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# CONSTRUCTION IN SPAIN: TOWARDS A NEW REGULATION?

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The Centre d'Estudis Sociològics sobre la Vida Quotidiana i el Treball (QUIT) is a research centre within the Departament of Sociology formally established in 1991.

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DYNAMO Sector Study

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## 1. THE CONSTRUCTION SECTION, CENTRAL TO THE NATIONAL EMPLOYMENT MODEL

Over the last decade, the construction sector has played a central role in the Spanish economy and, to a large extent, in its employment model. There are different reasons that justify this supposition.

Firstly, there is the weight of the construction sector within the national economy as a whole. Any of the indicators that can be used to measure its volume (employment, share of GNP, etc) suggest that the sector carries far greater weight than in most nearby economies. (EFIWLC 2005 and Table 1) The sector has also experienced growth rates that are higher than those of the economy as a whole, acting to a large extent as a sector that influences many of the other sectors to which it is associated, be that manufacturing (metals, wood, construction materials) or service (engineering, architecture, property, finance companies) sectors. There is currently a widely accepted consensus among economic analysts that a large amount of the recent success of the Spanish economy comes down to the impetuous growth of its construction activity, partly associated to the other great driving force behind the national economy, tourism. References to the Spanish model as the “European Florida” are becoming commonplace in the local press. In whatever case, what cannot be denied is that it plays a crucial role in explaining the growth of the economy and employment.

**Table 1. The weight of Spanish Construction Sector**

<b>Year</b>	<b>GDP</b>	<b>Employment</b>	<b>Male Employment</b>
<b>1995</b>	6,7%	9,2%	13,3%
<b>2005</b>	10,4%	12,4%	19,6%

Source: INE National Accountancy 1995-2005  
INE Employment Survey  
(www.ine.es)

Secondly, the construction sector maintains a model of employment organisation that influences in many relevant ways the employment system as a whole. There is no doubting that the way the sector organises and regulates employment includes certain traits that are generated by the specific characteristics of the activity. But both due to its weight within the employment structure in general, and the extent acquired by certain aspects, its influence reaches the overall employment system and to a certain extent opens debates that affect the whole. In this respect, there are two basic employment issues in the sector that indicate this. On the one hand, there is the high volume of temporary labour. The rates of temporary employment in this sector are not only the highest but have also remained unaltered in recent years, while they have

been moderated in other sectors. Construction alone generates more than 20% of the total temporary employment in the country, and as this is a sector in expansion, it contributes to keeping the overall rate at a high level (Recio, 2005). On the other hand, there is also the matter of the typically high accident rate in the sector, which is the most visible aspect of the dreadful social-health conditions that predominate the Spanish employment world, and have greatly contributed to the generation of a debate over labour health that led to the Labour Risks Prevention Act of 1995. The debate about accidents has been associated both to the issue of temporary work as to the company fragmentation that is typical of an activity in which subcontracting assumes an endemic nature. Therefore, the sector has partly been at the centre of the debates about labour reform that have arisen in recent years.

Thirdly, the sector plays an important role in the migratory process that the country is currently experiencing. Once more, as occurred in the past with internal migrations, it has been observed that construction is an activity that enables, and to a large extent encourages, the transition of workers towards urban environments. It constitutes a clear “bridge of entry” for people coming from other social contexts, making it one of the key sectors in the study of migratory processes.

Fourthly, the central role of the companies in the sector in the productive structure of the country should be highlighted. Despite widespread fragmentation, there are a small number of companies that have reached a high volume both in national and international terms. This is a small number of large companies that have traditionally been associated to public works. Due to the very nature of the activity and the peculiar history of Spanish capitalism, these are business groups that have had an intense relationship with the financial sector on the one hand, and public administrations on the other. This is also a sub-sector in which companies have strong relationships with each other and have an organisation (SEOPAN - Sociedad de Empresas de Obras Públicas (Society of Public Works Companies)) that often becomes an important oligopolistic instrument. SEOPAN includes a selective group of 35 firms, despite in construction there are registered 448,446 firms (INE: Directory of firms). The importance of these companies, however, reaches far beyond their control of public works. In recent years, they have massively diversified their activities and moved into the management of a wide range of public services (transport, management of infrastructures, airports, cleaning, social services, water management, etc) while at the same time expanding their activity to the international sphere. To a large extent, the experiences of the construction sector are being spread to other fields of employment and where it is therefore possible for the same fragmentation mechanisms and labour instability to arise that were first applied to the construction sector. Although it is not the objective of this study, the analysis of these companies constitutes a central element when studying many aspects of neo-liberal management, given that these companies control a large part of the privatised public services, have an important financial dimension (bolstered by the current tendency to finance other public works through “shadow tolls” and other forms of leasing) and play a highly active role in the internationalisation of the Spanish economy.

Finally, we should not lose sight of the social role played by the sector in two aspects that affect the national production and employment models. On the one hand is the

informal economy. Tax evasion is endemic in the sector and appears at all levels. In the property sector this is especially common, and parts of property deals are frequently paid in “black money”, which works its way down to all levels of the process and therefore affects salaries and the possibility of irregular contracts. On the other hand, but closely linked to the former topic, is the close relationship between the construction sector and political corruption. The scandals that occasionally come to light in the press and end up in court are a clear expression of an activity that is directly influenced by political decisions (either by contracting public works, or by regulating the use of land). This corruption appears in different forms, from buying off local politicians in order to obtain generous qualifications for certain sites to commissions paid to obtain a works project. A situation from which neither the need to finance political parties, nor the financing of local public works through which mayors attempt to attract voters, are exempt. It cannot be doubted that this corruption does not necessarily affect the employment system, but the social climate that it generates helps to legitimise non-compliance with a whole range of regulations and inhibits collective action, which leads, for example, to open distrust of trade unions and a lack of social awareness of the need for fair regulations.

In short, an analysis of the sector connects us to more general aspects of the Spanish employment model.

## **2. ESSENTIAL CHARACTERISTICS OF THE SECTOR**

In this section, we are going to highlight the characteristic elements of the Spanish construction sector. Many of these are common to most countries, in which the construction sector is a peculiar one in many ways. This is especially true in reference to its spatial nature (it is an activity that has to take place at each location), to the type of product (in many cases each construction is a unique product), to the variety of processes that converge in the final process, the persistence of many trades and the difficulty for industrialising the activity (although an increasing use of semi-manufactured products and machines has been observed), the irregularity of the activity, so dominated by cycles of investments and long-lasting consumption, as well as the political cycle and its seasonal nature as a result of being an activity that is performed in the open air and requires certain environmental conditions for some of its processes. All of this can also be found in the Spanish construction industry, but it seems more relevant to highlight its specific features.

### **2.1. Oversizing and sustained growth**

The weight of construction in the Spanish economy is almost double that of most countries around it. This is partly due to the peculiar situation of the Spanish economy. On the one hand, because the Spanish economy lacks strong and advanced service and industrial sectors, and on the other due to the unusual geographical position of the country that has benefited intense specialisation in tourism that has brought with it a major process of constructing specialised infrastructures and housing in many parts of

the country, especially in coastal regions. But this weight is also the product of an intense growth of the construction activity that over the last ten years has become the main driving force behind economic growth.

In fact, in the past, the sector was already the subject of major growth in the light of the intense industrialisation process that occurred from 1959 onwards. But this first phase of growth appeared to end in the early eighties when the general economic crisis, and possibly the installation of a democratic political system that generated uncertainty and tried to alter the old systems of corruption, led to the destruction of almost a million jobs in the sector. From 1985, a period of growth began in the construction sector that only suffered a major setback during the severe recession of 1991-94, when employment in the sector was reduced by 22%. From the third trimester of 1994, a period of continued expansion began that has hardly stopped since. Analysing the three-monthly employment figures, the only minor setbacks can be observed as a result of seasonality in the first trimester of certain years, but these variations are minimal (drops of less than 0.2%) and do not alter the general pattern. Between the first trimester of 1995 and the first of 2006, employment was multiplied by 2.3, which was an unprecedented expansion.

