

focus on Social dialogue

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The *Consejo Andaluz de Relaciones Laborales*:
since 1983, a Successful Institutional Model
for Social Dialogue*

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1. Introduction

The paper intends to propose to the reader a reasoning around a virtuous model of tripartite experience of social dialogue, which represents an emblematic case study worthy of consideration for the crucial involvement of a public authority.

This last one is the Andalusian Council of Industrial Relations (“*Consejo Andaluz de Relaciones Laborales*” - *CARL*): a collegiate body of a tripartite

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nature, constituted by the employers' and trade union organizations that hold the most representative status in the Andalusian Autonomous Community, as well as by the *Junta de Andalucía*, integrated within the organizational structure of the regional Ministry of Employment.

Well, the objective of this study is to propose a critical and reasoned analysis of this peculiar institution, on the occasion of its fortieth anniversary, trying to better understand its functioning peculiarities and projecting the gaze to its future horizons, thus offering avenues for reflection and interpretative proposals, with a view to ascertaining whether it can represent a successful model of institutionalized social dialogue, functional to concretize the vision of a digitalization of work conceived as a “shared social process” or a “continuous partnership process”. The thesis that is argued in the study considers, of course, that it is.

Starting from a general and brief overview of the tendency to disintermediation that characterizes the contemporary phenomenon of the digitalization of work, the paper will thus provide a critical analysis of some of the main pillars of the Andalusian Law 4/1983 of 27 June – which established the Andalusian Council of Industrial Relations, as mentioned above – thus assessing the regulatory dimension of the CARL, with particular reference to its creation, its legal nature and its functions.

In this way, through a critical analysis of the normative data, it is intended to test the relevance of the reference discipline (Law 4/1983 of 27 June), considering possible paths of its reform. Special attention will be focused on the II Plan of Support to the Andalusian Collective Bargaining 2023–2025, elaborated by the CARL, within a mature social consensus that has identified strategic and operational objectives, as well as concrete measures and actions, in order to – among other things – strengthening the role of the *Consejo* as a collegiate organ of institutional participation and a fundamental pillar of the Andalusian industrial relations system.

From a methodological point of view, the paper is based on a theoretical analysis of the normative data and (*rectius*, in the light of) doctrinal contributions elaborated on the theme.

2. *Digitalization and disintermediation: challenges and opportunities for social partners*

As widely evidenced in international and national doctrine, the contemporary labour horizon seems to be disruptively starred by algorithms, increasingly integrated in production processes, in a growing interpenetration with human being at work. Just think, by way of example, of the eight combinations identified in the theoretical model of the “operator 4.0”, through which it is possible to study the coordinates of a new human-machine integration, through an innovative taxonomy: “the Super-strength Operator (operator + exoskeleton), the Augmented Operator (operator + augmented reality), the Virtual Operator (operator + virtual reality), the Healthy Operator (operator + wearable tracker), the Smarter Operator (operator + intelligent personal assistant), the Collaborative Operator (operator + collaborative robot), the Social Operator (operator + social networks), and the Analytical Operator (operator + Big Data analytics)”¹.

Algorithms, autonomous organizations, smart contracts, blockchain²: dematerialized and “humanless” digital technologies give shape to “a sort of technology-enabled leaderless collective”, co-protagonist of society and work³.

With specific reference to the latter, the digital transformation that affects the world of contemporary work has been opportunely defined (among other things) in terms of a true “globotic revolution”⁴, result of an

¹ BREQUE, DE NUL, PETRIDIS (EUROPEAN COMMISSION – DIRECTORATE GENERAL FOR RESEARCH AND INNOVATION), *Industry 5.0. Towards a sustainable, human-centric and resilient European industry*, European Union, 2021, p. 15, <https://op.europa.eu/en/publication-detail/-/publication/468a892a-5097-11eb-b59f-01aa75ed71a1> (date of last consultation: March 8, 2024); ROMERO, STAHRÉ, WUEST, NORAN, BERNUS, FAST-BERGLUND, GORECKY, *Towards an operator 4.0, typology: a human-centric perspective on the fourth industrial revolution technologies*, in Vv.AA., *Proceedings of the International Conference on Computers and Industrial Engineering*, 2016, pp. I-II.

² BINI, *Algorithms, blockchain, smart contracts. Some introductory considerations for a labour law approach*, in LO FARO (Ed.), *New Technology and Labour Law. Selected Topics*, Giappichelli, 2023, pp. 35-45.

³ POPPER, *A Venture Fund with Plenty of Virtual Capital, but No Capitalist*, in *The New York Times*, May 21, 2016, <https://www.nytimes.com/2016/05/22/business/dealbook/crypto-ethereum-currency.html> (date of last consultation: January 22, 2022).

⁴ BALDWIN, *Rivoluzione globotica*, il Mulino, 2019, p. 11.

unprecedented and extremely quick mixture between digitization and globalization.

Precisely the confluence of different phenomena linked together, along with the unpredictability that characterizes the evolution of digital technology, determines the emergence of particularly emblematic and significant trends: among which, that of disintermediation seems to play a special role. Indeed, as highlighted with particular reference to blockchain, algorithmic technologies “can diminish the role of intermediaries, who can command market power, collect significant fees, slow economic activity, and are not necessarily trustworthy or altruistic keepers of personal information”⁵.

Although it represents only one example, blockchain represent the epiphenomenon of a wider global trend, well described in terms of “digital disintermediation”, launched towards “metalaboral” horizons and the projection of a work entirely developed in the metaverse⁶: “*blockchain è disintermediazione perché, essendo essa una tecnologia crittografica, rende giuridicamente possibile il trasferimento digitale di dati, valori, diritti e informazioni senza la presenza di terzi certificatori*”⁷.

By the way, as recently argued, “*firme es la convicción sobre la necesidad de considerar y abordar la digitalización del trabajo con un planteamiento que la conciba como proceso social compartido, con respecto al cual explorar y poner en práctica todas las metodologías y las herramientas participativas que faciliten la proyección del fenómeno en su dimensión indispensablemente colectiva*”⁸.

