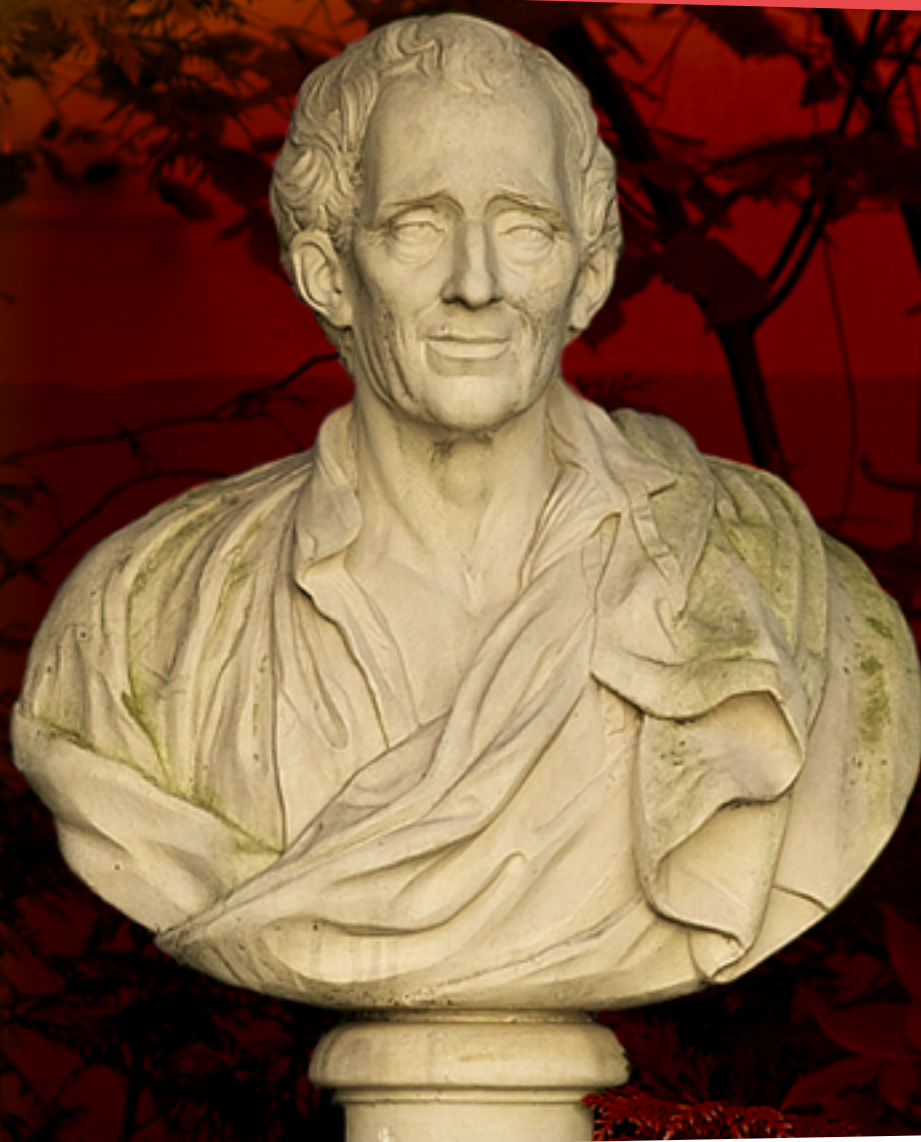


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The minimum wage, a national tool in the fight against social dumping?

