

Guaranteed Minimum Income: New Spaces for Trade Union Action

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Abstract

Trade unions have developed a very important role guaranteeing minimum incomes through collective bargaining. However, after the last Great Recession and austerity policies imposed by the Troika on many countries, among which Spain, the traditional mechanism of fixing minimum wages has become less effective on many occasions. Nonetheless, it has been argued that trade unions are following various new paths in order to guarantee minimum wages, both in Spain and in comparative labour law, and these share several common trends. This paper aims to analyse these paths and which convergences in trade union practices and strategies can be detected in this field.

Key words

Trade unions; minimum income; social clauses

Resumen

Los sindicatos han desarrollado un papel muy importante en garantizar ingresos mínimos a través de la negociación colectiva. No obstante, tras la gran recesión y las políticas de austeridad impuestas por la Troika a muchos países, entre ellos España, el mecanismo tradicional de fijación de salarios mínimos ha sido menos eficaz en muchas ocasiones. A pesar de ello, se sostiene que los sindicatos están siguiendo diversos nuevos caminos para garantizar ingresos mínimos, tanto en España como en el derecho del trabajo comparado, que comparten muchas tendencias comunes. Este artículo se centra en analizar esas vías y las convergencias en las prácticas y estrategias de los sindicatos en este terreno.

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Palabras clave

Sindicatos; ingresos mínimos; cláusulas sociales

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1. Introduction

Trade unions and collective labour rights have suffered a gradual and serious deterioration in recent years in many European countries, especially in those peripheral. The Spanish case is a good example in this sense, as it illustrates the impact of austerity policies imposed by the Troika. Instruments and practices traditionally used by trade unions to ensure worker protection have become less effective. Their counterbalance to power when confronting employers has been greatly reduced by legal reforms, especially in the field of collective bargaining. At the same time, employers have seen a strengthening of their unilateral decision power.

However, it should be noted that trade unions have not shirked from their commitment to worker advocacy and are attempting to follow different paths of action, despite the many challenges they must face. This paper deals with these new practices and focuses on those aimed at obtaining decent incomes. Accordingly, we will consider the Spanish case from a comparative perspective that shows, as will be seen, several convergences with trends followed in other jurisdictions. As discussed below, these strategies are characterised by three different aspects: an increasing emphasis on the bargaining process rather than on formal aspects; a multiplicity of new partners involved in these processes, beyond that of the classic union/employers' association binomial; and, finally, the scope is often framed within a local level as an exclusive operational area or engaging with others within a multilevel framework.

2. Wage reductions and erosion of traditional collective bargaining

One of the consequences of the Great Recession that took place in the late 2000s and beginning of the 2010s was a rise in inequality, wealth distribution and poverty. Wage freezes and salary reductions were applied in many European countries during this period. As a result, having a job does not mean earning an adequate income to ensure decent living conditions in the current scenario and the working poor is a reality that has spread across Europe.¹ Moreover, despite the fact that increased productivity and economic recovery seem to have become a reality recently, wages have not risen proportionally.

According to Spain's National Statistical Institute (Instituto Nacional de Estadística 2017), wages in the country lost 8.6% of purchasing power in the period 2008-2015 (without price inflation). On the other hand, according to Eurostat (2017), low-wage earners (those paid two thirds or less of national median gross earnings per hour) represent 17.2% of all employees in the EU-28 (15.9% in the euro area). In-work poverty stands at around 10% of European workers, according to Eurofound (2017), which also indicates an increase in non-standard forms of employment, among other circumstances, as a major cause in the increased numbers of this collective. On the other hand, according to Capgemini's *World Wealth Report 2017*, High-Net Worth Individuals (those with assets of over 1 million dollars) increased by 59% in Spain during the period 2008-2016 (from 127.1k to 202.2k), the number of High-Net Worth Individuals increased by 7.5% in the world and the volume of wealth concentrated by them increased by 8.8%, with the number of wealthy individuals increasingly on the rise, distributing a larger number of assets among them.

Concerned as it was about these circumstances, the European Commission explicitly included in the initiative on the European Pillar of Social Rights (2017) several aspects

¹ Although it represents a low percentage of working people, the gig economy and platforms are a new context of informality and precariousness for workers (see, among others, De Stefano 2016 and Prassl 2018), especially regarding wages for online tasks (see Semuels 2018).

that may be considered in policies, practices and regulations of all stakeholders. Hence, Principle 6, on wages (in Chapter II, on fair working conditions), establishes:²

Workers have the right to fair wages that provide for a decent standard of living.

Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.

All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners. (*European Pillar of Social Rights* 2017, Chap. II, Principle 6)

Nevertheless, the latest labour reforms in many European countries have deeply eroded collective labour rights, emphasising the deregulation of national collective bargaining systems inspired by the European Union (Bogg and Ewing 2017). As a common trend, bargaining units have been fragmented and decentralised by prioritising the company level. These legal changes have led to lessening the possibilities of unions to assure decent wages for workers and undermining their legal/political position. As Novitz (2017) notes, one of the elements explaining increasing inequality and its economic and social effects in the UK case is “the gradual collapse” of sectoral collective bargaining. Furthermore, it is important to note the problems that the “representativeness” of trade unions must face with different groups of workers (Bogg *et al.* 2017).

