

## ARTICLE

**CRISIS OF CARE, MIGRANT WOMEN AND SOCIAL REPRODUCTION IN SPAIN: CONFLICTS OF LAW AND ECONOMIC CRISIS**

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**Abstract:** This article analyses the effects of the economic crisis on the crisis of care in Spain, in particular, on the regulation of the domestic employment. The crisis has had a constricted effect with regards to the unfolding of regulation which seemed to improve the recognition of the right to care and dignifying the sector of domestic employment. Based on testimonies of domestic migrant workers in Barcelona collected during my field work, I argue that the crisis provides arguments which are not only material but also moral for the regression in terms of rights, both on the institutional as well as the domestic level. In this context, the conflict between the right to care and the right to decent work is worsened; and the equation between the distributive labour of the State, weak in terms of care, and the historic absence of recognition which sweep along the domestic employment sector is being reconsidered.

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**Introduction**

In Spain, the increasing number of people in the situation of dependence, motivated by the ageing of the population and the low fertility rate as well as the massive incorporation of women into the labour market, has led to an unprecedented shortage of care. The so-called crisis of care involves a process of externalization and commodification of care, be that through the market or the public institutions. In a context of clear setbacks in terms of public policies, people resort to the

private market. Unlike other countries, where this market has a formal and standardised character, in Spain it is characterised by a high level of informality. This way, resorting to the employment of migrant women in order to resolve care needs, in a regular or irregular situation, has become a habitual practice of externalization amongst Spanish households.

This explains the fast increase of the domestic employment in the last years, moving from 350,000 in 1995 to 750,000 in 2010, more than doubling in 15 years; although it is true that from 2007 it settles and then descends moderately in the following years. It is a highly feminized sector (90-95 %) with a very important presence of foreign women. Between 50 and 60 % of the domestic workers

comes from foreign countries, above all Latin America and Eastern Europe, and to a lesser extent from Africa and Asia (ILO 2013).<sup>1</sup> Even though the economic crisis has not produced such a significant loss of employment as can be observed in other more masculine labour sectors, it has involved a decline and a growing precariousness in the working and living conditions of workers, which is of utmost importance to make visible.

The overwhelming presence of women in domestic employment, just like the especially vulnerable conditions to which they are exposed, should be explained by the intersection of different factors: public policies for long-term care (lacking and in clear regression since 2012); the regulation of the labour market and especially domestic employment (weak with regards to the recognition and protection of the labour rights); and the migratory regulation (crucial in the configuration of a highly ethnicized labour market niche) (Martínez-Buján 2011; Nogueira and Zalakain 2015).

This article maintains that the crisis has had a constricted effect with regards to the unfolding of recently approved regulations (The Dependency Law 2006; and the new regulations for the domestic employees 2011) which seemed to improve the recognition of the right to care and dignifying the sector of domestic employment. Based on testimonies of domestic migrant workers in Barcelona (fundamentally from Latin America) and of representatives of associations and trade unions, collected during my field work (2012-2016), I argue that the crisis, based on a new economic morality, provides arguments which are not only material but also moral for the regression in terms of rights, both on the institutional as well as the domestic level. In this context, the conflict between the right to care and the right to decent work is worsened; and the equation between the distributive labour of the State, weak in terms of care, and the historic absence of recognition which

sweep along the domestic sector is being reconsidered.

### **Public policies and domestic labour regulation**

In Spain care has not been subject of public policies in a clear manner, nor recognized as a social issue, until the 21<sup>st</sup> century. From the 1980s and 1990s we can observe public policies oriented to the assistance of old people and conciliation, but it was not until 2006 that the State, under EU pressure, assumed full responsibilities on the provision of care, by approving the Dependency Law.<sup>2</sup> Since then, care has generally devolved onto the family and, especially, women. In 2004, Spain still had one of the lowest formal care development rates in Europe (Comas D'Argemir 2015).

The Dependency Law promoted personal autonomy and special attention for individuals in situation of dependency, and aimed at configuring the National Dependence System as the fourth pillar of the Welfare State, after the National Health, Education and Retirement Pension Services developed in the 1980s. As a significant novelty, the law created a new universal and subjective social right for citizens, according to different types and degrees of dependency. The law planned two types of benefit: access to either public or publicly financed private social services, and direct economic compensation to the families, the latter being the ones which finally, and as a consequence of the budget cuts, have been stimulated the most (Sánchez Maldonado 2010, Bofill 2011). This has encouraged the consolidation of private care in the households carried out by migrant workers, often in irregular situation (Martínez-Buján 2014).

