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Collective Bargaining, Labour and Environmental Rights: the Spanish Experience

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Abstract

This article focuses on the Spanish Just Transition process through the role of collective bargaining, following the adoption of Law 2/2011, of 4 March, on Sustainable Economy. Taking into account the main findings of the Agreement project, this article deals with the ‘green’ clauses in Spanish collective agreements. Through the analysis of collective agreements signed at sectoral and company level, negotiators have included many environmental clauses, ranging from environmental principles of action of companies as economic agents and as an employer in labour relations to rights and obligations related to wages, transport, health and safety and information and consultation with workers. The new collective representation of workers and the interests in environmental matters are also examined. The important role of social dialogue is highlighted in relation to the conclusion of the new Just Transition Agreements. It is argued in favour of the interrelation of collective bargaining and environmental protection across the subjects analysed, highlighting the need to explore green jobs through new occupational categories and the potential of social dialogue at all levels.

Keywords: Just transition, collective bargaining, green clauses.

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1. Introduction

Collective bargaining in Spain is expected to play an important role in the transition from the current production model to a more sustainable one, not only in environmental but also in social terms. On the one hand, the Spanish government approved the Just Transition Strategy, adapting the criteria included in the International Labour Organisation (ILO) ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ (2015). However, the Spanish strategy focuses on the actions of public authorities and the review of public policies, overlooking the role that social partners can play in the implementation of just transition. On the other hand, the ILO Guidelines contemplate the actions that trade unions and employers’ organisations can implement, thus claiming their leading role.

As pointed out by Chacartegui Jávega and Canalda Criado¹, collective bargaining in Spain shows a growing concern for environmental issues since Law No. 2 of 4 March 2011 on Sustainable Economy came into force². Through the analysis of collective agreements signed at sectoral and company level, negotiators have included different environmental clauses, ranging from environmental principles of action of companies as economic agents and as an employer in labour relations to rights and obligations related to wages, transport, health and safety and information and consultation with workers. This paper aims to highlight the most important aspects arrived at from the analysis and to underline the debates raised by environmental clauses in collective bargaining in Spain.

The examination of environmental clauses included in collective bargaining must begin with the constitutional recognition of both the right of workers to bargain collectively and the protection of the environment. On the one hand, the right to collective bargaining is recognized in Title I, Chapter II, Section 2 of the Spanish Constitution, under the heading ‘Rights and Duties of Citizens’. Article 37 of the Spanish Constitution represents a constitutional framework that requires further regulation to give substance to the law. There are three direct consequences of the location of this right in Section 2 of the Spanish Constitution: a) the right to collective bargaining prompts public

¹ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report*, ADAPT, 2020. The research is currently being carried out under the Spanish project funded by the Spanish Ministry of Science ‘Decent working conditions in the frame of the Spanish Strategy of Just Transition’ (PID2019-108628GB-I00).

² Official State Gazette, 5 of March 2011.

authorities to take action; b) the regulation of the right to collective bargaining corresponds to the law (articles 37.1 and 53.1 of the Spanish Constitution) and c) if a legal provision violates the essential content of this right, it could be unconstitutional pursuant to art. 61(a). However, Article 45 of the Constitution specifies that everyone has the right to enjoy a proper environment for personal development, as well as the duty to preserve it.

Our approach takes into account a point of contact between two elements: environmental aspects and labour rights³. The protective nature of both fields, particularly in terms of occupational health and safety, is a shared objective in Spanish collective agreements⁴. Moreover, in the field of workers' participation, the sustainable use of resources, the protection of the environment, the health of workers and the improvement of competitiveness have been included in statutory collective agreements.

2. Green Regulatory Clauses Relating to Working Conditions: a Win-Win Negotiation Strategy

The right to collective bargaining is laid down in Title III of the Workers' Statute⁵. Collective bargaining is part of the changing dynamics of collective action⁶. Collective agreements in Spain can be negotiated at the firm level or at the sector level. Regarding firm-level collective bargaining, Article 87(2) of the Workers' Statute establishes that not only unions but also works councils, which are compulsory in undertakings with more than 50 workers, and workforce delegates, which are compulsory in undertakings with 11 to 49 workers, can be signatory parties. Moreover, according to Article 87(2) of the Workers' Statute, unions can be signatories to collective agreements concluded at the national, regional or local level when applying to more than one firm. The legal effects of the collective agreement are generally applicable for the period for which the agreement has been concluded according to Article 82(3) of the Workers' Statute. In addition, Article 86 states that the conditions of a collective

³ M. Rodríguez-Piñero y Bravo Ferrer, Medio ambiente y relaciones de trabajo, in *Temas Laborales*, 1999, n. 50, 7-18; M.P. Rivas Vallejo, La protección del medio ambiente en el marco de las relaciones laborales, in *Tribuna Social*, 1999, no. 103, pp. 9-27.