Collective bargaining has traditionally been the wage-setting mechanism used in different labour relations systems, although many of these have national minimum wages that cover a significant number of workers. The goal of the national minimum wage is to guarantee a decent income to workers that must be respected by collective agreements and employment contracts. However, this institution has also been affected by the economic crisis. In the case of the Spain, the national minimum wage affects an important number of workers and, despite its existence and aim, the number of working poor has increased. This fact might be explained by several circumstances, among which must be underlined the economic crisis and regulatory changes. According to Spain’s Tax Authority (Agencia Tributaria 2017), 6,083,517 people undertook some sort of paid work during 2016, earning a total amount below the national minimum wage for that period and representing 34.01% of all Spanish employees.

² There is another principle that should be highlighted from the perspective of guaranteed minimum incomes in Chapter III regarding social protection and inclusion and including a principle on minimum income: “Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market” (*European Pillar of Social Rights*). As will be seen later, Spanish trade unions have developed several new practices with a variety of other partners to exert influence in this field. This is a clear example of the embeddedness of trade unions and social protection issues, integrating and connecting two different levels: employment and social security.

TABLE 1

Payments in proportion to national minimum wage (NMW)	Employees	Remuneration per person	Wages (EUR)	Annual average wage (EUR)
Total	17,888,520	1.36	336,938,113,674	18,835
From 0 to 0.5 NMW	3,744,384	1.51	6,910,433,593	1,846
From 0.5 to 1 NMW	2,339,133	1.70	16,062,121,471	6,867
From 1 to 1.5 NMW	2,334,247	1.47	26,859,793,289	11,507
From 1.5 to 2 NMW	2,439,191	1.27	39,095,492,477	16,028
From 2 to 2.5 NMW	1,856,927	1.20	38,053,993,441	20,493
From 2.5 to 3 NMW	1,285,261	1.16	32,226,507,094	25,074
From 3 to 3.5 NMW	994,722	1.17	29,579,226,576	29,736
From 3.5 to 4 NMW	771,639	1.15	26,465,738,845	34,298
From 4 to 4.5 NMW	589,756	1.13	22,928,641,709	38,878
From 4.5 to 5 NMW	404,704	1.13	17,560,729,876	43,391
From 5 to 7.5 NMW	775,037	1.15	42,399,642,059	54,707
From 7.5 to 10 NMW	213,218	1.18	16,627,796,372	77,985
More than 10 NMW	140,301	1.19	22,167,996,869	158,003

Table 1. Employees, wage and salary payments – 2016.

Source: Spanish Tax Authority.

NMW: national minimum wage or minimum guaranteed interprofessional wage (*salario mínimo interprofesional* – SMI).

In fact, the evolution of the national minimum wage has not been characterised by a constant annual increase. The economic crisis and other contextual circumstances have affected the rate of increase it has suffered. For instance, while there was no increase in 2012 and 2014 compared to previous years, when the effects of the economic crisis were more evident, in the current year there has been an increase of 8% compared with 2016. Nevertheless, there are important differences across Europe when comparing national average wages. In the case of Spain, an increase of 90% to achieve 60% of the national average wage is needed.³

Fixing the national minimum wage in Spain is done in consultation with unions, but it is not agreed upon with them, given that their role is essential when negotiating wages with companies in collective agreements.⁴ As seen below, the latest collective bargaining reforms have weakened this union function.⁵ The legislator notes in the explanatory reasons of the norm that its purpose is that collective bargaining should be “an instrument, and not an obstacle, to adapt employment conditions to specific business circumstances”. A declared goal of the reform is to increase flexibility within firms, providing them with instruments to avoid the use of dismissals as a mechanism of restructuring the workforce. However, this attempt to increase *flexicurity* is a bogus argument as long as the norm also includes external flexibility mechanisms that facilitate dismissals (Alarcón Caracuel 2014). The limitation of ultra-activity, the priority of applying company-level agreements and escape or get-out clauses have all led to a scenario characterised by a fragmentation of collective agreements, an undermined strength of social actors and a reduction of coverage levels: “this inevitably entails an important disruption of the collective bargaining system, which theoretically should help to maintain an equilibrium” (Chacartegui 2016).

Data on wage evolution shows the impact of reforms in this field. According to Eurostat (2018a), the median equivalised net income in the euro area (18 countries) rose 11.16%, from 16,499 EUR (2008) to 18,340 EUR (2016). However, it fell 1.99%

³ See the interesting European Trade Union Confederation (ETUC) briefing note on this issue as part of its *Pay Rise* campaign (ETUC 2017).

⁴ The mechanism to establish the national minimum wage in other European countries provides an important role to trade unions, such as in the case of Belgium or Greece, where it is fixed by collective bargaining. However, it should be noted that in the Spanish case there was a previous agreement among the Government and social actors (most representative trade unions and employers' associations) for 2018 and subsequent years to achieve progressively the amount of 850 EUR by 2020.