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In the context of the economic crisis in Europe, wages have become a key issue on the European political agenda. The fixing of minimum wages is considered as one of the tools to be considered in the search for solutions to the economic imbalances and problems, both at a European and a national level. This spotlight on the issue of minimum wages on the European stage is all the more remarkable in that that the Treaties do not give the EU competence in matters surrounding wages, thus prohibiting the adoption of harmonisation measures on the minimum wage. However, this lack of competence did not prevent the growing level of intervention on the part of the EU in minimum wage matters as part of the activities of the Troika and the European semester. Even more recently, the recommendations to Member States in 2015 bear it out, be it in pointing out the benefits of the introduction of the minimum wage (for example in the case of Germany), or the “defective” nature of the system for setting the minimum wage (for example in Belgium). Meanwhile, together with an old concern shared by the ILO (ILO Convention No. 131), and the Council of Europe, proposals for a minimum wage in Europe for the purposes of combatting poverty and unemployment as well as economic regulation, have recently multiplied. *Boosting jobs and living standards in G20 countries* (1) a joint report produced by the G20, OECD, ILO, the World Bank and the IMF, is emblematic of this movement in favour of the minimum wage.

However, the consensus in favour of the institution of the minimum wage should not mislead us as to the nature of the unity between those supranational bodies. While it can be seen as serving the fight against poverty and low wages, it is also partly a remedy against the possible return of protectionist legislation in a context of high unemployment (2). However, such a conception conflicts with the uses of the social policy tool that is the setting of a minimum wage within States. Indeed, in the face of social dumping situations and the absence of international or European systems, there is a very real temptation to (re)turn to national legislation in order to set limits on the introduction of competition in social legislation. The obligation to respect a minimum wage within national territory might then seem to be the one key to combating social dumping. However, the possibility of providing a national solution to these transnational imbalances is severely restricted by legal protection for the market. Indeed, the use of national law in combating social dumping does not escape the severities of economic freedoms of movement. The memory of the *Laval* (3) and *Rüffert* (4) decisions still burns bright. Two recent judgments handed down by the European Court of Justice discussed in this paper shed light on the margin of appreciation left to national legislatures in the fight against social dumping. European constraints, which weigh on national law, complicate the use of that discretion owing to the multiplicity of objectives which the courts require to be reconciled. The fight against social dumping should indeed be accommodated with two other, partly contradictory, objectives: the promotion of the services market and the protection of posted workers. Accordingly, the Court does not exclude competition between the respective social legislation of Member States. Rather, it seeks to define the boundaries within which such social competition is possible in the transnational

provision of services (5), even considering the fact of a service provider taking competitive advantage of differences between wage rates as favourable to the exercise of the freedom to provide services. However, in this context, constraints differ widely depending on whether or not the service involves the mobility of the provider's employees. Indeed, in the event of employee mobility, Directive 96/71/EC on the posting of workers in the framework of the provision of services (6) serves precisely to provide a framework for reconciling national social policy objectives with economic freedoms by setting a minimum basis for social rights. So it is not surprising, as illustrated by the two recent decisions of the Court of Justice reviewed here (7), that control over national anti-dumping laws can vary wildly in its nature depending on whether it follows the harmonised framework derived from the Directive.

I. The fight against social dumping outside the context of harmonization

The possibilities of instituting mechanisms against social dumping are now very limited within the European Union. Even the Court of Justice seems, as in corporate law matters, to be fairly favourable to competition between national legislations. Social law, and in particular legislation on the minimum wage, does not appear to be an exception.

A recent decision of the Court of Justice of 18 September 2014 (8) demonstrated the above point. The case involved the use of social clauses inserted into a call for tenders. These clauses made submitting a tender subject to the respect by bidders of certain social or environmental constraints. Such clauses are not unknown under French law, certain provisions of the *Code des marchés publics* (Public Procurement Code) enabling the contracting authority to include social requirements. French law makes only modest use of such clauses, mainly aimed at social inclusion. In this respect, there appears to be greater scope for this practice under German law, as the decision in *Rüffert* had already revealed (9).

In the 2014 case, the city of Dortmund had launched a public call for tenders for digitization and data retention services. This tender included a social clause under which the admissibility of any given tender was subject to the commitment to pay employees an agreed minimum. One of the tenderers, the Bundesdruckerei (the now-privatised equivalent of the *Imprimerie nationale* or HM Stationer's Office), must not have welcomed such a requirement. Indeed, it had intended to use a Polish subcontractor to perform the contract, the advantageous rates naturally being linked to the low wage rates provided under Polish law.