⁴ J. Jordano Fraga, *La protección del derecho a un medio ambiente adecuado*, Ediciones Bosch, Barcelona, 1995.

⁵ Royal Decree 2/2015, of 23 October 2015, Official State Gazette, 24 of October 2015.

⁶ J. López López, *Collective Bargaining and Collective Action. Labour Agency and Governance in the 21st Century?*, Hart Publishing, Oxford / Portland, 2019.

agreement have a certain effect that extends beyond the end of the agreement period. Moreover, the Workers' Statute distinguishes between 'regulatory clauses' (*cláusulas normativas*) and 'obligation clauses' (*cláusulas obligacionales*).

As for the need to change the Spanish productive model, the complexity of environmental problems demands a holistic and proactive approach⁷, rather than traditional enforcement mechanisms⁸. Regarding the regulatory clauses provided in sectoral collective agreements, some 'green' aspects include: the new job classification system and all the training duties associated to this; the impact of the environmental issues on remuneration; and sustainable transport plans. Following Dobson and Bell⁹, the question could be focused on the idea of what kind of subject one would have to be to fulfil the expectations of the good environmental citizenship, and employers and workers are not exceptions to this objective. Moreover, this query must be completed looking at the assumptions that underpin the construction of this idea in terms of environmental sustainability in the workplace¹⁰.

The provisions in the Spanish collective bargaining of the 'green jobs classification' show a clear objective of the social actors to provide employees with adequate new green skills and expertise in order to improve environmental performance¹¹. It is crucial for the green Spanish strategy to attract highly qualified staff by offering attractive employment opportunities in the field of green research and development, which drives the innovative capacity and technical progress of sustainable

⁷ M.A. García-Muñoz Alhambra, Derecho del trabajo y ecología: repensar el trabajo para un cambio de modelo productivo y de civilización que tenga en cuenta la dimensión medioambiental, in L. Mora Cabello De Alba, J. Escribano Gutiérrez (eds.) *La ecología del trabajo: el trabajo que sostiene la vida*, Bomarzo, Albacete, 2015, pp. 39-54.

⁸ F. Pérez Amorós, Derecho del trabajo y medio ambiente: unas notas introductorias, in *Revista Técnico Laboral*, 2010, no. 124, pp. 173-200.

⁹ A. Dobson And D. Bell (eds) *Environmental citizenship*. MIT Press, Cambridge, MA, 2006.

¹⁰ J.F. Alenza García, G.L. Barrios Baudor, C. San Martín Mazzucconi, La negociación colectiva como fuente del Derecho ambiental, in *Revista Aranzadi de Derecho Ambiental*, Pamplona, 2003, no. 3, pp. 17-32; G.L. Barrios Baudor, La negociación colectiva como instrumento de protección y educación ambiental, in J.F. Alenza García (ed.), *Ambiente natural, empresa y relaciones laborales*, Aranzadi, Pamplona, 2009, pp. 691-821; C. Chacartegui Javega, *Negociación colectiva y sostenibilidad medioambiental. Un compromiso social y ecológico*, Bomarzo, Albacete, 2018.

