impulse self-employment, and “cuts” approved to reduce (at least, but not solely quantitatively) the rights of the unemployed to benefits and allowances. For clarification purposes, we shall divide this section into two distinct points.

2.1. *Protective measures for the unemployed and to promote self-employment*

On the eve of the crisis, several measures were adopted to protect the unemployed. The first, included in Royal Decree-Law 2/2008, of April 21, was a plan of action for those not entitled to additional unemployment benefits and an income below the IPREM figure; under the framework of the plan quoted above, they could receive a subsidy of 350 euros per month for a maximum of three months. A second example of a protective measurement for the unemployed (although in this case with some doubt), was included in Royal Decree Law 4/2008, of September 19, and consisted of offering the opportunity of receiving, in advance, the total amount of the unemployment benefit (normally, this benefit is paid monthly) to non-EU foreign workers for voluntarily returning to their countries of origin; the return

must be made within 30 calendar days (presumably as of the payment of the recognized amount) and their return to Spain is blocked for three years. But, we insist, these measures were adopted on the eve of the crisis and were only “messengers” for numerous others that would come later, as we shall explain in the paragraphs below.

In the context of the crisis, unemployment protection for dependent workers was channeled through different legislative measures that basically temporarily extended (short-term) unemployment benefits. It should be noted that the claim of some members of the socialist government of President Rodríguez Zapatero to extend the protection for the mentioned issue for a third year failed and even led to a governmental crisis (with the resignation of the Minister for Economics). Also, the aforementioned legislative texts for the protection of dependent workers attempted to make unemployment benefits compatible with wages in order to reduce the unemployment rate and to promote labor contracts.

Royal Decree Law 2/2009 of March 6 (later Law 27/2009 of December 30), disposed the renewal the unemployment benefit and social security contribution (paid by the State Organism in charge of the unemployment protection) of those who were affected first by suspension or temporary reduction in their employment contract and subsequently by suspension or termination of thereof. The measure (renewal of unemployment benefits) was continued through several subsequent legal texts that even improved it and increased the time of the benefit till 180 days in the event of termination of the employment contract. Finally, Royal Decree Law 3/2012, of February 10 (later Act 3/2012 of July 6) extended the measure we are examining to the end of last year, 2013.

In line with the above, Royal Decree Law 10/2009, of August 13 (later Law 14/2009 of November 11) is another interesting text for the protection of dependent workers. In its Preamble, the Government stated that it considered “appropriate, urgent and pressing articulate mechanisms to expand coverage to protect those workers who have exhausted their unemployment benefits to prevent or mitigate the risk of social exclusion”. This was the aim of the Temporary Program for Protection in case of Unemployment and for Integration (*Programa Temporal de Protección por Desempleo e Inserción*); this program contained an extraordinary unemployment benefit equal to 80 per 100 of the regulated monthly IPREM, with a maximum duration of 180 days.

This line of protection for workers who have exhausted unemployment benefits and allowances was furthered by Royal Decree-Law 1/2011 of February 11. It is based on the Social and Economic Agreement signed by the Government and the social partners on February 2, 2011. In this RDL, economic help is provided, ranging from an initial 75 per 100 of the IPREM and to the subsequent 85 per 100 (for beneficiaries with three or more dependents), for a maximum duration of six months. This assistance may be accessed by those having a monthly income of less than 75 per 100 of the minimum wage (SMI). As in the case referred to in the preceding paragraph, the described measure was subsequently extended expressly, until Royal Decree 1/2013, of January 25, which foresaw its automatic extension “whenever the employment rate is above 20 per 100...”.

Royal Decree 3/2012, of February 10 (later Act 3/2012 of July 6) regulates the new indefinite contract of employment to support entrepreneurs (*contrato por tiempo indefinido de apoyo a emprendedores*), under which was authorized to a worker to make compatible with the salary the 25 per 100 of the amount of unemployment benefit that has been recognized for previous work.