⁵ Essentially through Act 3/2012, of 6 July, on the urgent measures for labour market reform.

in Spain, from 13,963 EUR (2008) to 13,685 EUR (2016). As stated above, the number of low-paid workers has increased in many countries, with the “risk that a large number of people will feel left behind [which] may lead to increased social tensions, particularly if certain groups of people consider that they have paid a high price during the crisis while the benefits of the earlier expansionary period –and perhaps future recovery– have been unevenly shared” (Belser *et al.* 2010).

3. New scenarios and stakeholders for trade union action

Faced with these difficulties in the area of classic collective bargaining, trade unions are exploring new mechanisms to overcome this situation. Unions have sometimes opted for a global framework, as in the case of the European Trade Union Confederation’s campaign *Europe Needs a Pay Rise* (see <https://www.etuc.org/en/issue/pay-rise> and <https://payrise.eu>). An interesting point to note is the multilevel interaction between national and European frameworks, between various national trade unions and the Confederation, in developing a common strategy. Another aspect to underline is the use of various social media networks to disseminate the campaign.⁶ This final aspect is crucial, to such an extent that various national trade unions can obtain specific data on their socioeconomic context, the problems they must face in obtaining decent wages and the successes obtained in this field in order to share this information with each other in an attempt to follow these same patterns.

But it is at a local level where the most interesting experiences can be found. In this regard, the global trade union federation Public Services International (2017) has stressed the possibilities of trade unions in developing transformative practices in the local arena in order to build equitable and inclusive communities, such as negotiating local tripartite agreements or promoting the inclusion of social and environmental clauses in public procurement.

Indeed, strategies of local collaboration with other actors, such as NGOs, residents’ associations or city councils, are becoming quite relevant in comparative law. Stone and Cummings (2011) give good examples of new practices at the local level in the USA, particularly in Los Angeles, where various community benefit agreements (CBA) have been achieved.⁷ Stone and Cummings analyse the alliances between trade unions and other community organisations that try to influence labour conditions from a position outside the classic collective agreement field. Among other successful results, in some cities they achieved “living wages, job training, local hiring preferences, workplace safety protections, health insurance benefits and job security for local workers” (Stone and Cummings 2011, 274). Local government law has been a very useful instrument for this purpose, with the authors emphasising contracting, land use and general regulatory power being implemented in local ordinances and a new formula of negotiated community benefit agreements.

According to them, there are various challenges that this “embryonic form of a new type of unionism” must face, two of which should be underlined (Stone and Cummings 2011, 275). Firstly, the classic role played by unions has shifted to other actors and these labour-community coalitions do not provide stable representation for workers or provide them with assistance on labour-related problems. Secondly, a shift has also occurred regarding traditional solidarity bonds, as these are no longer based on workplace in these social movements. Consequently, they argue that “it is unclear whether these new forms of organizations will generate the loyalty and cohesiveness necessary for a sustained and engaged membership” (Stone and Cummings 2011, 274, 293).

⁶ For example, the campaign can be followed in Twitter (#OurPayRaise) or in Facebook (<https://www.facebook.com/OurPayRaise/>).

⁷ Galley (2015) provides other examples of CBAs in Ontario (Canada) and the USA.

It is quite difficult to find union strategy convergences with these practices in Spain. The main reason is the basic differences among labour relations systems and legal support that collective rights have traditionally had in the Spanish case, establishing bargaining procedures and legal effects to collective agreements. However, there are two examples that should be underlined.

Firstly, a recent tripartite agreement on hotel and restaurant services in the Balearic Islands that was signed on 28 September 2017, between the Balearic Government (Department of Labour), Hotel Business Federation of Mallorca and Hotel and Tourism Federations of the most representative trade unions (CCOO and UGT). It is in fact an extension of the 2014 collective agreement, but its most striking feature is the participation of the Government, thereby ensuring that the social parties achieved such a highly significant agreement, considering the primary importance of the tourism sector there. Among other improvements in working conditions, it resulted in an agreed increase of 17% in wages in the hotel and restaurant services during the period 2018-2021 (5% in 2018, 5% in 2019, 3.5% in 2020 and 3.5% in 2021). This represented an improvement on the agreed collective bargaining increases, which were 1.3% (Govern de les Illes Balears 2017). In this case, a focus on the local arena and interaction and agreement with local authorities are common points of Spanish trade union strategies to ensure higher wages.

Secondly, new mechanisms have been explored in other labour-related areas, such as social protection. Indeed, there are two levels or areas in which different instruments to guarantee a minimum income can be found. On the one hand, in the employment sphere, as seen before, particularly through collective bargaining, during which wages are agreed upon alongside other working conditions. And, on the other hand, in the social protection sphere, by means of public benefits, a field in which trade unions are also playing an important role by collaborating with other agents. This occasional collaboration with other collective agents in a regional area, such as civic associations or NGOs, also reveals union strategy convergences in different countries. In this case, it is very interesting to highlight how they achieve their objectives through popular legislative initiatives.