¹¹ ILO, Green jobs for Sustainable Development. A case study of Spain, Paralelo Edición, Madrid, 2012. Available at https://www.ilo.org/global/topics/green-jobs/publications/WCMS_186715/lang--en/index.htm.

industry. In this sense, the most representative trade unions and employers' associations have paid attention to high and adequate qualifications, training and initiatives for lifelong learning as important preconditions for a competitive sustainable labour market, particularly in the ecological agriculture sector. Recalling the ILO recommendations in the early identification of skill needs for the low-carbon economy, Spanish social actors should engage in skill needs anticipation, implementing either a quantitative or qualitative method¹², in sectors such as the metal industry, cement activities and alimentary industry. Thus, the growing concern for the environment and sustainable development leads the signatory parties to ratify in the agreements their commitment to the improvement of some actions, e.g. increasing the training and information of workers, taking into account the environmental regulations, as well as the improvements contained in Royal Decree 1/2016 of December 16, of Integrated Pollution Prevention and Control¹³. According to the skills that are necessary for the successful performance of the new tasks, collective agreements require urgent innovations in order to include provisions connecting working conditions with sustainability duties and obligations, particularly as regards remuneration. Where a job classification system is used for determining pay, it must be based on new skills and abilities, considering that feminist ecological patterns might be helpful tools¹⁴. As an illustration, these job classifications must to be revised in order to exclude gender discrimination, due to the new current regulations provided by Law 3/2007 of 22 March, on equal treatment between women and men¹⁵ and Royal Decree 902/2020 of 13 October, on equal payment between women and men¹⁶, according the provisions of Article 141(3) of the Treaty, and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union and the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). The training duties associated with the new skills involve specialized knowledge relevant to implementing the

¹² ILO, *Anticipating skill needs for green jobs: A practical guide*, International Labour Organization Publications, Geneva, 2015, p. 12.

¹³ Official State Gazette, 31 of December 2016.

¹⁴ A. Zbyszewska, *Regulating Work with People and Nature in Mind: Feminist Reflections*, in *Comparative Labor Law & Policy Journal*, Vol. 40, no. 1, 2018, pp. 9-28.

¹⁵ Official State Gazette, 23 of March 2007.

¹⁶ Official State Gazette, 14 of October 2020.

Spanish green strategy¹⁷. Some skills are likely to become obsolete due to structural changes in the labour market (e.g. the production of coal heating systems or traditional light bulbs); some new skills will be created as new ‘green-collar’ occupations emerge, while some existing jobs will change. The primary questions are quantitative – in particular, how many entrants will be needed for the occupation – and this also requires one to define new training systems for the apprenticeship, combining on-the-job training and work experience with institution-based training¹⁸.

A clear example is the new provisions concerning staff performing tasks in special environments, using technical skills and professional abilities, e.g. the cement industry¹⁹. Taking into account these new green skills, Spanish collective agreements have included some innovations concerning the wages of workers who perform tasks using technical skills and professional abilities. Thus, the impact on remuneration in some sectors – i.e. the cement industry²⁰— is designed through ‘green-friendly incentives’, which take into account the difficult environmental circumstances in which the tasks are carried out.

The mobility model based on collective transport and non-motorized means constitutes one of the sustainability foundations²¹. One of the proposals in Spanish sectoral collective bargaining is the progressive introduction of sustainable means of transport for workers. These methods are combined with energy-efficient, eco-driving practices, such

¹⁷ H. Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, Bomarzo, Albacete, 2016.

¹⁸ This is the case of the ‘Digital and Green Skills Vallès’ project managed by the County Council of the Vallès Occidental (Consell Comarcal del Vallès)¹⁸ in Catalonia which develops specific training programs focused on the circular economy and recycling operations meeting high standards of environmental protection and occupational health and safety. <https://digital4circular.com/>.

¹⁹ See the III agreement for the Sustainable Use of Resources, the Protection of the Environment, the Health of the Community and the Improvement of the Competitiveness of the Cement Industry (Spanish Official Journal 24 October 2017).

²⁰ S. Rodríguez Escanciano, “Sostenibilidad ambiental y prevención de riesgos laborales: reflexiones sobre el sector de la construcción ecológica”, *Revista del Ministerio de Trabajo, Migraciones y Seguridad Social*, núm. 138, 2018, p. 219-270; H. Álvarez Cuesta, “La sostenibilidad ambiental y social en el sector cementero. Comentario al III Acuerdo para el uso sostenible de los recursos. la protección del medio ambiente, la salud de las personas y la mejora de la competitividad del sector cementero español”, *Revista General de Derecho del Trabajo y de la Seguridad Social*, núm. 48, 2018, p. 420.

