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WORKING TIME ISSUES

SPANISH TEAM REPORT

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List Of Contents:

1 - What are the sources of the working time regulation in your country (implementation of EU directives, Constitution, law, collective agreements, case law...)?

Working time is regulated in several interrelated sources. The hierarchy of sources of the Spanish legal order applies (i.e. Constitution; statutory law; collective agreements; contracts). Case law is not a source of law in the Spanish system.

- **Constitution:** articles 40.2, 43 and 15 of Spanish Constitution (SC) are related with working time regulation. Firstly, article 40.2 SC states that public authorities have an obligation to "ensure daily rest, by limiting working hours". Secondly, article 43 SC stipulates the right for health protection in a broad sense, including health protection of workers. Both articles are guiding principles of social and economic policy. Articles 40.2 and 43 SC are related to article 15 SC (the right to life and physical integrity). Article 15 SC has the rank of fundamental, ths having resource to *"recurso de amparo"* in the Constitutional Court.

- **International and supranational sources:** articles 93 to 96 SC grant to the International treaties and conventions ratified by Spain equal rank as other contents of the Spanish Constitution: they are incorporated into the Spanish legal order and must be applied in their own terms.

  The rights recognized in the SC related to human rights must be interpreted in the light of the Human Rights Charter (art. 10.2 SC). Because of its importance to our topic, we highlight the Conventions and Recommendations of the International Labour Organization (ILO), specifically Convention number 1 "Hours of Work" (Industry), 1919. For its regional importance, the Council of Europe highlights with two important texts, firstly the *"European Convention on Human Rights (1950"),* important in topics such as freedom of association and the prohibition of discrimination, secondly, the *"European Social Charter or Charter of Turin (1961)",* which recognizes a number of basic rights for a decent job.

  At European Union level the Directive, which allows Member States some leeway, is the most important legislative instrument. The most relevant Directives with an impact on working time are the Working Time Directive 2003/88 and Directive 97/81 / EC on the framework agreement on part-time work. Those Directives have been transposed into the

Spanish legal order.

- **Statutory law:** working time is regulated by different instruments such as ordinary laws, decree-law or legislative decrees[1].

  Working time regulation is found in Workers' Statute (WS) in articles 34 to 38. The regulatory framework designed by these articles can be improved by collective agreement or employment contract.

  There are also special regulations for certain sectors, such as the Royal Decree of Special Working Time (seasonal agricultural workers or sea workers), or Royal Decree 1579/2008 for railway workers.

- **Collective Agreements:** the collective agreement is a very important source of Spanish Labour Law. The collective agreement articulates labour relations in the space left to it by the law with the aim of improving state's legislation, that as we have seen in relation with working time is found mainly in the Workers' Statute.

- **Individual Sources:** the employment contract is also a source of regulation. The employment contract creates the labour relation and regulates certain aspects. These aspects must always be respectfull with legal regulation and collective agreements. As a consequence, individual autonomy has limited room. However, the latest labour reforms have produced an important change in the relation between sources, with a greater emphasis on the unilateral will of the employer[2] in certain issues related to working time. It will be explained later, but when it comes to irregular distribution of working time (art. 34.2 WS), as well as changes in the working time and the timetable the unilateral power of the employer have been strenghtened. In fact, the labour reform of 2012 has widened the possibilies to introduce changes because of economic, technical, organizational and production causes[3].

[1] Organic laws are designed to develop fundamental rights (art. 81.1 SC), so rights among the arts. 14-29 SC, for example, freedom of association (art. 28.1 SC). Therefore, to develop the working time regulation an organic law is not needed will, being this regulation developed by ordinary law.

[2] Irregular distribution of working time, non-application of collective agreement, substantial change in working conditions, reduction of working time, and so on.

[3] Previously, this article stipulated as a pre-requisite that the substantial change in working conditions contributes to prevent a negative evolution of the company or to improve the situation and prospects of the same through a more appropriate organization of resources that could favor the company competitiveness position (drafting in force from 1995 until 2012).