In other terms, the challenge of disintermediation can offer, in reality, the opportunity for a relaunch of the participatory dynamics of the social partners and, therefore, for a new period of intermediation that, in the context of social dialogue, brings social agents back to the center of the scene, facing the transformative processes in progress. Effectively, as has been opportunely brought to light by authoritative Spanish doctrine, “*los procesos de automatización no pueden desarrollarse sobre la base de un impulso empresarial ex-*

⁵ OECD, *OECD Blockchain Primer*, 2018, p. 3, <https://cdn.github.org/umbraco/-media/2431/oecd-blockchain-primer.pdf> (date of last consultation: March 10, 2024).

⁶ On the point, see BINI, *El trabajo hacia el metaverso: horizontes de participación*, in CAIRÓS BARRETO, ESTÉVEZ GONZÁLEZ (Coords.), *Estudios sobre negociación colectiva y diálogo social*, Bo-marzo, 2024, pp. 75-100.

⁷ FAIOLI, *Con la blockchain migliorano politiche del lavoro e previdenza*, in *Il Sole 24 Ore*, August 17, 2018, p. 14.

⁸ BINI, *Digitalización, información, democratización*, in *RMTES*, 2022, 154, p. 209.

clusivo y excluyente”, being “*necesario garantizar la presencia del sindicato en la gestión de los procesos de innovación tecnológica*”⁹.

And this need for participation can be satisfied only starting from a full enhancement of the fundamental role of information on the dark side of the digital revolution, animated by algorithms of last generation, wrapped in a halo of mystery that affects its dynamics, its codes, its operating logics¹⁰. In fact, only by shedding light – in a collective dimension – precisely on these critical profiles, through an effective, timely and exhaustive information, the asymmetry that connotes ontologically the employment relationship, and that by effect of digitization suffers a pathological accentuation, can be reduced and controlled¹¹.

In this sense, the Spanish legal system represents a sort of laboratory of virtuous innovation of extraordinary interest, having adopted a specific rule by means of the Royal Decree–Law 9/2021 of 11 May, “amending the recast text of the Workers’ Statute Act, approved by Royal Legislative Decree 2/2015 of 23 October, to guarantee the labour rights of persons engaged in distribution in the field of digital platforms” (the so-called “Rider Law” or “*Ley Rider*”)¹², in which we can find the provision of an innovative and specific right of information for workers’ representatives (the new article 64.4, letter d) of the Workers’ Statute)¹³.

⁹ GOERLICH PESET, *Innovación, digitalización y relaciones colectivas de trabajo*, in *RTES*, 2019, 92, p. 6.

¹⁰ BINI, *La dimensión colectiva de la digitalización del trabajo*, Bomarzo, 2021.

¹¹ CROUCH, *Se il lavoro si fa gig*, il Mulino, 2019, 161. As a result of the digital revolution affecting work organisation, we can observe an “*expansión del poder de control de los empresarios sobre los trabajadores, acentuando la asimetría del contrato de trabajo*”. See also GÓMEZ GORDILLO, *Algoritmos y derecho de información de la representación de las personas trabajadoras*, in *TL*, 2021, 157, p. 163: “*las nuevas herramientas de gestión empresarial pueden, con mayor intensidad que las tradicionales, vulnerar los derechos fundamentales de las personas trabajadoras y sortear los controles desarrollados en los espacios de participación de sus representantes en la empresa*”.

¹² GINÉS I FABRELLAS, *El derecho a conocer el algoritmo: una oportunidad perdida de la “Ley Rider”*, in *IUSLab*, 2021, 2, p. 3: “*el derecho de información que se reconoce a la representación legal de la plantilla en la ‘Ley Rider’ resulta una regulación pionera en Europa, que permite conocer y controlar la legalidad de las decisiones laborales adoptadas por la empresa. El acceso a información sobre las métricas o variables utilizadas por el algoritmo permite a la representación legal evaluar su adecuación para adoptar decisiones automatizadas en materia de condiciones laborales, acceso o mantenimiento del empleo*”.

¹³ Article 64.4, letter d), of the Spanish Workers’ Statute: “*El comité de empresa, con la periodicidad que proceda en cada caso, tendrá derecho a: (...) d) Ser informado por la empresa de los parámetros, reglas e instrucciones en los que se basan los algoritmos o sistemas de inteligencia artificial que afectan a la*

A particularly significant normative contribution of the will – fully shared – to give back prominence to the social partners, within the framework of a general systematic vision, which conceives the digitization of work as a “*proceso de colaboración*”¹⁴, a true “*proceso social en construcción*”¹⁵, “*cuyos límites y efectos están aún por explorar en toda su profundidad*”¹⁶.

Consistent with this vision, another interesting hermeneutic–systematic contribution is provided, always in the Spanish framework, by the Fifth Agreement for Employment and Collective Bargaining (CNEA), signed on 10 May 2023, between the trade unions’ organizations CCOO and UGT and the employers’ organizations CEOE and CEPYME. In this Agreement, the signatory parties identify – *inter alia* – the general coordinates describing the impact of the introduction of digital technologies on work organization, defined in terms of “*inversión estratégica básica para el futuro de las empresas y para el incremento de su productividad y competitividad*”¹⁷.

And, “*con el objetivo de favorecer una transición justa, inclusiva y beneficiosa para todas las partes, es fundamental que los convenios colectivos sectoriales y de empresa incorporen medidas para hacer frente a estos retos, en línea con lo recogido en el Acuerdo Marco Europeo sobre Digitalización y en este AENC, adaptándose estas medidas a las realidades de cada sector, actividad y empresa y anticipándose a sus impactos en los centros de trabajo*”¹⁸. In other words, in order to promote an inclusive and sustainable digital transition, it recognized as essential the inclusion, in both sectorial and company collective agreements, of measures specifically addressed to these challenges, in line with the European Social Partners Framework Agreement on Digitalisation (June 2020).

As is well known and as has been said at length in a previous mono-

toma de decisiones que pueden incidir en las condiciones de trabajo, el acceso y mantenimiento del empleo, incluida la elaboración de perfiles”. In this regard, see BINI, *Digitalización, información, democratización*, cit., pp. 210–211: “*a través de la ampliación del alcance del derecho de información de la representación de las personas que trabajan, pretende favorecer la elaboración de respuestas precisamente a estas cuestiones y, en otras palabras, contribuir a una especie de ‘levantamiento del velo’, es decir a la disolución del halo de misterio que envuelve, en general, el fenómeno “inteligencia artificial” en la empresa*”.

¹⁴ Acuerdo Marco Europeo de los Interlocutores Sociales sobre Digitalización, 2020, 5.