²¹ R. Sastre Ibarreche, Empleo y desarrollo del Protocolo de Kyoto: los derechos de implicación de los trabajadores, in *Revista General de Derecho del Trabajo y de la Seguridad Social*, 2009, no. 9.

as the gradual implementation of sustainable mobility plans for workers. For example, in the retail sector the most representative trade unions and employers' association have concluded an agreement to improve the distribution of environmentally-friendly products. They have also committed to reducing emissions, increasing the use of sustainable vehicles or reorganizing routes through individual and collective mobility plans.

3. Improving Occupational Health and Safety Provisions: an Environmental Perspective

Occupational health is a field of confluence when it comes to socio-ecological interests²². The organization of work according to sustainable patterns must take account of the general principle of adapting work to the worker. Furthermore, this is a context where decent work arguments become crucial²³. In this sense, the transition to a green economy has the potential to reduce exposure to workplace hazards and pollution risks. Taking into account these synergies, workers' involvement is promoted in order to overcome the erroneous perception of work and the environment as conflicting realities²⁴. As a result of global warming and the Spanish idiosyncrasy of extremely hot temperatures and heat waves, increased heat stress has become an obstacle to decent working conditions.

The notion of 'work environment' overlaps with that of the 'environment', due to many factors²⁵. This confusion between internal environment and external environment is a common trend in many sectors²⁶. Furthermore, experiences in some sectors, for example, tourism

²² M.J. Rodríguez Ramos, M.J., Salud laboral versus medio ambiente: por una política de prevención de riesgos laborales también en el medio externo, in *Aranzadi Social*, 2002, n. 22, 1191-1214; P. Rivas Vallejo, El tratamiento del ambiente natural en el marco de las relaciones laborales, in J.F. Alenza García (ed.), *Ambiente natural, empresa y relaciones laborales*, Aranzadi, Pamplona, 2009, pp. 597-690.

²³ Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, op. cit.

²⁴ J. Escribano Gutiérrez, Lavoro e ambiente: le prospettive giuslavoristiche, in *Diritto delle Relazioni Industriali*, 2016, no. 3, pp. 679-704.

²⁵ P. Tomassetti, Labour law and environmental sustainability, in *Comparative Labor Law & Policy Journal*, vol. 40, no. 1, 2018, p. 63.

²⁶ See, e.g. XXI collective agreement of extractive industry, glass and ceramic industry (Spanish Official Journal 23 November 2018); XIX collective agreement of chemical industry (Spanish Official Journal 26 July 2018); collective agreement of wood (Spanish Official Journal 11 September 2018); collective agreement of service stations (Spanish Official Journal 11 March 2020); collective agreement of paper and cardboard paste

and construction, show that regulatory tools are crucial in order to implement measures to improve occupational health and safety, such as new working time schemes, frequent rest breaks and workers' rehydration²⁷.

Health risks associated with environmental degradation should be prevented²⁸. Collective bargaining is indispensable for the successful implementation of adaptation measures. In the Spanish context, we find examples in sectors such as agriculture, forestry, fishery, energy, manufacturing, recycling, transport, construction and the chemical industry. The social partners in the Spanish chemical industry were convinced that high benefits in the area of health and safety and the reduction of occupational diseases would be difficult to achieve through legislation on chemical substances. In this field, the primary objective was to evaluate health and safety, with its comparably low record of occupational diseases. For example, social actors want to strengthen workers' protection by introducing endocrine disruptors as a category of hazardous substances under occupational health and safety rules and increasing the enforcement capacity in collective bargaining. To this end, the parties undertake to ensure that the prevention of occupational hazards and the protection of the environment are inseparable elements in the daily activities of companies and workers. They promote the study of the environmental processes and products used in the sector, proposing improvements and/or replacements with other products, when economically viable. From a gender perspective, women's bodies can act as chemical bio-accumulators and suffer consequences such as changes in the reproductive system and the outbreak of fibromyalgia, multiple-

(Spanish Official Journal 9 July 2019); collective agreement of perfumes (Spanish Official Journal 20 August 2019); collective agreement of waste recycling (Spanish Official Journal 29 March 2019); IV collective agreement of rail services (Spanish Official Journal 28.3.2017); collective agreement of rail services' contractors (Spanish Official Journal 6 March 2018); III collective agreement of the metal industry (CEM) (Spanish Official Journal 11 December 2019); V collective agreement of the gardening sector (Spanish Official Journal 17 July 2018); collective agreement of the construction sector (Spanish Official Journal 21 September 2017); VI collective agreement for the real-estate sector (Spanish Official Journal 27 December 2019).

