CAPTIVE AUDIENCE SPEECH: SPANISH REPORT

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I. THE ROLE OF TRADE UNIONS WITHIN SPAIN'S POLITICAL, SOCIAL, AND ECONOMIC CONTEXT

In 2007, Spain commemorated the thirtieth anniversary of its first democratic elections after the civil war, thus signaling an end to Franco's dictatorship. The beginning of a new democratic regime throughout the so-called transition period to democracy commenced in 1977 with the first amnesty laws being passed and the legalization of political parties and unions that, up till then, had been working underground (in 1977, amid tension from the military, the communist party was also legalized). That same year a series of laws began to pave the way towards democracy and these recognized the right to workers' freedom of association and the right to strike.

It is worth recalling that, for almost forty years, Franco's regime had strictly prohibited trade unionism and the simple fact of being a union member was considered illegal.[2] In line with this view, there was just one legal union, the *Unión Sindical Española*, in which membership was compulsory and included both workers and employers, in line with fascist ideology that denied social disputes and companies were there to serve a higher interest, i.e., the creation of national wealth.[3] In the 1970s, however, workers belonging to underground unions managed to infiltrate factory work councils in large companies and busily began to carry out union activities within

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2. For an analysis of Spanish labor movement during Franco's regime and the political transition to democracy in Spain, see R. FISHMAN, WORKING-CLASS ORGANIZATION AND THE RETURN TO DEMOCRACY IN SPAIN (1990).

3. ANTONIO BAYLOS GRAU, SINDICALISMO Y DERECHO SINDICAL (Bomarzo ed., 2004).

the workplace that informally led to strikes and collective bargaining procedures.[4]

The inauguration of a new democratic political system began with our Constitution in 1978, and this charter was the result of consensus among all our elected political parties that represented the vast majority of Spanish society. When it eventually came into force this implied putting a new political order in place under the formula of a Social and Democratic State of Law and constitutional monarchy.

The aforementioned Spanish Constitution (SC) grants a key institutional role to unions and employers' associations in its preface and considers these, together with political parties, to be one of the most important aspects in a democratic system.[5] The aforementioned article points out that trade unions "contribute to defending and promoting economic and social interests which rightly belong to them."[6] This acknowledgement is therefore essential in order to understand both sides of trade unions in our system: one involves the classic duty of representing the workers' interests as opposed to employers' interests and on the other they become acting parties in political life who intervene and take part in government decisions concerning social and economic issues. Thus the reference made in Article 7 SC to the interests that rightly belong to the workers must be seen in a broader sense covering such wide ranging issues as immigration policies, the environment, housing, etc.

As Romagnoli points out, this transformation in union thought, which appears not only in national law but in all European Union (EU) legislation, arises from the fact that "union representation goes way beyond private interest with specific mandates and powers . . . and thus acquires a privileged role in processes where they have to produce generally effective work rules." Unions have become a sub-species of political representation which are mentioned in the manuals of constitutional law."[7]

As regards the above, the role of Spanish unions in social dialogue has been and still is quite significant. Hence in the early years of democracy, trade unions contributed to the stability of

4. After three decades of isolation, in the end of the 1960s, Franco's regime "developed extensive economic, cultural and even military dealings with many Western democracies" and entered in a reformist period. As Fishman says, some reforms of the system were necessary to "justify the regime's policies within international organizations such as the ILO. . . ." FRANCO, *supra* note 1, at 93.

5. Spanish Constitution, at art. 7.

6. *Id.*

7. U. Romagnoli, *La Libertad Sindical Hoy*, 14 REVISTA DE DERECHO SOCIAL no. 14 (2001).

democracy through political agreements and took part in designing a policy to restrain wage rises. The successful general strike in December 1988 called by the two largest national unions to protest against the socialist government's aim to lift tight protective regulations on workers marked an important turn in union strategies while also marking a victory for greater independence regarding political powers. Generally speaking, save a number of periods when there was open opposition to government policies and unions subsequently resorted to mobilizing workers in four general strikes, throughout the last thirty years of democracy on a state level agreements have prevailed between unions, governments, and management in many labor, economic, and social protection issues.

The Spanish trade unions' clear involvement in institutions on the political scene contrasts starkly with the position of a greater weakness in their traditional areas of activities, namely factories, and managing collective bargaining and labor disputes. In Spain a curious paradox can be seen in that the union membership rate stands at just 16% despite the high turn out in union elections.