Could the obligation imposed by the call for tenders to meet the wage set by a branch collective agreement be compatible with EU law? Was it necessary to refer to secondary legislation in order to answer that question? The Court systematically dismissed the arguments presented along those lines. Firstly, Directive 96/71 was not applicable, as the position of employees engaged in the provision of services did not correspond to posting cases set by the Directive. The reason was simple: the performance of the public procurement contract by a Polish subcontractor did not require the transnational posting of employees to Germany, since the provision could be made by a "100% subsidiary established in Poland" (10). The judgment at least has the merit of highlighting one of the shortcomings of European legislation intended to prevent social dumping. Aimed "at ensuring fair competition between national undertakings and undertakings performing transnational provision of

services" (11), Directive 96/71 encompasses only part of the services: those involving wage mobility. However, even in the absence of worker mobility, transnational provision of services can play the social dumping card whilst circumventing the requirements under Directive 96/71. Focused solely on the question of the posting of workers, European law is far from averting any risk of unfair competition on the basis of differences in social legislation.

On the other hand, as regards the argument drawn from accountancy against Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which provides the possibility of introducing social clauses in the definition of public procurement, finds no more favour with the Court of Justice. Not only was the Court careful to cast doubt on the compatibility of a provision requiring the payment of a minimum wage with the provisions of the Directive, but it also considered that, in "assuming" this compatibility, such requirements may be imposed only if they are "*compatible with Community law*" (12). This merely serves as a reminder of the hierarchy of norms under European law. Primary law takes precedence over secondary legislation and the provisions of national law implementing a Directive cannot therefore rely on their compliance with the provisions thereof in order to circumvent the requirements of fundamental freedoms of movement. The compatibility of the social clause provided by national law must therefore be appreciated directly in light of Article 56 TFEU establishing the freedom to provide services.

Faced with this almost categorical imperative of the Union, national instruments in the fight against dumping struggle to pass the justification test. Indeed, after a demonstration that was as brief as it was implacable, the Court of Justice had once again to strike down German legislation. First, as in the *Rüffert* case, the Court considered that imposing a minimum wage on subcontractors established in another State where the wage rates were lower constituted a restriction on the freedom to provide services. The case law grounds for this line of reasoning are at least honest. For the Court, this requirement "*constitutes an additional economic burden that may prohibit, impede or render less attractive the provision of their services in the host Member State*" (13). On this point, there are few social law provisions likely to be qualified as restrictions on the freedom to provide services. In line with the liberal conception of restrictions, the Court seemed quite convinced that the rule of (social) law is in itself an economic sin, a negative externality impeding free movement. Whilst not quite closed off, the road to redemption is narrow. National authorities must justify the strictly proportionate pursuit of an EU-compatible objective.

Admittedly, the Court did not rule out in principle the justifications founded on the fight against social dumping. It thus considered legitimate the objective to which the legislature of *Land of North Rhine-Westphalia* expressly referred, being to "*ensure that workers are paid a decent wage to avoid both*" social dumping "*and penalising competitors that provide decent wages to their employees*". However, the Court's examination of that justification also reveals its severity.

First, the Court recalled the approach adopted in *Rüffert* (14). A national measure applicable only to public procurement is not able to achieve this if there is no evidence suggesting that "*workers active in the private market does not need the same wage protection those active in the public market*". Indeed, in failing to have extended the collective standard to all private-sector companies, national

law cannot claim with an hint of consistency to pursue the aim of fighting against social dumping or protecting the independent organisation of the working life of trade unions, “*without justifying the specific fate of the posted workers*” (15). The example of public procurement clearly did not win the favour of the Court which, in raising consistency from justification to standard, instead saw therein the signs of a lack of the necessary character of the means used in pursuit of the objectives claimed by the national authorities. It is therefore only on the condition (in this case satisfied *a priori*) of having been extended that the imposition of a minimum wage could be justified.