¹⁵ RODRÍGUEZ RAMOS (Ed.), *Transición digital en Andalucía: realidades y desafíos. Informe*, Consejo Económico y Social de Andalucía, 2020, p. 30.

¹⁶ PRIETO, BOTO GIL, *Introducción*, in *Guía Negociación Colectiva y Digitalización 2020 – Cuadernos de acción sindical*, CC.OO., 2020, 9, p. 7.

¹⁷ V Acuerdo para el Empleo y la Negociación Colectiva (V AENC), May 2023.

¹⁸ *Ibid.*

graphic study on the subject¹⁹, the latter specifically promotes and “encourages social partners at the appropriate levels and enterprises to introduce digital transformation strategies in a partnership approach”²⁰, highlighting that a “shared analysis and joint commitment to action needs to be supported by social dialogue structures, comprising employer and workers representatives”²¹.

So, faced with a reality so set on the path towards a tendency to disintermediation, there is a strong need to reverse course and turn the tide, the trend itself, promoting paths of reintermediation – and so, first of all, paths of social dialogue – that transform the digitalization of work in a “shared social process”. Well, precisely starting from this conceptual premise, we must ask ourselves about what possible structures of social dialogue could represent fruitful and virtuous framework models, functional to the realization of an anthropocentric, collective and plural vision of the digitalization of work. In this sense, the *Consejo Andaluz de Relaciones Laborales* presents features and characteristics worthy of note.

3. *The Consejo Andaluz de Relaciones Laborales: purpose and functions of a key institution for social dialogue and collective bargaining*

3.1. *Introduction*

Established by one of the first laws of the Andalusian Parliament – the Andalusian Law 4/1983, of 27 June – the institution has celebrated this year its fortieth year of activity, playing (*rectius*, continuing to play) an absolutely central role in the industrial relations system of the Community.

As the most authoritative Spanish doctrine has highlighted, the *Consejo Andaluz de Relaciones Laborales* represents an “*instrumento utilísimo de diálogo*

¹⁹ BINI, *La dimensión colectiva*, cit.

²⁰ European Social Partners Framework Agreement on Digitalization, June 2020, 8-9: highlights two “objectives: foster employment transitions of workers in enterprises, and more broadly between enterprises and sectors, through investment in skills that ensure skills updating and the continuous employability of the workforce and the resilience of enterprises; provide the conditions for digital transformation of enterprises that leads to employment creation, including employers’ commitment to introduce technology in a way that benefits at the same time employment, productivity and the work content and improved working conditions”.

²¹ European Social Partners Framework Agreement on Digitalisation, June 2020, 9.

social y de consulta entre los interlocutores sociales y la Administración autonómica”, expressing the best idea of “*promoción de diálogo y de consenso social con vistas a promocionar e incitar el desarrollo, la mejora y la modernización de las relaciones laborales en Andalucía*”²².

A useful instrument of social dialogue and consultation among social partners and regional Administration: indeed, the *Consejo* is conceived as a permanent consultative and social dialogue body in the field of industrial relations, which is responsible, according to its founding law “to facilitate consultation and cooperation between the Autonomous Administration, employers’ organizations and trade unions, as well as between them and to facilitate their access to the services administered by the Autonomous Community”²³.

Coherently with the international Guidelines on Labour Administration and, in particular, with article 5, ILO C150 – Labour Administration Convention, 1978 (No. 150)²⁴, the Andalusian Council of Industrial Relations is created in order to ensure “consultation, cooperation and negotiation between public authorities and the most representative organizations of employers and workers”²⁵.

²² RODRÍGUEZ-PIÑERO, BRAVO FERRER, *El Consejo Andaluz y el Desarrollo de las Relaciones Laborales en Andalucía*, in CRUZ VILLALÓN, RODRÍGUEZ-PIÑERO, BRAVO FERRER (Coords.), *Veinte años de relaciones laborales en Andalucía*, Consejo Andaluz de Relaciones Laborales, 2003, p. 117.

²³ Translation of article 3.1, Andalusian Law 4/1983.

²⁴ Article 5, ILO C150 – Labour Administration Convention, 1978 (No. 150) : “1. Each Member which ratifies this Convention shall make arrangements appropriate to national conditions to secure, within the system of labour administration, consultation, co-operation and negotiation between the public authorities and the most representative organisations of employers and workers, or –where appropriate– employers’ and workers’ representatives. 2. To the extent compatible with national laws and regulations, and national practice, such arrangements shall be made at the national, regional and local levels as well as at the level of the different sectors of economic activity”.

²⁵ Article 5, ILO C150 – Labour Administration Convention, 1978 (No. 150). See Explanatory Memorandum 2, Andalusian Law 4/1983 of 27 June: “*La creación de un Consejo de relaciones laborales en Andalucía responde a las directrices internacionales más recientes sobre el sistema general de la Administración del Trabajo, de forma que, dentro del respeto más estricto a la autonomía de las organizaciones empresariales y de los sindicatos, se establezcan procedimientos para garantizar ‘la consulta, la cooperación y la negociación entre las autoridades públicas y las organizaciones más representativas de empleadores y de trabajadores’ que son necesarios no sólo a nivel nacional, sino también ‘a nivel regional y local’ (art. 5, Convenio 150 OIT, 1978). Mediante la creación del Consejo andaluz de relaciones laborales se pretende, así, facilitar ‘consultas y cooperación efectivas entre los trabajadores y organismos públicos y las*

More concretely, the current competence framework of the CARL – as a result of a set of regulatory interventions, that have occurred over time, which will be mentioned later – consists of some fundamental functions among the others²⁶:

- to facilitate collective bargaining between employers' organizations and trade unions, through material and personal supports, that enable the highest levels of dialogue and understanding, always in accordance with the principle of collective autonomy, enshrined in article 37 of the Spanish Constitution²⁷. In particular, the Council plays a crucial role, encouraging and supporting collective bargaining in sectors characterized by difficulties and criticalities for collective bargaining;

- to facilitate and promote mediation and arbitration in collective labour disputes²⁸: since 1999, collective labour disputes has been successfully managed by the CARL through the so called “Extrajudicial System for the Resolution of Labour Disputes in Andalusia” (*Sistema Extrajudicial de Resolución de Conflictos Laborales de Andalucía – SERCLA*), established within the Council.

