"Current situation, features, and evaluation of changes in the labor law in southern Europe in the wake of the economic crisis"
- The Portuguese regime

ANA TERESA RIBEIRO[1]

ABSTRACT:

In this brief article, we will try and sum up the main recent changes to Portuguese labor law. Although there were signs of evolution since 2003 (with the adoption of the Labor Code), this phenomenon was accelerated by the crisis, which particularly struck Portugal. In fact, the country was forced to require external financial aid and, as a condition to that assistance, a Memorandum of Understanding was signed, demanding a number of alterations to labor law (among other areas) in order to create a more employer-friendly regulation and promote economical recovery.

We try and will analyze these changes, their reception amongst social partners, as well as their practical enforcement.

KEYWORDS: Recent developments; Portuguese labor law; crisis.

Introduction

The present study addresses the recent changes featured in Portuguese Labor Law, both at individual and collective relations.

Although some of these changes had already been put in motion before the crisis (the blurring of the *favor laboratoris* principle, the introduction of more flexible working time schemes, and so forth), they were reinforced and deepened after 2011. The driving force behind this new legislative boost were the Memoranda agreed between the Portuguese State and the *Troika* (composed by the European Commission, the European Central Bank and the International Monetary Fund). These Memoranda were a condition to the external financial aid the country required. And, basically, it ensured that Portugal would conduct a series of structural reforms concerning fiscal policy, financial sector regulation and supervision; budgetary framework; health care system; public-private partnerships; state-owned enterprises; public administration; education; goods and service markets; housing markets; the

[1] Assistant Professor of Law/Lecturer at the Oporto School of the Faculty of Law, Universidade Católica Portuguesa. The Author welcomes any feedback regarding the contents of this article: aribeiro@porto.ucp.pt

judicial system, and so on[2]. And, naturally, labor law. On this last matter, the key purpose was to diminish the risk of long-term unemployment, to reduce the labor market segmentation, to foster job creation and to ease the transition of workers from jobs, firms and sectors[3]. We will begin with the innovations introduced on the individual relations and we will address collective relations in the second part.

Part I – Developments in individual labor law

1. Severance payments

One of the demands from the Memorandum was the reduction of severance payments amounts, in order to provide for their alignment with the prevailing average in the EU[4]. This led to the phased downgrading of severance payments due to employees in case of extinction of the work post, employee's unsuitability and collective terminations.

In its original wording, Article 366 of the Labor Code provided for a compensation of one month for each complete year of service[5]. There was no maximum threshold for the compensation, whereas there was a three-month payment minimum, and collective agreements could choose a more favorable formula. Nowadays, some decrees later[6], the payment is of 12 days per complete year of service. And the new regime carries some difficulties, due to its complex transitional rules (which distinguish the applicable regime depending on the dates the contracts

[2] The *Memorandum of Understanding on Specific Economic Policy Conditionality* of 17th May 2011, as well as the *Memorandum of Economic and Financial Policies* and the *Technical Memorandum of Understanding*, can be found, in both English and Portuguese versions, at http://www.portugal.gov.pt/pt/os-temas/memorandos/memorandos.aspx. All references on the text to the Memorandum refer to the first one. All references on text to legal provisions, without mention of diploma, belong to the Portuguese Labor Code.

[3] Paragraph 4 of the Memorandum. Due to the extension and purpose of this article, we will not be able to address the measure aimed at the labor relations of civil servants. Nevertheless, the main innovations on this domain were: the promotion of civil servants' mobility (within local, regional, and central administration); the revision of the salary policy; the limitation of promotions and the freezing of wages and hiring; the cutting-back of costs related with health systems; and the reduction of pensions above a certain amount.

[4] However, although severance parameters were, indeed, lower in other European countries, their wages are higher and collective bargaining, as well as social plans, substantially raise legal compensations. Hence, this alignment was more illusory than real – Lobo Xavier (2012), 76.

[5] The year fractions are calculated in a proportionate manner – Article 366, no. 2.

[6] *Act no. 53/2011*, 14th October, reduced the compensation to 20 days of payment (per complete year of service). And it determined that the final amount could not be higher than 12 months of salary (and the monthly salary used for these sums could not be higher than 20 minimum wages). Initially, this regime was only applicable to new labor contracts, but *Act no. 23/2012*, 25th June, extended it to all contracts.

were entered into, but also differentiate periods of contract execution, associating different criteria to each separate period)[7].