As for the measures to promote and protect self-employment, we shall first address the one contained in Law 32/2010 of August 5, creating a specific protection system for the cease of activity of self-employed people. It is true that this measure was announced by the Self-Employed Workers Statute (Law 20/2007 of July 11, passed by the Parliament prior to the economic crisis), but in the Preamble of the mentioned Law 32/2010 it is also explained that its approval was due to the effects provoked by the crisis on this type of workers (especially in certain sectors, such as construction and trade).

Worker protection and promotion of self-employment are the goals that justify the adoption of Royal Decree 1300/2009, of July 31, through which (with time frame) the payment of unemployment benefits is provided in their mode of single payment to those wishing to join cooperatives and other labor companies as partners (in a stable form). Similarly, another interesting legal text should also be mentioned: Royal Decree Law 4/2013 of February 22 (subsequently, Act 11/2013 of July 26), which adjusts the described measure to the unemployed under the age of 30.

Finally, with respect to self-employment, Royal Decree Law 4/2013 of February 22 (subsequently Act 11/2013 of July 26), also reformed the General Social Security Act, establishing a program designed to promote employment for groups with greater difficulties in accessing the labor market, making it possible to reconcile the perception of pending unemployment benefit with the economical professional fees for self-employment.

2.2. *The legislative reform of unemployment benefits and their provision.*

The rules governing contributory and non-contributory unemployment benefits are settled on the General Social Security Act (hereinafter LGSS, *Ley General de la Seguridad Social*), approved by Royal Legislative Decree 1/1994 of June 20; specifically, Title III (Articles 203 et seq.) This legislation, as we shall see, has been significantly affected by the austerity measures taken during the economic crisis. It is in this area (and in the pensions system, as we shall soon see) where the so called “cuts” in social rights have been made, an expression that is generally used in the media by the trade unions, politicians and other public opinion social bodies. All of these “cuts” have amended the LGSS.

The first regulation to be examined is Royal Decree Law 10/2010 of June 16 (subsequently Act 35/2010 of September 17). Through it, the concept of protected unemployment was changed, but we are more interested in those measures against fraud that were inserted in this text. Specifically, the so called “*compromiso de actividad*” (a sort of agreement that the unemployed had to sign before the Labour authorities compelling him/her to seek employment while without work) was regulated (to strengthen it). The new amendment reduced the voluntary period to participate in the training activities directed to improve “employability” (corresponding to the usual occupations or skills of the unemployed) to 30 days as of receipt of benefits (prior to this amendment it was 100 days). According to the previous text, Royal Decree Law 20/2012 of July 13, (of great importance, and which we shall later reconsider) established the duty of the beneficiaries of unemployment benefits to prove before the Public Service of Employment of the autonomous communities or before the federal employment services, when they required it, that they have taken action to actively employment, to reinsert themselves in the work market or to improve their “employability”; if this is not done at the required moment, it is considered that those beneficiaries are in default of the so called “*compromiso de actividad*” (activity commitment). Finally, another text that must be considered is Royal Decree Law 11/2013 of August 2, which introduces the obligation of being registered in the competent public service office as a “job-seeker” within the duties to be fulfilled in order to access unemployment benefits. This registration must be maintained until reintegration in the labor market.

Anyway, for now, the fight against Social Security fraud is culminated in Law 13/2012 of December 26, allowing for the fight against irregular employment and social security fraud. According to its Preamble, the Social Security Law (and other important laws, such as the Social Offences and Sanctions Act) has been amended in order to prosecute illegal practices on the labor “black market”, to correct fraud in the perception of unemployment benefits and to block the undue payment of employer discounts for public contributions to work promotion.