With reference to the first of the two functional profiles just introduced, it is worth pointing out that a fundamental strategic “map”, in which the objectives and measures for the impulse to collective bargaining are stated, is represented by the so called “*Plan de Apoyo a la Negociación Colectiva Andaluza*”, which has been recently approved, in its second version, for the 2023–2025–time horizon (see *infra*).

Precisely this last source makes a significant hermeneutical contribution, of great interest to understand and study the dynamics of the functioning of social dialogue in the context of reference, highlighting how “collective bargaining is inherent in social dialogue (...): social dialogue and collective bargaining are the most appropriate working methods for the proper functioning of the labour relations system at all levels and for addressing reforms, changes and adaptations in productive sectors and enterprises”²⁹.

organizaciones de empleadores y de trabajadores, así como entre éstas últimas’ (art. 6.2.c., Convenio 150 OIT,1978)”.

²⁶ See CONSEJO ANDALUZ DE RELACIONES LABORALES, *Memoria de actuaciones 2022*, CARL, 2023, pp. 9–10.

²⁷ Article 3.1.d), Andalusian Law 4/1983.

²⁸ Article 3.1.e), Andalusian Law 4/1983.

²⁹ CONSEJO ANDALUZ DE RELACIONES LABORALES, *II Plan de apoyo del CARL a la negociación colectiva laboral andaluza (2023-2025)*, CARL, 2023, pp. 10–11: “la negociación colectiva es inherente al diálogo

And precisely this “consecration” of social dialogue as crucial method for the governance of the industrial relations system – intrinsically linked to collective bargaining, of course – is fully appreciated in its institutionalization, through the creation in Andalusia (as indeed in other Spanish Autonomous Communities) of regional Economic and Social Councils (*Consejos Económicos y Sociales Autonómicos*) and Labour Relations Councils (*Consejos Autonómicos de Relaciones Laborales*, like the *CARL*)³⁰.

With reference to the Andalusian context, precisely the concrete dynamics of the model of institutionalization of the social dialogue deserve to be studied carefully in its specific operational development, throughout the decades of cumulated experience, in order to properly understand what such an institution model can “tell” other legal systems, with specific regard to the industrial relations and the social dialogue processes management.

Indeed, the fortieth birthday of the Andalusian Council of Industrial Relations – which represents in Spain a real reference³¹, taken as an efficient model for the implantation of similar organs in other autonomous communities: “*Ninguna otra Comunidad Autónoma ha abordado la concertación social de una forma tan extensa y detenida*”³² – offers, in a certain way (and, of course,

social. El art 10.20º Ley Orgánica 2/2007, de 19 de marzo, de reforma del Estatuto de Autonomía para Andalucía (EAA) establece entre los objetivos básicos de la Comunidad Autónoma, el diálogo y la concertación social, reconociendo la función relevante que para ello cumplen las organizaciones sindicales y empresariales más representativas de Andalucía. Los protagonistas de la negociación colectiva son las personas trabajadoras y las empresas, a través de sus representantes: las organizaciones sindicales y empresariales. En esta materia, y como consecuencia del necesario respeto al principio de autonomía de las partes, el papel de los agentes sociales y económicos como interlocutores necesarios e imprescindibles resulta incuestionable. El diálogo social y la negociación colectiva son los métodos de trabajo más apropiados para el buen funcionamiento del sistema de relaciones laborales en todos los niveles y para abordar reformas, cambios y adaptaciones en los sectores productivos y empresas”.

³⁰ In Andalusia, the Andalusian Economic and Social Council (*Consejo Económico y Social de Andalucía* - CES) was established in 1997, taking on consultative functions (previously attributed to the *CARL*) of the Autonomous Community’s Government in economic and social matters. It is a statutory, collegiate and self-government body, attached to the Regional Ministry of Employment, Enterprise and Self-employment, in which the interests of not only the most representative trade union and employers’ organizations are represented; consumers and users, the social economy sector, local authorities and universities are also represented (Andalusian Law 5/1997, of 26 November).

³¹ On the historical-evolutionary trajectory of the Spanish model of social dialogue and trade union protagonism, see, among others: CASULA, *Espagne: le “modèle ibérique” face à la crise et aux indignés*, in ANDOLFATTO, CONTREPOID (Eds.), *Syndicats et dialogue social. Les modèles occidentaux à l’épreuve*, PIE Peter Lang, 2016, pp. 107–122.

³² RODRÍGUEZ-PIÑERO, BRAVO FERRER, *cit.*, 127; GONZÁLEZ BIEDMA, *Aspectos de la concertación social en Andalucía*, in OJEDA AVILÉS, *La concertación social tras la crisis*, Ariel, 1990, p. 272.

beyond the limited perimeter of the present study), the precious opportunity to carry out a reasoned study, a sort of “check-up” that looks to the future, through a critical analysis of the past, considering the main aspects of its regulatory framework of reference, in the light of the main challenges facing the social partners, such as the digitalization of work.

In so doing, the aspects of greater interest of the institution model in question will be highlighted, placing it adequately in the context of a reflection on the centrality of the role of social partners and social dialogue in the European context, being aware of a fundamental data: “*diálogo y concertación social constituyen una seña de identidad de la Unión Europea y de los países europeos*”³³.

3.2. Legal nature and normative framework of a “hybrid” Public Administration

Looking in depth at the essential profile of CARL, we can say that collective bargaining and conflict constitute, in a certain sense, the DNA that defines its identity, whose “hybrid” character – with respect both to its composition, as to its functions – derives from the tripartite structure that it has, despite being, at the same time, a Public Administration.

According to article 4.8 of the Andalusian Decree 155/2022, of 9 August, “which regulates the organizational structure of the Andalusian Ministry of Employment, Enterprise and Self-employment” (“*Consejería de Empleo, Empresa y Trabajo Autónomo*”), the CARL is configured as an entity attached to the same Public Administration and, in particular, to the Office of the Deputy Councillor (“*Viceconsejería*”), thus excluding the possibility to consider the CARL as an autonomous and/or a self-governing body (as it is not provided for and regulated by the Statute of Autonomy of Andalusia), and/or an administrative agency or an instrumental Administration, being rooted within the administrative apparatus proper to the Andalusian Ministry of Employment, Enterprise and Self-employment.