**Table 2** *Employment in construction 1996-2005*

<i>year</i>	<i>employment (thousands)</i>	<i>employment growth (thousands)</i>	<i>(%)</i>	<i>wage employment (thousands)</i>	<i>wage share (%)</i>
<b>1996</b>	1.228,10			921,4	75
<b>1997</b>	1.305,80	77,70	6,3	986,1	75,5
<b>1998</b>	1.385,30	79,50	6,1	1.077,30	77,8
<b>1999</b>	1.572,20	186,90	13,5	1.245,10	79,2
<b>2000</b>	1.722,70	150,50	9,6	1.370,30	79,5
<b>2001</b>	1.876,20	153,50	8,9	1.502,30	80,1
<b>2002</b>	1.980,10	103,90	5,5	1.590,40	80,3
<b>2003</b>	2.101,60	121,50	6,1	1.706,60	81,2
<b>2004</b>	2.253,20	151,60	7,2	1.818,30	80,7
<b>2005</b>	2.357,20	104,00	4,6	1.877,40	79,6

*Source: INE(Encuesta de Población Activa)*

The recent experience of Spanish construction is one of a sector that has not experienced significant cycles of activity, not even of a seasonal nature. This latter aspect could be explained by the peculiar climatologic conditions in the country that, except in some areas, has very little bad weather or extreme cold. But most of all it is explained by an economic activity that in recent year does not ever seem to stop. In fact, for some time now, many economic experts, such as the Bank of Spain itself, have warned against the dangers of oversizing and over-dependency on the sector, but up until now the fears of crisis have been allayed by incredible expansion.



Year	Growth		GDP Real Growth
	Monetary	Real	
1996	1,8	-0,5	2
1997	4,5	1,8	3,2
1998	10	5,6	3,9
1999	14,1	7,2	4,3
2000	15,3	5,6	4,8
2001	15,5	8,6	3,6
2002	13,6	6,8	2,9
2003	13,2	5,8	3,2
2004	14,6	6,3	3,9
2005	16,3	6,9	3,9

source: I.N.E. Contabilidad Nacional España

This growth undoubtedly explains some of the situations that dominate the sector, such as the lack of any requirement to regulate cycles in order to retain a qualified workforce given that many years have passed since this kind of worker has experienced employment or drops in activity. On the other hand, the sector has always had an increasing need for workers, which has possibly influenced the dynamics of immigration and also explains some of the organisational solutions that have been adopted.

There is not just one causal explanation for this sustained growth, but rather it is the product of a variety of factors. This growth has been produced both in the construction of housing as in public and private provisioning.

The most spectacular growth has certainly been in housing.

2002	533.848
2003	525.331
2004	586.092
2005	612.066

source: Ministerio de la Vivienda

Over the last five years, Spain has experienced growth rates in the construction of housing that are considerably higher than those of most European countries. (Rodriguez, 2006) This growth is due in part to demographic factors, but these are not the only ones at play. In fact, the annual construction of new housing is vastly higher than the number of new family units. Demography explains part of the problem, as the period coincides with a time when a large number of people have reached a marriageable age as well as the numerous arrivals of immigrants, and to a lesser

extent, changes in family structure (divorces). It should be noted that in terms of housing, Spain is experiencing dual migration, that related to employment (or rather, seeking employment) and that of European Union citizens looking for a more agreeable climate. This demand, despite being important, cannot explain this growth alone, and at least two other components should be added. On the one hand, the demand for a second home, which is highly traditional among the middle classes and for holiday tourism. On the other hand, there is buying as a simple investment (estimates state that 15% of houses are empty). In this aspect, a relevant element may have been the drop in the profitability of bank deposits, the uncertainties of the stock exchange, and at the same time, the liberalisation of the financial system that has led to a cheap, easily accessible mortgage rate with generous repayment periods. Housing (in local slang, "el tocho") has become highly prestigious as a form of investment since at least the nineteen seventies, when the Franco government developed a policy aimed at promoting house buying, something that explains why Spain should be the country with the highest percentage of homeowners. The cost of buying property has never been deflated, though there have been some periods where it has frozen, which has reinforced the image that investing in housing is profitable (there were only a very short experience of moderate fall of prices in 1992-3). The continued revaluation of prices experienced throughout the boom period reinforced this vision and has led to a truly paradoxical situation, given that while there is an increase in the construction of new housing and the prices are rising, many of these are empty and for many young people access to housing has become a serious problem or has led to high and also increasing debts.

The financial sector is undoubtedly a crucial agent in this expansion in housing. Its role is found both in the offer of housing, through financing promoters, and in the demand. Increasingly more permissive policies in terms of the amounts and periods of loans greatly explain the long-lasting nature of the phenomenon. Banks have fuelled both final demand (expanding the years of devolution of credits, financing near the 100% of costs...) and real estate investors (financing the buying of land). For many local banks, especially saving banks, real estate financing represents more of 50% of their whole activity (SEOPAN, Rodriguez, 2006).

Meanwhile, the public sector, on its different levels, has played an important role not just in the permissiveness of urban planning, but also as an agent demanding civil works. Local authorities are prone to promote construction partly because, due the characteristics of the Spanish tax system, it is their principal source of funding their budgets. On the other hand, the weight of the construction sector in the Spanish economy, its impact on employment and the presence of important lobbies that permanently demand infrastructures have determined a major channelling of public funds into investment in construction projects. Some of the central axes of public policies are major investment projects that guarantee a more or less stable volume of activity in the sector of large-scale public works. Some of the vicissitudes of local policy, such as the failed and senseless Hydrological Plan can be best explained here. Public works in Spain have become the most important means of legitimising political castes, in contrast to the underdevelopment of many social services.

**Table 5. Tender of public works**

<b>Year</b>	<b>Rate of growth in monetary terms</b>
<b>1996</b>	22,80%
<b>1997</b>	0,00%
<b>1998</b>	51,20%
<b>1999</b>	-15,80%
<b>2000</b>	2,30%
<b>2001</b>	45,40%
<b>2002</b>	13,10%
<b>2003</b>	-10,90%
<b>2004</b>	18,30%
<b>2005</b>	18,50%

source: Ministerio de Fomento: Estadísticas de Licitación de Obras Públicas

The private sector has also generated a demand for civil works, as a result both of the general increase in the activity, and especially of the reorganisation of logistic, commercial and leisure systems that have led to a major investment in commercial zones, distribution platforms, etc.

There is also other important question attaining public sector. In the Spanish fiscal system, local governments depend on taxes related with construction in order to cover their needs of funds (Work tax, Estate tax). At the same time they are responsible of the real estate development. So they accept new development projects in order to obtain a permanent flow of money to finance local needs. Many times local firms influence the local policy by means of putting some relatives in the local Government or, directly they negotiate with local Government legal (the firm give money or land to the local Government in order to obtain a requalification of a estate) or illegally to local council members or parties. Today the whole political debate in Spain is centered, partly, in the problem of local corruption.

All these factors have converged to promote the sustained growth of construction activity and to generate a certain path dependency from which there seems to be no way out.

## **2.2. A polarised business structure**

It could be argued that the construction sector as a whole can be characterised by the predominance of the small company. Highly specialised production, the instability of the activity, the low entry costs and the low capitalisation required in different phases of the process explain this characteristic situation in the sector. There is a predominance of microcompanies that are specialised in highly specific areas of the process and self-employed workers carry greater weight than in other economic activities. Companies are often short-lived, only to reappear under other names or in other forms. Companies frequently have small organisational staffs that are supported

by the extensive use of temporary contracts in order to meet sporadic demands. Some of these companies are mere contractors of workers without any real productive organisation.

**Table 6. Structure of Construction firms**

Size	Number of firms	% of total
<b>Without employees</b>	207.131	46,20%
<b>1-2 employees</b>	111.755	24,90%
<b>3-5 employees</b>	57.640	12,90%
<b>6-9 employees</b>	29.535	6,60%
<b>10-19 employees</b>	24.086	5,40%
<b>20-49 employees</b>	13.756	3,10%
<b>50-99 employees</b>	2.869	0,60%
<b>100-199 employees</b>	1.119	0,20%
<b>200-499 employees</b>	440	0,10%
<b>500-999 employees</b>	80	0,02%
<b>1000-4999 employees</b>	30	0,01%
<b>More than 5000 employees</b>	5	0,00%

source: I.N.E. Directorio Central de Empresas

But limiting an analysis of the sector to the massive proliferation of microcompanies would mean not considering the presence of a small number of large organisations. These have especially emerged in the public works sector. This is a peculiar market in which several factors combine to promote the presence of large companies. On the one hand, there is the technical complexity of many projects (each is unique) where there is the obligatory need for business structures that are able to integrate and assume the responsibilities for start-up, which is beyond the means of a medium sized company. On the other hand, financing constitutes a fundamental question, owing to the endemic problem of liquidity that seems to be affecting the public sector. Large construction companies, with important contacts in the financial world, have one of their most important bases in this field. The increase in deferred payment methods in the public sector has helped make them even more important. And last, but by no means least, these companies have the required know-how for moving in the political market in which many operations are decided. There is basically a nucleus of six companies, constituted after a long process of mergers and with a common history of long-lasting connections to the political system. This group acts *de facto* as a veritable oligopoly. They not only control a substantial part of the largest public works, but also maintain strong links with each other. It is common for many works projects to be adjudicated to the *Uniones Temporales de Empresa* (Temporary Company Unions - U.T.E.s) in with two or more large associated companies participate, whereby it becomes commonplace for each of the large companies to be involved in different projects side by side with the others.

