UNIT 1: LABOUR LAW.

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This introductory lesson has two main purposes:

1) On the one hand, to understand what Labour Law is as an autonomous legal discipline, that is, knowing and understanding what the scope and characteristics of Labour Law are, as a independent branch of our legal system.

2) On the other hand, to be familiar with the historical, social and legal factors that led to the emergence and development of Labour Law and its current institutional, legal and academic autonomy.

1.- Concept of Labour Law.

To make a first approach to the concept of Labour Law and its scope, it is worth reminding here what the meaning of "Law" or a legal system is.

As it is known, a legal system is a set of written or customary rules born within a particular social group for the purpose of ordering relations among individuals and solve conflicts which may arise between them.

Thus, the notion of Law is linked to society and social groups because where there are social groups, social relations are triggered and where there are social relations, Law arises (*Ubi societas ibi ius*, i.e where there is society, there is Law). Every single society, no matter how primitive it is, must be provided with some sort of rules aimed at regulating peaceful coexistence among its members. Those rules are, precisely, the Law or the so-called legal system.

The legal system is unique. However, in contemporary societies, due to the wide range of social relations that are triggered within them,

the legal system is forced to create branches to organise society with criteria of rationality and efficiency. In the words of Jaime Guasp, "*Law is one in its essence but their manifestations are many*." In short, that is why nowadays modern legal systems are organised in different branches or legal sectors (Civil Law, Administrative Law, Criminal Law, Tax Law, Labour Law, etc.).

Each sector or branch of legislation regulates specific social relations that constitute its scope, but in order to become an autonomous legal discipline specific inspiring principles are also needed. Therefore, returning to the subject of this section of the lesson, it can be said that in order to define Labour Law, two factors must be referred to:

1) The scope of Labour Law.

2) Its guiding principles.

1 - The scope of Labour Law

The scope of Labour Law is constituted basically by the set of the social relations that arise from the rendering of services of one person to another. However, not all kind of work carried out among people is regulated by Labour Law but only those that meet a number of features:

1) Free or volunteer work

2) Remunerated work

3) Dependent work, that is, t the performance of work under the organisation and direction of somebody else.

4) Work for hire (hired-hand work), that is, services rendered on behalf of another person.

In general terms, only when the work rendered fulfils the above defining elements, shall it be regulated by Labour Law. These elements, of course, have not been created by scholars yet are required by the

Worker's Statute (WS) when delimiting the scope of Labour Law (art. 1.1)[1] and are necessary to identify the existence of employment contracts (art. 8.1 ET)[2] . Therefore, these legal features are required by judges and courts to describe a particular employment relationship as regulated by Labour Law. The concept and meaning of such notes identifying employment relationships regulated by Labour Law will be analysed in lesson 5, focused on employment contracts.

To sum up, Labour Law will only apply to workers who render their remunerated services voluntarily, on behalf of another person, and under his organisation and supervision.

2.- Inspiring principles.

As it has been said here, Labour Law scope is constituted by the work provided voluntarily, remunerated, on behalf of another person and under its power of organisation and management.

Notwithstanding, to qualify Labour Law as an autonomous legal discipline it is not enough to have an object itself to be regulated. The existence of an independent body of detailed rules with its own principles and legal institutions is also necessary.

Indeed, nowadays Labour Law, as an autonomous branch of our legal system, has an independent regulatory system based on own principles. Nevertheless, this has not always been the case. The following has to be taken into account:

1) When industrial revolution and capitalism arose, relations of production based on exchange of volunteer and paid work, dependent and on behalf of others were developed progressively. These working

[1] Article 1. Scope of Application. 1. *The present Law shall be applicable to the workers voluntarily rendering their services for compensation on behalf of another party, within the scope of the organisation and management of another, physical or legal person called the employer or entrepreneur.*

[2] Article 8. Form of Contract. 1*. The work contract may be formalised in writing or orally. It shall be presumed to exist between anyone rendering a service on behalf of and within the scope of the organisation and management of another, and the person receiving it in exchange for a compensation paid to the former.*

relationships were governed by Civil Law, based on the principle of free will, and channelled through the services contract.

2) With the development of the capitalist society and production relations based on the exchange of personal services for remuneration, a range of historical, social and legal factors trigged the adoption by the States of certain rules regulating some aspects of those relations. Those rules were not inspired by the principle of *free will* (also called "autonomy of the will"). They were policy working rules inspired by principles totally opposed to those of the civil contracts.

3) The latter is important because the appearance of these first policy working rules, inspired by specific principles, marked the birth of the first labour regulations and, therefore, the genesis of Labour Law as an autonomous legal discipline.