Social protection benefits are thought to protect citizens when working incomes have either failed or prove to be insufficient. There are various mechanisms of this kind in Spain. There is an active insertion income (*renta activa de inserción*) at a national level and there are minimum insertion incomes at a regional level (with each Autonomous Community having its own regulations, requirements and amounts). The terms of instruments at both levels are decided upon by the respective governments, and unions only have a very limited participation in their creation. However, a recent experience in Catalonia should be underlined: the civic guaranteed minimum income (*renda garantida de ciutadania*).

It is important from the content perspective because it is an attempt to guarantee a minimum income recognised as a universal right of all citizens to avoid them falling under the poverty line.⁸ A consequence of the legal nature of this right is that it is not conditioned to budgetary availability or the obligation of the recipient to participate in social and employment integration actions, as occurs with the aforementioned national protection or other regional instruments.⁹ Additionally, the right only considers the economic situation of applicants and their situation, without taking into account the usual family household. Finally, it recognises an amount of 664 EUR per month (12 annual payments, to be increased during a transitional period) on a supplementary basis, entitling holders to receive a public amount that, when added to their incomes, is equal to that amount.¹⁰

⁸ Regarding the establishment of income security as a right, see Standing (2004).

⁹ Although this employment activation is not compulsory, an additional benefit promotes it.

¹⁰ Although it is lower than the national minimum wage (735.90 EUR for 2018), it is higher (54.32%) than the active insertion income (430.27 EUR for 2018).

But what we would like to emphasise is its development. This public social protection mechanism has its origins in a popular legislative initiative that was passed in the Catalan Parliament after a process of negotiation to determine its specific regulatory content (Catalan Parliament Act 14/2017, of 20 July, on civic guaranteed minimum income). The popular legislative initiative was presented by several associations, after having collected more than twice the minimum signatures required for a legislative initiative: citizens' platforms, neighbourhood associations and also trade unions, such as Comissions Obreres (CCOO), Comissions de Base (CO.BAS), Unió General de Treballadors (UGT) and Unió Sindical Obrera de Catalunya (USOC) [more information is available on the citizens' platform website: <http://www.rendagarantidaciutadana.net/index.php/ca>]. It opened a new path for unions that involves collaborating with other associations with common aims. In fact, the use of popular legislative initiatives by a group of different collective subjects, including trade unions, on a specific issue at various levels (local and national) is becoming an increasingly more common democratic instrument of participation.¹¹

As noted above, a minimum wage is one mechanism used to ensure that all workers receive a decent wage, as there is always a large number of them in all countries that do not benefit from increases that are agreed upon in collective bargaining, regardless of its scope. Despite the fact that minimum wages are mostly laid down by law or governments, prior consultation or bargaining with unions and employers often takes place. Due to the cyclical blockage of the Congress's parliamentary term, scores of cities and counties in the USA have acted to significantly increase the minimum wage above state and federal levels since 2012.¹² A minimum wage is set in each province in Canada. Although its amount is approximately 11 CAD per hour in most of these, some provinces such as Ontario or Alberta have higher minimum wages (around 14 CAD per hour), following union demands to establish a minimum wage of 15 CAD per hour.

According to Eurostat (2018b), only 22 of the 28 EU countries have minimum guaranteed interprofessional wages (Austria, Cyprus, Denmark, Finland, Italy and Sweden have not stated these). The recent introduction in Germany of a minimum wage, which oscillates between 8-9 EUR per hour depending on each Land, has largely been a reaction to the European Court of Justice's (ECJ) *Rüffert* case, which we will refer to later. There are indeed notable differences among countries with this legal instrument that cannot simply be explained by differences in costs of living. There is a first group of countries that have a legal minimum wage of between 1,000 EUR and 1,600 EUR (Germany, Belgium, France, Ireland, Luxembourg, Netherlands and UK); a second group established the minimum wage at around half the aforementioned amounts, between 500 EUR and 900 EUR (Spain, Greece, Malta, Portugal and Slovenia); and the rest have a minimum wage that is a quarter of the first group (Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Romania and Slovakia), between 200 EUR and 500 EUR per month. In general, each country can be classified according to the way its minimum wage is fixed, either by legal or collective bargaining instruments. However, these options are not watertight compartments. Legal norms and collective bargaining complement and overlap each other at various levels, due to institutional diversity and different trade union strategies in confronting the challenge of reducing poverty and income inequalities (Schulden *et al.* 2016).

¹¹ The popular legislative initiative has been used by the Platform for People Affected by Mortgages (Plataforma de Afectados por las Hipotecas, PAH), other social organisations and trade unions to try to change current regulation on this issue, which has had a devastating effect on thousands of families that lost their homes because of the economic downturn and the impossibility of paying back their mortgages.

¹² A detail of these campaigns, results and analysis can be found at <http://raisetheminimumwage.com>. Kumler '07 (2007) has analysed more than 100 experiences of local living wage ordinances in the USA.