As stated in the previous section, the influence of these companies reaches far beyond the construction sector as they have diversified their activity towards a wide range of other activities, especially the management of public services. At present, most of these companies' staffs no longer form part of the construction activity. The main reason why these companies are modified is the search for more stable activities than construction. In fact, what has enabled them to widen their sphere of activity is a blend of their financial clout (essential for financing entry into these sectors) and their knowledge of the finer arts of public management. Something that can be exemplified by the new system of contracting public projects, through which companies are not only adjudicated with the construction of buildings but also obtain the rights to manage complementary activities (maintenance, cleaning, vigilance, etc.) for long periods (generally 30 years) and during which time they charge a State levy to amortise the investment and charge for services.

**Table 7. The big Spanish Construction Groups**

### **1 ACS**

Main activities : Construction (Dragados)  
Infrastructure Management (Iridium, Abertis-Autostrade)  
Engineering and Industrial Services (Cobra)  
Cleaning and waste management (Urbaser)  
Water management (Urbaser)  
Collective services (Clece)  
Public Transport (Continental Auto)  
Ports management (Dragados SPL)  
Electrical production (Union Fenosa)  
Construction activity in Europe:  
Portugal, Italy, France, Ireland, United Kingdom

### **2 FCC**

Main activities:  
Construction (FCC)  
Water and Environmental Services (Aqualia, FCC)  
Infrastructure Management (Versia)  
Airport Services (Flightcare)  
Logistics and public transport (FCC Conex)  
Urban furniture (Cemusa)  
Real Estate (Realia)  
Concrete (Cementos Portland Valderribas)  
Construction activity in Europe:  
Portugal, Italy, France, Romania

### **3 Ferrovial**

Main activities  
Construction (Ferrovial Agroman, Budimex, Terratest)  
Infrastructure Management (Cintra)  
Real Estate (Ferrovial, Don Piso)  
Water and Environmental services (Cespa)  
Facility management (Ferroser, Amrey)  
Airport Services (BAA, Swissport)  
Construction activity in Europe  
Portugal, Italy, Ireland, United Kingdom, Germany, Poland, Rusia

#### **4 Acciona**

Main Activities

- Construction (Acciona Infraestructuras, Mostosal Warszawa)
- Infrastructure Management
- Real Estate (Acciona Inmobiliaria)
- Environmental and local services (Acciona, Ramel)
- Transport (Acciona Logistica, Transmediterranea )
- Airport Services
- Energy (Acciona Energia, Endesa)

Construction activity in Europe:

Portugal, Italy, France, Germany, Poland

#### **5 Sacyr Vallehermoso**

Main Activities:

- Construction (Sacyr, Somague, Eiffage, SIS)
- Real Estate (Vallehermoso, Testa)
- Environmental and collective services (Valoriza, Sufi)
- Infrastructure management (Itinere)
- Oil and Gas (Repsol YPF)

Construction activity in Europe

Portugal, France, Italy

#### **6 OHL**

Main activities

- Construction (OHL, ZSPV Uhersky Ostrosh)
- Infrastructure Management
- Environmental services
- Real Estate

Construction activity in Europe

Serbia, Bulgaria, Hungary, Czech Republic, Azerbaijan

It is also worth noting that these companies have been involved in a major internationalisation process, starting in Latin America and moving on to Europe, acting both in the field of public works and that of services, coming to form part of the largest contractors in the world, something that is in stark contrast to the limited internationalisation of Spanish industry.

Behind this group, there is a second line of medium sized companies, which are often implanted in an Autonomous community and that, on a regional basis, imitate the way the bigger companies work (and in some cases aim to move up their levels through mergers). It is fairly common for these companies to act as minority partners in the U.T.E.s that are created for works on an autonomous level, which also explain why SEOPAN is the meeting point for these two business sectors.(There are over 35 firm groups associated to SEOPAN, than represent near 5% of Spanish GDP).

Below these is the enormous myriad of the typical companies in the sector. To a large extent, this is the expected result of an activity where there is typically such a wide diversity of processes and knowledge. But, as we will be discussing later, some of this multiplicity of companies responds to subcontracting methods aimed at reducing labour costs. Some of the companies merely offer cover for the mobilisation of personnel, without there being any kind of organisational structure. Several of the

people interviewed considered that the origins of the extreme fragmentation that is so typical of the sector can be found in the decision by large companies in the late 1970s to outsource, as much as possible, their production activity and move towards the extreme fragmentation of the production process as the main means of control. The model has gradually been copied by the medium sized companies and today the bulk of the activity is in the hands of microcompanies and independent workers that are contracted for highly specific phases of a building project.

In the large and medium sized companies where union elections can be held due to there being enough permanent staff, it is common for there to be more representatives elected by technical and administrative personnel than by labourers, which exemplifies the high degree of outsourcing that is so typical of the large companies in the sector.

### **3. LOW QUALITY WORKING CONDITIONS**

#### **3.1. Precariousness as the norm**

Construction has always been an unstable form of employment. But it has changed its ways over time, so it is fairly paradoxical that the greatest precariousness should emerge in a period when fluctuations in the activity have been unperceivable.

The traditional system of organising production was based on companies that had a stable basic staff and contracted most of their temporary workers through the so-called *contrato fijo de obra*, or 'fixed work contract', in which the labour relation was concluded once the project was complete. Given that the division of work was relatively small and a labourer was able to perform a wide variety of jobs, in practice, work contracts tended to generate considerably long-lasting labour relations.

The situation has changed through the combination of changes in the regulation of employment contracts, from 1984, and the reorganisation of the production process. The latter has focused on the extreme fragmentation of activities, enabling companies to negotiate the cost (and delivery conditions, especially the time period) for each part of the production process. All of this implied that the participation of each worker in a project is limited to the period of production for which they have been contracted. The most common form of contract is a work contract that is automatically concluded when the company determines that the activity for which the worker was contracted has terminated. The level of temporary jobs in construction is extraordinarily high, include by the conditions of Spanish labour market (the rate of temporary jobs in constructions in 1,8 times the rate oh the Spanish Labour market as a whole).

**Table 8. The incidence of temporary employment**

<b>Year</b>	<b>Rate of temporary employment (%)</b>
<b>1987</b>	29,1
<b>1991</b>	55,7
<b>1995</b>	64,4
<b>1997</b>	61,9
<b>2001</b>	58,9
<b>2004</b>	58,2
<b>2006</b>	56,8

source: I.N.E. Encuesta Población activa

This explains the enormous proliferation of employment contracts (not only in construction) that lead to a high statistical rotation of the workforce, given that is common for the same worker, over the course of a year, to have as many contracts as the number of times they are required by a company. This is very common in construction, and means that the same worker could have several contracts with the same employer over a short period of time.

This fragmentation also leads project managers to opt for a limited specialisation of workers, meaning that workers tend to be specialised in a smaller number of specific tasks.

The result of this process is not just that the sector has the highest temporary employment rates in the labour market (along with domestic services), but that also despite the efforts made up until now any reductions to this rate are barely perceivable. While in industry and service companies, unions have negotiated for part of their staffs to move onto fixed contracts and the companies themselves have understood the need to 'fix' at least some of their staff, this has not happened in construction, where short-term labour relations are still the rule. It is even possible that statistics underestimate the real impact of the situation as they are based on the answers of the interviewed person in the home.

The most precarious situation often arises with staff that are not on salaries. It is true that certain segments of the construction sector make independent employment a possibility, as is the case with some special machinists that are hired by different projects or all activities performed in private homes in the form of reformations, painting, etc. But in many cases, the category of being self-employed has been enforced by employers as a way of shunning social security responsibilities and pressurising the contractual conditions of the job. All of the people interviewed agree in indicating that it is this collective that suffers the poorest working conditions, whereby they are forced to do their work under pressure of contracts in which they themselves are the weakest party. Despite the importance that unionists give to the autonomous workers, statistical figures suggests a decline of this relative size (from 17% in 1987 to a 10,7% in 2006).