But the most important text to be studied is the previously mentioned Royal Decree Law 20/2012 of July 13, on measures to ensure fiscal stability and the promotion of competitiveness; this text modifies the unemployment benefit scheme. Prior to it, the percentages applied to the basic amount of the unemployment contributory benefit were 70 per 100 for the first one hundred and eighty days of unemployment and 60 per 100 as of the one hundred and eighty-first day. Since enforcement of the text, the first percentage has been maintained, but not the second, which has dropped to 50 per 100 (“... 50 per 100 as of day 181 of unemployment”). In the Preamble to the quoted text, the amendment is explained, appealing to several arguments, of which, only two are of interest to us:

“Measures to promote employment respond ... to great objectives... impulse the unemployed actions in order to ensure their return to the labor market ... generate the necessary incentives to ensure the sustainability of the public unemployment benefits system... In short, the adopted measures reinforce the future viability of the protection system and contribute to the fulfillment of the objectives for budgetary stability...”.

As for the unemployment non-contributory benefits, Royal Decree Law 20/2012 of July 13, introduces major modifications. So, as noted in the Preamble to the present rule law, “the link between the right of access to subsidies and the personal assets of the beneficiaries is strengthened... the special subsidy for unemployed over 45 years of age who have perceived their contributory benefit has been removed; this measure only affects new potential recipients”; in this Preamble, it is clarified that the “the elimination of this subsidy doesn’t cause a lack of protection for the unemployed who may be entitled to the regular subsidy”.

We believe that the most significant change (based on its consequences) is the one affecting subjects entitled to receive long-term non-contributory unemployment benefit. Before the reform, it was possible for individuals over the age of fifty-two to access this allowance. Now, one must be over the age of fifty-five in order to obtain it; the text that we are following literally states that in order “to obtain the allowance, the employee must have reached the age of fifty-five years on the date of the contributory unemployment benefit expiring...”.

At times, the reform of the unemployment scheme has worked to strengthen social rights and at times it has worked against them. A good example of this is seen in Royal Decree Law 4/2013 of February 22 (subsequently Act 11/2013 of July 26) amending the provisions included in the Social Security Law regulating the suspension and termination of the right to contributory unemployment benefits. To estimate the direction of this amendment of the quoted Act, we should consider that the right to unemployment benefit is suspended when the holder performed a job (employment contract) for less than 60 months time (previously the limit was established at 24 months) in the case of self-employed individuals under the age of 30 years who have initially entered the Social Security Special Scheme for the self-employed for the first time (RETA, *Régimen Especial para los Trabajadores por Cuenta Propia o Autónomos*).

3. Negative reforms or “cuts” of social rights

We shall now consider the potential “setbacks” in social rights (Social Security) and social protection in general. As previously mentioned, these have been called “cuts” for the media, trade unions and sectors of the political class. Some of these “cuts” are temporary while others have clearly amended Spanish Law. Of the temporary ones, we can include the delays to the extension of the paternity allowance to four weeks (currently 13 days), as previewed by Law 9/2009 of October 6, delays determined in the successive General Budgets Acts, after 2009 (including the latest delays approved at the time of the writing: Law 22/2013 of December 23).

Royal Decree Law 8/2010, of May 20, is the origin of the first systematic “cuts” in social rights (Social Security). This RDL temporarily neutralized the federal pension increases as of 2011 by suspending the LGSS provisions (this Act normally established the annual revaluation of contributory pensions based on inflation, or, the Spanish IPC (*Índice de Precios al Consumo*)). This measure was extended by subsequent legal texts passed by the Government (for example, Royal Decree Law 28/2012 of November 30, and the related Royal Decree Law 29/2012 of December 28). During the crisis, increasing pensions, when occurring, was on a “discretionary” basis (that is, without adjusting them to variables that were previously determined by Law) in the State Budget Acts, such as in the last published, Law 22/2013 of December 23 (which revalues 0.25 per 100). At this point, and regarding pension increases, we should mention the recent passing of Act 23/2013 of December 23, focusing on the “*Factor de sostenibilidad del sistema de pensiones*” (Sustainability factor in the pension system), whose Preamble states that, through it, generally speaking, the amount of pensions shall be adapted to the amount of the pensioner contributions.

But, as we can see, with the exception of 23/2013 Act, this set of dispositions (the neutralization of the legal increase of the State pensions) is considered temporary and circumstantial. However, the measure contained in Royal Decree Law 8/2010, forbidding the possibility of partial retirement agreements with workers affected by redundancy plans (economic dismissal) or stipulated in company collective agreements is definitive.