Broadly speaking and oversimplifying, it can be said that there were three factors that led to the progressive academic, institutional and legal autonomy of our discipline: 1) the proliferation and development of those policy working rules; 2) appearance of the employment contract as a special contract type, subjected to a specific legal regime, different to the one applied to the services contract; 3) the growth and development of trade unions and union power, as well as the birth of the Labour Law specific source of rights: the collective agreements.

So, what are the principles that inspired those rules whose proliferation determined, among other factors, the emergence of Labour Law?

These rules were inspired by the principle of protecting the weaker party of the contractual relationship: the principle of limitation of the parties' free will.

Whilst in Civil law the principle of free will prevails, according to which the main source of the regulation of the rights and freedoms of

the parties is the contract (art. 1255 CC), in Labour Law a totally opposed principle prevails: the limitation of the parties' free will. According with this principle, the contract is not the main source of regulation of the working rights and obligations but the legal labour standards. Hence, it is commonly asserted that the employment contract is a "regulated contract", because its content is predetermined by legal regulations, being very low the regulatory margin for the parties.

This general principle of limitation of the party autonomy, leading the legal regulation of labour relations, can explain the today's existence of three important principles which guide the application of labour rules and are even covered by WS:

- The principle of a more favourable rule (art. 3.3 WS)

- The principle of a more beneficial condition (art. 3.1 c) WS)

- The principle of inalienability of rights (art. 3.5 WS)

The first of these principles is aimed at solving conflicts between labour rules and the remaining two regulate the relationship between labour standards and the parties' free will. However, the study of these principles will be undertaken in the 4th lesson.

Conclusion.

The purpose of this section was to define Labour Law. It may be defined as the area of Law which regulates the personal services rendered voluntarily for compensation, on behalf of somebody else, under direction and subordination, and which has its own inspiring principles.

2.- Factors that led to the emergence of Labour Law.

A legal regime of work has always existed, at least, since there is the first evidence in the history of human exploitation (SALA FRANCO). By contrast, Labour Law has not always existed in the history of

humanity. Its genesis is linked to a particular historical period as a result of the development of certain historical, social and legal factors. Throughout history there have been as many labour legal regimes as prevailing modes of production. In the slave mode of production, there was a work legal regime based on property rights of a person (the *dominus* or master) over another (the *servus* or slave)[3]. In the feudal mode of production (feudalism), a work legal regime based on subordination within the frame of vassalage relationships prevailed [4]. In the capitalist mode of production (capitalism), as it is known, the scheme of work is based on the free exchange of labour for remuneration. However, it is not possible to talk about the genesis of Labour Law since the first evidence of human work exploitation, but only with the coming of the capitalist society and the free exchange of labour for remuneration.

Now, Labour Law does not emerge with the mere change of the production mode from feudalism to capitalism. In fact, once the capitalist society was running, for many years Civil Law regulated the employment relationships, so the contract type which ordered these relations was a civil one: the services contract.

The emergence of Labour Law was gradually triggered as a result of a long process of economic and social changes that started from the industrial revolution. Summarising, there were four factors or that determined the onset or genesis of Labour Law: 1) A sociological factor: the industrial revolution and its social effects; 2) A legal factor: the liberal-individualistic Law and its social dysfunction; 3) A social factor: the labour movement; 4) A political factor: the State intervention in regulating labour relations.

[3] Slaves were considered property under Roman law and had no legal personhood. Unlike Roman citizens, they could be subjected to corporal punishment, sexual exploitation, torture, and summary execution.

[4] The relationships between feudal lords and his vassals were based on the holding of land in exchange of a service or labour.

1.- Sociological factor: the industrial revolution and its social effects.

In mid-eighteenth century and throughout the nineteenth century, the technological evolution, due to the introduction of machines in the relations of production, unleashed a set of major economic and social changes that led societies to a deep transformation known as the industrial revolution. The industrial revolution brought, in turn, two important changes:

1) Change in the organisation of work: from the production concentrated on small workshops and coming from the field, typical of the feudal society, work turns to be concentrated in factories. First, large concentrations of capital emerged, companies proliferated and large-scale production within them.

2) Change in the structure of the working population. In the feudalism capital and workforce were concentrated on the figure of the craftsman. However, with the development of a capitalist society both factors are dissociated due to the emergence of two different social groups. On the one hand, those craftsmen and farm workers who, having enough purchasing power could raise capital and set up factories. On the other hand, those other people who, due to the lack of enough capital, could only exchange their labour for remuneration for a living. So, it can be said that two large social groups emerged (employers and workers) which constituted the leaders of the new capitalist mode of production.