The small size of production units also adds to this contractual precariousness, given that it generates systems of relations in which the personal control of the foreman often intervenes and where it is difficult to establish a network of interpersonal relationships that can enable workers to exercise any effective control over their working conditions.

### **3.2. A high risk sector**

If there is another characteristic that defines the conditions in the sector, which is the high level of labour risk. The high rate of accidents at work constitutes a characteristic trait of the Spanish employment market. And construction is undoubtedly the sector with the highest accident rates. The figures are clear:

Injuries among construction workers are 25% of all labour injuries in Spain (despite they also represent a 12% of labour force). The incidence of leave by injuries (the relation between leave by injuries and number of employees) is over 11% in the last ten years. The number of mortal accidents fluctuates between 250 and 300 every year, without a clear tendency of reduction (in 2003 there was 232 accidents of this type (1,31 among 10000 employees, in 2005 there were 309 and the rate climbed to 1,50). 42% of the 257 most risky companies in Spain are in construction (Abellán, 2006).

This accident rate is, in part, 'naturalised' through the socially accepted relationship between construction and high-risk activities, which at the same time can be countered in terms of the accident rates in this sector in other European countries. Therefore, a few years ago, a heated debate arose around the issue, basically promoted by unions, which aimed to expose the fact that accidents occur due to the specific context in which the activity takes place. (Colectivo IOE, 2005; Amable 2006)

A context that combines several factors, first, the traditional absence of a preventative culture in Spanish business as a whole and in construction in particular. Until the passing of the Labour Risk Law that obliged companies to introduce a series of preventative measures, this was a 'forgotten' subject in the business world. The law itself has not managed to completely change the situation. Companies continue to see risk control methods as an unnecessary cost and in many cases other mechanisms are also missing that could have a role to play in compliance with the same: there are not enough work inspectors and prevention delegates. This latter figure is especially absent in the construction sector. This is one more product of the extensive presence of subcontracting and temporary work that prevents companies from choosing these types of representatives due to the coexistence in the same space of employees from very different professional environments.

This leads us to the second factor explaining the situation: the proliferation of subcontracts influences control over safety conditions in different ways. As the staff of a project is so fragmented, there are no committees of union representatives (each company should have its representation). The fact that many companies only intervene in the project for a very short period of time makes the situation even more difficult. Pressure on small subcontractors in terms of the speed and delivery periods

and the fact that in many of them there is a predominance of payment for piecework only reinforces this lack of care taken over safety. Workers undoubtedly do not make enough demands. There are also attitudes associated to values of 'machismo' and 'bravado' with regards to risks, and a lack of knowledge of the real size of the risk. The increasing presence of immigrant workers, some with serious problems for understanding the language, makes it even more difficult to develop strong demands for security at job level. Subcontracting also adds another component, the absence of a clear management structure, with somebody really in charge of making sure that safety regulations are observed on a daily basis.

This is not a completely homogenous situation. Although insecurity constitutes a common feature of the sector, differences can be perceived. In major public works, union pressure on the authorities, that is the Ministry of Public Works or the government of an Autonomous Community or a local administration, have imposed stricter safety conditions on contracting companies. In some major works, unions have achieved the recognition of external safety delegates, with the capacity to work alongside the company's delegates on safety control issues throughout the duration of the process (this, for example, is the case with the construction of new metro lines). But this situation is not produced in the same way in the private sector, where there is major dispersion and companies prefer to pay fines if they have an accident rather than strictly applying the law.

Accidents are not the only danger at work, although they are the most visible. Working conditions in the sector generate other types of work-related illnesses related to the physical hardship of many processes such as exposure to dangerous materials. In addition, in a climate like that of the Mediterranean, exposure to the sun can be a serious danger (in just one week in July, 4 workers have died from sunstroke). In a recent study made by the ISTAS foundation, construction was considered one of the activities in which there is the greatest exposure to different types of cancer, skin cancer from excessive exposure to the sun being the most common. As one of the interviewed workers told us "Here, we have to close our eyes in summer". But, as we said earlier, the activity in Spain is an ongoing cycle.

### 3.3. High wages?: irregular pay, long days

The third factor that characterises the employment situation in the sector is that of salaries. It is always a complicated task to work out what salaries are like in the construction sector. In order to understand the situation we have studied the different sources of Spanish wages. Basically la *Encuesta Trimestral de Coste Salarial ETCL* ((quarter data), la *Encuesta Anual de Coste Salarial EACL* (annual data) and the *Encuesta de Estructura Salarial 2002.EES* .The analisis of their results allows us to clarify some questions. Results are summarised in tables 9 and 10.

Table 9. ABSOLUTE AND RELATIVE CONSTRUCTION WAGES (2002)		
	Yearly wage(€)	Relative to all sectors wage
Average	17.245	86,30%
10 decile	10.552	101,10%

25 decile	12.049	93,40%
50 decile	14.388	81,70%
75 decile	18.882	71,90%
90 decile	26.630	69,10%

Source: I.N.E. Encuesta Estructura Salarial 2002

<b>Table 10. ABSOLUTE AND RELATIVE CONSTRUCTION WAGES 2006</b>			
		€	relative to all sectors
Labour costs	monthly <sup>1</sup>	2076	98,30%
Direct wage	monthly <sup>1</sup>	1429	95,60%
Direct wage	hourly <sup>1</sup>	10,19	82,11%
Labour costs	yearly <sup>2</sup>	24.574	95,50%
Direct wage	yearly <sup>2</sup>	17.219	91,80%

1 Source I.N.E. Encuesta Trimestral Coste Salarial 3rd quartes 2006

2 Source: I.N.E. Encuesta Anual Coste Salarial 2005

Globally, the average construction wage is near below the average wage (despite this statistical source do not have data about agricultural and domestic service and firms below 5 employees where wages use to be low). But the whole picture is more complex. First the average construction wage is progressively approximating to general average. From 2000 to 2006 the growth of construction wages are higher then other sectors (the index is 127 for construction face 120 for the whole economy, according to ETCS). This pace reflects the industry situation, characterised by a large employment growth. Second, according to different sources differences in wages are higher than in total cost, due that construction employees pay, proportionally, more social contributions due to its larger injures rate. Third, the structure of construction wages are (according to EES 2002) more egalitarian that the whole economy. In particular, the wages of people situated in the low percentiles of wage distribution are higher than the whole economy. This is an effect of the non existence of part-time jobs, but also can do to the fact that wage-rates in the lower levels of qualification are higher than in other industries. Construction offers relatively high wages to poor educated men despite average and upper-tier wages are not so high that other industries. Fourth, working time is longer than other activities (as shown in Table 11). We can see in table 10 than the hourly rate is, proportionately lower than monthly and annual wage. Construction employees must to work more hours than others in order to obtain an equivalent bulk of money. All people interviewed, both unionist and employers representative, agree that in construction “you can earn money”, because they compare construction earnings to other manual jobs.

<b>Table 11. ANUAL WORKING TIME IN CONSTRUCTION (full time)</b>		
Year	Hours	Relative to manufacturing
1996	1801	102,7
2000	1812,3	102,5
2001	1813,3	102,6
2002	1811,8	103,4
2003	1797,8	103,3

2004	1792,5	103,4
2005	1789	103,5

Source: INEM Encuesta Coyuntura Laboral

The base for fixing salaries is constituted by collective agreements. Since 1992, there has been a national agreement that sets the general conditions for the sector and provincial agreements that adapt salaries to local conditions. The salary tables for construction indicate salary levels that are somewhat higher than the provincial agreements for the industrial sectors (although possibly not the agreements of large companies). But everybody knows that salaries in the sector are not completely fixed by the collective agreement. In fact, one of the lines of union activity consists of informing workers of the conditions in the agreement in order for them to demand that they be applied.

The agreed salary levels are increased in several ways. One important one is the proliferation of overtime hours. In the current expansion phase of the activity, working overtime hours is a common and clearly visible practice, in that construction is an activity that is carried out in view of other people. It is usual that in most projects the working day starts at 8 in the morning and ends 10 hours later (with the usual 1,5 hour break for breakfast and lunch ), meaning 42,5 hours a week over 5 days. But the working enlarge two hours more (ending at 20 pm). Neither is it uncommon for work to be done at weekends, in those situations where the constructor is under pressure to deliver in time. Many of these hours, like other complements, are not declared. This is one of the common elements in the sector: “you make money here, but you work long hours for it” (U1). The proliferation of overtime might explain much of the divergence between salaries per hour and salaries per person. Although it should also be noted that in construction these hours are paid, something which is not always evident in other sectors where long days are worked (such as the financial sector), or where the payment is far lower (such as in the hotel business or trade).