The often quoted Royal Decree 8/2010 is also the source of a structural modification (not temporary) affecting family protection law schemes. First, we should note that Spanish law (unlike other EU legal systems, for example, that of the Republic of Ireland) has never contemplated a systematic set of rules to protect and support the family, and this reform serves to worsen the situation. With this text, the economic benefits (single payment) offered for the birth or adoption of a child (€ 2,500 for each child born or adopted) was removed. Furthermore, the new regulation of child allowance under 18 has abolished the different “stretches” contemplated in LGSS and has unified their amount (set for every year) attending to the lowest figure stipulated in the LGSS. This policy has been continued in successive Budgets Acts, until the present one: Act 22/2013 of December 23 (the 2014 Budget).

In our study we must recall the important Act 27/2011 of August 1, on updating, improvement and modernization of the social security system. We anticipate that such legislation shall deal mainly with the regulation of the Spanish pension of retirement scheme, but it also contains some other interesting “cuts” in relevant aspects from the pensions system. The text’s Preamble reflects the commitments found in the Agreement between the social partners and the Government as signed on 2 February of that year.

To facilitate the comprehension of this reform, we shall briefly explain how retirement pension has been traditionally calculated in Spain. For years, the applied age has been 65 years. Upon completion of that age, in order to obtain the amount of the pension, the applicant contributions to the system from the previous fifteen years worked must be added; as contributions are paid monthly, and there are 14 every year (1 per month and 2 extra payments at Christmas and normally in summertime), the obtained result is divided by 210 (the result of multiplying the months corresponding to fifteen years, that is 180, by 14). A scale of progressive percentages related to the number of contributions is applied to the obtained quotient; these percentages determine the amount of the pension: the quoted percentages are 15 years, 50 per 100; as of the sixteenth year onwards, the percentage increased by 3 and 2 per 100, up to 100 per 100 with 35 years of contributions.

Act 27/2011 and its Preamble explain that the reform of the retirement pension is necessary due to the continuous increase in life expectancy and the strengthening of the “contributory” system. All of this has led to the establishment of the retirement age at 67 years (for decades, 65 years); however, the new age shall only be applicable after a long transitory period. According to the new version of LGSS, workers “shall be entitled to contributory retirement pension regime if they... fulfill the following requirements... are 67 years of age, or 65 when reaching 38 years and six months of contributions” (to the public system).

On the other hand, the quoted Act 27/2011 has considerably increased the dividend and the divisor of the base stipulated for calculating the contributory retirement pension (thus it shall now be calculated taking into account the contributions to the system not for the last fifteen years worked, as was the case before the reform, but for the last twenty years). As stipulated in the LGSS (amended), the regulatory basis of the retirement pension under the contributory regimen shall be the quotient obtained by dividing the contributions of the applicant to the system during the 300 months immediately previous to the last month before the retirement by 350. In this case, as with the case described in the preceding paragraph, the new rule for calculating the base of the pension shall be enforceable after a long transitory period. The new rule also adjusts the system for the integration of “gaps” in the regulatory base of the pension.

Finally, Act 27/2011 partially modifies the percentages used to calculate the pension amount according to the years of contribution that must be taken into account for this purpose (prior to the reform, this percentage was 3 and 2 per 100); according to the 27/2011 Act: “as of the sixteenth year, for each additional month of trading, between 1 and 248, 0.19 per 100 shall be added and as of the month in which 248 is exceeded, 0.18 per 100 is added; in any case, the percentage applicable to the regulatory base shall exceed 100 per 100...”.

The Act goes on to reform Social Security Law in the case of early and partial retirement, but at this point its regulations have been first suspended and later amended, as we shall see. In both cases, early and partial retirement, reduction coefficients are considered.