2.- Legal factor the liberal-individualistic Law and its social dysfunction.

What was the Law that ordered the relations of production during the early capitalist mode of production like?

As it is known, in the late eighteenth century and throughout the nineteenth century, liberal ideology became fashionable, leading to a new understanding of Economics and Law.

From an economic point of view, this ideology calls for a non-intervention of the State in the production of goods and services. Economy must be left to the free interplay of supply and demand.

From a legal point of view, Liberal Law relies on two principles that brought the French Revolution: freedom and equality. These principles transferred to the field of labour contracts at factories implied two things:

1) Freedom of contracting: the parties' free will was completely governing labour relations between employers and workers. Therefore, the parties decided freely whether or not to conclude the contract, the contract terms, and also the time to terminate the employment relationship. As it is known, the contract which conducted this working relationship was the civil services contract.

2) Prohibition of unionism: Combinations of workers constituted a criminal conspiracy considered in law as a crime, because the union interfered with the parties' freedom by forcing workers to not hire if not above minimum work conditions.

It is very illustrative in this regard, the identification of this offence in the Spanish Penal Code of 1848 as a crime of "*scheming to alter the price of the workforce*" ("*maquinaciones para alterar el precio de la mano de obra*"). Before that and with a similar purpose, the *Conde of Toreno* Decree of 1813 abolished the guilds, declaring freedom of work and industry and banning any professional association (including, therefore, the unions).

What were the social consequences of applying this liberal-individualistic law to working relationships?

Liberal Law was of apparent goodness in its theoretical approach (due to the positive connotation of the terms of liberty and equality) but of dire consequences in its application in the working relations. The

principles of freedom and equality had just a merely formal application in the contractual relationship:

- The contract parties were not free or, at least, freedom was not for the weakest party, because workers were not free to sign the contract, but were forced to do so as the only means of livelihood as it was the only alternative to unemployment.

-The parties were not equal: the employer, as the strongest party of the employment relationship, imposed the working conditions and workers could only accept or reject them, but never negotiate.

These circumstances led to a high dehumanisation of work and very hard living conditions of the working class.

In this regard, contemporary documents and historians published work refer to the appalling living conditions of the workers living in overcrowded houses near factories with no health conditions. Also there were long working days and little remuneration, which was just for subsistence. An example of common compensation abuse was the so-called "truck system", a remuneration system which lied on vouchers that could be exchanged for less quality goods with exorbitant prices. There was also women and children labour exploitation. Theywere used as cheap workforce, in conditions akin to slavery, high work accidents, morbidity and mortality rates due to the absence of social security and occupational risk prevention systems. It is very known, in this regard, the assertion of A. Guépin, a French physician from Nantes who said that "living for workers is not to die" (1935).

3. - Social factor: the labour movement.

The labour movement was undoubtedly the main trigger for the development of Labour Law. It emerged as workers' reaction against the liberal system and employers abuses in labour relations. The incidence of the labour movement could be appreciated in two different ways:

1) From the point of view of the social action, the proletariat gradually becomes conscious of classes and reacts through direct action against the excesses of the system:

a) The first workers' collective actions arose in the form of clandestine meetings, demonstrations, strikes, and violent actions in factories. It was especially remarkable the so-called "Luddite". This social movement first emerged in England, among textile craftsmen who protested against newly developed labour-saving machinery and they destroyed them. The movement's name was originally attributed to Ned Ludd, a young individual who allegedly smashed two stocking frames in 1779, and whose name became emblematic for destroying machines. In Spain, there were also expressions of this social movement in the townof Alcoy in Alicante.

b) In addition, the first workers' associations arose, mainly for two purposes:

- On the one hand, mutual benefits associations were set up to cover workers' social risks protection. A good example of such initiatives in Spain were the so-called "Mutual aid societies" (*Sociedades de socorros mutuos*) which were created for this purpose.

- On the other hand, strike funds were also set up. Such funds (strike pay) were aimed at providing workers on strike compensation during the length of the strike.

2) From an ideological point of view, labour movement was inspired by two streams of thought which both claimedthe transformation of the society through the struggle of the working class and the proletariat access to the means of production. As it is known, these ideological trends were:

- Anarchism: characterised by a revolutionary inspiration. It rejected any collaboration with the State and refused political parties.

There were claims for the transformation of the society through workers' revolution.

-Marxism: characterised by a collaborationist inspiration. There were claims for the transformation of the society from the State through political parties, using the State legislative power. Within this school of thought, the 1848 Communist Manifesto, written by Karl Marx and Friedrich Engels, and commissioned by the Communist League has to be highlighted. In addition, the development of the scientific socialism and the emergence of the first workers' parties have to be pointed out. The Social Democratic Party of Germany constituted their main model.