With respect to its composition, the Title II of the Andalusian Law 4/1983 provides for an organisational structure composed of a President (rep-

³³ DURÁN LÓPEZ, *Diálogo y Concertación Social desde la Perspectiva y Experiencias Europeas*, in CRUZ VILLALÓN, RODRÍGUEZ-PIÑERO, BRAVO FERRER (Coords.), *cit.*, p. 141. See also HECQUET, *Essai sur le dialogue social européen*, LGDJ, 2007; WELZ, *The European Social Dialogue under Articles 138 and 139 of the EC Treaty. Actors, Process, Outcomes*, Wolters Kluwer, 2008.

resenting and directing the Council), a Secretary General (coordinating the technical and administrative services), a Plenum of twenty-eight representatives (four of the *Consejería de Empleo, Empresa y Trabajo Autónomo*, ten of the most representative trade unions, ten of the most representative employers' organizations, plus four members appointed by the President of the *Junta de Andalucía*).

The composition, to which reference has just been made, clearly demonstrates the peculiarity and the hybrid nature that characterize this Public Administration, animated by the representatives of trade unions and employers' organizations.

In addition, extremely interesting seems to be the peculiar functional autonomy the *Consejo Andaluz de Relaciones Laborales* has, considering that precisely this functional autonomy is conceived in a purposeful perspective, at the service of trade union and employers' organizations, with full respect for both collective autonomy and institutional autonomy that characterizes the CARL³⁴. It is precisely in the constant search for balance between these aspects of the complex concept of "autonomy", that the founding mission of the Council expresses itself to some extent.

In this sense, the definition of an Andalusian Council of Industrial Relations conceived as a "liquid Administration", seems very appropriate, highlighting the peculiar character of a Public Administration animated and starred by trade unions and employers' organizations: an Administration "*que está y no está al mismo tiempo, porque es una Administración que hace suya la voluntad de las organizaciones sindicales y empresariales que la integran en su Pleno*" and, precisely in this sense, it is also a "*centro de imputación convencional, vinculados como estamos a los acuerdos entre los interlocutores sociales, y un ámbito de confrontación democrática de intereses sindicales y empresariales, y de ambos mundos, el de las normas y el de la voluntad y autonomía colectiva de sus organizaciones sindicales y empresariales habrá de surgir ese proyecto de Ley*"³⁵.

Concretely, the availability of both human and economic resources to

³⁴ GÓMEZ MUÑOZ, *Una visión general del Consejo Andaluz de Relaciones Laborales a propósito de su cuarenta aniversario fundacional*, in *TL*, 2023, 170, p. 15: "El Consejo tiene también una posición institucional, administrativa y presupuestaria propia y diferenciada frente a las organizaciones sindicales y empresariales que lo componen. El CARL tiene un espacio propio de autonomía funcional, al servicio, por supuesto, de las organizaciones sindicales y empresariales, y con pleno respeto a la autonomía colectiva, pero un espacio legal autónomo para la realización de sus fines y competencias legales y reglamentarias".

³⁵ GÓMEZ MUÑOZ, *cit.*, pp. 10-11.

be devoted to collective negotiation and mediation of collective labour disputes, as well as the physical presence on the territory of the Andalusian Community, with ten administrative offices: all these factors contribute to the concrete and effective promotion of social dialogue according to a tripartite structure, converting the CARL model into a case study of great interest in the Spanish horizon (and not only).

However, a factor of significant criticality, in the context of the dynamics of operation of the *Consejo Andaluz de Relaciones Laborales*, can be identified in the excessive fragmentation that characterizes the CARL regulatory framework of reference, based on three fundamental pillars, that are represented by the Andalusian Statute of Autonomy ("*Estatuto de Autonomía*"), the above mentioned CARL Law ("*Ley de creación del CARL*") and the Decree of structure of the Andalusian Ministry of Employment, Enterprise and Labor Autonomous ("*Decreto de estructura de la Consejería de Empleo, Empresa y Trabajo Autónomo*").

The combination of these normative pillars outlines the regulatory profile of a *Consejo* intrinsically characterized by a tripartite matrix (trade unions, employers' organizations and Public Administration), functioning on the basis of unanimous agreements, that express an emblematical orientation to the promotion of social dialogue and to the protection of a tripartism approach. But, as has pointed out in doctrine, the time seems ripe for a reform: in fact, the proposal of approval of a new Law of the CARL sinks its roots (also) in the soil of the need to cope and overcome the "regulatory dispersion" that characterizes the current scenario, forty years after the entry into force of the Law establishing the *Consejo*³⁶.

3.3. *Functions and peculiarities*

Here, we consider preferable to propose a general and comprehensive

³⁶ GÓMEZ MUÑOZ, *cit.*, p. 13: "*creemos que este puede ser el momento idóneo para una nueva Ley del CARL con motivo de su 40º aniversario fundacional que reajuste su naturaleza híbrida (órgano consultivo/centro directivo) conforme a sus competencias actuales, y que, además, evite la enorme dispersión normativa en la que se encuentran reguladas sus funciones y competencias*". Indeed, limiting here the look to the rules of greater importance, it is necessary to point out, as reference sources: articles 1.b), 1.d), 2.4 y 4.8, Decree 155/2022, 9 August, regulating the organizational structure of the Andalusian Ministry of Employment, Enterprise and Self-employment; articles 10.20, 26.2, 44, 63, 166, Organic Law 2/2007, 19 March, reforming the Statute of Autonomy for Andalusia (EAA).

overview, without going deep into the analysis of specific norms: it seems so interesting to consider critically the framework of functions entrusted to the CARL, looking inevitably at the CARL Law (Andalusian Law 4/1983, of 27 June), whose article 3 clarifies that “the role of the Council will be to facilitate consultation and cooperation between the Regional Administration and employers’ and trade union organizations, as well as to promote their access to the services administered by the Autonomous Community”³⁷.

More specifically, among the principal functions of the *Consejo Andaluz de Relaciones Laborales*, we can highlight the elaboration of proposals regarding labour or social policy, the promotion and preparation of advices, studies and statistics on labour relations, either on its own initiative or on a proposal from the President of the *Junta de Andalucía* or the *Consejo de Gobierno*.