As for early retirement, Act 27/2011 clearly distinguishes between that derived from worker termination that is not attributable to a personal cause (for example, by redundancy) and that derived from the employee’s will and interest in voluntarily leaving. However, the text was amended (in large part) by Royal Decree Law 5/2013 of March 15, having the following significant title (literally translated): “measures to

promote the continuity of the working lives of older workers and to promote active aging”. In its Preamble, the Act initially justifies its content to the publication of the European Commission’s 2012 White Paper: An Agenda for Adequate, Safe and Sustainable Pensions (Brussels, 16.2.2012). Next, the quoted Act from its Preamble summarizes the “philosophy” that inspired it based on the following sentences: “the increase in the retirement age, the continuation of working life and the increasing participation of older workers in the labor market represent basic elements for the adequacy and sustainability of pensions...”. Royal Decree Law 5/2013 affected ages and significantly increased the reduction coefficients in the case of early retirement, coefficients that were linked to relevant periods of proven contributions.

As for partial retirement, Act 27/2011 requires that workers be at least 63 years of age (prior to this reform, it was sufficient to be 61) and have at least 33 years (previously 30) of proven minimum effective contributions. On the other hand, the Act, *inter alia*, states that “notwithstanding the reduction in working hours ... during the period of partial retirement, employer and employee shall pay contributions based on the current contribution base, as if the worker would have continued working full-time...”. These provisions were later supplemented by other rules; thus, when employer and employee would have agreed to the early retirement of the latter, following a part-time (or even indefinite) replacement contract with another worker, Royal Decree Law 5/2013 provides an age-scale in order to access the mentioned retirement, linked to the previous contribution periods (from 2013-2027), which must be at least 33 at the time of the event; the RDL also provides that the reduction of working hours of a full-time worker who retires must be “between a minimum of 25 per 100 and a maximum of 50 per 100 or even 75 per 100 for cases in which the substitute worker (who takes the position that was partially left by the retired individual) has been hired with an indefinite duration employment contract...”.

It should be noted that Act 27/2011 also provides compatibility of certain pensions with the income earned by the retired; specifically, it states that “the charge of the retirement pension shall be compatible with the development of self-employment whose total annual income does not exceed the minimum wage, on a yearly basis.” But this possibility of receiving the retirement pension at the same time that employment income definitively opens with the already mentioned Royal Decree Law 5/2013, in which it is alleged that this option was “highly restricted under current Spanish legislation” (Preamble). Finally, according to the text, the contributory retirement pension shall be compatible with the performance of any paid employment by a company (or other employer) or any self-employment, either full or part time, but it also warns that “the amount of the retirement pension compatible with work shall be equivalent to 50 per 100 of the resulting amount of the pension on its initial recognition ...”, and that, although during the course of that work, the Social Security contributions shall only be enforceable for temporary disability, working accident and professional sickness, it introduced “a special contribution for solidarity of 8 per 100 of the base that shall not be computed for future pensions or benefits”.

4. A reference to the regulation of Social Security contributions during the economic crisis.

In conclusion, we shall consider how the rules governing Social Security contributions have evolved. The temporary rules (those typically appearing in Budget Law, usually lasting one year), shall not be considered in this paper, including the “structural” ones (relating to the structure of the contribution system), that are found in the Social Security Act (LGSS) and Royal Decree 2064/1995 of December 22, which is a statute law (whose Article 23 which now interests us the most, has been amended several times since its initial publication in the Official Gazette or *Boletín Oficial del Estado*).

To facilitate the understanding of the following paragraphs, we shall briefly explain the Spanish Social Security Law contribution system. First, we should mention that the system is divided into various schemes, so-called “*Regímenes*” (regimes); the most important of these is the “General Regime” for workers employed in industries, services and agriculture; aside from this regime, among others which are less relevant, there is the “Special Regime” (or Scheme) for the self-employed or “freelancers” (who do freelance work).