Spain's trade union "identity crisis" is no different from that suffered by unions in the rest of Europe, especially brought about by trade unions and their members drifting further apart. This involves a complex phenomenon that can be seen in many of the world's industrialized countries and has been widely studied with the main causes of this weakness being highlighted as: the fragmentation of labor markets due to the lack of job security, changes in how the workforce is made up with the incorporation of new workers, especially women and immigrants, new methods of work organization that favor outsourcing work in an economy that has become highly globalized, the rise of the service sector in the economy and also a more aggressive attitude by employers to combat the trade unions' influence in companies.[8]

Without delving too deeply into this issue it is worth noting that a number of these aforementioned factors are clearly present in the Spanish system of labor relations. First, in the 1980s and 1990s the economic crisis and high unemployment turned into structural problems to be tackled as a priority by the political classes. Indeed to fight massive unemployment governments of all sides introduced new legal reforms with the aim of slackening tight labor laws and cutting

8. W. Däubler, *¿Salidas de la Crisis? Reflexiones para un Cambio de los Unions*, *in* SINDICALISMO Y CAMBIOS SOCIALES 53–74 (Valdes-Dalré ed., 1994); M. GOLDFIELD, EL DECLIVE DEL SINDICALISMO EN ESTADOS UNIDOS (1987); J. Visser, *In Search of Inclusive Unionism*, 18 BULL. COMP. LAB. REL. no. 18 (1990).

costs by placing the emphasis on creating more jobs rather than creating better ones. Despite attempts to pass laws on policies to change this trend, Spain still has the highest temporary employment level in the European Union (in 2006 the European average was 14% while in Spain they still accounted for over 30% of the total number employed). This situation of temporary employment clearly has a negative effect upon workers' involvement in union issues.

On the other hand, the importance of the economy and employment structure has focused more and more on the service sector, an area that traditionally has had very low union membership and in which can be seen a greater level of concentration in the labor market since, together with low skilled workers in labor intensive sectors, can also be found highly qualified jobs in the financial sector, new technologies, etc. We must not forget that both highly qualified workers and those with the low qualifications are not normally involved in collective demands, and thus remain outside the union's protective core.[9]

One other feature of the situation in Spanish companies is the almost absolute predominance of small- and medium-size companies since some 85% of companies boast fewer than ten workers. Amid this situation, which churns out so many small companies, the presence of workers' representatives in many workplaces is inexistent (according to regulations, any workplace with more than six workers may elect a representative) and when they do exist, they are subject, due to their close proximity, to tighter management control. However, as we shall see, our legislation does not allow employers to intervene in issues that affect relationships between unions and their members, not even in their own company; quite the contrary since any antiunion behavior will lead to a harsh response from the courts and labor authorities. However *de facto* pressure exerted upon union members by the owners of small businesses can prove rather effective.

Last, one of the reasons that helps to explain our low union membership rate is the legal regime itself, since it allows collective agreements to be applied both to union members and non-members who are included in the bargaining team. Probably the fact that non-members benefit all the same from the unions' bargaining activities does not encourage union membership.

9. Miguel Rodrígues Piñerio, *Autonomía Individual, Negociación Colectiva y Libertad Sindical*, 15 RELACIONES LABORALES 13–29 (1992).

II. THE LEGAL FRAMEWORK OF WORKERS' FREEDOM OF ASSOCIATION

The Spanish Constitution grants the highest recognition to workers' freedom of association and strikes since they are included within a chapter dedicated to fundamental rights, i.e., those enjoying the highest safeguards. This confers an active role upon the trade union and therefore adopts a way to encourage a worker's freedom of association that separates this from the classic idea of workers' freedom of association exclusively seen as an area of one's independence to be protected against outside interference. In line with this idea of encouraging union membership, our Constitution specifically and independently recognizes the right to belong to a trade union in contrast to a more general view of freedom of association.[10]

As regards fundamental rights, workers' freedom of association must be governed by an Organic Law, a kind of law that has to be passed by a qualified majority in parliament. In the scope of law, the Organic Law of Trade Union Freedom (OLTUF) governs a worker's fundamental right to freedom of association and sets out the framework of protection.[11]