TABLE 2

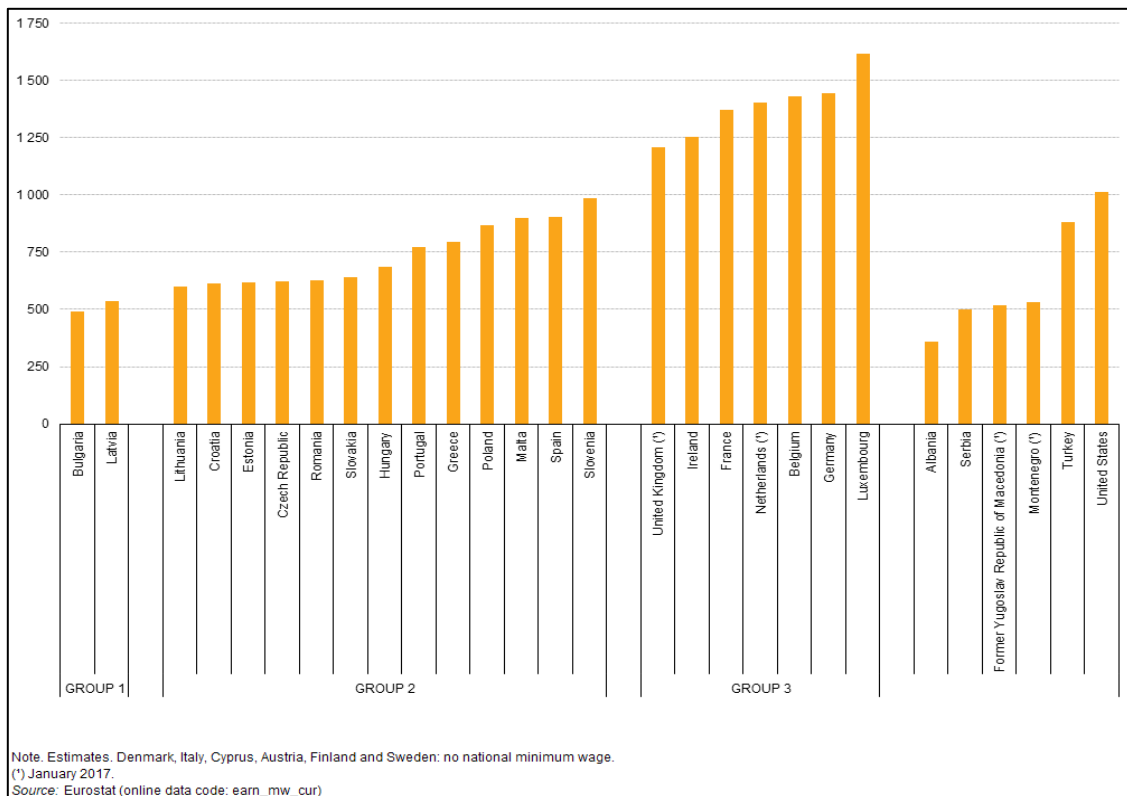


Table 2. Minimum wages per month (purchasing power standard corrected) – July 2017.

Source: Eurostat (2017).

No equal minimum wage exists throughout Switzerland because it is fixed by collective bargaining. But, as in half of the EU countries, collective bargaining covers slightly over half of the workers. The Union Syndicale Suisse (USS) has succeeded in its initiative of holding referendums in different Cantons since 2010. These referendums among all citizens requested the implantation of a minimum legal wage and achieved uneven results. Thus, while Geneva rejected the initiative, it was passed in Neuchâtel in 2011, although the subsequent act that had to define its specific terms was stalled by judicial remedies: a Swiss Federal Court sentence of 21 July 2017 [ATF 143 I 403] stated that the act could come into effect, thereby providing some arguments that may be interesting for other jurisdictions with a complex political structure. According to the Federal Court, a minimum wage is mainly a social policy rather than an economic policy measure, given that its purpose is to fight against poverty (the working poor) and contribute to a respect for human dignity. For this reason, federal competences in economic policy and constitutional principles of individual economic freedom cannot curb the implementation of a minimum wage (which was initially established in that Canton at 19.78 CHF per hour, more than 3,100 EUR per month).

However, national or regional minimum wages are not adequate in some cities that have a distinctive cost of living. Specific initiatives to establish a local living wage are also important in Europe. One example can be found in the UK with the case of the London Living Wage (Barnard 2011, 270-271). This initiative establishes an hourly wage of 10.20 GBP, which is considered enough to live on and to save for a worker and his/her family in London. One good point of this initiative is that it takes into account the real cost of living in a specific geographical area. In this case, it is higher

inside rather than outside the Greater London region.¹³ But the weakest point of this initiative is its voluntary basis.

Although Spain has a national minimum wage, as noted above, a debate has begun to introduce different higher minimum incomes in local and regional areas. In this sense, for instance, the Barcelona City Council is analysing alongside various actors the legal feasibility and impacts of the creation of a *city wage* (*salari de ciutat*).¹⁴ The Catalan Socialist Party (Partit dels Socialistes de Catalunya – PSC) is promoting a minimum income of 1,048 EUR in the Metropolitan Area of Barcelona (Vargas Llamas 2017). It is a higher amount than the current national minimum wage (707.60 EUR) and the minimum amount to cover the basic expenses of a family. It is an approximate amount that will be adapted to the reality of each city and budgetary possibilities. Mayors of this political party in the Metropolitan Area are committed to presenting motions in their respective City Councils to pass this minimum wage not only to their workers (through collective bargaining), but also in public procurement, to be applied in those companies that obtain service provisions. Although the idea is the same as in the case of the London Living Wage (current minimum wages are not insufficient in some places), there is a political commitment to enforce these minimum wages through a powerful instrument that public administrations have available to them: procurement.