In the general scheme, the workers’ contribution is calculated based on three variables: a) the contribution base, which is comprised of the salary or wages (cash and benefits in kind) and payments

extending beyond those economic concepts that are exempt according to Social Security Law; b) contribution rates (percentages), which are rates that apply to the base by the “contingencies” that are covered or protected by the system: accidents in the workplace, common accidents, common or professional diseases, and unemployment, “*Fondo de Garantía Salarial*” (salary or wage guarantee Fund), and professional formation or training; c) the fee (or “*cuota*” in Spanish, that corresponds to payment made partially by the employer and partially by the worker), which is what enters the State Social Security Treasury (*Tesorería General de la Seguridad Social*). In the autonomous regime (*Régimen de Trabajadores por Cuenta Propia o Autónomos*), contributions are made on a “tariffed basis”, that is, following a scale of bases that were previously determined by Law (normally within the Budget Acts).

Focusing on the structural rules on this item, Royal Decree Law 20/2012 of July 13, which was referred to previously, introduces some reforms that actually result in an increase in the tax burden affecting the contribution base of the general scheme (*Régimen General*). The technique used for increasing this consists of including concepts (monetary, benefits in kind) that were traditionally excluded from taxation in the quoted base.

Royal Decree Law 20/2012 offers a new version of Article 109 of the Social Security Act (LGSS), which is the most important norm on this item (contribution); this article has been extended with the mentioned statute, Royal Decree 2064/1995, specifically in its art. 23. This rule of the LGSS and the one of the RD 2064/1995, regulate the composition of the contribution base, which since the 1990s, has been closer to the regulation on income tax. Its amendments, which we shall now examine, almost complete the process of integration of different laws (tax Law and Social Security Law).

Until 2012, the total amount of compensations for death of the worker, transfers of workplace, suspensions of contract, and especially termination or cessation of the employment contract, redundancy or dismissal was not included in the contribution base. Until then, this exemption affected the 100 per 100 of the mentioned concept. There were important arguments to justify this disposition: among others, it should be considered that these compensations are generated over the years of work (and for this reason, they are affected by rates of contribution fixed in successive budgets for different periods: these rates can change from one year to another); on the other hand, the contribution base has a monthly (but not an annual maximum “ceiling”); the period for paying the contribution is every month ... With the reform that we are examining, the income tax regulation criteria have been imported to the Social Security Law, as previously mentioned, and the exemptions of contributions are reduced by the amount for death, transfer, contract suspension, redundancy, dismissal, compensations fixed in sectoral rules (that is, rules governing a branch of industry, services...), collective agreements (for death, transfer and suspension of contract), the Statute of Workers (*Estatuto de los Trabajadores*, the main employment Act in Spain), statutory rules, or in the procedure Acts. That is, the contribution exemptions have been reduced to the amounts of compensation established in the rules and do not affect the amounts agreed upon in company agreements or contracts of employment when they exceed the legal or statutory limits. As stated above, it is inevitable to see an increased federal tax burden in the reforms of Royal Decree Law 20/2012, although the explanation of it given in the Preamble of the text (explaining that we have advanced) is purely technical: “homogenize tax rules with Social Security issues”.

For now, the process of increasing the contribution base culminates in Royal Decree Law 16/2013 of December 20, which once again amended the wording of the Social Security Act (LGSS), art. 109. Its Preamble announces that its provisions regulating contributions to Social Security “reflect upon the need for urgent action in order to ensure sustainability in the Social Security system”, meaning that it is necessary to gather additional means (more money, anyway) to attend to their multiple aims or objectives. The referred text strictly announces that “only (the concepts outlined therein) are exempted in the contribution base”. As a result of this latest reform, the following concepts go on to make up the contribution base: the total amount of transport and distance bonuses (previously only that exceeding 20 per 100 of IPREM was taxable); deposits in private pension plans; promotional gifts; worker donations (for business promotions) (previously only that exceeding 20 per 100 of IPREM was taxable); vouchers for lunch and dinner; school support provided by companies for the education of their employee’s children; grants for nursery schools; premiums for liability insurance; premiums for private medical insurance... As evidenced by their mere mention, some of these new reforms are not going to favor the social rights of workers.