The OLTUF and case law from our Constitutional Court have recognized a series of laws that sets out the minimum, indispensable contents of a worker's right to freedom of association, without which this would not be recognized as such.[12] These rights are governed in article 2 of the OLTUF and consist of: the right to belong to a trade union that comprises the right to set up a union and to freely organize it provided that its structure is based on democratic rules; the right to union action that includes collective bargaining, strikes and collective disputes and—as regards the individual—the freedom to choose to be a member of a union or not.[13] Article 8 OLTUF also recognizes the right for workers who are members of a union to set up their own sections within a company, hold meetings and receive information provided by the union.[14]

The Spanish Constitution recognizes the right of freedom to manage companies (article 38 SC) and the right to ownership (article

10. F. Valdés Dal-Ré, *Libertad de Asociación de Trabajadores y Empresarios en los Países de la Unión Europea* (Ministerio de Trabajo y Asuntos Sociales 2006).

11. OLTUF (1986, 11).

12. Constitutional Court Decision 1986 (No. 39); Constitutional Court Decision 1988 (No. 9).

13. OLTUF at art. 2.

14. *Id.* at art. 8.

32 C.E.) a level that comes below freedom of association.[15] This precedence is the determining factor for judges who have to reach a decision on an eventual clash between the management's right to organize its business and the worker's right to free association. It should be remembered that in other national legislations such as America, the right to own a business is equal to or higher than freedom of association.[16] This therefore establishes the order of values that those who interpret and apply employment law must follow. One clear example may be seen in the subject of strikes, where the management's response by lock-outs can only be accepted in exceptional circumstances when there are situations that may endanger personal safety or cause damage to property but not on the same level of conditions as the measures regarding collective disputes called by the workers.[17]

The Spanish Constitution establishes that fundamental rights must be interpreted in accordance with international treaties and conventions on human rights that have been ratified by Spain.[18] In regard to the issue of workers' freedom of association, Spain has ratified Conventions number 87, 98, and 135 concerning freedom of association, collective bargaining, and workers' representatives.[19] The aforementioned ratification of these conventions is therefore the key since, despite the fact that in many ways the national legislation actually improves the minimum level of protection provided for in the International Labour Organisation (ILO) treaties, it is important how national regulations are interpreted in light of these international regulations.

Obviously, normal courts preserve the right to declare effective the workers' freedom of association but our Constitutional Court is clearly the main protector of this, as the main interpreter of the Constitution while being the final legal instance on a national level to rule on violations of fundamental rights caused to individuals. Indeed the Constitutional Court as regard to what has become consolidated doctrine has included union activities within the basic contents of workers' rights to freedom of association in article 28 C.E.

Two features are highlighted in the legal framework of Spanish trade unionism, which has something to do with historic tradition and

15. Spanish Constitution, at arts. 32, 38.

16. J.A. Gross, *A Logical Extreme: Proposing Human Rights at the Foundation for Workers' Rights in the US*, http://www.americanrightsatwork.org/resources/studies (2002).

17. Constitutional Court Decision 1981 (no. 11).

18. Spanish Constitution, at art. 10.

19. ILO Convs. No. 87, 98, 135.

the union culture in the Spanish system of labor relations: first, the level of union representation is measured by election results and not by the number of members. The OLTUF reserves for the most representative unions a privileged condition, i.e. those that achieve a certain level of union membership on a state level (over 10% of the total number of representatives in *union elections* for company-level representatives) or regional (over 15%). The law grants the unions elected by this criterion special powers over the rest of the unions to act as social interlocutors before the public powers, receive subsidies, form part of institutions, etc. Since the first union elections in 1978 there has been a clear de facto two-union setting as a result of there being two large trade union confederations—the Trade Union Confederation of Workers' Commissions (Comisiones Obreras, CC.OO) and General Workers' Confederation (Unión General de Trabajadores, UGT). On a regional level three more unions meet the conditions of being the most representative: two in the Basque Region (LAB and ELA/STV) and one in Galicia (CIG).

Another basic feature of our legal model of trade unionism is that in Spain, in line with the European continent's tradition,[20] workers' representation in companies is carried out along two lines: the strictly union one that is carried out by workers who are union members in companies who set up trade union sections and are carried out by representatives elected by the whole of the workers in companies, also called unitary representatives. Both types of representation are governed by different regulations, union sections as far as the direct expression of a worker's freedom of association is concerned, are regulated through the aforementioned OLTUF; in contrast the latter, being linked to workers' rights to take part in company issues acknowledged in article 129 of the Constitution, is regulated by the Worker's Statute. This regulation, inspired by the Italian *Statuto dei Lavoratori*, includes the main body of both individual and collective regulations related to labor law in Employment Law, and sets out the main powers, protective measures, and conditions held by elected workers' representatives.