Overtime is not the end of the story. The lack of qualified labour often leads to supplementary payments for workers that are considered essential and are useful to attract. In most cases, this is an individual deal in which bonuses are agreed that are not usually declared. Some workers have major bargaining power, given the market circumstances, and their income is considerably higher than what is set out by the legal bases. In some cases, what is paid is a 'package' in which the inclusion of overtime payments is commonly accepted.

At the other extreme of the segment is irregular employment. There are two main lines of development. On the one hand, irregular immigration that reaches the sector through contracting chains. Spanish foreign policy produces a wide range of situations that make workers highly dependent on the employer. From the person without papers and without the right to work, through to the employee that needs the company owner's signature in order to obtain or renew their work permit there is a huge variety of situations in which the company can impose conditions. The shortness of subcontracts and the personalised relationship existing in them prevents any collective action in this field. Added to this are difficulties with language and

relationships that these people struggle with when it comes to knowing their rights. Spanish unions are working in this area, they are even publishing information sheets in different languages (Spanish, French, English, Russian, Chinese and Arabic), but many of the African immigrants often suffer from illiteracy.

Immigrants are not the only people that find themselves in this situation; the extreme proliferation of subcontracts affects some native workers too. At the end of the chain are autonomous workers who need to negotiate their 'price' with a company. At the lower parts of the chain of subcontracts, piecework payments are common: people are contracted to perform a specific task in exchange for a set sum of money, without there being any kind of relationship with a standardised salary. This is an old formula for enforcing work rates and limiting salary costs (if there are errors in the piecework deal the worker ends up putting in more hours than expected in order to complete their commitment) that is still common in the sector.

Irregular salaries appear in many other forms. One fairly common one aimed at increasing cash payments without increasing the company's salary costs consists of apportioning extra payments and adding them to the monthly salary. In Spain, workers have the right to 30 days of paid holiday and 2 extra annual payments (the amounts are established by agreement). The Law establishes that holidays and the extra payments should be paid, in the case of temporary contracts, at the end of the period (for example, a worker with a 3 month contract will receive at the end a payment of 23 additional days which correspond to the sum of half an extra payment and a fourth of the holiday quota). Where there is a proliferation of short-term contracts, like in construction, companies use the 'pro rata' system with these payments to create the illusion of higher payments than normal. This tends to be combined with the application of a very small reduction (usually 2%) of Income Tax, which fails to comply with the Ministry of Finance's regulations that establish a table of deductions in accordance with income. In both cases, companies attempt to make employees feel they are earning more, although in the latter case it is possible that they will ultimately find that they have to pay more in liquidating I.R.P.F. (personal impact tax) payments. Both practices are illegal, but are rarely reported by the people concerned, nor are legal measures taken.

In short, the sector's payment structure features major differentiation and personalisation of salaries depending on the professional and social status of each person. And although salaries can be relatively high, they include a large amount of overtime and fiscal irregularities. To a certain extent, this salary system is made possible by the high level of fiscal informality operating throughout the sector, and whose central nucleus appears in the property sector. The large amounts of black and undeclared money circulating through the chain makes it possible for there to be different forms of irregular salaries: from overtime and undeclared bonuses to the employment of completely submerged immigrants. Therefore, in the salary field there is a close interrelation between the deregulation of the labour market and fiscal informality.

### **3.4. A chiaroscuro of working conditions**

Seen as a whole, the labour conditions in the sector are in many ways contradictory. Over the last eleven years, the inexistence of fluctuations has made employment in construction a fairly stable activity, although this comes in combination with a very large amount of rotation between jobs. It is easy to find a job, but it is also very easy to lose it. And most of all, it is difficult to develop a stable professional outlook. Among the many attempts to stabilise employment, in some provinces an agreement has been reached to extend the idea of fixed employment per project (thinking historically of the type of contract by which a worker participated in all the different phases of the same construction) being applied to the employee of a company that works in different projects in the same province, although its impact has lessened.

On the other hand, the sector offers relatively attractive salaries, especially for people with low levels of education, but in exchange, they must accept long working days, high amounts of insecurity and a long coexistence with all kinds of irregularities.

## **4. GOING DEEPER INTO PRECARIOUSNESS**

### **4.1. Insufficient professional recognition**

In many countries, professional recognition constitutes the main regulating element of the profession. Confirmation of the importance of many qualified jobs that play a key role in the production process leads to the formation of highly regulated professional markets for some groups of workers. This is not the case in Spain, where social organisation has been different.

Construction was historically configured as an intermediate social space between the rural world and industrial employment. It constituted the main port of entry for migrants from the countryside to cities. And professional training was fundamentally training at the workplace, through experience. Professional recognition has essentially been down to the companies that determine the category of their workers. In the expansive phases of the cycle, this recognition was possibly produced more directly than in times of recession. But although this recognition is manifested in Social Security contribution sheets, no special accreditation is created. This is often unimportant, as given the permanent lack of good professionals it is easy for many tradesmen to gain this recognition when they move to another company. But in whatever case, this has more to do with the salary than the existence of productive niches reserved for their profession. In fact, the professional categories recognised by the agreement are mainly the same as forty years ago, meaning that no in-depth debate has ever been produced about the qualifications in the sector.

A factor that certainly contributes to the consolidation of this situation is constituted by the peculiar organisation of professional training. Before 1970, there was no *de facto* universal education and children would often move into employment before the age of 14. That year's reform established education for all up to 14 years and

introduced two types of secondary education: '*bachillerato*' (aimed towards university studies) and '*formación profesional*', or professional training. The latter was always short of resources and socially undervalued. It was always seen as something for failures to do in a society that associated university certificates with social success (the fact that professional training was the obligatory alternative for children that got bad marks helped promote that perception). And the dominant elite never really understood the importance of this kind of education. In fact, while there was a major expansion in public '*bachillerato*' schools and universities in the nineteen eighties, most professional training centres were private, which generated a greater offer in the areas that implied less investment (administration, etc.). Professional training was also presented along the same basic lines as school education, which increased its distance from the employment market. The 1990 reform failed to resolve this issue, its main change being the prolongation of compulsory education to 16 years without generating any changes to professional training. Therefore, companies had little faith in professional training (except in certain fields) and young people with little motivation to continue their school education looked for ways of finding their way directly into the employment market. In a situation like the one we have at present, in which construction (and the hotel and catering sector) create jobs, it is easy to find work, which strengthens the old dynamic of learning at the workplace.

The lack of adequate skills is a big problem, the everybody recognizes (EE1, EE2, U3, VS, PM). In the words of a project management::

*"I spend a lot of time and efforts to control the quality of work. Usually I need to request to my subcontratists to change their staff. The key role in the works are the foremen, who really has the control of the process"* (PM)

This deficient professional training and recognition does not mean that the importance of professionalism and quality is being ignored in the sector. But until now, the models developed in the country depend more on quality control of other areas than the direct professionalism of the workers.

An element worth highlighting is that while there is no precise regulation of labour issues, there is in reference to materials. All construction materials must pass through an extensive certification process before they can be used. In 2006, (March, 17h) a new catalogue of technical regulations was passed that reinforces this control of production processes. This catalogue specifies both quality conditions (structural security, fire security, health and safety conditions, sustainability and energy efficiency) and control procedures. But, it does not include any condition about labour qualification. The logic of quality depends basically on the quality of works manager and technical supervision (Ministerio de la Vivienda 2006). At the same time, there are rules that oblige companies to provide 10 years of security cover when delivering a home, due to the possible existence of unseen faults.

On the ground, the key figure in controlling the process is the technical architect. This is a medium-level university certificate for the person responsible for the technical control of the project. Below this person are supervisors who are in charge of overseeing the activity. To a large extent, technical management staff is responsible

for making sure that quality regulations are met. This is therefore a “low confidence” production model with respect to operators and that considers that it is the technicians that have the capacity to guarantee the good quality of the end product.

In fact, it is possible that this supervision is stricter in public works than in building housing, given that in the former the consequences of technical errors are so much greater. In the construction of housing, there is a widespread opinion about the poor quality of the same, especially in terms of what affects non-structural finishes. Possibly the Mediterranean climate and the fact that some of these houses are only used for short periods of time help make the issue more tolerable. Nevertheless, public works are by no means innocent and more or less serious incidents are often in the news: such is the exemplary case of the collapse of a metro tunnel being constructed in Barcelona, and which led to several blocks of flats being demolished and up to 1,000 people being moved away for periods of over a year, and the continuous problems when laying high speed railway lines.