However, the measure must also satisfy the proportionality test. The use here of the minimum wage as a tool in the fight against social dumping is not obvious where this objective must be also be reconciled with the promotion of freedom to provide services and the protection of a service provider’s employees. Thus, according to the Court, requiring a subcontractor to respect a minimum wage rate higher than that prevailing in the territory where it employs its employees is disproportionate where the difference in the “cost of living” in each of the States concerned is not taken into account. Returning to the purposes of such legislation, the Court affirmed that the fixed minimum wage to be respected “*correspond[s] 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*” (16). To impose the respect of a minimum wage “*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*” prevents subcontractors established in another Member State from “*from deriving a competitive advantage from the differences between the respective rates of pay*” (17). Therefore, a minimum wage unrelated to the local cost of living “*goes beyond what is necessary to ensure that the objective of employee protection is attained*” (18). Only the imposition of a minimum wage taking into account the difference in the cost of living could qualify. We can sense the complexity of the system to be put in place in order to meet the Court’s requirements.

A similar argument prevails concerning the issue (also relied upon) of the stability of social security systems. As it had considered in *Rüffert*, the Court found that there was no risk of serious imbalance in the German social security system. For the sake of pedagogy, the Court also added on this occasion that “*[i]f those employees did not receive a reasonable wage and were consequently forced to have recourse to social security in order to ensure a minimum level of purchasing power, it would be to Polish social assistance that they would have a right*” (19). Admittedly, in such configurations, Polish workers are not covered by the German social security system. This fairly obvious point nevertheless makes it easier to understand the reasons behind the difficulty in justifying an anti-dumping scheme before the Court of Justice. The Court accepts the principle but, by basing the justification on the protection of the service provider’s employees, it ignores the necessarily systemic rationale of anti-dumping tools which, in guaranteeing the rights of workers from another Member State, ultimately aims to protect employment on national territory.

Clearly, the imperatives imposed by the respect for freedoms of movement make it difficult to use the minimum wage as a tool in fighting against social dumping. However, is the existence of a Directive which, like 96/71/EC, aims to harmonise the resistance of national legislation to social dumping, likely to change the review conducted by the national court?

II. The fight against social dumping in the guise of harmonisation

The severity of the *Laval* and *Rüffert* decisions left little room for the imposition of a minimum wage by the conventional route, and could have cast doubt on the answer to this question. In *Laval*, the Court had imposed a restrictive reading of the margin of appreciation granted to national authorities in the implementation of Directive 96/71. Firstly, not all the improvements made to the minimum standard of protection, with which the Directive requires compliance, were possible. According to the Court, "*the level of protection which must be guaranteed to workers posted to the territory of the host Member State is limited, in principle, to that provided for in Article 3(1), first subparagraph, (a) to (g) of Directive 96/71, unless, pursuant to the law or collective agreements in the Member State of origin, those workers already enjoy more favourable terms and conditions of employment*" (20). In other words, the minimum standard of protection operates a complete harmonization and may well become a maximum standard for those matters that it harmonises. Indeed, for those matters (minimum wage, working hours, etc.), the Directive "*expressly lays down the degree of protection for workers of undertakings established in other Member States who are posted to the territory of the host Member State*" (21). The scope for improving the minimum standard of protection (22) would appear to be limited, since it is only possible "*in compliance with the Treaty and, in the case of public policy provisions, on a basis of equality of treatment, to national undertakings and to the undertakings of other Member States*" (23). In other words, beyond the minimum standard, there resurfaces the imperative to justify of anti-dumping mechanisms in light of freedom of movement, the severity of which we have already seen. The definition of what is included in the minimum standard is crucial in that it tends to fix *a priori* the conditions for fair competition between economic operators. The margin of appreciation granted to Member States is doubly limited. Firstly, as to the form, because the intervention of social partners also appeared to be just as unfavourably received by the Court for the purposes of defining the minimum standard. In *Rüffert*, the Court rejected the argument that the minimum wage could be determined by an agreement which would not have been declared universally applicable in accordance with the requirements of Article 3, paragraph 8 of the Directive.