The result of these continuous amendments is a very complex system[8] that hardened the task of employers[9]. Still, it is considered a balanced solution, since it protects employees' expectations[10].

2. Grounds for individual dismissals

With the intention of fighting market segmentation, the Memorandum demanded for a number of changes regarding the grounds for individual dismissals. The argument was that if it were easier to terminate open-ended contracts, employers would more frequently resort to this form of hiring[11]. Bearing this in mind, it asked for individual dismissals due to unsuitability of the employee to be possible even without the introduction of new technologies or other changes to the workplace. This imposition was implemented by *Act no. 23/2012*.

The constitutionality of this alteration was challenged before the Constitutional Court, on the grounds that it violated the prohibition of dismissals without a fair cause (Art. 53 of the Portuguese Constitution), as it was feared that it would lead to unjustified and arbitrary dismissals. The Court, however, deemed it valid, since there are enough guarantees to ensure a fair evaluation of the employers' performance. Plus, it would not be reasonable to force the employer to keep this worker when the decrease in quality or quantity is definitive (see *Judgment of the Constitutional Court no. 602/2013*)[12].

Act no. 23/2012 also targeted dismissals linked to the extinction of work positions, following the idea, present in the Memorandum, that these dismissals should not have to follow a pre-defined seniority order, when more than one

[7] A special rule was created for fixed-term contracts and temporary employment contracts, alternating criteria according to the moment those contracts were entered into and whether they were subjected to extraordinary extensions.

[8] Monteiro Fernandes (2014b), 569.

[9] See http://www.publico.pt/economia/memorando-da-troika-anotado (7/08/2015).

[10] Rosário Ramalho (2014), 1038.

[11] Paragraph 4. 5., of the Memorandum. Júlio Gomes ((2012), 578) challenges this idea, since everything indicates that employers hire because they have a need for manpower, and not because it is easier to dismiss.

[12] Available at http://www.tribunalconstitucional.pt/tc/acordaos/20130602.html (7/08/2015).

employee is assigned to those functions. Therefore, it only asked for the employer to establish 'a relevant and non-discriminatory alternative criterion'[13].

The validity of this change was also questioned before the Constitutional Court, with the argument that the new rule enabled 'custom-made' dismissals, allowing the employer to choose the most convenient criteria in order to dismiss specific employees he wished to dismiss (but against whom he had no fair cause). The Court agreed with the petitioners and declared the new rules unconstitutional. Following this decision, the legislator modified the Labor Code once again, and, today, in order to execute this sort of dismissal, the employer has to follow this hierarchized criteria: worst performance review; lower academic and professional qualifications; heavier burden in maintaining the contractual bond; less experience at the work post and less seniority. Monteiro Fernandes[14] disagrees with the current path. In fact, the previous grounds aimed at preventing discretion and discrimination, and protecting more vulnerable workers. However, the new requisites merely try and implement objectivity, lacking the previous social purpose.

Additionally, the Memoradum stated that these dismissals should not be subject to the obligation of previously attempting to transfer the employee to an available compatible position[15]. This duty was present both for dismissals due to the extinction of the work position and unsuitability of the employee. However, *Act no. 23/2012* eliminated it. Faced with the change, the Constitutional Court declared it unconstitutional, because it enable the dismissal of an employee when, in fact, it is feasible to keep him in another position, violating the prohibition of dismissals without a fair cause (see *Judgment of the Constitutional Court no. 602/2013*). Once again, following this decision, the legislator gave a step back and reinstated this obligation[16].

3. Working time schemes

[13] Paragraph 4. 5. ii), of the Memorandum.

[14] Monteiro Fernandes (2014a), 397-398.

[15] Paragraph 4. 5. iii), of the Memorandum. See Monteiro Fernandes (2014b), 547. Therefore, if there was any post available and compatible with the professional qualifications and the aptitude of the employee, the employer had to offer it to him. Only if the employee declined, would then the employer be able to proceed with the dismissal – Monteiro Fernandes (2014b), 394.

[16] Currently, it can be found in Articles 368, no. 4, (dismissal due to the extinction of work post) and 375, no. 1, d), (dismissal due to unsuitability of the employee).

On this matter, the Memoradum advocated for the easier introduction and renewal of working time arrangements and short-time working schemes in case of industrial crisis[17]. Specifically, it wished for the possibility of implementing a 'bank of hours' by direct agreement between employees and employer. This was accomplished with the introduction of the 'individual bank of hours' and the 'group bank of hours', adding to the pre-existent 'bank of hours' – which was renamed as 'collective bank of hours'.