- **Case law sources:** Case law is not a source of law in a strict sense. However, the jurisprudence of the European Court of Justice (ECJ) as well as the one of the Spanish Courts have to be taken into account as an interpretative tool. Because of its impact we highlight here the judgement 24/2011 of the Spanish Constitutional Court[4] and the judgment of the Supreme Court of 20th June 2005[5]. But the case law function is basically to solve loopholes, because the regulatory role is reserved to collective agreements and law.

2 - What are the goals of the regulation?

We will divide this question in two, considering the goals related to workers and those to employers for better understanding.

a) PURPOSES OF WORKER PROTECTION AND CONCILIATION.

- **Risk prevention in the workplace:** many different studies have tested that when the working time is limited, workers have a better physical, mental and social health. In fact, the working time Directive finds its legal basis in the EU competencial title on health and safety at work. In addition, working time determines the rest time.

- Rest periods are essential for physical and mental recovery from wear resulting from work. Therefore, from this perspective, professional and common diseases could strongly reduce.

- **Reconciling personal and family life**: the full incorporation of women into paid work has made it necessary to divide housework between women and men. This situation demands a reflection on how to better regulate working time to reconcile domestic work and paid work. This leads to the develop of a new business dynamic of rationalization of timetables, which must respect the principle of equality between women and men. In fact, if both genders have a paid work, both must cooperate with their family duties. As consequence the legal system should offer different alternatives to share out working time and free time. Only in this way society could make progress towards real equality between women and men.

[4] In this judgment is set, the right of art. 37.5 WE as a legally enforceable right (right to reduced working hours for childcare) versus art. 34.8 WE (right to adapt and distribute your day) which needs the support of a collective or individual agreement.

[5] In this judgment was declared the legality of a collective agreement which had established that breastfeeding leave could accumulate in full days in one month (art. 37.4 WE).

b) PURPOSES RELATED TO EMPLOYERS' INTEREST

- **Flexibility versus internal distribution of employment:** employers consider more and more decisive to have the power to easily change the working time, its distribution, as well as timetables or shift work. According to the statements of purpose of recent labour reforms (2010 and especially 2012), this would constitute an alternative to layoffs. In this sense, the aim of these reforms would be to maintain employment levels inside the companies.

  The internal flexibility of working time discourage new contracts (and therefore employment creation). The recent labour reforms try to cover the needs (different peaks of production) of the companies with the same staff. Thus, the Government is not thinking about polities of distribution of employment[6], a surprising policy line in a society as the Spanish one, with high levels of unemployment.

3 - How did your country implement the working time regulation directive and the part time directive?

Working Time Directive: Working time legislation is in articles 34 to 38 WS, and other sectoral regulation. All this legislation is clearly in line with Directive 2003/88/EC. This Directive replaced the former Directive 93/104/EC. In fact, there were not major changes between the first Directive and the second and the Workers' Statute was passed in 1995. Therefore we can argue that the Workers' Statute incorporated all the legislative changes demanded by the first Directive of 1993 as well as the regulations of Law 10/1994 and 11/1994 (labour reforms of 1994).

Thus, we understand the implementation of Directive 2003/88 in Workers' Statute as a minor legislative work. Indeed, it can be seen how the different legal precepts match perfectly with articles of the 2003 Directive. To give some examples: article 34.2 WS and art. 19 Directive; article 36.3 WS and articles 2.5 and 13 of the Directive or the art. 38.1 WS and art. 7 Directive.

Part-time Directive: Directive 97/81/EC, concerning the Framework Agreement on part-time work is transposed into the Spanish legal order mainly in Article 12 WS. However, it should be considered, for its importance, the relief contract (articles 12.6 WS and 166 of General Law of Social Security). These last articles have been modified by the Royal Decree-Law 5/2013,

[6] The main posture defended by the representation of workers.

containing measures to promote the continuity of the working lives of older workers and active ageing. There has been a change from a contractual figure which looked for the progressive incorporation of a young person to another which seeks to extend the professional life of older workers. There are more figures associated with part-time working such as hiring part-time training link (Royal Decree-Law 16/2013 and 8/2014).