However, economic crisis and budget restrictions (especially from 2012)<sup>3</sup> halted the development of the Law, slowing down the deployment and restricting to the maximum the criteria of the allocation of the benefits.

This returned the responsibility of care to families, reinforcing *familiarism* and traditional gender roles (Comas D'Argemir 2015).

In turn, domestic employment in Spain has historically been characterized by precariousness and informality. It is a sector with an inferior level of protection compared to the other economic sectors, primarily deregulated and subject to clearly discriminatory labour and wage conditions (Martínez-Veiga 1995; Climent 2011; Nogueira and Zalakain 2015). In 2011 the Government promulgated Royal Decree 1620/2011 regulating the special relationship that characterizes service within households. It updated the rules governing the labour relationships of domestic employees and set out to improve working conditions in the sector by bringing them as far as possible into line with those of other workers.<sup>4</sup> In addition, Act No. 27/2011 on the updating, adaptation and modernization of the Social Security scheme incorporates the Special Security Scheme for Domestic Workers into the General Social Security Scheme. These new regulations were approved as a result of social and unions' struggles and international pressure.<sup>5</sup>

Despite of the advances that it meant, several collectives note that the law does not fully equate the right of workers when compared to the rest, leaving certain aspects without regulation, such as not recognizing the unemployment benefit or the withdrawal figure. Nor does it put an end to the informal economy.<sup>6</sup> These irregularities when it comes to contracting are fundamentally a product of the bureaucratic complexity and the increase in the cost of the contributions which the law implies for the households (García et al 2014; Pla-Julián and Giménez-Moreno 2012).

This is framed within the context of a Labour Reform (2012)<sup>7</sup> which has cut back the labour rights, and an Immigration Law which makes family regrouping even more difficult as well as

complicating the possibilities of administrative regularisation for the migrant population.<sup>8</sup> It should be added that the immigration laws in Spain have benefitted this kind of contracting. Domestic employment has practically been the only option for women to enter legally in Spain and it is also virtually the only job option if they find themselves in an irregular situation (Comas D'Argemir 2015; García et al 2014). As a matter of fact, as Climent (2011) points out, the objective of the immigration laws has been to support the process of defamiliarization of the attention through the outsourcing and sub-contracting of the care by migrant women.

Be that as it may, the economic crisis and the impoverishment of the middle classes and elderly people, many of whom have low incomes, the main petitioners of these services, complicate the deployment of a regulation which rests upon the purchasing power of the Spanish households. Without the concurrent development of public policies which support the sector it is difficult, if not impossible, for the great majority of the households to assume the cost of the service. This shows the weak labour distribution of the State, which suggests a major problem of political order with regards to who should assume the cost of the care, following which a conflict of rights emerges, which I will refer to later on.

### **The crisis as discriminatory argument**

A study carried out recently by Briones et al. (2014) on the migrant women's perception of the new labour regulation, demonstrates how, facing the new economic and administrative charges, many employers have decided to: a) maintain the labour relation although in illegality; b) force their employees to assume the cost of the contribution to Social Security System by reducing salaries; or c) fire the workers. Although the new regime has favoured the creation of jobs with more labour

rights, the migrant women perceive that in the present context of crisis the regulation has not contributed to the improvement of their labour conditions. The main reason being the employers' reservations when it comes to fulfilling the legislation.

Indeed, the greater part of the workers interviewed, regardless of their administrative situation, continue working without a contract and carrying out illegal workdays. Some of them have lost their job, or have seen themselves forced to accept salary reductions due to the new taxations; aggravated by the fact that in a lot of cases (live-in positions) the employers fail to register domestic workers as residents. They are supposed to work the same in less time and for a smaller wage: 'I was first earning 450 Euros working 18 hours per week; then my work shift was reduced to 12 hours per week; I do the same, but I do it in less time and for less money. My boss said to me: "just take it or leave it"' (Sandra, Colombia). The employers reject demands to regularize or wage increases adducing income reduction because of the crisis: 'I've always asked for them to pay the Social Security but the Mister's children have always dragged their feet and now they tell me that the time isn't right for demands' (Isabel, Ecuador).

However, it should be stressed that this explanation it is not always enough for some women, who are sceptic about this argument, and actually perceive themselves as victims of exploitation and abusive treatment. This is the case of Maria Elena (Honduras) who speaks about her last labour experience where she took care of an 83-year-old lady, as a live-in domestic and without a contract. She earned 700 Euros per month, of which 150 was for renting a room. She had to pay for the transport and lunch; the only meal she had throughout her working day:

The first day the lady met me, she told me that she would not do the paper work; that once she had done it for another girl and she had left immediately. Now you can't trust anyone. [...]