²⁷ III agreement for the Sustainable Use of Resources, the Protection of the Environment, the Health of the Community and the Improvement of the Competitiveness of the Cement Industry (Spanish Official Journal 24 October 2017); collective agreement of the construction sector (Spanish Official Journal 21 September 2017).

²⁸ C. Chacartegui, Workers' participation and green governance, in *Comparative Labor Law & Policy Journal*, vol. 40, no. 1, 2018, pp. 89-108.

chemical sensitivity, chronic fatigue syndrome and an increase in breast cancer. Many toxic insecticides, solvents and heavy metals can accumulate particularly in women's bodies due to their higher concentration of fat cells²⁹. Nevertheless, the gender perspective is absent in the great majority of Spanish sectoral collective agreements. For this reason, the Spanish scholars underline the need to include specific provisions of occupational health from a gender perspective³⁰.

Moreover, the proportion of lost working days work due to work-related injuries attributable to changing temperatures at work has been calculated, and the results also underscore the potential economic costs of this exposure³¹. The role of employers' associations and unions in developing sustainable solutions and fostering technical innovation is fundamental, especially regarding recent technologies and standards. Due to the importance of agriculture, tourism and construction in Spain³², heat stress affects workers in a negative way in terms of occupational health, particularly those that are vulnerable to extreme temperatures –as outdoor workers or workers with chronic medical conditions, e.g. heart or circulatory conditions, lung conditions, kidney problems or diabetes³³.

Extreme ambient conditions have serious consequences for occupational health at work, and reversing this trend from a shared social and ecological perspective requires empowerment. Spanish Royal Decree 485/1997 regulates the conditions of minimum and maximum temperature in the workplace, stating that the temperature should be between 17 and 27°C where sedentary work is taking place and between 14 and 25°C for light physical work. Temperatures exceeding 40° C are common in Spanish summers, but these can leave workers unable to work

²⁹ C. Valls-Llobet, Contaminación ambiental y salud de las mujeres, in *Investigaciones Feministas*, 2010, n. 1. From the same author, see *Sesgos de género en medio ambiente y salud*, in A. H. Puleo García (ed.), *Ecología y género en diálogo interdisciplinar*, Plaza y Valdés Ediciones, 2015, pp. 21-36.

³⁰ L. Mora Cabello De Alba, J. Escribano Gutiérrez (Eds.), *La ecología del trabajo: el trabajo que sostiene la vida*, Bomarzo, 2015; C. Chacartegui Jávega, *Ecofeminismo y corresponsabilidad: una mirada desde Cataluña*, in J. López López (ed.) *Derechos@género*, 2019, Bomarzo, Albacete, pp. 247-271.

³¹ E. Martínez-Solanas et al., Evaluation of the impact of ambient temperatures on occupational injuries in Spain, In *Environment Health Perspective* 2018, vol. 126, no. 6.

³² S. Rodríguez Escanciano, Sostenibilidad ambiental y prevención de riesgos laborales: reflexiones sobre el sector de la construcción ecológica, in *Revista del Ministerio de Empleo y Seguridad Social*, no. 138, 2020. pp. 219-270.

³³ J.L. Monereo Pérez, Medio ambiente de trabajo y protección de la salud: hacia una organización integral de las políticas públicas de prevención de riesgos laborales y calidad ambiental, in *Relaciones Laborales*, 2009, no. 100, pp. 481-538.

or cause a partial disability. The occupational health planning instruments provided by collective agreements could significantly help to mitigate heat stress and promote health benefits. These instruments are based on guiding principles. Firstly, mainstreaming climate change adaptation to companies' planning processes and diagnosing the health risks associated with heat stress and current climate variabilities. Secondly, adaptability through the implementation of occupational health responses—identification of the main risks and the implementation and adoption of specific measures for the monitoring of on-site weather conditions—to the main problems of health linked to heat stress. Thirdly, coordination of the overall health and safety adaptation process as a keystone for company strategies on this matter.