4. Public procurement as a new path for trade union action

The enforceability of labour standards through procurement is becoming increasingly important (Barnard 2011, 2017). Considering the difficulties in achieving decent wages through the traditional mechanism of collective bargaining, unions can play an important role in these practices at different procedural stages, despite the fact that it is governments (local, regional or national) that decide on the inclusion of such social content. Firstly, as a political subject, agreeing on the establishment of a ‘social clause’ in procurement with the government so that companies entering into contracts with administrations can guarantee decent working conditions and, particularly, decent wages that are often higher than those specified in the collective agreement. Secondly, unions can bargain and agree upon wages within the company that obtained the public contract. And finally, unions can also play an important role regarding its accountability, through information and consultation rights.

Indeed, unions can agree upon these social clauses directly with public administrations, which respond to two sources of pressure from unions. The most common or traditional is related to their role as an employer in terms of collective bargaining. The second concerns their political/electoral nature (i.e. the search for votes). In this way, administrations appear as an interlocutor that can directly or indirectly impose specific working conditions onto firms (i.e. metropolitan minimum wage). These conditions can be included in public procurement. A two-pronged method exists to fix wages in companies that win administrative tenders. Firstly, through a collective agreement between employers and unions and, secondly, public administrations can also exercise control on the concessionaire company so that it effectively complies with procurement clauses. It is a similar practice to union action that establishes working conditions for temporary employment agencies by bargaining with the user undertaking (i.e. the construction sector).

However, ECJ case law has seemingly prevented these practices since *Rüffert v Niedersachsen* (2008), when it applied Directive 96/71/EC, concerning the posting of workers in the framework of the provision of services. In this case, the ECJ ruled that the national regulations under which firms could successfully tender for a public works contract restricted the freedom to provide services; these regulations demanded a

¹³ On the mechanisms to calculate it considering the real cost of living, see <https://www.livingwage.org.uk/calculation>.

¹⁴ Information on a workshop organised by Barcelona’s Economic and Social Committee on 24 March 2018 and papers presented there are available at <http://www.cesbcn.com/index.php>.

written commitment by firms in the competitive tender to pay their workers the minimum remuneration established in the collective agreement applicable in the place where the service must be performed as compensation for the execution of services.

This conclusion is later reiterated in *Bundesdruckerei v Dortmund* (2014), in a case settled in a different Member State in which national legislation ordered tenderers and their sub-contractors to pay workers performing that service the minimum wage applicable in the country of the awarding body. An additional argument is related to the different cost of living in both Member States:

By imposing, in such a situation, a fixed minimum wage corresponding to that required in order to ensure reasonable remuneration for employees in the Member State of the contracting authority in the light of the cost of living in that Member State, but which bears no relation to the cost of living in the Member State in which the services relating to the public contract at issue are performed and for that reason prevents subcontractors established in that Member State from deriving a competitive advantage from the differences between the respective rates of pay, that national legislation goes beyond what is necessary to ensure that the objective of employee protection is attained. (*Bundesdruckerei v Dortmund* 2014)

This practice shows, on the one hand, the ability of unions to find new ways to exert pressure and effectively perform their function and, on the other hand, the ability of capital to find legal mechanisms to resist these practices.

However, a later decision opened the door to a continuation of these practices. A significant change occurred in *RegioPost v Landau* (2015), which applies Directive 2014/24/EU of the European Parliament and Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. In this case, the Court made a special effort to identify facts that make it different from precedents in *Rüffert* and *Bundesdruckerei* and thus justify a trend reversal. Initially, it would seem that the Court wishes to limit the scope of this new method when it comes to limiting it when there is a legal norm with a general scope instead of a local or sectoral agreement:

The minimum rate of pay imposed by the measure at issue in the main proceedings is laid down in a legislative provision, which, as a mandatory rule for minimum protection, in principle applies generally to the award of any public contract in the Land of Rhineland-Palatinate, irrespective of the sector concerned. (*RegioPost v Landau* 2015, par. 75)

In fact, the effects of this decision may enhance this method, because, as indicated by trade unions, the implementation of minimum terms cannot be limited to the most dynamic, greater benefit sectors, as it is necessary to apply generally applicable legal regulations that socialise the advantages of a decent wage. It is our belief that the point of the principle of the free provision of services may result in social dumping. However, following *RegioPost*, the possibility to insert minimum pay clauses in social procurement contracts seems to have been opened.