The *collective bank of hours* is instituted by a collective agreement and it allows for the normal period of a day's work to be increased up to four hours; and also the extension of the normal week's working period up to 60 hours (with the maximum limit of 200 hours)[18]. The collective agreement must provide for a compensation, which may correspond to extra salary, to the equivalent reduction of working time or, since 2012, to the extension of holidays[19]. The new *individual bank of hours* (Article 208-A) allows access this regime through an *ad hoc* agreement signed directly between employer and employee or through a general proposal from the employer to which the workers may oppose in writing, within 14 days[20]. Finally, the *group bank of hours* (see Article 208-B) allows the extension of the other banks of hours (collective and individual) to employees initially unaffected by these mechanisms. This lack of initial coverage may happen because these workers are not affiliated to the trade union that entered into the agreement that provides for the collective bank of hours. Or, in case of the individual bank of hours, it may occur because the employee has not signed the *ad hoc* agreement or has opposed the general proposal presented by the employer. This extension can be achieved through one of two paths: A) the agreement that provides the collective bank of hours enables the employer to extend this regime to a group of workers, as long as it is originally applicable to 60% of the employees of that team, section, or economic entity[21]. Or B)

[17] See paragraph 4. 6. i), and ii), of the Memorandum.

[18] *Vide* Article 208, no. 2. These limits may be surpassed in case of business crisis (Article 208, no. 3).

[19] See Article 208, no. 4. However, Nunes de Carvalho ((2012), 27) argues that these are not truly vacation days, since the employer will not have to pay holiday allowance. Similarly, Monteiro Fernandes (2012a), 104.

[20] *Vide* Article 205, no. 5, *ex vi* Article 208-A, no. 2. Either the *ad hoc* agreement, or the general proposal must state the compensation method for the extra work, and the possibilities are the same as in the collective bank of hours. It enables the normal period of a day's work to be increased by up to two hours; and the extension of the normal week's working period up to 50 hours (with the maximum limit of 150 hours).

[21] See Articles 206, no. 1, *ex vi* 208-B, no. 1.

the general proposal, aimed at the individual bank of hours, was accepted by, at least, 75% of a team, section, or economic entity, allowing the employer to apply it to the remaining workers of that structure[22]. Employees covered by a collective agreement that provides for an opposing regime are exempt in both cases and, regarding only the first, so will be the ones affiliated to a trade union that opposed the extension of the collective agreement in question[23].

There are several doubts surrounding the bank of hours. For instance, the notions of team, section, and economic entity, as well as the measurement of the threshold percentages are imprecise[24]. And this provides the employer with a higher degree of discretion; particularly since statute does not offer endow the employees with an "opposition right"[25]. Furthermore, and in order avoid hidden unilateral impositions, the collective bank of hours should have been given a prominent role, only allowing the other options when, after a serious negotiation, the agreement is unattainable[26].

The Constitutional Court was also called to evaluate the compatibility of these mechanisms with the Constitution (see *Judgment of the Constitutional Court no. 602/2013*). The petitioners argued that the individual bank of hours placed employees in a vulnerable position, due to their difficulty to refuse it. Whereas the group bank of hours violates freedom of association, for it applies the conditions of a collective agreement to a worker that lacks affiliation to the signing trade union. Furthermore, both modalities aggravate the conciliation between professional activity and personal and family lives (safeguarded by the Constitution – see Article 59, no. 1, b)). The Constitutional Court however rebutted these arguments and considered them both valid. We do not share the Court's point of view. Particularly, regarding the group bank of hours, although the Constitution allows for the (administrative) extension of collective agreements, as we will see ahead, this possibility must be carefully weighed. Firstly, the representativeness of trade unions should be ensured (which does not happen under Portuguese law). In addition, this is a peculiar of extension, since it merely targets part of the agreement. However, collective agreements are the

[22] *Vide* Articles 206, no. 3, *ex vi* 208-B, no. 2.
[23] See Article 208-B, no. 3.
[24] Nunes de Carvalho (2012), 32-33.
[25] Nunes de Carvalho ((2012), 33-35) and Monteiro Fernandes ((2012a), 103) uphold the employee's right to oppose to the application of the group bank of hours, based on labor law principles and parallel dispositions of the Labor Code.
[26] *Idem*, *ibidem*.

product of negotiation. This means that, while it supplies the bank of hours, the agreement, most likely, offers some kind of benefit towards the employees (aside from the methods of compensation provided by statute). But the workers affected by the group bank of hours will only have access to its legal regime, without those other benefits. It is an extension merely *in pejus*. Therefore, in our opinion, the group bank of hours violates the Constitution.