4. Information and Consultation of Workers on Environmental Matters: the Creation of 'Green' Employee Representative Bodies

The collective dimension of eco-labour rights is widespread in collective agreements including environmental clauses in Spain. As the analysis of collective bargaining showed,³⁴ around 50 per cent of company-level collective agreements (35 per cent if sectoral collective agreements are considered) that included environmental clauses contained provisions on the creation of new forms of collective representation of workers with environmental skills. These representative bodies have similarities with other entities in Germany and the UK.³⁵

As has been pointed out in earlier research³⁶, the creation of bodies representing workers' interests in environmental matters has been given new momentum since 2007, with the transposition in Spain of the 2002 Directive on information and consultation rights.³⁷ The transposition law included environmental matters among the possible terms of the information and consultation processes, although this was not provided for in the transposed Directive. However, the creation of the model for the representation of workers' interests and the structure of collective

³⁴ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report*, *op. cit.*

³⁵ Eurofound, *Industrial Relations and Sustainability: the Role of Social Partners in the Transition towards a Green Economy*, Luxemburg, 2011, p. 8

³⁶ S Canalda Criado, La representación de los intereses de los trabajadores en materia medioambiental: la creación convencional de los 'delegados medioambientales', in *El Estatuto de los Trabajadores. 40 años después*, Ministerio de Trabajo y Economía Social, Madrid, 2020, pp. 1627-1648

³⁷ Official Journal of the European Union, L 80, 23 March 2002, pp. 29–34

bargaining in Spain may have played a decisive role in promoting the creation of workers' representative bodies having a say on environmental issues.

Firstly, with regard to the model of worker representation, the law provides for the formation of unitary representation bodies (works councils and staff delegates) in workplaces. In addition, trade union organisations can create, through their affiliates, an internal structure within companies (trade union sections and delegates) to develop their trade union action. Despite this distinction, the fact remains that trade union organisations actively participate in the bodies of unitary representation for which they can submit their candidatures. In this way, they extend their action, strengthening the link between the action of trade union organisations and unitary representation bodies.

However, the structure of collective bargaining has been articulated through bipartite agreements at state level between trade union organisations and the most representative employers' associations, especially since the decentralisation of bargaining promoted in the 1994 labour reform. At that time, the legislator regulated a new role for workers' representatives to implement certain company decisions. Since then, the social partners have taken over the promotion of information and consultation procedures through bipartite agreements signed at the State level. However, the social partners have also distributed the subjects that should be dealt with at the different levels of negotiation, including environmental matters. Specifically, these agreements have distributed environmental matters on two levels. On the one hand, since the bipartite agreement of 2003, environmental matters have appeared as a subject for the bilateral sectoral observatories created by the most representative trade union and employers' organisations. On the other hand, since the 2007 agreement, the actors have affirmed that informing workers' representatives about environmental actions that have direct repercussions on employment can count on the technological improvement of companies and thus overcome the impacts that could derive from environmental regulations.

In this context, it is possible to state that the creation of collective representation bodies specialised in environmental matters responds not only to a commitment of the social partners to facilitate dialogue in this field but it was also triggered by both legislation.³⁸ However, the creation

³⁸ P Tomassetti, Labour law and environmental sustainability, *op. cit.*, p. 80, highlighted the potential role of both EU and national legislation on information and consultation of workers.

of green workers' representative bodies by collective agreements has taken place in different ways, differing in the subjects involved, the scope of their functions and competences – especially in terms of information and consultation – and, finally, the guarantees of protection in the exercise of their competences.

Firstly, in both sectoral and company-level collective agreements, two ways of creating a green representative body can be distinguished: on the one hand, by extending the functions of existing workers' representative bodies, which include workers' health and safety representatives; and, on the other hand, by creating a genuine figure specialising in environmental matters. This new form of representation can be undertaken by a single worker called an 'environmental delegate' (*delegado medioambiental*). In very few cases does the new form of representation take the form of joint environmental commissions in the cleaning sector of Melilla³⁹ or environmental committees, the latter being an exception among company-level collective agreements.⁴⁰ Although environmental delegates are often appointed from among the existing representatives, this does not imply an extension of the functions of the other bodies: the creation of the new figure usually confers new responsibilities and a direct dialogue with the company beyond the information and consultation processes provided for the other representative bodies.