The Public Services International trade union (2017) has highlighted various examples of public procurement developed by some of its affiliated unions in the UK (UNISON's *Ethical Care Charter*), Netherlands (FNV campaign) and Denmark (on public building contracts). As will be seen, the English and Dutch experiences share the workers' group at which it is targeted: employees of private companies of care services to which councils or municipalities outsource these services. However, the final results differ in each case, especially regarding the instruments used and their enforceability.¹⁵

UNISON is one of the UK's main trade unions of workers providing public services. Against the background of a critical precariousness of working conditions of homecare

¹⁵ Dragicevic and Ditta (2016) provide other comparative examples, stressing the problems of compliance of local living wages laws in the USA. In this sense, alternative mechanisms are being used, such as enforcement councils in the UK, comprising trade unions and employers' associations.

workers, UNISON launched a national campaign called *Ethical Care Charter* (see UNISON 2013). It calls on local governments and authorities to join and its aim is to include a minimum floor of labour conditions in public procurement. It has a website on which those councils adhering to the Charter are listed, which is an interesting use of reputation as a mechanism to engage political actors to become involved in this process.¹⁶

The FNV also developed a campaign in the Netherlands over several years to ensure that local procurement included decent wages and employment conditions, similarly in the field of home care services provided by private contractors. In this case, the pressure led to a national act that was passed by the Dutch government in February 2017 mandating local government to ensure that companies obtaining public contracts paid their workers decent wages.

The experiences of Copenhagen and other Danish cities adopting labour conditions in public building contracts by cooperating with building worker trade unions can also be underlined, leading to good results for both workers and their families (better employment conditions) and also employers (enhanced reputations and those competing unfairly being driven out of the market). Local governments can also benefit from the efficacy of economic investment in procurement. Firstly, workers receive better training and skills, resulting in a better service, and secondly, trade unions provide a continuous, effective mechanism of compliance to inform local authorities of any contractor breach of procurement clauses.

As seen before, Swiss trade unions used the mechanism of referendums to include legal minimum wages. In those Cantons where it was impossible to set a minimum wage by law, they used an alternative strategy, pressuring public authorities to achieve the goal of minimum income by other means. Thus, Geneva City Council introduced a clause requiring a minimum wage of 25 CHF per hour (about 3,500 EUR per month) in public tender contracts immediately after the referendum refused to introduce a minimum wage in 2011. However, the courts annulled this requirement a few months later [Ch. Adm. C.J. Genève: ATA/657/2011]. The City Council then introduced a clause according to which paying a minimum wage of between 20 CHF and 25 CHF to all workers would act as a very decisive point in obtaining a public contract (20% of the overall score of the public request for tenders). But again, the Swiss Federal Court [ATF 140 I 285] annulled this indirect mechanism to establish minimum wages on the grounds that it could not be demonstrated that higher wages would increase the quality of the service. Conversely, it was clear that higher wages led to a direct increase in public spending and, unless the law stipulated otherwise, the City Council should ensure to incur the lowest possible cost in each public procurement contract.

The trade union strategy of agreeing with local government authorities to introduce the obligation for tendering companies to pay decent wages in public procurement contracts has an outstanding precedent in the USA.¹⁷ Civic organisations and trade unions succeeded in ensuring that Baltimore City Council required contractor companies to pay a wage covering the vital needs of a four-member family. Although a limited number of works benefited from this measure, it drew attention to the problem of low wages and the working poor and similar initiatives soon appeared, such as those in Des Moines (Iowa) and Gary (Indiana). Similar ordinances were passed in New York City, Jersey City, Milwaukee, Santa Clara and Los Angeles after three years. There were 82 local ordinances of living wages and 70 under way at the beginning of 2002 (Luce 2002).

¹⁶ More than a dozen councils have currently signed up to the Charter, including Reading Council, Lancashire Council, Camden Council or Greenwich Council. The complete list is available at <http://www.savecarenow.org.uk/who-has-signed-up-already/>

¹⁷ A precedent of Kansas City in 1891 can be found at this webpage dedicated to minimum wages in public procurement (available in German): <https://de.wikipedia.org/wiki/Tariftreuerregelung>.

This strategy of combating working poverty by creating a contractors' market that pays decent living wages also spread to Canada. All direct and contracted personnel providing services on city premises are now paid according to the Vancouver living wage. Since then, other BC local governments have taken similar steps, such as the Huu-ay-aht First Nation and the City of Port Coquitlam.¹⁸

There is a growing interest to include these kinds of practices in many Spanish local and regional areas. For instance, the inclusion of a minimum wage in the County Council of Vallès Occidental (Catalonia) of 1,071 EUR, which is 45.54% higher than the current national minimum wage (Nació digital 2017). This amount is to be applied both to the County Council and to the towns and cities within it, not only to their own workers, but also to external companies. It has been obligatory in the public procurement of home care services and will be included in the procurement of school transportation services. This is one of various measures against increasing inequality and poverty, such as setting a maximum rent, in which unions have played an important role.

Social clauses imposed by local governments on their contractors do not always have a clear effect on wages. For instance, this is the case of Seville City Council in Spain, which, on 1 April 2016, set a list of social clauses that all public contracts should include (see Ayuntamiento de Sevilla 2016).¹⁹ These tender specifications are very explicit in terms of environmental issues and provide several improvements regarding accessibility and equality. Moreover, they indicate improvements in the field of employment, although without establishing a minimum weighting. But as regards wages, these clauses do not go beyond the obvious fact that the principle of legality and collective bargaining in force must be respected, without even incorporating clauses that should have been included under International Labour Organization (hereinafter, ILO) Convention No. 94 or Recommendation No. 84.