4. Overtime work and public holidays

Another set of requests from the Memoradum aimed at the regulation of overtime work. In fact, it asked for the reduction of the additional pay to a maximum 50%[27], and also for the elimination of the compensatory time off[28]. These recommendations were implemented in the 2012 labor reform, embodied in *Act no. 23/2012*, which revoked Article 229, nos. 1, 2, and 6, (compensatory time off) and changed Articles 268 and 269 (payment of overtime work). Furthermore, despite being absent from the document, four holidays were eliminated by this reform[29].

Once again, and in spite of the public outcry about the value of work and the important of the right to leisure and rest, the Constitutional Court agreed to these measures (see *Judgment of the Constitutional Court no. 602/2013*).

5. Extra measures

In addition to these changes, the legislator targeted the pre-existing collective agreements that covered these subjects, in order to create a protective barrier against the 'past'.[30] Aiming at this intention, Article 7, of *Act no. 23/2012*, determined that the clauses of such agreements were to be:

- null and void (when disposing over severance payments, in case of extinction of the work post, unsuitability of the employee or collective termination; and when providing for a compensatory time off regarding overtime work);[31]
- and suspended (when conceding an additional payment for overtime work, higher than the one provided by statute)[32].

[27] While previously employees were granted an extra 50% pay for the first hour of overtime work, 75% for the additional hours and 100% for overtime during holidays.

[28] The Memorandum stated, however, the possibility of such norms being revised, upwards and downwards, by collective bargaining – according to paragraph 4. 6. ii), of the Memorandum.

[29] See Article 234, no. 1.

[30] Monteiro Fernandes (2012b), 558.

[31] See Article 7, nos. 1 and 2, of *Act no. 23/2012*.

Several Authors characterized this rule as bizarre[33] and once again, the Constitutional Court was called in to pronounce itself. The petitioners claimed that Article 7 was invalid, since it violated the right to collective bargaining. In fact, the subjects addressed by these clauses (now at stake) are part of the 'reserve' of collective bargaining (a fundamental right, enshrined in Article 56 of the Constitution), which prevents any legislative intervention. The Court argued that, regarding severance payments' clauses, there was no interference with the 'reserve' of collective bargaining. In fact, since this is highly imperative subject, collective agreements are merely able to determine some of its aspects. However, it recognized that was not the case with compensatory time off in case of overtime work. In fact, this is a field particularly devoted to collective bargaining, so the new rules were interfering with the reserve of collective bargaining. And considering that new agreements could provide the same set of clauses on these subjects, the intervention in the previous agreements was unnecessary and inadequate to its finality (which was the standardization of labor conditions). For this reason, the Court deemed this change unconstitutional. In turn, the suspension of clauses providing for additional pay for overtime work higher than the legal stipulation was considered valid. In fact, such suspension affected not only the previous but also the new agreements celebrated for a period of two years. Therefore, despite interfering with the reserve of collective bargaining, this measure was adequate to fulfill its purpose[34].

6. Minimum wage

Finally, the Memorandum also targeted minimum wage. It stated that 'over the program period, any increase in the minimum wage will take place only if justified by economic and labor market developments and agreed in the framework of the program review'[35]. And the government pledged not to raise minimum wage for the duration of the program, unless the *Troika* gave its consent.

The Constitution does not prohibit the maintenance of the minimum wage's

[32] See Article 7, nos. 4, of *Act no. 23/2012*. It was also determined that if, within two years, the suspended clauses were not altered, the sums they provided should be reduced to half (with the limit of the amount enshrined in statute) – according to Article 7, no. 5.

[33] Nunes de Carvalho (2012), 37-38; Monteiro Fernandes (2012b), 558.

[34] The reduction, mentioned in fn. 32, was also deemed unconstitutional. Because it meddled with the reserve of collective bargaining and it was not adequate (unnecessary) to reach its purpose. In fact, after these two years, new agreements would be able to provide for more favorable regimes.