The *secciones sindicales* (union sections) in companies are established by workers who are union members and these become union representatives in the workplace and the workers' spokesperson before employers is the union delegate. The Constitutional Court has highlighted the two-sided aspect of the *secciones sindicales* as "examples of internal organizers of the union and external

20. W. LECHER, TRADE UNIONS IN THE EUROPEAN UNION (1994).

representatives to whom the Law concedes certain advantages and prerogatives which correlatively imply expenses and costs for companies."[21] Union delegates who act as representatives on the Work councils in large companies have the same powers and guarantees as the elected workers' representatives. These laws also provide the unions who have members on the work council with the possibility to negotiate collective agreements at company level.

As regards the elected workers' representatives, in companies with fewer than fifty workers, the workforce elects *staff delegates* (delegados de personal), while in larger firms it elects representatives (the number depending on the size of the workforce) to the work council (comité de empresa). The law grants these representative bodies important powers since they represent all workers in the company before employers and have the power to negotiate collective company agreements and to begin collective disputes.

So employers have two possible interlocutors to negotiate collective company agreements: either the union's *secciones sindicales* or the elected representatives. Although the link between both kinds of representation is obvious, the vast majority of members of the work council stand in union election lists. At negotiations above company level the only bodies allowed to represent the workers are the unions.

III. PROTECTIVE MEASURES AGAINST THE INFRINGEMENT OF WORKERS' FREEDOM OF ASSOCIATION

The Organic Law on workers' Freedom of Association governs the protection of unions and union members individually against violations of workers' rights to freedom of association carried out by public powers and employers. In essence the OLTUF includes two kinds of antiunion behavior: those that discriminate either in favor of or against union membership and those that interfere with the work of the unions.

Hence, article 12 of the OLTUF prescribes the nullity of any rule, clause in a collective agreement, individual agreement or unilateral decision taken by the employer that leads to any "discrimination in the workplace or in working conditions, whether these are in the worker's favour or not, due to anyone joining a union or not" or, generally, due to taking part in any union activity.

Also forbidden are measures taken by employers that encourage workers' collusion with management (*amarillismo sindical*), i.e.,

21. Constitutional Court Decision 1989 (no. 61); 1992 (no. 173); 1993 (292).

"unions dominated or controlled by employers, financially backed by them or affected in any other way which could imply effective control over them."[22]

These prohibitions are implemented with the judicial and administrative guarantees provided for in our law. Indeed in the Labour Procedure Legislation, hereinafter LPL, Spanish lawmakers have laid down a judicial procedure to indict anyone infringing workers' freedom of association and further fundamental rights. This procedure is of a preferential and summary nature and, among guarantees worthy of mention is the mandate of inverting the burden of proof. This procedural guarantee is used when the worker provides "reasonable proof" that the management's behavior has infringed upon a worker's right to freedom of association. For instance, in the Constitutional Court Ruling 74/1998 the plaintiffs proved that a department store paid lower wages to employees who were members of one union as opposed to those paid to workers who were members of other unions. Thus, the burden of proof then rested on the management who had to prove there were sufficient, real, and serious reasons for taking that decision that were not related in any way to a violation of workers' rights.[23]

The court decision that considers that there has been a rule or activity designed to go against unions must declare an immediate end to such behavior together with its nullity. In the event that this activity that infringes a worker's rights has led to a dismissal, this shall be declared null and void by the judge and shall lead to the worker's reinstatement in his former job. The decision may recognize the worker's right to compensation due to any damages caused.

As explained above, the workers' freedom of association is a fundamental right, so workers can resort to the Constitutional Court to request that it declare the existence of an infringement upon freedom of association stemming from actions carried out by public authorities and individuals.

As regards any remaining areas, antiunion behavior may be subject to an administrative fine imposed by the public authority in labor matters.

Along with these guarantees regarding procedural rules it is worth noting finally one that is of a substantive nature provided for in article 5 of the ILO Convention number 158, concerning Termination of Employment 1982. This article prohibits the employer's dismissal

22. ILO. Conv. No. 98, art. 2.
23. Constitutional Court Decision, Nov. 23, 1981 (No. 38); L.P.L. art. 179.

as a reprisal, when the worker has previously denounced or has participated in proceedings against the employer alleging violation of law. On the basis of this article, since 1993 our Constitutional Court (Constitutional Court decision 7/1993 and following) has interpreted widely this safeguard that has been called the indemnity guarantee (garantía de indemnidad).