4. - Political factor: the State intervention in labour relations regulation.

Due to the notoriety of the Labour movement, States gradually became aware of the social problems of the working class and began to step in, through legislative measures, limiting employers' powers to regulate the employment relationship and, thus, improving workers' life and working conditions.

Expression of this trend is the phrase by Antonio Maura, Spanish Minister during the Liberal governments of the early twentieth century, who suggested the "need of a revolution from above to prevent it occurring from below".

There are a wide range of examples of this policy of the State intervention in industrial relations:

1) Initially, it was a very shy intervention, aimed solely at protecting the most disadvantaged groups (women and children). Examples of such rules are:

- French Law concerning women working, from1841. This Law banned certain drudgery to women.

- Spanish Law concerning children's work from 24 July1873 (called "Benot Law", in response to its creator, Eduardo Benot). This

Law banned hiring children under 10 years of age and limited working time of children under 15 years of age.

- Spanish Law relating children's hazardous work from 26 July1878. Some risky jobs were banned for children (diver, bullfighter, acrobat, animal tamer and similar).

- Spanish Law concerning work in commercial establishments from 27 February1912, approved during the government of José Canalejas. It is the so-called "Law of chair", because women were recognised the right to a seat when they would do it standing up.

2) Over time, the regulatory state intervention became more settled. In this respect, 1919 was an important year, basically for two reasons:

On the one hand, we are witnessing the "*constitutionalisation*" of Labour Law". The Weimar Constitution was approved in Germany. It was the first European Constitution which, along with the rights and freedoms of all citizens, collected specific rights for workers. Precisely this Constitution inspired Spain's Republican Constitution from 1931, which recognised, for the first time, labour rights as free association, minimum wage, limiting working time and paid annual leave.

On the other hand, in 1919 the International Labour Organisation (ILO) was also founded by the Treaty of Versailles. Since its inception, a major international forum for discussion was created where States' exchange experiences regarding labour issues, particularly international labour standards and decent work. Spain is part of it as a full member. The ILO has developed longstanding a longstanding important regulatory function through its Conventions and Recommendations. These legal standards, to the extent that they contain minimal nature rights, underpin the States' social legislation development in all kinds of matters avoiding, thus, "social dumping".

3) In the twentieth century, certain political and legal events occurred that were crucial to the emergence of Labour Law as an autonomous branch of our legal system. Those events were, mainly, the following:

1. – Legislation firstly recognised the contract of employment as a contract type namely aimed at regulating labour relations. In Spain it was recognised for the first time in the Labour Code of Primo de Rivera from 1926.

2. – States changed their attitude to unionism and collective rights. Consequently, unions are tolerated initially and later recognised by laws[5]. The same can be said about collective autonomy (the right to negotiate collective agreements) and the right to strike, saving the gap marked by Nazism and Fascism[6].

3. - A specialised Administration was created: the Ministry of Labour (created in Spain in 1920), with a specific control body: the Labour Inspection[7].

4. - A specialised jurisdiction was created: the labour jurisdiction (1908).

3. - The functions of the Labour Law.

So far in this unit, it can be concluded that the appearance of Labour Law is the result of a legal regulation of a class conflict. The development of a capitalist society during the nineteenth and twentieth centuries showed the confrontation of the claim of the working class to overcome the legal and social situation and the interest of the owners of capital to keep the status quo unmodified.

[5] In Spain through the Associations Act of 1887, under which first Spanish unions could be founded: UGT and CNT.
[6] In Spain it continued to be penalised under the Associations Act until the early twentieth century (1909) when it was decriminalised.
[7] In Spain it was established in 1908 with the birth of the Industrial Courts. Such courts were built by a jury composed by employers and employees who judged on the facts and the judge applied the law

Given this social context, Labour Law arises within the conflict of classes developing three basic functions:

1) The first is to protect the rights of workers as the weaker party in the contract of employment, which is manifested in the recognition of minimum, inalienable individual rights and collective rights whose purpose is to reduce the inequality between the parties in the contract. All of which makes Labour Law a compensating instrument and one of the major reflections of the Social State.

2) Secondly, it plays an integrative function of the social conflict. Labour Law creates the legal framework where opposing interests of employers and employees in labour relations are ordered. This function is performed by Labour Law, mainly, through the legal recognition of the collective rights: freedom of association, collective bargaining, right to strike and industrial actions.

3) Thirdly, it also plays a stabilising role of the economic and political system as Labour Law allows to achieve a structural balance between workers' protection, the right to free enterprise, and business freedom and employers' managerial powers.