But, as mentioned above, the two main, structural functions the CARL exercises are:

– to “*facilitar, dentro del respeto al principio de autonomía colectiva consagrado en el artículo 37 de la Constitución, la negociación colectiva entre organizaciones empresariales y sindicales, mediante apoyos materiales y personales que posibiliten los más altos niveles de diálogo y entendimiento. El Consejo fomentará, en especial, la negociación colectiva en aquellos sectores donde existan particulares dificultades para la misma*”³⁸;

– to “*facilitar y promover la mediación y el arbitraje en los conflictos colectivos de trabajo. A tal fin, el Consejo podrá adoptar medidas encaminadas a su solución mediante el ofrecimiento de mediadores y árbitros y la adopción de propuestas o recomendaciones, en especial respecto de contiendas prolongadas o de amplia repercusión en la Comunidad Autónoma o sobre autorregulación de huelgas y paros en servicios públicos esencia*”³⁹.

In other words, the main functions of the CARL can be identified as follows.

On the one hand, it is protagonist in the facilitation and impulse of collective bargaining, through material and personal supports, that concretely and significantly enable the most high-quality levels of social dialogue and mutual understanding, of course always within the constitutional perimeter and, in particular, respecting the principle of collective autonomy enshrined

³⁷ Translation of article 3.1, Andalusian Law 4/1983, of 27 June.

³⁸ Article 3.2, letter d), Andalusian Law 4/1983, of 27 June.

³⁹ Article 3.2, letter e), Andalusian Law 4/1983, of 27 June.

in article 37 of the Spanish Constitution⁴⁰. It deserves to be highlighted that the Council encourages and supports collective bargaining, especially, in sectors characterized by particular difficulties or complexity.

On the other hand, the CARL plays a crucial role also in the collective labour disputes field, contributing to facilitate mediation and arbitration, by offering mediators and arbitrators and adopting proposals or recommendations, especially in those cases characterized – among other things – by a high-level of criticalities: prolonged, wide-ranging disputes with a broad impact in the Community, such as is the case of the strikes in essential public services.

This specific and fundamental collective conflict management function (and contribution to the management) is fulfilled by the *Consejo Andaluz de Relaciones Laborales* through a specific tool, represented by the so called “*Sistema Extrajudicial de Resolución de Conflictos Laborales de Andalucía*” (SERCLA), functionally “anchored” at the CARL and regulated by an Interprofessional Agreement, demonstrating the crucial role played by social agents in forecasting, regulating and driving a vital instrument in the Andalusian industrial relations system⁴¹.

Administratively linked to the CARL (the relationship between CARL and SERCLA is oriented by the administrative support that the first guarantees the second), the *Sistema Extrajudicial de Resolución de Conflictos Laborales de Andalucía* (SERCLA) was created in 1996, by means of an inter-confederal agreement and it has experimented an evolution in its system of competences that we could define, in its historical development, somehow characterized by “variable geometries”. Effectively, while initially the competence

⁴⁰ Article 37, Spanish Constitution: “1. *La ley garantizará el derecho a la negociación colectiva laboral entre los representantes de los trabajadores y empresarios, así como la fuerza vinculante de los convenios.* 2. *Se reconoce el derecho de los trabajadores y empresarios a adoptar medidas de conflicto colectivo. La ley que regule el ejercicio de este derecho, sin perjuicio de las limitaciones que pueda establecer, incluirá las garantías precisas para asegurar el funcionamiento de los servicios esenciales de la comunidad*”.

⁴¹ MARTÍN MUÑOZ, *La autocomposición de los conflictos laborales. Valoración teórico-práctica de la mediación y el arbitraje en el ámbito de aplicación del ASAC y del acuerdo SERCLA*, in REDT, 2020, 231, pp. 163–196. On the extrajudicial labour-dispute resolution, see also: SÁEZ LARA, *Presente y future de la mediación en el sistema español de relaciones laborales*, in VALDÉS DAL-RÉ (Coord.), *Los sistemas de solución extrajudicial de conflictos laborales*, SIMA, 2006, pp. 68–102; VALDÉS DAL-RÉ, *Los procedimientos extrajudiciales de solución de conflictos laborales en la Unión Europea: una aproximación de derecho comparado*, in VALDÉS DAL-RÉ (Coord.), *Los sistemas de solución*, cit., pp. 182–209.

of the System embraced only collective labour conflicts, over the years (and, with greater precision, from 2005), it has been extended to embrace also individual labour conflicts, and subsequently (in 2022) reduced, excluding conflicts in the Public Administration (because of the impossibility of having a budget to be allocated to transactional effects). The strategic importance of the Extrajudicial System of Labour-Dispute Resolution System of Andalusia is, moreover, confirmed by the quantitative data submitted by the CARL, which validate the centrality of this crucial instrument, with a view to successfully managing and resolving conflicts and disputes⁴².

4. *The Consejo Andaluz de Relaciones Laborales as a virtuous model of institutionalized social dialogue, looking to the digitalized future*

Definitely, to an overall assessment, it emerges a full coherence between the general functions institutionally characterizing the mission of the CARL and those that we could define as the strategic lines of intervention, that compose the holistic concept of social dialogue, in an inclusive and comprehensive vision, clearly highlighted by the International Labour Organisation, in the following terms: “Social dialogue includes: negotiation, consultation and information exchange between and among governments, employers’ and workers’ organizations; collective bargaining between employers/employers’ organizations and workers’ organizations; dispute prevention and resolution; and other approaches such as workplace cooperation, international framework agreements and social dialogue in the context of regional economic communities”⁴³.

The constant synergy with trade unions and employers’ organizations, which characterizes the core action of the Andalusian Council of Industrial Relations, is somehow one of the most emblematic aspects of this so peculiar institution, whose activity is guided and oriented by the principles of subsidiarity, proportionality and attribution. In fact, the CARL conceives its

⁴² On this point, interesting data are presented in GÓMEZ MUÑOZ, *cit.*, pp. 26–29. *Inter alia*: “La gestión del SERCLA implica la tramitación de expedientes de mediación y arbitraje en toda la comunidad autónoma, con un volumen anual de 3.000 expedientes en sus 10 sedes provinciales” (page 26).

⁴³ INTERNATIONAL LABOUR ORGANISATION, *Social dialogue and tripartism*, <https://shorturl.at/moPQ6,1> (date of last consultation: March 4, 2024).

own action as complementary and integrative with respect to the action of trade unions and employers' organizations (subsidiarity); in a perspective of adaptation to specific needs (proportionality); and respecting the powers legally conferred on the CARL (attribution). As highlighted by the Council's President, "*el CARL encuentra la mayor de sus fortalezas, que no es otra que trabajar desde el diálogo y el consenso, desde el respeto a la autonomía funcional y competencial y la capacidad de iniciativa del Consejo como Administración pública y desde el respeto a la autonomía colectiva de las organizaciones miembros de un Consejo como órgano de participación institucional*"⁴⁴.