The fact is that ILO Convention No. 94, on Labour Clauses in Public Contracts,²⁰ has been forgotten in strategies aimed at obtaining minimum wages, possibly due to a widespread non-compliance of its contents. In fact, ILO strongly regrets this in a report that the Committee of Experts submitted to the 97th session of the International Labour Conference in 2008 (International Labour Office 2008).²¹ The purpose of this Convention was to ensure that competition to obtain a public contract would not exert a downward pressure on wages. This is the reason why it requires that all public contracts must contain an explicit clause obliging the concessionaire to pay its workers the same wage and respect other working conditions governing the regions where the public work or service is executed, regardless of the instrument in which these employment conditions have been established (legislation, collective agreement or arbitration decision). In other words, it is not enough to refer generically to the duty to comply with current legal conditions, nor to the conditions contained in the employment contract, nor to the legal or conventional conditions at the state level regulating wage or other employment conditions, such as working hours. In addition, this obligation to equate employment conditions at least to those at a local level is transmitted to subcontractors that may execute a part of the work awarded by the public administration. Consequently, we can see that the union strategy of obtaining a minimum wage level through the technical specifications of administrative contracts is not an extravagant instrument, but rather a technique imposed by an international agreement adopted as a tripartite at the ILO.

¹⁸ Two examples of municipal programmes attempting to guarantee a minimum wage can be found at <http://www.livingwagehalton.ca/living-wage-cities> and <http://livingwagecanada.ca/index.php/blog/municipal-role-living-wage-movement/>.

¹⁹ It should be noted that Seville is the fourth Spanish city in terms of population.

²⁰ Adopted in 1949 and currently ratified by only 62 countries, among which are 10 EU countries.

²¹ In Chapter I of this report, there are several historical references to precedents of minimum wages in public contracts in various countries since the 19th century.

The national government in Spain has recently taken a small step forward as regards social clauses in public procurement. The Official State Gazette published a Royal Decree on 6 March 2018 that initially details four complete pages of precedents: five communications, two green papers, five directives, one guide, one proposal, one extraordinary plan, three national strategies, one programme, one comprehensive plan, one resource map, one action plan and five legislative precedents. All this to create an inter-ministerial commission that, in relation to social criteria in public procurement, can perform the following: agree on monitoring and reporting mechanisms, proposals for revision, analysis, proposals, recommendations, reports, studies or application guides, design of actions, training of staff and creating work commissions. No mention of ILO Convention No. 94 is made, although it was ratified by Spain in 1971, nor that these social clauses should establish a minimum wage.

5. Some conclusions for discussion

Some general features of the working-class movement from a historical perspective have been its resilience, its ability to adapt constantly and its instruments and strategies to legal and socio-economic reality at any time. As Gumbrell-McCormick and Hyman (2013) have pointed out: "if European unions are to survive as effective 'continuous association', they must continuously reinvent themselves". An analysis of certain practices in the field of minimum incomes has led us to affirm that unions are involved in such a process of "reinvention".

Spanish trade unions were an outstanding political actor during the Franco dictatorship alongside others such as political parties or neighbourhood associations, acting clandestinely to recover democracy (see Fishman 1990). The Spanish Constitution (1978) shaped a democratic model of industrial relations, assuming a principle of political and social pluralism and recognising the central position of trade unions and employers' associations. In the words of Constitutional Court Ruling 101/1996: "trade unions are a basic component or an essential institution of the Spanish constitutional system". Nevertheless, they must face, as we have seen, legal obstacles in the current context to continue defending workers' rights.

According to López López (2017), unions are implementing new strategies to address new forms of inequality and the practices analysed are good examples of new paths for trade union action to achieve this objective by effectively implementing a guaranteed minimum income. However, from a broader perspective, they very clearly illustrate their ability to overcome the legal and strategic obstacles they must face in order to continue developing their protective role of workers' interests.

As discussed above, these strategies are characterised by three different aspects. Firstly, the emphasis is increasingly on the process of bargaining than on formal aspects, which is linked to the idea of a "deliberative understanding of collective bargaining" (Bogg 2009). The different alternative instruments they use to achieve decent wages (local tripartite agreements with administrations, referendums, popular legislative initiatives, public procurement) illustrate this idea. Secondly, this deliberative process exceeds the classic union/employers' association binomial; moreover, it goes beyond tripartite agreements involving public administrations. It is possible to find various other citizens associations that are jointly organised around a specific issue. And thirdly, linked to this, the scope is often framed at a local or regional level.

A final idea that we would like to stress concerns one of the instruments analysed: public procurement. This has to do with the non-application of ILO Convention No. 94 and Recommendation No. 84. Both are high potential instruments that lack adequate compliance. In the current circumstances, in which the traditional tools used by trade unions are becoming highly inefficient, they should consider demanding the application of these international regulations.

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