She was 83, and had a bad temper. For breakfast they would offer me a glass of milk and a bread roll. I got stomach problems from not eating. When I told her so she said I could have another glass of milk in the night; and that I would have to settle with that. I asked her if I could bring some dinner and reheat it there, but she told me I couldn't that she didn't like if the microwave and the kitchen would smell of food. [...] I was forbidden to touch her furniture; she was all the time watching me. Once she offended me. She accused me of stealing some of her jewellery and she threatened me with reporting me to the police: "I will call the cops so that you'll tell me the truth; from now on I will keep a close eye on you". And I told her: "I might be poor but I am no thief; you can investigate all you want and you'll see". After some days she apologised. [...] When I got pregnant she fired me.

Martha (Bolivia) has also experienced several histories of abuse and mistreatment. In 2012 she worked as a live-in domestic in the upper district of Barcelona; she did everything in the house and was also in charge of a child. She had no contract; and earned 900 Euros per month. She was dismissed after six months; she was told that the family's enterprise went bankrupt. However, she feels that she was dismissed because of the problems she had with the child. He showed an aggressive and defiant attitude towards the care-taker; until a moment when he even threatened to kill her with a knife:

When I told her mum, she blamed me. She didn't believe me: "my child wouldn't do that". I told her the truth, that when she wasn't there, he was terrible, he shouted at me, he used to hit me. That child needed affection; his parents didn't have the time for him. He used to say: "nobody understands me; nobody loves me". That's the actual reason why I was dismissed.

In 2015 Rosemary (Bolivia) got a job as a live-in domestic, taking care of a 95-year-old

woman from a wealthy family, she did not have a contract and was paid a salary much lower than what the law determines; almost without spare time and subject to an abusive treatment which she finally could not endure:

She told me she was not to make me a contract; that things were not going well and she could not afford that. I accepted the job because I needed it, but I could not stand it for more than two months. I felt imprisoned. She was afraid of being alone and she grabbed me. I could not even breathe. She slept during the day and she was awake the whole night, demanding attention all the time. I could not even take the garbage out. When I sat down for a little rest, she said to me: 'I'm not paying you to sit down'. I had no time to see my children; she didn't want me to leave the flat. If I were to divide the pay in 24 hours, I didn't even earn 50 cents per hour. She exploited me. So I told her and went off.

Fieldwork conducted among female workers accounts for the abusive treatment that these women frequently receive by the employers: endless work shifts, hardly a few hours of rest, extreme work control, mistrust, food rationing, humiliating treatment, threats of dismissal or report, physical abuse, sexual assaults. The cost for the women is high, both, physically and psychologically. This is especially serious in times where the crisis forces them to intensify and multiply the strategies employed to survive, by diversifying the source of employment, increasing the working hours, containment of the expenses and remittances, forced entry into the labour market of the members of the family who had previously remained outside, forced return of family members to their home countries, greater geographical mobility, etc. (Juliano 2012).

In my view, both for the State and for the employers, the crisis serves as a discriminatory argument for not applying the law and, thus, reinforcing the precariousness and inequality. In my view, a new economic morality based on

austerity (budget restrictions; diminished social rights) and impoverishment (of broad sectors of society) is being put forward. Upon which the limits of whose rights are affordable and whose rights are not, are being redefined (not only in material but also in moral terms), having a negative effect upon the most vulnerable sectors.

### **The right to care versus the right to a decent work: a conflict yet to be resolved**

Faced with the abuse and impunity being allowed, the associations of the domestic workers condemn the indifference of the administration and urge the Labour and Social Security Inspectorate (Ministry of Employment and Social Security) to act by deploying effective control mechanisms for the correct compliance with the law. They also denounce the lack of employment of public policies that strengthen the regulation and discourage the underground economy. In several appearances before the Employment Commission of the Basque Parliament, the Association of Domestic Workers in Bizcaya (ATH-ELE) has presented the real situation of vulnerability (legally and socially) that the domestic workers find themselves in.<sup>9</sup> Similarly it has denounced the lack of control by the Work Inspectorate, the impunity with which the private recruitment agencies act, and the lack of political will to employ an effective regulation in the sector. ATH-ELE has refuted the prejudices (myths) which still exist with regards to a possible effective regulation of the sector: inviolability of the household, which complicates the control and audit of the labour relation; and the idea that a greater control would lead to a decrease in employment. As opposed to this, ATH-ELE claims for legal mechanisms in order to enter the household, as well as alternative ways to control (already present in other fields of state intervention such as the migration control); and urges the government to study measures to support employment. "Care calls for public

spending”, as Isabel Otxoa, spokesperson of the association, argues.