Coherently with its fundamental function related with the impulse to collective bargaining, the CARL adopted, in July 2023, the *II Plan de Apoyo a la Negociación Colectiva Andaluza 2023-2025* (Plan of Support to the Andalusian Collective Bargaining), which identifies a set of objectives and actions, to promote collective bargaining in the Andalusian socio-economic context, in the biennium 2023-2025.

Result of a mature and extended negotiation process between social agents and Andalusian Public Administration, the II PANC (2023-2025) represents an important contribution with a view to tracing the future path that the Andalusian industrial relations system is called to follow.

Concretely, seven are the strategic objectives which, together with the fourteen operational objectives and the seventy-seven support measures, form the core of this key document, which constitutes a fundamental contribution, looking to the future, with a view to improving the quality of collective bargaining, while respecting the spirit and essential values of social dialogue and "*sobre la base del respeto a la autonomía colectiva de las partes y de la coordinación y asistencia técnica del CARL*"⁴⁵.

Among them, it seems interesting to consider, from the point of view of this study, in particular, the strategic objective number 3, dedicated to "strengthen the Andalusian Council of Industrial Relations as a collegiate body of institutional participation and basic pillar of labor relations in Andalusia", identifying three well-defined operational objectives: the reform of the Andalusian Council of Industrial Relations Law, the rationalization of the structure of sectoral collective bargaining at the provincial and regional levels and the contribution to facilitating greater knowledge and legal cer-

⁴⁴ GÓMEZ MUÑOZ, *cit.*, p. 15.

⁴⁵ *Ibid.*

tainty in relation to certain critical profiles of contemporary complexity in collective bargaining⁴⁶.

With regard to the first operational objective of the three to which reference has just been made, among the relative support measures, all teleologically oriented to the achievement of the objective itself, some of them in particular deserve to be highlighted: the impulse to a “*reformulación y modernización por parte de la Consejería de la relación de puestos de trabajo del CARL para adecuar su estructura a la realidad funcional actual*”; the allocation of “*los medios necesarios al CARL para llevar a cabo una política de comunicación social propia en redes sociales coordinada con la de las organizaciones empresariales y sindicales*”; the allocation “*de los medios técnicos y personales suficientes para el desarrollo de las funciones administrativas del Consejo y para el desempeño de la labor del Consejo como observatorio estadístico de la negociación colectiva*”⁴⁷.

In other words, the II Plan of Support to the Andalusian Collective Bargaining highlights the ability of CARL to understand that times change and that, therefore, to continue to perform effectively and successfully its fundamental functions, it is necessary to adopt some changes, some reformulations, some modernizations.

Times change and CARL adapts to them.

This specific point just mentioned seems of interest, demonstrating perfectly the ability of the CARL of adaptation to the changing needs of the socio-economic reality in which it is called to operate: it is probably in the predisposition to embrace, manage and lead the change that we can find one of the success-key elements that have guaranteed the *Consejo* its protagonism, despite the passage of the years.

In fact, as highlighted by José Manuel Gómez Muñoz, current President of the *Consejo Andaluz de Relaciones Laborales* and Full Professor of Labour and Social Security Law, the creation of the CARL in 1983 responds to a specific need for democratization of labour relations, in a precise and very particular historical moment, characterized by the recent implementation and entry into force of a rule of extraordinary importance in the trade union Spanish landscape: the *Estatuto de los Trabajadores* (1980; Spanish Workers’ Statute)⁴⁸.

⁴⁶ CONSEJO ANDALUZ DE RELACIONES LABORALES, *II Plan de Apoyo del CARL*, cit., pp. 19–21.

⁴⁷ *Ibid.*

⁴⁸ GÓMEZ MUÑOZ, cit., p. 9: “*Sin duda alguna su creación obedeció a la necesidad de democratizar*

Precisely the development of the classical institutions, both individual and collective, on which the architecture of Labour Law is based – in a participatory and inclusive dynamic, proper to social dialogue, and in a critical period – is, in a certain sense, the fundamental challenge of an innovative organ, like the CARL of the origins was.

Well, the contemporary context is deeply different from that which accompanied the birth of the CARL, resulting, today, characterized by new major social issues, that challenge the Labour Law paradigms, questioning its own conceptual foundations. Among all, particularly emblematic are the unprecedented challenges posed by the disruptive process of digitization of society and, therefore, in particular, of employment, in the general terms briefly described above (see *supra*).

Indeed, “in the light of the empirical evidence emerging from the contemporary productive reality, the digitalisation of socio-economic paradigms emerges as disruptive enough to determine – among other things – the apparent eclipse of the collective dimension of work, as a result of an important push towards the individualization of and in the work itself. The same identity and class consciousness of the workers seem to ‘discolour’, broken down into a molecular society model, driven by intelligent technologies, structured according to disintermediation logics (in this sense, blockchain and distributed ledger systems are emblematic archetypes)”⁴⁹.

Precisely in the face of such trends, as has been pointed out above, “the digitalisation of work should be considered as a transition to build inclusively, according to an anthropocentric vision – consistent with the development model of ‘industry 5.0’ – and with the indispensable participation of workers’ representative organisations. Digitalisation cannot be considered as a phenomenon fulfilled, inexorable, implacable, which the worker and the social partners can only interpret and ‘suffer’ passively, but as a ‘partnership process between employers and workers and representatives’ (European Social Partners Framework Agreement on Digitalisation)”⁵⁰.

las relaciones laborales en un momento especialmente sensible de nuestra historia, cuando apenas llevaba tres años aprobado el Estatuto de los Trabajadores de marzo de 1980 y cuando faltaban aún dos años para la aparición de la Ley Orgánica de Libertad Sindical”.

⁴⁹ BINI, *Participation in the anticipation in the digitalisation of work: models and experiences for a shared sustainable process*, in VV.AA., *ILERA European Congress 2022 on “Industrial relations and the Green Transition; Towards inclusive and sustainable growth” (Barcelona, 8-10 September 2022) - Abstract Book*, ILEA, 2022, p. 85.