4 - Is there, in your country a general framework about working time (i.e. a legal or conventional or statutory working time rules, weekly rest, holidays, specification for overtime working hours. What is the scope of this regulation (workers, employees, others...)?

The Spanish legal system starts with the constitutional mandate to the Government to guarantee the necessary rest by limiting the working day and granting periodic holidays (art. 40.2 CE).

At EU level the objectives of improving the living and working conditions (art. 151 TFEU) and the fundamental right to the limitation of maximum working hours as well as the right to daily and weekly rest are of relevance.

A period of paid annual leave is also recognized in the EU order (art. 31 CFREU). Other international rules also affect the organization of working time, such as those from the ILO, affecting some specific sectors.

The legal system of the European Union links the regulation of working time with health and safety at work. This connection was shown in Directive 93/104/EC, concerning the organization of working time (subsequently replaced by Directive 2003/88/EC), which establishes the minimum requirements in this field and declares itself applicable to all sectors, both private and public, with some exceptions. It was complemented by specific Directives for some sectors. It is also connected with some other Community legislation, such as Directive 18/2010/EU on parental leave, and Directive 94/33/EC on the protection of young people at work.

The regulation of working time in the Spanish legal order is in articles 34, 35 and 36 WS, in addition to contents that may derive from other related laws, including Law 31/1995, on prevention of labour risks. This shapes the general regulatory framework

This general regulation is supplemented by the rules on special days approved by RD

1561/1995, which provides extensions or restrictions on working hours for certain sectors or types of work, affecting different labor relations of a especial nature, as well as rules affecting certain professional groups such as civil servants. Collective bargaining agreements complete the regulation.

In relation to the second part of the question, the scope of working time regulation includes all workers who provide their services voluntarily and are within the organizational and direction powers of third person, no matter whether it's an actual person, a legal entity or if it is named employer or not. In addition, there are groups of workers with special regulation in this topic such as senior management staff, professional sportsmen or artists among others. Finally, it should be added that some groups are not subject to these rules, such as civil servants or self-employed people among others.

5 - What is the legal, contractual (individual contracts) conventional (collective agreements) or statutory system about working time?

There are three elements that define working time's regulation:

- **Statutory law**: it forms the legal minimum. Other sources cannot worsen this legal level of regulation.
- **Collective bargaining agreements**: they can improve the legal minimum.
- **Will of the parties**: it cannot deviate from legal and conventional rules unless this possibility is allowed.

In the regulation of working time a great importance is bestowed on collective bargaining and individual labour contract, in an attempt to search for a balance between the demands of production by the company and the needs of the worker.

Are there limits to working time? (apart from those included in the EU directive). Are there derogations to the general regulation of working time?

Here we make a comparison between the Spanish legislation, regulated by the WS and Directive 2003/88. To do so we proceed in the following paragraphs:

- **Rest between days or daily rest:** According to article 34.3 WS, between the end of one work day and the beginning of the next there will be a break of at least twelve hours, while the Directive, in its article 3, states that there must be a minimum of eleven hours. So the Spanish regulation improves the EU regulation in the Directive.

- **Breaks during work**: the EU Directive states that when workers have exceeded 6 hours of work, they are entitled to a break (without determining the amount), and establish a series of requirements to determine it which are alternative: collective bargaining, legislation, etc. The Spanish Legislator has regulated this in article 34.4 WS ("snack break" of at least 15 minutes, with an implicit reference to collective bargaining or employment contract)

- **Maximum weekly working time**: in the EU Directive, in its article 6.b), it is established that the average working time shall not exceed 48 hours, including overtime, in a week. Article 16.b) complements that precept, whit a possibility to extend the reference period up to four months. What the Spanish legislator has made is to set the limit at 40 hours per week, but the reference period is annual, i.est: one year. This means that one week the worker can work more than 40 hours if it is compensated working less than 40 hours in another week. That is, our state regulation is more beneficial in terms of the number of hours per week, but more cumbersome when it comes to the reference period, allowing a high degree irregular distribution of working time. In addition, the Directive establishes the limit of 48 hours overtime and the corresponding reference period of four months, which is exactly the same as the Spanish regulation.