[35] See paragraph 4. 7. i), of the Memorandum.

amount in situations of true national disgrace. Yet, it is possible to determine different minimum wages, according to the characteristics of each sector or even enterprise. Although this is not the current option, the legislator has previously implemented that solution. For this reason, some Authors questioned the constitutionality of this imposition, since it froze the minimum wage not only for debilitated companies, but also for profitable and stable ones. Furthermore, this policy was insensitive to the existence of primary social needs, precisely when the country was going through a general and extraordinary increase in the cost of life, deepening the inequalities in one of the most unequal countries of the EU[36]. Furthermore, in case of improvement of Portugal's financial and economic state, it would still be necessary to obtain the *Troika*'s approval to change the amount of minimum wages. Despite these objections, the minimum wage stayed untouched (at 485 euros) from 2011, until recently *Decree-Law no. 144/2014*, 30th September, raised it to 505 euros[37]. Currently, its amount is 530 euros, by *Decree-Law no. 254-A/2015*, 31st December.

Part II – Developments in collective labor law

1. The extension of collective agreements by State intervention

Concerning this matter, the Memorandum stressed the need to define clear criteria for the extension of collective agreements. The representativeness of the negotiating organizations and the implications of the extension for the competitive position of nonaffiliated firms should be among these requisites[38]. This demand was fulfilled by the *Resolution of the Council of Ministers no. 90/2012*. And so, according to this legal instrument, for now on, an agreement will only be open to extension by State intervention if the following conditions are met: 1) the extension of an agreement must be required by its signing parties (one trade union and one employers' association); and 2) in order for all of the enterprises (and employees) of the sector to be included in the scope of the extension, the employer's side of the convention must employ, at least, 50% of the workforce of that sector **or** the

[36] João Reis (2012), 137-138.

[37] *Vide* Article 2 of this legal instrument.

[38] Paragraph 4. 7. ii), of the Memorandum: '(…) the Government will: (…) **define clear criteria to be followed for the extension of collective agreements** and commit to them. **The representativeness of the negotiating organisations** and **the implications of the extension for the competitive position of non-affiliated firms will have to be among these criteria**'.

employers' association that signed the agreement must be composed, in at least 30%, by small and medium enterprises[39].

To understand the impact of this change, we must first have of glimpse of the most significant aspects of Portuguese collective relations. Under Portuguese law[40] (the same goes for the German or Italian regimes), collective agreements only cover employees affiliated to the trade union that signed them with their employer (or with the employer's association the latter belongs to)[41]. Therefore, employees lacking trade union membership, or members of a competing union, will not be covered by the agreement[42]. Consequently extension mechanisms expand the advantages associated to collective bargaining, granting the access to these conditions to employees who, otherwise, would not enjoy them[43]. Particularly in Portugal, and considering the heavy presence of SMEs[44], the low union density[45], and the limited effect of collective agreements (principle of 'affiliation'), this means that most employers and employees are excluded from the direct scope of negotiation. In fact, SMEs generally stand apart from collective bargaining[46], since they feel more acutely the global phenomenon of decrease in union membership[47]. Additionally, they also often lack representative institutions for the personnel and employers' affiliation is also reduced[48]. And despite having legitimacy to celebrate agreements by themselves with trade unions, these employers show a tendency to direct negotiation with their employees, due to their (usually) more traditional and paternalistic mentality[49].

Since this ultimately leads to the removal of these employees from collective bargaining, one could assume that the effectiveness of collective bargaining is very

[39] This second alternative was added by *Resolution of the Council of Ministers no. 43/2014.*

[40] See Article 496, no. 1.

[41] Robert Rebhahn (2003), 283.

[42] Unlike regulations found in France, Belgium, Austria, and Finland, where when an employer (or an employers' association) enters into an agreement it binds all the employees of the undertaking. Even if they are not members of the signing trade union or if they are affiliated to a competing trade union. These agreements carry an *outsider effect – vd*. Robert Rebhahn (2003), 283, 287; Pélissier, Auzero, and Dockès, (2013), 1341.

[43] Robert Rebhahn (2003), 290.

[44] As of 2008, 99.7% of the non-financial societies were SMEs (*Estudos sobre Estatísticas Estruturais das Empresas*, 2010).

[45] Despite the lack of official data, it is estimated that the Portuguese trade union rates are situated around 18.4% (*Livro Branco das Relações Laborais*, 2007, 72).

[46] Catarina Carvalho (2011), 632-633; Marco Biagi (1993), 26.

[47] Bouquin, Leonardi, and Moore (2007), 17.

[48] Marco Biagi (1993), 26; Catarina Carvalho (2011), 608-609, 633.

