

Contents

<i>List of abbreviations</i>	<i>x</i>
Introduction: From the EU crisis to constitutional balancing	1
1 Constitutional balancing of fundamental labour rights	13
1.1 Introduction	13
1.2 Constitutional balancing as a method and its theoretical justifications	14
1.2.1 Against constitutional balancing	18
1.2.2 The balancing actors	20
1.2.3 The axiological nature of fundamental labour rights	21
1.3 Balancing technique(s)	27
1.3.1 The proportionality test, a critique	29
1.4 Balancing in fundamental social rights' adjudication and the essential content dilemma	34
1.4.1 Italian and Spanish insights on the notion of essential content	39
1.5 Conclusions	42
2 Constitutional balancing techniques in the world: A glimpse	47
2.1 Introduction	47
2.2 A worldwide panoramic of constitutional balancing	48
2.3 Balancing in supranational courts	50
2.3.1 The CJEU way of balancing: a labour reading	50
2.3.2 The ECtHR way of balancing: a labour reading	59
2.3.3 On reasonableness	61
2.3.4 Around values, balancing and proportionality in supranational courts	63

2.4	<i>A reappraisal of constitutional balancing in Italy and Spain</i>	68
2.4.1	<i>Balancing in the Italian constitutional case law</i>	70
2.4.2	<i>Applied balancing in the Spanish constitutional case law and the principle of proportionality</i>	76
2.4.3	<i>Financial and economic factors in the Constitutional Courts' case law</i>	82
2.5	<i>Conclusions</i>	90
3	Italian and Spanish post-crisis case law and "its" fundamental labour rights	94
3.1	<i>Introduction</i>	94
3.2	<i>The relevant Italian post-crisis case law</i>	96
3.2.1	<i>Public employees' wage reduction before the Court</i>	96
3.2.2	<i>Retirement benefits revaluation and the modulation of the Court</i>	99
3.2.3	<i>On compensation for unjustified dismissal</i>	100
3.3	<i>The relevant Spanish post-crisis case law</i>	102
3.3.1	<i>The first and comprehensive judgment on the 2012 labour reform</i>	102
3.3.2	<i>The second and consistent judgment, one year later</i>	104
3.4	<i>Fundamental labour rights in the balance</i>	107
3.4.1	<i>The right to work</i>	108
3.4.2	<i>The right to collective bargaining</i>	111
3.4.3	<i>The right to a sufficient and proportionate remuneration and the principle of adequacy of pensions in the Italian case law</i>	119
3.5	<i>Conclusions</i>	124
4	Constitutional balancing in the Italian and Spanish post-crisis case law	127
4.1	<i>Introduction</i>	127
4.2	<i>The role of the Courts</i>	128
4.3	<i>The technique applied to supervise the legislator's balancing</i>	132
4.3.1	<i>The principle of reasonableness that permeates the Italian constitutional post-crisis case law</i>	133
4.3.2	<i>The stone guest of the Spanish constitutional post-crisis case law: the principle of proportionality</i>	138
4.4	<i>The terms balanced</i>	143
4.4.1	<i>The Italian post-crisis case law and the public financial contingencies</i>	143

4.4.2	<i>The Spanish post-crisis case law and the overriding fight against unemployment</i>	151
4.4.3	<i>The economic crisis argument, in the balance?</i>	154
4.4.4	<i>An uncontroversial axiological term: the freedom to conduct a business</i>	156
4.5	<i>Conclusions</i>	158
	Conclusions	163
	<i>Bibliography</i>	169
	<i>Index</i>	195