- **Maximum working day**: the Spanish legislation sets the limit of the ordinary working day in 9 hours, a limit that does not appear in the EU Directive. However, this can be modified by collective bargaining: the limit may be improved or worsened by collective agreement. In any case, the minimum of 12 hours rest time between workdays (article 34.3 WS) must be respected.

What is the definition of overtime work in your country? Is the worker allowed to refuse overtime work and, if so, under which conditions? What are the consequences of a refusal of the worker?

According to the Spanish labour legislation, it is considered overtime those working hours made "beyond the maximum duration of the ordinary working day" (article 35.1 WS). It would be

overtime the working time exceeding 9 working hours, unless by collective agreement or enterprise agreement would have been established a distribution of work scheme that while respecting the work time limits (weekly and annual) makes possible increased working hours over 9 in a concrete day.

According to article 35.4 WS overtime is voluntary, that is, the employer offers it to a particular worker and he accepts or not voluntarily, therefore there must be a bilateral agreement for its realization. There are 3 exceptions (article 35.3 ET.):

- When agreed in collective agreement.
- When agreed on the employment contract.
- In a situation of "force majeure", that is, when necesary to prevent or repair disasters and other extraordinary and urgent damages, without prejudice to their compensation as overtime.

Outside of these three cases, the worker may refuse to its realization freely and without the employer having the possibility to impose a disciplinary sanction.

Is there a financial or other (for instance days of compensatory rest) compensation for overtime hours?

With regard to remuneration of overtime, the rules is that it cannot be paid lower than the ordinary time. The collective agreement or, otherwise, the individual contract shall set the price of overtime. Hereafter, the collective bargaining agreement may choose th overtime is paid or compensate through rest (equivalence between hours of work and rest).

Compensatory rest have to be set in the agreement, whether collective or individual: in the absence of that, the rest should be enjoyed within four months after the performed overtime.

Since 1994 there is a legal preference for compensation of overtime, in the absence of conventional regulation, by equivalent rest periods in the following four months.

In any case, if the collective bargaining agreement provides that they are paid, the price of overtime can never be less than the price of the ordinary hour.

Do workers have the right to ask for a reduction or an increase of their working hours? If so under which conditions? Do the employers have specified reasons to refuse the change?

There are various cases related to work and family reconciliation in which the worker can reduce the workday without being considered as a part-time job according to the Spanish legislation.

All these reductions of working time are considered as subjective rights of the worker. Within his ordinary workday corresponds to the worker to determine the schedule and length of the reduction. However, it is not an absolute right; the employer can challenge the worker's decision. The worker who wants to enjoy this working time reductions must inform to the employer 15 days in advance or the notice period established by collective agreement, communicating the concrete periods and schedule of the reduction. Once the worker does this, the employer can accept or refuse the proposal. Faced with a partial or full negative situation, the worker can go to the specific procedure regulated by "Ley Reguladora de la Jurisdicción Social" (article 139). The question is solved in the Social Jurisdiction in this special procedure.

Other provisions for reduction of working hours in the WS are:

- **Breastfeeding of childs up to nine months**: workers are entitled to one hour off from work in this situation. They can divided it into two fractions of half an hour. This permission will be proportionally increased in case of multiple birth. It applies in the same conditions to adoption or foster care.

  This right can be replaced by a reduction in their workday by half an hour for the same purpose or accumulate it in full days in the terms regulated in the applicable collective agreement, or an individual agreement without reduction of wage. It may only be exercised by one of the parents if they both work (art. 37.4 WS).

  In the event that children are premature or, for whatever reason, they must remain hospitalized after birth (art. 37.4 bis WS), the worker has the right to leave the work an hour earlier or, alternatively, to reduce his workday a maximum of two hours. In this last case there is a proportional reduction in wage.