The Constitutional Court considers that when the employer's decision affects the worker as a reprisal for having started proceedings against him, this decision violates the fundamental right of access to justice. This will lead to the nullity of the decision. I must say that according to the Constitutional Court the indemnity guarantee comprises all kinds of damaging effects brought about by the employer's decision not only as a consequence of a previous lawsuit being filed but also as a claim filed with the employment authorities.

IV. DIVERGENCES BETWEEN THE PROTECTIVE LEGAL FRAMEWORK AND EMPLOYERS' ANTIUNION STRATEGIES

Legal recognition of the workers' right to freedom of association and the consideration of guarantees to enforce this right are not always accompanied by the de facto recognition of a trade union in a workplace.

On the other hand the low involvement of workers in unions has largely favored Spanish employers' interests that are no different from those in the rest of Europe when attempting to restrict trade union influence in their companies and cutting the labor costs as much as possible.[24]

The most common antiunion practices consist of employers failing to provide information concerning labor and economic aspects that must be provided by legal imperative to the workers' representatives. In other cases, employers hinder the conducting of union elections by not providing, for instance, a list of company workers. As explained above, this conduct can be considered null and void by a court decision and these matters take priority over other matters.

In a survey carried out with union leaders, the difficulties experienced by unions to enter certain companies where union representation has never existed previously were highlighted, and

24. Teresa Lawlor, Mike Rigby & Roger Smith, *European Trade Unions: Changes and Responses*, *in* ROUTLEDGE (Routledge Stud., in the Eur. Econ. 1999).

these were caused by encouraging union elections or just carrying out union tasks to keep the workforce informed.[25]

These difficulties were more common in small companies "where the employer has a direct relationship with his workers and can exert heavy pressure on them, as well as explicit threats to workers for them not to mix trade unions in their labour relationship."[26] Similarly, problems have also been detected in companies that have a high number of white collar workers or with a high number of workers with temporary contracts. Regarding the latter, these workers do not support unions due to a fear of losing their jobs.

Often the aim to weaken union presence has not been carried out directly by employers using overt antiunion behaviors but rather with strategies that have reduced the workers' position of force in their demands. Many companies have encouraged, for example, a segmentation of working conditions between long standing employees and new arrivals through collective bargaining, which leads to individualized work relations. One usual practice in certain sectors (for instance in the financial sector) was for the companies to negotiate different conditions to those that were agreed on in the collective agreement en masse with workers individually. The Constitutional Court declared these practices unconstitutional since they violated workers' freedom of association by distorting the regulatory role of the Collective Agreement negotiated with workers' representatives.[27]

One other tactic used by employers to discourage union membership is to adopt measures at an organizational level that would artificially reduce the number of workers by outsourcing the workforce, resorting for example to temporary employment agencies or by subcontracting work activities. In many cases it is difficult to tell whether this is a measure based on financial opportunities or whether an attempt lies behind it to weaken labor demands made by large workforces.

V. IS THE CONCEPT OF CAPTIVE AUDIENCE SPEECH POSSIBLE IN THE SPANISH SYSTEM OF LABOR RELATIONS?

Spanish legislation does not accept any possible interference by employers in establishing workers' representatives in the companies.

25. R. SERRANO DEL ROSAL, TRANSFORMACIÓN Y CAMBIO DEL SINDICALISMO ESPAÑOL CONTEMPORÁNEO (Consejo Superior de Investigaciones Cientificas ed., 2000).

26. *Id.* at 122.

27. Constitutional Court Decision 1992 (No. 105), 1993 (No. 208).

Introducing union representatives in companies is facilitated to a great extent by the OLTUF since no conditions are imposed and this resorts to the regulations of each union's internal organization.[28] It is only necessary for workers who are union members to want to form a union section without a minimum number of workers being mentioned. Union sections in companies shall be established bearing in mind the internal statutes of each union involved. In contrast, both the work council and staff delegates must be elected by the whole of the workers in a specific workplace.

The law does not compel workers whatsoever to create workers' representatives but such initiatives should be based on the workers' free will. Of course, once workers decide to introduce them, the employer is compelled to accept them.