⁵⁰ *Ibid.*

So, as highlighted in doctrine, its fortieth anniversary could represent for the CARL the occasion for a new impulse for the achievement of its fundamental objectives: Public Administration together with social partners should continue playing a central role in the promotion of collective bargaining and labour disputes' resolution, providing technical and professional support, experimenting forms of innovation and modernization⁵¹. The peculiarities and dynamics of functioning of the model of social dialogue that the CARL embodies and institutionalizes, seem fully consistent with the complex and unprecedented challenges posed by the process of digitalization of work in place.

5. Conclusions

In conclusion, it is clear that the *Consejo Andaluz de Relaciones Laborales* (Andalusian Council of Industrial Relations) has represented, represents and will continue to represent a key-institution in the Autonomous Community of Andalusia industrial relations system and a reference model in the social dialogue general horizon.

As is well said in the II Plan of Support to the Andalusian Collective Bargaining, "*En estos cuarenta años de funcionamiento, el CARL se ha consolidado como un referente fundamental en el marco general de las relaciones laborales en Andalucía. Como adalid del diálogo y del consenso ha sido, y es, especialmente decisiva su aportación al mejor desarrollo de las relaciones laborales en nuestra Comunidad Autónoma y para la configuración de la negociación colectiva como instrumento principal para la regulación de las relaciones colectivas de trabajo en donde el convenio colectivo se convierte en espacio idóneo para favorecer la competitividad empresarial y para el mantenimiento y la creación de empleo*"⁵².

⁵¹ GÓMEZ MUÑOZ, *cit.*, p. 15: "estamos ante un Consejo Andaluz de Relaciones Laborales en el que la Administración de la Junta de Andalucía, de la mano de los interlocutores sociales, debe recuperar en este 40º aniversario una posición relevante de iniciativa, fomento y promoción de la negociación colectiva, de ofrecimiento del apoyo técnico y profesional a la negociación colectiva y a la resolución de los conflictos, con una voluntad irrenunciable de modernización y actualización de nuestro sistema andaluz de relaciones laborales, con capacidad de propuesta y de creación de nuevas herramientas técnicas para favorecer los procesos de negociación y de impulso a las empresas y a los derechos de los trabajadores".

⁵² CONSEJO ANDALUZ DE RELACIONES LABORALES, *II Plan de Apoyo del CARL*, *cit.*, p. 7: "In these forty years of operation, the CARL has established itself as a fundamental reference in the general framework of industrial relations in Andalusia. As the champion of dialogue and

The recipe of this success is, of course, composed of many ingredients, among which we cannot fail to mention its intrinsically hybrid character, with reference both to its composition, as to its functions; in fact, one of its greatest strengths lies in the interpenetration of different complex functions that, with their intrinsically hybrid character, trace variable geometries, as in a continuous kaleidoscopic evolution, which guarantees full capacity to respond to the changing volatility of the issues on which it intervenes.

And it is precisely this capacity of response on several fronts – together with the predisposition to adaptation and readiness for change and modernisation, as well as with the “*clima de entendimiento y mutua confianza entre los interlocutores sociales y la Administración Autónoma dentro del Consejo [that] ha contribuido al diálogo y a la concertación social en Andalucía*”⁵³ – which can make the difference, seeming extraordinarily important in addressing the challenges of the digitalization of work.

In fact, faced with the above-mentioned reality, characterized by a digitalization of work oriented to disintermediation, and assumed as a shared premise the strong need to reverse course and turn the trend, promoting paths of reintermediation, returning centrality to social dialogue, with a view to transform the digitalization of work in a “shared social process”, the *Con-*

consensus, and it is especially decisive its contribution to the better development of industrial relations in our Autonomous Community and to the configuration of collective bargaining as the main instrument for the regulation of collective labour relations where the collective agreement becomes an ideal space for promoting business competitiveness and maintaining and creating jobs”. See also pages 7–8: “*Es también este Consejo expresión máxima de la participación institucional y representativa de los interlocutores sociales y económicos en los órganos colegiados de la administración autónoma, cumpliéndose el mandato Constitucional y Estatutario en cuanto al papel que desempeñan las organizaciones sindicales y empresariales más representativas en la Comunidad Autónoma de Andalucía en el ejercicio de la defensa de los intereses que les son propios. El CARL se proyecta como un modelo que ha servido de referencia para la composición de los demás órganos de participación institucional consagrando el carácter tripartito y paritario que rigen en estos ámbitos participativos y representativos*” (“It is also the highest expression of the institutional and representative participation of the social and economic partners in the collegiate bodies of the autonomous administration, fulfilling the constitutional and statutory mandate as regards the role played by the most representative trade union and employers’ organizations in the Autonomous Community of Andalusia in the exercise of the defense of their own interests. The CARL is projected as a model that has served as a reference for the composition of the other bodies of institutional participation by enshrining the tripartite and parity character that govern in these participatory and representative”).

⁵³ RODRÍGUEZ-PIÑERO, BRAVO FERRER, *cit.*, p. 127.

sejo Andaluz de Relaciones Laborales could represent a virtuous model of institutionalized social dialogue, a fruitful reference, functional to the concrete realization of an anthropocentric, collective and plural vision of the algorithmic work.

In this sense, the *Consejo Andaluz de Relaciones Laborales*, with its glorious and long history, crosses now its own evolutionary trajectory with a bright future ahead, feeding on the vital sap brought by collective bargaining and industrial conflict.

Abstract

The paper proposes a study around a virtuous model of tripartite experience of social dialogue, emblematical for the crucial involvement of a public authority: the *Consejo Andaluz de Relaciones Laborales*. Starting from a general and brief overview of the tendency to disintermediation that characterizes the contemporary phenomenon of the digitalization of work, the paper will thus provide a critical analysis of the Andalusian Council of Industrial Relations, thus assessing its regulatory dimension, with particular reference to its creation, its legal nature and its functions. Special attention will be focused on the II Plan of Support to the Andalusian Collective Bargaining 2023-2025, elaborated by the same CARL, that has identified strategic and operational objectives, as well as concrete measures and actions, in order to strengthening the role of the *Consejo* as a collegiate organ of institutional participation and a fundamental pillar of the Andalusian industrial relations system.

Keywords

Social dialogue, Digital transformation, Disintermediation, *Consejo Andaluz de Relaciones Laborales*, Case study.