- **Workers with legal custody of a child under 12 years or with physical or mental disabled without age limit**: In this case the worker can reduce his workday between 1/8 and 1/2, with a proportional reduction in wage. This reduction shall be determined on the ordinary workday, not being possible to use a weekly or monthly reference.

  According to art. 37.5 WS it is also contemplated the case when a parent, adoptive parent or pre-adoptive parent, have to take care of a child who has a serious illness such as cancer, requiring hospitalization and continued treatment. In all these cases a reduction of the workday of at least 50% is established, although the conditions of its exercise are regulated by collective bargaining.

- **Workers who are responsible for the direct care of a family member within the second degree of consanguinity or affinity who, because of age, accident or illness, cannot fend for himself, and do not perform any paid work**: it is a right included in article 37.5 WS, these case allows for a reduction of the workday. The decision of the schedule and length of the reduction belongs to the worker. If two or more workers of the same employer produce this right for the same person, the employer may limit its simultaneous exercise for justified reasons.

- **Workers victims of gender violence or victims of terrorism**: they have the right to the reduction of the workday (with a proportional reduction in wage) or to reorganize their schedule. These rights may be exercised in the terms determined by collective bargaining agreement or agreements between the company and workers' representatives, or agreement between employer and the workers affected. In absence of any agreement, article 37.6 WS applies.

- **Work and family life conciliation**: Article 34.8 WS provides that the worker is entitled to adapt the duration and distribution of workday to exercise their right to the conciliation of personal, family and working life and also to achieve a better productivity in the enterprise. The right of workers to adapt the duration and distribution of workday is conditioned to the terms established by the applicable collective agreement or by agreement between employer and employee.

6 - How is working time organised over the week, the month or the year? Do working time accounts exist? What are the conditions of modulation (i.e an irregular repartition of working time in the week, the month or the year?) What are the consequences on wages? What are the consequences on rest periods?

Spanish law has chosen a flexible modulation of maximum working time by establishing a period of reference of one year. Despite of it, there are limits. The first is the maximum weekly journey that it is 40 hours. Since the reference period is one year it means that there can be weeks where the workers work 40 or more hours and weeks where they work less. In the end of the year the total amount of working hours cannot exceed 40 per week.

According to this, the peculiarity introduced by the 34.2 WS (irregular distribution of the journey along the year) is a new flexibility measure from ordination of the working time. Not needing any agreement, the employer can distribute irregularly up to the 10 per cent of the annual working hours. The employer has to give previous notice to the worker. The period of notice is at least five days. This possibility It was introduced in the labour reform 3/2010.

Collective agreements regulate the compensation arising from the differences between the performed working time and the maximum duration of the ordinary labour week. If there is no agreement, these differences have to be compensated within the next twelve months. The annual period of reference doesn´t prevent compulsory observance of the diary and weekly rest.

When it comes to Directive of 2003/88/CE, Member States can establish (article 16) a reference period that don´t exceed four months for the maximum duration of the weekly working time (article 6). This is the general rule that this Directive contain. Having said so, there is not a contradiction between the Spanish regulation and the Directive. This needs an explanation.

We take as a departure point the 40 hours/week limit and the possibility the employer has to decide the irregular distribution of up to the 10% of that amount in a period of reference of one year. This means that the employer has the possibility to distribute irregularly, without any need of an agreement, around one hundred and eighty hours per year.

This means that the employer can exceed the 40 working hours per week, but it has to take into account that he is bound by the reference period of four months stated in the Directive, where the maximum weekly hours is 48 (article 6 b in relation to 16 b of Directive 2003/88/CE). So the final formula consist on a maximum working time calculated from a 40 working hours weeks maximum length of the working hours in a period of reference of one year that can be irregularly distributed thorough the year with the limits of the Directive (maximum of 48 hours week in a period of reference of four months) and, thus, compensated.