Indeed, workers' union representatives in companies must not only be tolerated by employers but also employers must cooperate in carrying out the company's union activities and accept the economic costs arising from the representative's activity. The Worker's Statute imposes upon employers the duty to inform, consult, and negotiate with workers' representatives on certain issues. Also employers must respect workers' representatives guarantees provided for by law such as the right to remain in the company in cases of collective dismissals or his right to be heard along with the other representatives before proceeding with the dismissals. Furthermore employers are obliged to provide workers' representatives with a series of facilities such as placing at their disposal a notice board or suitable premises, where this is physically possible, or to collect union dues or concede to representatives paid hours to carry out the representatives' activities, etc.

Therefore the law requires something more than just an employer's permissiveness to carry out union activities in his company; employers must help it to be correctly conducted.

In line with the legal framework of protective measures described above, and unlike the American concept of captive audience speech, our regulations do not rule in any way the right for employers to hold meetings with their workers to discuss union matters. Logically within their duties as regards the power to manage, employers may call on their workers to attend meetings to inform them of certain items but these must not allude to union issues. Meetings are tools that serve to

28. YOLANDA VALDEOLIVAS GARCÍA, ANTISINDICALIDAD Y RELACIONES DE TRABAJO (Civitas ed., 1994).

exchange ideas and opinions but whose contents may not violate workers' fundamental rights to freedom of association and ideology.

Nor would failing to attend a company meeting be a fair reason for dismissal in our regulations unless this were caused by unjustified conduct that amounted to serious reiterated disobedience by the worker. In the event that a judge considers the dismissal as violating the fundamental right to a worker's freedom of association this shall be declared null and void and the worker must be reinstated in his job without compensation being an alternative to this.

A number of American scholars maintain that one decisive factor for low union membership in American companies is due to the business owner's intervention by organizing campaigns against unions that is protected under the legal cover of captive audience speech.[29] In Spain it is not possible to put low union membership down to the employer's actions since any interference by the company management in union activities is strictly forbidden and there are important protective measures such as inverting the burden of proof as mentioned above. However, especially in small companies or family-run businesses the pressure exerted by the owner to prevent workers becoming union members *can* be an important factor.

On the other hand, Spanish labor legislation, unlike the American one, exclusively governs workers' rights of assembly. Regarding this it acknowledges two types of assemblies that are governed by different regimes: those organized by unions involving their members and those meetings called for by all the workers in a company.

So in union meetings the union members may at company level "hold meetings, having previously notified the management . . . outside work hours and without disturbing the normal company activity.[30] Meetings should therefore not affect company activity, and a plan to hold meetings must be announced in advance to the management. The OLTUF specifically provides for the possibility that trade unionists who are not workers at a company may attend and enter workplaces "for activities that are directly related to their union."[31]

29. *See*, *e.g.*, Chirag Mehta & Nik Theodore, *Undermining the Right to Organize: Employer Behaviour During Union Representations Campaigns*, http://www.americanrightsatwork.org/resources/index.cfm (2005); *see also* Elizabeth J. Masson, *Captive Audience Meeting in Union Organizing Campaigns: Free Speech or Unfair Advantage*, 56 HASTINGS L.J. 169 (2004).

30. OLTUF at art. 8.

31. *Id.* at art. 9(c).

In contrast, meetings held by all the company workers can only be called by the workers' representatives or by a number of workers that make up no fewer than 33% of the workforce. This right is also extended to union delegates when their *sección sindical* is present on the work council but not in any other case.[32]

The limits to management control of workers' right of assembly must generally be seen from a restricted viewpoint since they cannot limit the right to a worker's freedom of association, except for a reasonable, justifiable cause. Hence the employer's power to organize his business must be adjusted as far as possible to exercising fundamental rights. In accordance with consolidated case law passed by the Constitutional Court, an employer's decisions that affect any fundamental rights must coincide with criteria pertaining to suitability, necessity, and proportionality for them to be considered constitutional.[33] As mentioned above, recognition by Spanish regulations of a degree higher than the right to freedom of association as opposed to the right to carry out business activities is a key differentiating factor used to mark the different levels of protection of rights compared to other systems, such as the American one, which provide a wider margin of appreciation for jurisprudence.[34]

32. *Id.* at art. 10.1.
33. Constitutional Court Decision 1996 (No. 55); 1996 (No. 66); 1996 (207).
34. Valdés Dal-Ré, *supra* note 8.