But what about when the conventional requirement of a minimum wage follows the standard imposed by Directive 96/71? Without changing ECJ case law, the decision of 12 February 2015 (24) provides useful details, as to substance, on the concept of the minimum wage while casting a more optimistic light of the States' margin of appreciation for the implementation of Directive 96/71. In this case, a Polish company had posted 186 workers to a Finnish branch, to work on the construction of a nuclear plant, namely to carry out the electrical works. The workers accused the Polish company not having paid the minimum wage due to them pursuant to the minimum guarantees provided by Finnish collective agreements. In order to assert their rights, they had used a formidably effective procedural mechanism, under Finnish law, allowing them individually to assign their claims to the trade union, so that it ensures the recovery thereof (25). This is what allowed the latter to bring an action against the Polish company before the Finnish courts, to obtain judgment ordering the company to pay a total of €6,648,383.15.

The decision presented an opportunity for the Court to reconsider the concept of the minimum wage within the meaning of Directive 96/71. Neither completely European nor truly national, the definition of the minimum wage is at the crossroads of two techniques specific to European semantics: that of autonomous concept and that of the reference to national law. It is not an independent concept, the

content of which the Court would freely determine. Indeed, “*the Directive has not harmonised the material content of those mandatory rules for minimum protection*” (26). While States must impose the respect of a minimum wage rate on service providers, the definition of that rate is referred to the competence of national authorities. Also, “*the task of defining what are the constituent elements of the minimum wage, (...) is a matter for the law of the Member State of the posting*” (27). However, the reference to national law is not without its limitations, since it is important that this definition should “*not have the effect of impeding the freedom to provide services between Member States*” (28). As we shall see, while if the determination of the constituent elements of the concept is free, the concept itself is not.

First, the Court adopted a fortunately broad view of the minimum wage. In this case, the union claimed the application of a wage guaranteed by collective labour agreements, in accordance with the categorisation of employees into pay groups. This also called into question the Finnish equivalent of French classification grids, also provided by collective labour agreements. The fixing of the minimum wage was, in this case, based on criteria such as qualifications, training, experience of workers, the nature of the work performed, etc. Furthermore, the union considered that the employer had to guarantee not only the minimum wage, but the guaranteed pay for piecework. Relying on *Laval*, Advocate General Nils Wahl suggested adopting an impoverished and impoverishing reading of the concept of the minimum wage. With reference to the promotion of freedom to provide services, he considered that “*the lowest rate of pay — be it by pay classification or by pay groups*” sufficient to protect posted workers adequately (29). This was also the position defended by the Polish company, the wages that it paid to its employees corresponding to the minimum of the minimum rates, that is to say the minimum wage payable by the hour to the lowest wage category of employees. Against this reading, the Court invoked a respectful interpretation of collective autonomy. The reference to national law here enshrines a significant margin of appreciation, since “*the method of calculating [of the minimum wage rate] and the criteria used in that regard*” are a matter for the host Member State. Their enforceability is only subject to two conditions. On the one hand, those rules must be binding (30). Such a requirement, however, does not have the same resonance as national collective bargaining systems and can, in some trading systems, require considerable adjustments. The difficulties encountered by German law in *Rüffert* attest to this. Moreover, the rules defining the minimum wage must meet a transparency requirement, “*which means, in particular, that they must be accessible and clear*” (31).

The solution is significant. Not only does the Court recall in doing so (although the severity of its previous decisions may already have sown doubt) that the components of the minimum standard can be rooted in treaty law, but above all, that respect for freedom to provide services does not impose just one single minimum wage. This conception contrasts with the constraints on the imposition of a minimum wage outside the framework provided by Directive 96/71 as in that instance, the minimum wage can only be there for the purposes of ensuring that workers receive an adequate wage depending on the cost of living, which appears to exclude a determination of the minimum wage modulated by employee category.