[49] Marie-France Mialon (1993), 63.

narrow. And yet, around 92 % of workers[50] were, until very recently, covered by these agreements, as a direct consequence of the quite liberal usage of the extension of collective agreements, the 'true star in the sky of the Portuguese collective autonomy'[51]. Lately, however, the number of extensions has diminished quite visibly. While in 2009 and 2010, respectively, 103 and 113 took place; in 2012 only 12 materialized, and nine in 2013. Finally, in 2014 only 13 extensions were produced and in 2015 merely 23 were created[52]. The reason behind this inflection was the change of the conditions required for the extensions. Before this alteration, extensions were unchained under the discretionary power of public administration[53]. All this changed with the Resolutions of Council of Ministers.

We believe it was, in fact, necessary to make some changes, in order to better protect undertakings and their competitive position (ensuring that extensions will not be used as a way to distort competition), and to overcome the inconveniences created by the lack of criteria of trade unions' representativeness (along with the absence of official data regarding this element). Nonetheless, these alterations have been amidst controversy and provoked several practical problems. On one hand, they had the self-proclaimed intent of promoting collective bargaining in Portugal. This goal was not achieved, since there was not only a significant decrease of extensions, but also the reduction of new agreements. As it seems, the willingness of social partners to participate in collective bargaining lessens when there are fewer guarantees that the same conditions will be extended to their competitors. In addition, the new requisites do not meet the exact impositions of the Memorandum, since it asked for the representativeness of both social partners to be taken into account (and the Resolution omit any reference to trade unions) and for the evaluation on the effects towards competitors (another absence). All of this easily explains the displeasure displayed by social partners. Particularly since the number of covered employees (directly or otherwise) has severely decreased. According to social partners, while in 2008, two million employees were covered by these agreements, in 2013 only 200,000 were benefiting from them[54].

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[50] *Estatísticas em síntese – Quadros de pessoal* 2010, p. 6. A similarly high percentage is also present in France (around 90%), also thanks to frequent agreement extensions (Eurofound, (2011), 6).

[51] Jorge Leite (2007), 149.

[52] Available data at http://bte.gep.msess.gov.pt (20/07/2015).

[53] Júlio Gomes (2009), 95; and Nunes de Carvalho (1988), 442.

[54] http://www.jornaldenegocios.pt/economia/emprego/lei_laboral/detalhe/ugt_alteracoes_ao_codigo_do_trabalho_vao_ajudar_a_dinamizar_contratacao_colectiva.html (30/12/2014).

2. Other changes

Recently, *Act no. 55/2014* introduced the possibility of suspending collective agreements[55]. The suspension requires the accord of the agreements' parties, is merely temporary, may be total or partial, and must be due to a business crisis. Furthermore, this measure has to be indispensable to ensure the company's viability and safeguard work posts. The legal rule, however, presents some interpretative doubts. In fact, it asks for an agreement between 'employers' associations and trade unions'. Considering that collective agreements can directly signed by employers, without the intervention of their associations, this begs the question of whether company level agreements may suspended. Either the legislator was imprecise, or it meant to circumscribe this possibility only to sector level agreements.

Conclusions

The intervention of the *Troika* in Portugal was a turning point in our labor regime. Several significant changes had already been in course. However, the reforms of 2012 and subsequent years accelerated this process twofold. Particularly, *Act no. 23/2012* implemented measures that led to the decrease in labor costs (at the expense of workers' rights); to the increment of the employers' power of decision; and the neutralization of previous collective agreements. The idea behind these alterations is that economic development is achieved through low salaries and longer working hours[56]. Quite unimaginatively, the legislator seems to believe that labor law's sole purpose is to increase competition and the only way to achieve it to reduce the cost of labor[57]. Labor law is becoming less and less oriented towards the protection of employees. Nowadays, weighed down by crisis, globalization and a dominant neo-liberal ideology, it is growing more focused on the needs of companies and their competitive potential. And even the Portuguese Constitutional Court, rather than assuming an obstructive rule (as it has been accused), has evoked the conjuncture of financial emergency and the commitments assumed by the country to accepted most of these changes. We need to rethink the path we have taken. Labor law cannot ignore the challenges posed by the modern and globalized economy. However, it must try and preserve its genetic code, ensuring the protection of employees' rights and

[55] See Article 502, no. 2.
[56] Monteiro Fernandes (2014b), 552.
[57] Júlio Gomes (2012), 576.

interests. Especially since several fundamental rights are clearly at stake (rights recognized not only by the Portuguese Constitution, but also by international instruments). A balance must be found and we still have a long way to go.

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