As it has been explained, the maximum ordinary working hours has, besides the aforementioned, two other limits. The first one, as a necessary law limit (that cannot be modified by agreement) is the 12 hours rest period between workdays. The second limit is the weekly rest. This consist on one day and a half of uninterrupted rest, though it can be accumulated in periods of reference of fourteen days (article 37.1 WS). The article 5 of the Directive says: "for every seven days period, the workers shall enjoy a minimum period of uninterrupted 24 hours rest, plus 11hours of diary rest". Both these provisions are the unique of "ius cogens" nature in the Directive.

7 - Are there legal or other rules about paid leaves (holidays, week days off, etc.)

Holidays provide an annual paid rest of several consecutive days to the worker. It is stablished like worker´s time to rest and spare time. This right is recognised in article 40.2 SC, and in article 7 of the working time Directive (at least four weeks of paid annual holidays, except termination of the working relation). This is regulated in the same terms in article 38 WS (30 natural days). This rule can be improved through collective agreement.

It is based on a double principle: workers have the right of having annual holidays paid. It is stablished in article 38.1 WS. The workers have to enjoy their holidays (holidays are not substitutable by economic compensation).

The Constitutional Court stablished that a worker has the right to work during the holidays for other employer or for himself.

Being holidays a periodical break of work with the purpose of rest, it is justified that holidays have to be enjoyed inside the natural year and not in the next years. The absences of the worker

which are not attributable to his will and therefore justified (working accidents, illness, maternity) cannot be taken into account to calculate the holidays. On the contrary, the absences that are attributable to him (illegal strikes and unjustified absence to work SSTC 5.11.1984 y 15.3 y 8.6.1988) are included in the calculation of the holidyas.

The loss of the wage for legal strike doesn't affect in the proportional part of the holidays wage (SAN Sala de lo social 23.4.1991).

In situations like maternity, paternity or temporal incapacity it can be the case that the worker cannot enjoy its holidays. To avoid any harm to the worker's rights, according to article 38.3 WS, the workers will enjoy the holidays when their especial situation is finished, but they have to do so even if the natural year when they were generated is over. There is a maximum, in case of termporal incapacity, of 18 months since the end of the year where holidays were caused.

The annual paid holidays cannot be less than 30 natural days. This rule can be improved through collective agreement.

To concrete when the worker is going to enjoy the holidays (article 38.2 WS) an agreement between the employer and the worker is needed. Provisions of the applicable collective agreement or the employment contract apply. According to the article 38.3 WS a holiday's calendar has to be fixed in every company for all the workers. The workers have the right to know when they will have holidays at least two months in advanced. When there are disagreements it exists a legal procedure in the social jurisdiction (articles 125 and 126 LRJS).

About the wages during holidays they are understood like "the normal or average wages" that correspond to the worker (article 7.1 OIT Convention number 132), and they have to be paid before the beginning of the holidays. The average or normal wages exclude extraordinary payments, like commissions received by the worker as a variable payment.

Paid leaves (article 37.3 WS), they can be improved by collective agreement. These paid leaves give the right to the worker to interrupt the work provision, but the obligation by the employer of pay is still in force. Some cases are: a) fifteen natural days in case of marriage b) two days in case of a child birth, dead, accident or serious illness that requires hospitalisation of relatives until the second degree of consanguinity or affinity. This is extended to four days if the worker has to displace himself. This needs previous communication to the employer.

8 - Are there legal or other rules for situations with specific working time models such as :

Part time work : definition (if any), conditions (if any), wages

Definition: Article 12.1 WS states: "the employment contract is understood as part time when it has been agreed a provision of services for a number of hours a day, a week, a month or a year, lower than the working time of a "comparable full-time worker". By "comparable full-time worker" the law refers to a full time worker in the same company and workplace, with the same kind of employment contract and that does the same job or similar to the partially contracted. If there is not any comparable full-time worker, it will be compared against the full-time work day as stipulated in the applicable collective agreement or, in its absence, the legal maximum. Part-time work can indefinite time or temporary, except in the case of training contract (article 12.3 WS).