#### **a. The fragmentation of subcontracting**

Subcontracts have always existed in the sector and this can be justified. The variety of processes involved in any project more than justify the existence of companies that specialise in specific stages of the construction process. But the present situation is very different to mere subcontracting for reasons of specialisation. It is a complete fragmentation of the organisation of production (Ruiz y Babiano, 1993).

The process seems to have its origins in the early eighties, when large construction companies started outsourcing much of their stable workforce. In many cases, groups of workers were offered subcontracts in exchange for accepting the loss of employment. Once the process had been set up, it reoccurred in smaller companies and the end result has been the extreme fragmentation of the process (Miguelez, 1990, Federación Estatal de Construcción Madera y Afines, 1993, Byrne and Van der Meer, 2005).

The common structure of any large project involves the existence of a main subcontractor that subcontracts parts of the process to different companies. In many large projects, instead of there being one main company, there can be a *Unión temporal de Empresas* (U.T.E. - Temporary Union of Companies) of two or three large companies, each one of which assumes part of the management. The usual situation is for the main company to only have one or two people involved in the control of the project. Meanwhile, the subcontracted companies cede all or part of their activity to other companies, through the fragmentation of the entrusted activity or simple cessation to third parties. This process can be repeated several times (up to 5 or 6 levels). At the end of the chain are the specialised microcompanies (small groups of workers that act together, small family enterprises), or autonomous workers, and it is quite common for there to be mere workforce intermediaries that supply labour and earn their commission. In reality, these 'companies' are no more than a mobile telephone and the owner's vehicle. Intermediation is produced through networks of personal contacts that workers in the sector can easily find out. (U3, LI, PM)



For large companies, this process enables them to put pressure on costs and delivery periods, exploiting their bargaining power with subcontractors. And thus, they can also avoid most types of union activity. They do lose the capacity for control over direct processes, but, as stated earlier, they hope to recover this through technical control. In fact, the implantation of this process has been associated to extreme specialisation and division of production stages that, to a certain extent, seems to resemble Taylorist organisation policies. Although here the pressure on delivery periods and visits to the site substitute, in an incomplete way, the characteristic direct control of the individual company. In part, the introduction of prefabricated materials could be related to this logic of reducing the needs for professional capacities and substituting them with simple processes and very few technical resources. Perhaps the most widespread innovation is the substitution of standard partition walls with plaster panels (known in Spain as Pladur, which is the name of the most important brand) and the pre-welded metal structures which are cheap and easy to install. Wherever innovation requires experience, there are big problems, as is the case with the installation of solar energy systems that are obligatory in Spain for new constructions.

Chain subcontracting is also a means for encouraging the informal economy. Although contracting companies should theoretically control all the staff involved in the project, this does not often happen in practice. The short duration and mobility of many subcontracts, as well as the variability of the projects themselves, makes it easy to lose control. In opinion of an employer the problem is in this subcontracting process, prize is the prevailing question. Both, quality of jobs and product are secondary items (EE2)

The process is also a source of wealth and parasitic activities for unscrupulous people. At the other end of the chain are the themes already covered, such as accidents at work, long working days, irregular payments, and the proliferation of piecework.

#### **b. The phenomenon of migration**

The spectacular increase in the workforce may not have been possible without the massive resource of immigration. From being almost unnoticeable in the early 1990s, now, according to the Survey of the Active Population, it represents 20% of total employment in the sector. A percentage that may even be underestimated both due to problems with the construction of samples (owing to the spatial mobility of immigrants and their mere legal inexistence), and to the phenomenon of foreign subcontracts that is starting to appear (especially from Portugal and, to a lesser extent, Eastern European countries).

In terms of geographic origins, there is huge diversity. More than 46% are Latin Americans (especially from Ecuador, Peru, Bolivia and Colombia), another 46% are divided equally among non-EU countries of Europe (Romanians, Poles, Ukrainians, etc) and people from the rest of the world (Moroccans, Sub-Saharan and a growing presence of Chinese) and just 7% are from the European Union (over-represented at the technical level) (Colectivo IOE, 2005).

These people come from diverse political conditions and are subject to the ups and downs of foreign policies. Some, those who have been here the longest, have obtained long-term permits. Others are temporary migrants with contracts obtained in their home countries, a situation that tends to be limited to those of a high professional category (as is the case with Angolan structural engineers and Ukrainian assemblers). But many have come into the country illegally, without papers. Subcontracting makes it easier for them to find work in many areas, especially in those less centralised processes that are harder for employment authorities to control. Work indoors (housing reforms, some rehabilitations) or the construction of isolated houses (or small, dispersed promotions) are the favoured areas for informal work. But it is not difficult to detect it in other areas, given that it is so easy for companies to evade inspections: a work site is hidden from outside observers, and companies tend to make inspections difficult, thus gaining time in which they can clear out any illegal employees etc. (Vargas et al., 2006)

These new immigrants are also a group that is willing to accept the conditions imposed in the sector, and at least when they first arrive in Spain they fit the profile of the 'passing bird' described by Piore (1979). As a trade unionist specialising in immigrant affairs told us, most of those who approach the union do so after being here for three years. In the first year, they are simply concerned about finding work and earning money in order to cover their expenses and send funds to their families. In their second year, they start putting pressure on their bosses regarding legalisation (the Spanish system conditions the awarding of work permits by insisting people have a job offer).(U4) This is often not possible or otherwise the manager is unwilling, which tends to generate tension which explodes in the third year when the worker gets frustrated at still not having any papers and discovers that a thousand and one legal obligations have been overlooked. When these workers turn to the unions, they are have almost always already been dismissed and in many cases it is hard to find any documentary evidence of the working relationship. Managers tend to pay cash in hand (or by paying directly into the workers account) in order not to leave any traces like bank transfers or cheques.

Getting 'papers' greatly conditions the working lives of these people. In recent years, the Partido Popular government, coinciding with the arrival of immigrants *en masse*, insisted on refusing to grant permits on the basis of the argument that legalisation would generate a 'call' effect that ended up generating a huge stock of undocumented workers. In 2005, the P.S.O.E. Government agreed to an extraordinary legalisation process that normalised the situation of more than 600,000 people, one fifth of whom (125,000) were working in construction. This did not completely resolve the problem, not just because immigrants have continued to arrive (to a large extent taking advantage of their connections that are already here) and also because the process itself has left many questions unanswered. Permits must be periodically renewed and this must be done in the sector where the original regularisation was made. In a sector like construction, where relations are typically short-term or easily reversible, the measure means that workers are left at the mercy of their bosses as to whether their contracts will be renewed, which is undoubtedly done by making concessions in other fields. The worst-case scenario involves many workers that were 'legalised' through

contracts in other sectors (especially domestic services) and that may now have problems if they want to renew their permit. In whatever case, migration laws are a good complement for the deregulated model that operates in the sector. It can even be seen that some labour contracting networks are taking on an ethnic appearance, with some intermediaries being people of those nationalities that organise the exploitation of their own compatriots. There is also a “technical” question: in the case of african or asiatic workers, subcontracts need to have at least one member of the team capable of speak spanish and the language of the crowd (arab, urdu, chinese, armenian...).

An additional matter is that of the foreign subcontractors working in Spain, especially Portuguese ones. Following the last EU regulations it seemed clear that the labour conditions to be applied were those of Spanish agreements. But in practice, this is far more complex for a variety of reasons. Agents interested in seeing that the law is applied (essentially unions and work inspectors) cannot get everywhere, considering the magnitude and characteristics of the sector. Companies often arrange for one-off jobs lasting just a few days that do not amount to real subcontracts. In fact, there is evidence that these companies themselves are a means for non-EU workers to gain entry, and once they have completed the job they came to Spain to do, they stay in the country in search of new opportunities, thus increasing the number of irregular employees. A new phenomenon of Chinese subcontracts appears as a new threat in last months (Magallon, 2006). Theoretically this subcontractors must pay the same wage and maintain the labour conditions of Spanish firms, but it is very difficult to control them. In opinion of a Labour Inspector:

*“In practice I can really control the worktime. When I request information about wages, firm representatives answer that they do not have information, due that wages are managed and payed in their country of origin and the accountancy data are not available in Spain. As they are companies that only participate in a small part of the work is vary difficult to obtain basic information from them” (IL)*

## **5. TOWARDS A NEW REGULATION?**

The employment model we have just described has proven enormously attractive from the point of view of companies in the sector. We have already indicated that this has been the big business sector in which the Spanish economy has grown 'spectacularly'. A sector that has blossomed in the form of millionaire businesses and where new 'entrepreneurs' can find their way up the ladder.