Accordingly, the creation of green employee representative bodies represents an important innovation that favours the defense of workers' interests in environmental protection. On the one hand, it guarantees direct and specific dialogue between workers and employers on environmental matters, isolating environmental issues from other matters addressed by unitary representation bodies. In addition, if environmental representatives have received specialized training, the effectiveness of the dialogue would exponentially increase. On the other hand, unlike health and safety committees, whose competencies do not include collective bargaining, green employee representative bodies can negotiate and sign pacts on environmental issues if they have acquired this competence, reaching a high degree of influence on the environmental management of the company.

Secondly, the functions and competences that are granted to the environmental delegates often reproduce the functions and competences of the other employee representation bodies but restrict their material

³⁹ Melilla Official Journal 7 march 2014.

⁴⁰ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report, op. cit.*, p. 86.

scope to environmental matters. However, as already discussed in another work,⁴¹ it would be desirable to explore other competences beyond information and consultation rights, strengthening the participation of workers' representatives in environmental decision-making, taking into account the provisions of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

And thirdly, the provisions contained in the collective agreements regarding guarantees for the exercise of environmental functions are noteworthy. Of all the sectoral agreements, the agreement for the sustainability of the cement industry stands out among the sectoral agreements where 'the time used by the environmental representatives for the assigned functions will be considered as the exercise of their competences as representatives and this time takes part of the use of the monthly paid hours'. This right to be paid for the time used for the exercise of their environmental functions is also very frequent in company-level collective agreements that have opted for the creation of environmental delegates.

In summary, the creation of collective representation of workers through environmental delegates is called to play a fundamental role so as it gives voice to workers at the workplace during the economic transition from our current production model to a more sustainable one. However, workers' approach to the environment –although not unique–⁴² must also be acknowledged by governments and other policy actors outside the workplace. In this sense, the need to give voice to workers has been pointed out by other authors such as Novitz in relation to the role of the ILO and the Sustainable Development Goals.⁴³

⁴¹ S Canalda Criado, La representación de los intereses de los trabajadores en materia medioambiental: la creación convencional de los 'delegados medioambientales', *op cit.*

⁴² N Räthzel and D Uzzell, Trade unions and climate change: The jobs versus environment dilemma, in *Global Environmental Change*, 21, 2011, p. 1215–1223

⁴³ T. Novitz, Engagement with sustainability at the International Labour Organization and wider implications for collective worker voice in *International Labour Review*, vol. 159, no. 4, 2020, pp.463–482.

5. Social Dialogue and the Environmental Issue: New Perspectives Through Just Transition Agreements

The interest of the social partners – notably on the side of the trade unions⁴⁴ in the environmental issue is not limited to the inclusion of green clauses in collective agreements. As noted in that report, there have been other expressions of collective autonomy that have paid attention to the environmental issue.⁴⁵

Firstly, there have been experiences of institutional participation of social agents in social dialogue roundtables with governments to deal with environmental issues.⁴⁶ Recently, the Spanish Government and the social partners have recently signed the 'Agreement for Economic Recovery and Employment' (*Acuerdo por la Reactivación Económica y el Empleo*), stating that the strength and sustainability of the economic recovery is directly linked to the generation of new opportunities and jobs in emerging sectors, including the green transition of all productive sectors and the circular economy.

Secondly, the social partners have reached bipartite agreements where they express their concern to favour the inclusion of environmental clauses in collective bargaining. As mentioned above, the bipartite agreement of 2003 proposed including environmental issues as a subject for the bilateral sectoral observatories set up by the most representative trade union and employers' organisations. Later, the 2007 agreement suggested the introduction of environmental issues in the information and consultation processes. More recently, the 2015 bipartite agreement suggests negotiating measures to avoid, reduce or prevent the negative effects of 'environmental restructuring' on competitiveness and employment.

According with the ILO's view that cooperation between governments and the social partners will be key to the success of the green transformation of the economy,⁴⁷ it is noteworthy the involvement of social partners in the so-called 'just transition agreements' (*convenios de*

⁴⁴ M. Gutiérrez Pérez, La protección del medio ambiente como factor condicionante de las relaciones laborales, *Revista Doctrinal Aranzadi Social*, vol. 3, no. 3, 2010, pp. 95-124.

⁴⁵ From a comparative point of view, the Spanish case would coincide with the initiatives implemented by the social partners autonomously or jointly with governments. See Eurofound, *Greening the European economy: Responses and initiatives by Member States and social partners*, 2009.