Conditions: part-time work contract must be written and it has to contain the exact amount of working hours per day, week, month or year to be provided by the worker (article 12.4.a WS).

If the daily working hours are lower than those of a comparable full-time worker and performed in a non-continuos schedule (for instance, two hours in the morning and two in the afternoon), there will only be one break during the working time (this can be modified by collective agreement under article 12.4b WS). Part time workers cannnot do overtime. This is only possible in case of "force majeure" (article 35.3 WS). The principle of equality in terms of labor rights and social protection between part-time and full-time workers applies.

Wages: The remuneration will be proportional to the established, by statutory law or collective agrement, for comparable full-time worker.

Week-end work: is work on Sundays allowed and under which conditions?

It does not exist in the Spanish legal order any norm that forbiddes work on Sundays. A different question will be that the workplace by its activity does not provide services. The rules of the collective agreements on this topic are of application.

Therefore, it does not exist any uniform criteria. The workers can provide their work in any day of the week in Spain. The only rules are those related with daily and weekly rest periods and the

maximum annual working hours as it has been explained.

Night work : definition, conditions, wages

Definition: Article 36.1 WS states that night work is the work performed between 22:00 and 6:00 hours. The employer that regularly emploies night work must report this circumstance to the labour authority. Artcile 36.1 WS also defines who is a night worker in its third paragraph: it is night worker the person that normally works during the night period at least three hours of his workday or at least one third of his annual working time.

Conditions: Night workers must always have health and safety conditions adapted to the night nature of their work. Night workers cannot bear any disadvantage for the fact of working at night (article 36.4.WS).

Wages: Their retribution must be specified in the applicable collective agreement, except when the nature of the work itself is night work (for instance, night guards) or when it has been agreed a compensation with rest periods (art. 36.2 WS).

Others forms of working hours (for instance, shift work...).

Definition: It is considered shift work every form of organization of the work in teams in such a way that workers perform successively the same duties in the same job positions, in a continous or discontinuous working rythm, implying for the worker the necessity of provide their services at different hours in a determined period of days or weeks" (article 36.3 WS).

Conditions: Shift workers must have the same guaranties as night workers when it comes to health and safety.

When a worker is studying for obtaining an academic or professional title has preference for choosing turn (article 23.1.a) WS).

The employer must try to organize the work in order to avoid monotony and repetition, and always taking into account the norms on health and safety of the workers (articles 36.5 WS and article 15.1.d) LPRL)

Wages: the same rules as for night workers are applicable. In this matter collective agreements have an important role to play. Normally collective agreements include bonus associated to the shift work.

9 - Is there a debate in your country about working time? And if so, what are the issues discussed especially in the context of economic crisis ?

One of the main debates related to working time in Spain is the result of the judment C-266/14 of the CJEU of 10 of September of 2015 about the working time of those workers lacking a fixed or regular workplace. The question arose because the company refused to consider as working time the time that its workers needed in their daily displacement between their homes and the places of the first and last client that was assigned to them by the employer. In this company, since 2011, there are no offices in the different Spanish provinces and all the workers are assigned to the central offices in Madrid, so the workers of provinces go directly from home to the clients, and not to any center of the company.

In this case, according to the "Audiencia Nacional" interpretation, article 34.5 WS does not assimilate the time of displacement from clients to home and vice-versa to working time. The argument is that the election of home by the workers is freely made. But in the case of workers of the transport sector the legislator considers the vehicle as a working place.

According to Directive 2003/88/CE it is considered working time all those temporal lapsus where the workers a) is at work b) is at disposition of the employer and c) is performing his activity or functions, all this with the purpose of an effective protection of the health and safety of the workers.

Therefore, we must understand that the workers of the company in the judement C-266/14 are performing their functions while they are commuting from their respective homes and the first client and the opposite and they are under the orders of the employer. Therefore the worker is not free to carry out personal errands or attend to personal situations during this displacement and thus, it should be considered working time.