But nobody can ignore the major deficiencies and costs. From the business point of view, the most debated question has been the lack of a qualified workforce. From the union's point of view, the black marks are increasing and highlight the precarious conditions, insecurity, failure to comply with collective agreements, etc. It is therefore only logical that the agents involved have attempted to negotiate institutional reforms aimed at resolving or reducing these problems, although different interests often block these agreements.

## **5.1 Collective negotiation and legislative reform**

Given the characteristics of the Spanish system, it can easily be noticed that changes are always produced by a combination of collective negotiations and legal reforms.

In the area of collective negotiation, the construction sector is one of those where it is most centralised, as since 1992 there has been a state agreement for the sector. One of the main reasons that led to this centralisation is the enormous inter-territorial mobility of companies and workers that made it useful for there to be a general framework that could establish common regulations for the whole territory. In fact, the large public works companies were those that were most willing to accept these kinds of agreement because they meant they could clarify the conditions for competition with respect to regional companies. However, the national agreement is complementary to provincial agreements that establish salary tables that consider the very different financial conditions in each of the different areas.

The national agreement is undoubtedly an important instrument in regulating the sector. One of the most significant aspects was the constitution of the *Instituto Laboral de la Construcción* (Labour Institute for Construction), a body involving unions and companies in charge of providing vocational training and financed by social security contributions and European funds (in the following section we will analyse the most interesting aspects), which aimed to provide a response to one of the most crucial problems, professional qualifications. (Byrne, 2003)

However, collective negotiation causes problems in terms of content as well as making sure people comply with what is agreed. In the first aspect, companies have not been very willing to negotiate many of the most burning issues, especially temporary labour, excessive subcontracting and labour health. And it has been even more difficult to implement control over what has been agreed or legislated, so much of the union activity has involved promoting political means to help resolve the situation.

It is important to understand the importance of the public sector in regulating the sector. In Spain, trade unions have a dual legitimisation and power, that of affiliation and that proceeding from union elections in which all workers participate. The former is, given the cultural tradition and social situation of recent times, small. And it is even smaller in the construction sector owing to the very situation of social instability in which people live (although also due to the individual bargaining power of more qualified workers). Neither is the election system particularly advantageous given the continual downsizing of personnel affecting large and medium sized companies and their tendency to limit stable personnel to technical and administrative activities (in many companies, the college of technicians and administrators is more represented than that of the manual workers). Despite maintaining some of the union bastions and the efforts made for affiliation (and complemented in the case of immigrants with the creation of supportive union bodies that also act as meeting points for the same and that explain the fact that the percentage of foreign affiliates is nearing the proportion of foreigners in the sector) the organisational capacity of these unions is undoubtedly insufficient to guarantee their presence in most workplaces, more so if we consider

the size of the sector, its territorial distribution and the mobility occurring between companies and jobs. But this capacity should still not be underestimated. Despite the low affiliation and union representation, they have been successful in calling strikes, and have won over the active support of thousands of non-affiliate wage-earners that desire stricter regulation of their living conditions.

It is this very weakness that has led unions in the sector to exert pressure on the different levels of Administration in order to achieve both legislative reforms and specific measures of support.

## **5.2 Regulation of training**

The *Fundación Laboral de la Construcción* (Labour Foundation of Construction) is a training organisation that was created by collective agreement and that is financed by European Union funds and social security contributions. It has offices all over Spain, although in Catalonia it shares its work with the *Institut Gaudí*, a similar type of centre created by Catalan companies but that, following negotiations, allows unions (CCOO, UGT) to participate in its activities, and is partly financed by the Foundation's funds. (Byrne and Van der Meer, 2003)

The different offices provide a wide range of courses that cover many of the aspects of further, vocational and even professional education owing, as we have commented earlier, to the deficiencies of the regulated '*Formación profesional*' when it comes to generating experienced workers.

There can be doubt that over its years of existence, the Foundation has developed an intense educational programme, but the results are partly limited by the nature of the environment in which it operates.

The main problem is undoubtedly the ambivalence with which employers treat this training. On the one hand, they consider it necessary for the sector to function properly, but on the other, they are reticent to finance it, and most of all, to recognise the certificates for purposes of employment. In fact, apart from the exceptions we will mention, most of the courses do not generate any kind of formal recognition. Most of the courses are held outside of normal working hours (from 7 in the evening), as employers are reticent about professional training, basically because they see the relationships as short-term and feel that training their employees better may only be of benefit to their competitors. This is the classic problem of positive externalities bemoaned in a sector where the proliferation of microcompanies makes it difficult to find a solution for the sector as a whole,

In fact, only two types of courses have achieved noteworthy success, showing the extent to which change depends on other types of actions. First, there are the labour prevention courses, made obligatory by the Labour Risk law and that, despite being extremely informal, are attended by a large number of workers.

The other example is the establishment by state law of an obligatory card in order to perform certain activities, basically those related to heavy machinery (cranes and moving land). This legal obligation has forced hundred of workers into taking training courses that qualify them for the card and companies themselves have taken an interest in the issue. This suggests that it is possible to resolve certain uncertainties that the sector has not been able to resolve itself.

For remaining activities, where this recognition does not exist, the situation is completely different. Recognition of employment categories is made from within the company without the intermediation of a formal process. Neither have unions been particularly demanding in this aspect, to a large extent because they are aware of the resistance they would be met with by employers who see these demands as being mechanisms to promote salary increases and reductions in the availability of workers. Another problem has arisen through the implantation of the crane and machine operator cards. To access these, people need a certain level of formal education that many workers in this sector do not have. Some because they left school early to find work, others, as is the case with many immigrants, because of the problem with the education in their home countries not being recognised by Spanish education authorities. In whatever case, the qualification can generate resistance among workers themselves and the long tradition of informality it is being imposed upon.

The fragmentation of regulations in 17 regions (Comunidades Autónomas) is an additional factor in the creation of a system of formal qualification. In practice, the *Instituto Laboral de la Construcción* intervenes as a different institution in each region (additionally in Catalonia, *Institut Gaudi*, participated by employers and unions, covers the same role, and manages funds from the Instituto). Each regional institute develops its activity according to regional conditions. Particularly the Institute from Asturias it is the more advanced center, and it is enforcing a more regulated system of training and skills. Now this Institute is trying to promote the same system to national level.

Undoubtedly, another of the unresolved matters is that of regular professional training. By not applying a new system that combines theory with vocational experience, entry into construction will continue being as disorganised as ever. Recent experience, both in terms of specific qualifications and in prevention show that the model can be changed, but it may be impossible for this to happen as long as companies insist on sticking by the informal model that they have been using until now.

### **5.3 Safety and hygiene as a means of regulation**

The debate about labour health has been a relevant one in Spain for many years, and is one that is of particular concern given that the accident rate is much higher than it is in other European countries. And also because of the existence of an ongoing intellectual effort, led by certain sectors of public health research and the unions themselves (especially the ISTAS foundation, which is linked to CC.OO.).

The labour risk prevention law came about as the result of this debate, whose directives include the creation of prevention delegates, the organisation of prevention by companies and training of the staff as a whole in prevention issues. However, in construction, the sector with the most accidents, this set of proposals has been difficult to apply:

- company fragmentation of work projects and the short duration of relationships prevent the election of delegates from among the personnel
  - the fragmentation of companies working and the absence of any strong centrality in the control of projects makes it hard for prevention measures to be applied, especially in small and difficult-to-control companies
  - personnel rotation, instable employment and also the type of male culture that predominates in the sector also do little to promote the right social response.

The result is that reducing accidents at work is a very slow process and improvements in other areas of labour health have yet to begin. (Among the numerous accidents that have occurred in the sector was the death in 2004 of 12 workers of the Arranz Acinas company in Burgos that were killed by a fire in the changing rooms in a basement that did not respect any safety regulations and was an accident waiting to happen, although nobody had expressed any formal complaint before the catastrophe occurred).

Construction unions warned that it was an important issue and that it was through labour health that better all-round regulation of the sector could be achieved. This led them into two parallel paths of action. The main one was the fight against precariousness, but as this was such a difficult path, they took a second line of action that put pressure on administrations. At the end of the day, these are the main clients of the sector and should take responsibility for the conditions in which public works are carried out.