⁴⁶ See H. Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, *op. cit.*

⁴⁷ ILO, *Working towards sustainable development: Opportunities for decent work and social inclusion in a green economy*, Geneva, 2012, p. 179.

transición justa) included in the Spanish Just Transition Strategy. Specifically, the Spanish government approved in 2019 the Just Transition Strategy with the aim of contributing to the transformation of the labour market and job creation during the energy transition of the economy. Furthermore, following the approval in the European Union of the Multiannual Financial Framework 2021-2027 and the NextGenerationEU fund, it is envisaged that the Just Transition Agreements will be instruments that facilitate the capture and management of the resources made available through the European Just Transition Fund.⁴⁸ In this framework, Just Transition Agreements are comprehensive territorial action plans established in those territories where the energy and ecological transition may put businesses and economic activities in difficulty and which may include measures relating to employment, social protection and training activities to encourage the adaptation of workers. The drafting of these agreements includes the participation of the social partners through the constitution of dialogue roundtables in which other actors such as local entities, regional administrations and other relevant social actors also participate. At present, more than 15 agreements are being drawn up in different Spanish regions and in all of them, together with the corresponding administrations, the participation of representatives of each of the most representative business and trade union organisations is ensured.

In short, this innovative instrument has facilitated the participation of the social partners in environmental matters and, more specifically, in the green policies relating to employment or vocational training that are developed in those regions. However, it should be pointed out that this participation is exclusively for consultation purposes, without the social partners being directly involved in the management of the agreement, thus it would be contrary to the ‘active’ role expected from social dialogue in the European Green Deal⁴⁹.

6. Conclusions

Over the last decade, Spain has been involved in a process of climate emergency that obliges the governments, unions, employers’ associations,

⁴⁸ Ver S. Canalda Criado, La Estrategia de Transición Justa: Una pieza clave para la aplicación del fondo de recuperación de la UE, in *Trabajo y derecho*, no.73, 2021 (forthcoming).

⁴⁹ European Commission, The European Green Deal, COM(2019) 640 final, 11 December 2019.

workers and employers to adapt themselves to the new environmental requirements. It has been an emerging concern for the social and environmental dimensions of the corporate social responsibility and sustainability, especially in the matter that is referred to as the concept of green jobs and decent work. The interrelated protection of labour rights and environmental sustainability is possible through the constitutional contents of the Article 37 and 45 of the Spanish Constitution. Moreover, the interconnections and synergies between labour rights and environmental sustainability take the collective agreements as a crucial instrument of implementation of the 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015. Although environmental and labour rights have not much interacted in the Spanish collective bargaining context, in the last decade both fields are overlapping and influencing one another, bringing social rights into the climate change debates. As it was shown in the work of Chacartegui Jávega and Canalda Criado, the insertion of green clauses is highly influenced by the Law 2/2011, of 4 March, on Sustainable Economy. It is a fact that Spanish social partners are trying to include green clauses in collective bargaining, especially, since the mentioned law, and this has been path that has culminated in the Spanish strategy on companies' corporate social responsibility practices (2014-2020).

Identifying and anticipating the new skills required for Spanish green labour market means that social actors must adapt their existing approach to jobs classifications relating to the transition to the low-carbon economy. Providing the skills required to improve sustainability in a sector of activity can create also a need for new occupations with very distinctive new specialization or set of new skills within an existing occupation. This is the experience in sectors as cement and construction, ecological agriculture, metal and food farming industry. Moreover, a new green conception of training and working rights and occupational health and safety is at the core of this new perspective. In the Spanish context, experiences in sectors, as tourism and construction, show that labour law negotiated instruments of regulation are crucial in order to implement measures to improve the protection of occupational health and safety.

Drawing conclusions from the analysis of the Spanish collective bargaining, employers' associations and unions welcome the opportunity to have a permanent constructive dialogue with the social partners at all levels, European and national, in order to rebalance the three essential pillars of energy policy: sustainability, security of supply and competitiveness. The recourse to social dialogue and collective bargaining is expected to culminate in public and enforceable agreements that

facilitate just transition objectives of social and economic sustainability. From an analytical perspective on the green strategies, there is a need to focus attention on the sectoral level. The enormous quantity of employers and workers affected by the different sectoral agreements provides us with an idea of the importance of these instruments in creating a green-friendly culture of rights.

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