Next, the identification of minimum wage components must comply with the concept of wages which, for the Court, is embodied in the notion of compensation. The Court inferred a qualification criterion.

Only the compensation components that do not alter the relationship between the benefit of the worker, on the one hand, and the consideration that the latter receives, on the other, may be treated as components of the minimum wage (32). Not all aspects of remuneration are also aspects of wages. This criterion had previously allowed the Court to exclude, for example, an employer's overtime payments from the calculation of the minimum wage (33) or the employers' contribution to the creation of capital to the benefit of employees (34). On this occasion, the test would be applied positively, not to exclude a factor in assessing an employer's compliance with the level of the minimum wage, but rather to require the payment of some element of compensation on the basis of the statutory minimum wage. The Court thus considered that "*the pay which the worker receives during the holidays is intrinsically linked to that which he receives in return for his services*" (35). However, it was then the reference to Directive 2003/88 (36) and Article 31 of the Charter enshrining the right of every worker to an annual period of paid leave which ultimately justifies this qualification. Indeed, those pieces of legislation imply that the worker receives regular remuneration for that rest period. Also, "*entitlement to annual leave and to a payment on that account*" are "*two aspects of a single right*" (37).

Lastly, the Court clarified the concept of "*allowances specific to the posting*" which, unlike the minimum wage, is an autonomous concept. The second subparagraph of Article 3(7) of Directive 96/71 assimilates these sums to minimum-wage components, provided that they are not paid to reimburse expenditure actually incurred on account of the posting, such as travel, accommodation or food expenses. Also, with regard in the present case to a daily allowance paid to the posted worker, the Court justified its assimilation to an element of remuneration on the grounds of the purpose of compensation. It is not paid as a refund, but as compensation for disadvantages due to the detachment, namely the distance of the interested parties from their usual environment (38). Similarly, in the case of the commuting allowance, the Court noted that it is paid to workers if the outward and return journeys made daily exceed one hour. As this premium compensates the daily travel time and is not paid as reimbursement of expenses actually incurred, it is integrated into the minimum wage. However, the payment of accommodation expenses by the employer, disbursed without employees having to do so in advance, is logically assimilated by the Court to a reimbursement. Similarly, food stamps paid by the Polish employer were not to be considered as part of the minimum wage. The Court therefore considered the compensation of living costs actually incurred by workers, which are thus akin to the payment of accommodation expenses, as being similar to reimbursements.

Remarkable for the clarifications that it brought to the concept of the minimum wage, the decision of 12 February 2015 is all the more so in its silence. Unlike the judgments in *Laval* or *Rüffert*, no reference is made in the decision, to Article 56 on freedom to provide services. When it follows the basic minimum standard imposed by Directive 96/71, national anti-dumping legislation may avoid the justification requirements. Only where it tends to deviate from this minimum standard, even for the purposes of improvement, that national law will be ruled as being an obstruction. Such a finding suggests a very particular understanding of Directive 96/71. The minimum standard of protection is perhaps not only to be read as what the national legislature *must* but also as what it *may* establish in respect of the fight against social dumping, subject to freedom of movement requirements. The national struggle against social dumping is therefore strictly limited. According to the decisions of the

Court of Justice within the scope of Directive 96/71, it is less a matter of preventing than it is of organising competition between national social legislations. The minimum standard of protection therefore aims to guarantee “fair” competition between Member States’ social legislations.