These same arguments have been put forward in previous parliamentary debates. Peterson (2009) gathers the expressions with which the proposal for a new law for the Improvement of the Special Status of the Domestic Employment was discussed, presented by the Galician Nationalist Party in the Spanish Parliament in 2005. The members of the parliament admitted that the Special Status was out-dated and discriminatory, and that domestic employment deserved a more decent status. However, the proposal was not approved, the arguments being that this law would increase the informal economy and put the state economy, and especially the Social Security system, at risk. During the debate the interests of the workers (the right to decent work) came into conflict with the interests of the middle class families and their needs for reconciliation. Hence, the first ones were subjugated to the need “not to raise the price for the service of the middle class families” (Peterson 2009: 52-54). In a similar way, in the recent parliamentary debate on the Spanish State’s ratification of the ILO’s 189<sup>th</sup> Convention, the Popular Party adduced the “incompatibilities with the Spanish legal system”, as well as the “negative effect for the employment”.<sup>10</sup>

### Conclusion

Despite of the advances produced on the legislative level in the last years, domestic employment is still suffering a strong invisibility and precariousness, which has only been worsened as a consequence of the economic crisis. The abusive treatment is perpetuated, with the additional problem that this is produced at the expense of a law which aims at promoting the legal and social protection of workers. The law is violated, to a great extent, with impunity. The violation of the law is sustained by, not only the weak distributive labour of the State and the

resulting overload that this means for households, but also by the lack of recognition that domestic employment has endured in Spain.

The lack of recognition as a cultural device legitimates both, at the public and at the private spheres, the lack of control over the law; and hence, its violation, no matter which legal or economic reasons are alleged for that. The violation of the law becomes functional, both to the State labour structure and to household economies, which see their care needs solved at a very low cost. In this context, the rights of workers are still being subordinated to the rights of employees, perpetuating conditions of flexibility and availability which benefit the latter; situating the sector in an area of private agreements in the informal economy, instead of the formal labour area submitted to the labour legislation (Climent 2011; Nogueira & Zalakain 2015).

The substantial political problem which emerges is of an enormous significance: who should assume the cost of the care? A problem which presents itself as a conflict of interests, which at the same time is a conflict of law (Razavi 2007: 13; Glenn 1992) between the right to care among persons in a situation of dependence (and also right to middle class families reconciliation) and the right to decent work for domestic workers. Here a quintessential element appears in the vindication of the rights: its profound embeddedness and interrelation. What is clear is that it is a political problem which calls for a political solution, an urgent need which has been reinforced with the economic crisis.

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<sup>1</sup> According to the ILO (2013), Spain is one of the three countries that generate most of the domestic employment in Europe, alongside France and Italy, representing a 5% of the occupation.

<sup>2</sup> ACT 39/2006, of 14th December, on the Promotion of Personal Autonomy and Care for Dependent Persons.

<sup>3</sup> Royal Decree-Law 20/2011 December 30, 2011, on Urgent Budgetary, Tax and Financial Measures for the Correction of Public Deficit; and National Reform Programme presented to European Commission in 2012.

<sup>4</sup> The legal framework for this special labour relationship was first introduced more than 25 years ago by Royal Decree 1424/1985.

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<sup>5</sup> In 2011 ILO approved the Convention 189 and the Recommendation 201 on Decent Work for Domestic Workers, aimed at improving the working and living conditions of tens of millions of domestic workers worldwide. Spain has not ratified it.

<sup>6</sup> Although the number of affiliated improve substantially (between 2012 and 2014 it goes from 250,000 to 430,000 persons) it does not reflect the reality of the sector; given that the workers are put in for much less hours that what they really work. It is estimated, on the other hand, that the sector counts with 700,000 workers, due to which more than 300,000 women are yet not affiliated (OIT 2013).

<sup>7</sup> Royal Decree-Law 3/2012, of urgent measures to reform the employment market.

<sup>8</sup> See the last reform of the Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their social integration.

<sup>9</sup> See the appearances of December 2013 <https://www.youtube.com/watch?v=qGRH9E9gRUc>; and March 2016 <https://www.youtube.com/watch?v=uISM9eD0WKs>.

<sup>10</sup> Europa Press, March 15 2016 (<http://www.europapress.es/economia/labor>

[al-00346/noticia-congreso-insta-gobierno-ratificar-convenio-empleo-domesticas-ano-20160315211854.html](http://www.europapress.es/economia/labor-al-00346/noticia-congreso-insta-gobierno-ratificar-convenio-empleo-domesticas-ano-20160315211854.html))