Notes

- (1) *Boosting jobs and living standards in G20 countries*, A joint report by the ILO, OECD, IMF and the World Bank, June 2012.
- (2) *Ibid.*
- (3) CJEU, Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, [2007] ECR I-11767
- (4) CJEC, Case C-346/06, *Dirk Rüffert v Land Niedersachsen*, [2008] ECR I-1989
- (5) That is to say, by which a service provider offering its services on the territory of a State other than where it is established.
- (6) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- (7) CJEU, Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund* [2014] decision of 18 September 2014; reported in France: R. Noguellou, RDI 2014, p. 560; CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna* [2015] decision of 12 February 2015; reported in France: J.P. Lhernould, Dr. Soc. 2014, p. 234.
- (8) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above.
- (9) CJEC, Case C-346/06, *Dirk Rüffert v Land Niedersachsen*, [2008] ECR I-1989
- (10) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, pt. 25.
- (11) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, pt. 30; Directive. 96/71, cited above, Recital 5.
- (12) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, pt. 29.
- (13) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, pt. 30.
- (14) CJEC, Case C-346/06, *Dirk Rüffert v Land Niedersachsen*, [2008] ECR I-1989, pt. 38-40.
- (15) In the absence of such a generalisation of the conventional norm, the German government could not establish that the respect of a minimum wage rate "*is necessary for a construction sector worker only when he is employed in the context of a public works contract but not when he is employed in the context of a private contract*"; CJEC, Case C-346/06, *Dirk Rüffert v. Land Niedersachsen*, specifically pt. 40.
- (16) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, pt. 34.
- (17) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, *ibid.*, pt. 34.
- (18) *Ibid.*
- (19) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, *ibid.*, pt. 35.
- (20) CJEU, Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, [2007] ECR I-11767, pt. 81.
- (21) *Ibid.*, pt. 80.
- (22) Provided under Article 3 (10) of Directive 96/71.
- (23) Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, cited above, pt. 82.
- (24) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*

- (25) The first issue in this reference for a preliminary ruling concerned the national law applicable to the assignment of wage claims. Polish law prohibits the assignment of wage claims, which the employer did not fail to argue in challenging the union's actions. Was such an assignment subject to the law governing the contract, Polish law according to the employer, or the law of the forum State, i.e. Finnish law? The Court of Justice opted for the latter solution, qualifying the Finnish scheme as a procedural rule, thus subject to the law of the forum State, i.e. that of the court dealing with the matter at first instance.
- (26) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 31.
- (27) *Ibid.*, pt. 34.
- (28) *Ibidem*.
- (29) Conclusions of Advocate General Nils Wahl, pt. 82.
- (30) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 40.
- (31) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 40.
- (32) *Ibid.*, pt. 36. The audit by the French judge of the statutory or contractual minimum wage fulfils a similar requirement. The Social Chamber thus ruled, on the subject of the contractual minimum wage, that "*in the absence of contractual provisions to the contrary, all sums paid in consideration of work done are included in the calculation of remuneration to be compared with the guaranteed minimum wage*" (Soc. 7 April 2010; on the *SMIC* (France's statutory minimum wage), Soc. 14 November 2012, n° 11-14.862). The implementation of the same criterion does not, however, result systematically in a similar qualification for some aspects of the remuneration paid to employees, such as a long-service bonus, even in light of the will of the parties to the collective agreement.
- (33) CJEC, Case C-341/02, *Commission v Germany* [2005] ECR I-02733. In this case, the Court considered that "*[i]t is entirely normal that, if an employer requires a worker to carry out additional work or to work under particular conditions, compensation must be provided to the worker for that additional service without its being taken into account for the purpose of calculating the minimum wage*" (pt. 40).
- (34) CJEU, Case C-522/12 *Tevfik Isbir v DB Services GmbH* [2013] ECR-00000. In particular, the Court considered that, whilst not separable from the work done, such a contribution pursued the long-term aim of guaranteeing capital formation. Such a social policy objective could not be regarded as forming part of "*the usual relationship between the work done and the financial consideration for that work from the employer*".
- (35) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 68.
- (36) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
- (37) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 67.
- (38) CJEU, Case C-396/13, *Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna*, cited above, pt. 47-48.