This was a process of slow pressure, made upon administration after administration, in particular councils, regional governments and public bodies. Where they were successful, territorial prevention delegates were recognised, often both in representation of unions and of companies. These are people placed by the organisations they represent and financed by the Administration with whom an agreement has been made. In some cases, the delegates control the safety conditions on specific projects (the first experience of this was produced in the work on the Olympic Games in Barcelona). These are projects in a precise location and where safety delegates have the capacity to oversee procedures and have a space that workers are able to come to.

In other cases, these territorial delegates have permission to visit sites within the territory they are responsible for. The fact that they are delegates of both parties reduces possible tension. In fact, the role of these delegates is to supervise work conditions, make propositions to those in charge of the projects and, if necessary,

report situations to 'Inspección de Trabajo', which is the body with the capacity for control and issuing sanctions.

The implantation of these delegates is highly unequal, as their existence depends on specific agreements with each local government. In large public works, this tends to be easy to achieve because the Administration itself is keen to avoid any serious problems. There is more resistance in the cases of territorial delegates, as it is feared that they are an attempt to introduce trade unions in areas where work organisation has expelled them. And in fact, the unions recognise that these delegates can introduce some union presence in the workplace. So, the existence of delegates is not stable and further negotiations are needed. Nevertheless, the existence of these kinds of delegates has proven efficient in large projects, where accident rates have been reduced.

In the last months seems to be developing a more strong approach in order to control labour injuries. Some Safety managers have been condemned to jail. These pressures seems to generate more attention about these questions. Technical architects organisations ("Colegios Profesionales") recommend their affiliates that they do not take Safety management (they usually do in order to earn more money), On the other side there is the emergence of specialised firms that take control of this questions, with a more professionalised approach.

#### **5.4 The long road to regulating subcontracts**

The high level of temporary employment that characterises the Spanish employment market constitutes a serious social problem. Construction has always been a sector with a high level of temporary employment, but a certain level of regulation was being achieved, at least for the workers that formed the nucleus of the sector. Companies had a percentage of fixed staff, those that generally performed the more complex work and the typical contract was the fixed work contract that generated contracts of a certain duration.

The combination of new forms of temporary contract, the fragmentation of the production process and the expansion of subcontracting ended up generating a social framework in which collective regulation and union organisation is almost impossible.

Therefore, construction unions became aware that the fight against precariousness in the sector was not just limited to control of temporary labour, a common condition in the sector, but needed to concentrate on the matter of subcontracting. Different analyses also suggested that there could be a direct relationship between the high accident rate and the high level of subcontracting, which also favoured irregular employment and non-compliance with labour regulations.

In 1999, CC.OO opted to launch a campaign aimed at regulating the sector. The medium used was the presentation of an *Iniciativa Legislativa Popular* (Popular Legislation Initiative). In fact, it was the only form of direct public participation permitted by the Spanish constitution. Congress has to pass the establishment of the I.L.P. (Byrne, 2000) Once it has been passed, the promoters have a six-month period to



collect a certain number of certified signatures. If they manage to do this, they can present a proposition for a law that Parliament is obliged to discuss, although its defence in the House can only be made by parliamentary parties. CC.OO. managed to collect 650,000 signatures and enjoyed the support of the main parliamentary opposition groups (Partido Socialista Obrero Español and Izquierda Unida). But the parliamentary majority led by the Partido Popular defeated the proposal. It was a full-on proposal, aimed at limiting subcontracting as much as possible, and was presented under the slogan “*Nos va la vida*” (meaning something like 'our lives depend on it').

The debate was not only important to the sector. It served to recognise the impact of subcontracting in many other employment sectors too. But it is in construction where the issue is most worrying. However, the model of outsourcing production certainly coincides with many aspects of other sectors (the transferral of risks towards workers, salary discrimination, etc). In the debates that led to a new labour reform in 2005, the issue has gone on to form part of the aspects that need to be regulated.

The Partido Socialista Obrero Español that agreed in the past to defend the I.L.P. has kept its promise and has dealt with the issue in two types of reform. In the general reform of the *Estatuto de los Trabajadores* (Workers Statute), measures were introduced to reduce the levels of temporary work (through subsidies, lowering the cost of firing and converting recurring temporary relationships of company workers into fixed contracts) and subcontracting (specifically the right to union guardianship for subcontracted workers employed in another company). These are measures of little consequence in the case of construction, where relationships are far less stable. Therefore, negotiations have reached an advanced stage to propose a subcontracting law that aims to combat the most damaging elements.

The most important questions covered by the new law are (Boletín Oficial de las Cortes Generales, 2006):

- limits on subcontract chains. They are limited to a maximum of three levels, although four can be authorised in exceptional cases. This means that the subcontracting company can directly subcontract any number of operations, but the subcontracts can only transfer their activity by up to two levels.
- Subcontracting companies are obliged to have a minimum stable personnel and their own means to perform the activity, and independent workers are not allowed to subcontract others. The aim of this is to prevent the activity of mere labour intermediaries and force companies to recompose a part of their personnel.
- Work projects are obliged to maintain a book of subcontracts to make it possible to control subcontracting.

Unions are aware that these are moderate measures, but that through dedicated union action and with the support of *Inspección de Trabajo* (a body that the Government has agreed to reinforce with resources) will at least be able to eliminate some of the most parasitic aspects. Some business sectors could be in agreement here in that they are aware that the current lack of control also has an affect on the product and workforce, and that methods that clean up the sector could help with

consolidation. We have yet to see whether the reform will lead to good results or, as has happened so many times before, it will end up being yet another of the unapplied regulations existing in Spain.

Also Labour Inspectors consider that this measure can, at least, eliminate the figure of the “telephon employer”, but it is not clear that can resolve other questions.

## **6. CONSTRUCTION AND THE NATIONAL EMPLOYMENT MODEL: OPEN QUESTIONS**

On the previous pages, we have revised the main characteristics of the Spanish construction sector. It is a sector that has developed spectacularly in terms of employment and activity levels. A sector that has fundamentally been developed on a 'low level' in terms of labour relations. Anybody close to the sector perceives a general sensation of deregulation and chaos. While the most serious problems arise in terms of labour conditions and workers' rights (health and labour risks, long days, irregular employment, etc) they can also be detected in other areas, basically the lack of qualified workers and in the quality of the product.

To a certain extent, construction is the result of a peculiar form of regulating the employment market and the Spanish economy. Of a social model that continues to generate high levels of school failure. Of a personalised company model that is rarely willing to accept negotiations with unions. Of a social model that tolerates and favours tax evasion and irregular employment. Of a migratory model that promotes the major institutional segregation of poor immigrants. Of an economic orientation focused on growth and short-term profit and barely aware of the social costs it is generating. There is a lot of historic continuity, but there can be no doubting that the general orientations promoted by neo-liberalism have found in Spain a handy terrain that is easy to develop. The expansion of subcontracting to extreme limits and its combination with the thousands of possibilities offered by temporary contracts are a good example of how the old traditions of labour relations based on authoritarianism have been combined with the new model of flexible management of the workforce.

But precisely because there are such extreme levels of this situation in construction, it is here that one of the most important debates has emerged and proposals for regulation are being suggested that, in some cases, extend beyond the sector. Such is the case with labour security and the way subcontracts are treated. These are two questions that affect the production system as a whole, but that have come to light as being problems on the basis, in part, of the debate in this sector. And they have managed to generate a certain awareness of the need to introduce regulations. Although the situation is not the same in all production sectors, problems with accidents at work and labour health, with training, and with the regulation of subcontracts are common to many other sectors.

We have yet to see how far this new regulation will go. Growth of the sector, and the establishment of the structure we have described will generate resistance to change.

Spain has a long-lasting tradition of passing laws that are then barely applied because institutional mechanisms fail to enforce them. And public administrations are also subject to the liberal airs proceeding from the European Commission.

But above all, the crucial issue is how far a production model can be sustained in which construction carries such huge weight. If the sector continues to expand (which is a worrying prospect considering the social and environmental impact that this model generates in terms of water resources, the destruction of space, political corruption, etc.) it is possible that regulatory policies might have some chance of success. But if the activity stagnates and unemployment increases, there will be support for the voices that associate regulation with economic decline, which will make things very difficult for those that propose change. And this will influence the social model as a whole. The Spanish social model is faced by the need to find ways of escaping this dependence on bricks and mortar.

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Employer's representative: Real Estate and Construction Employers Fomento del Trabajo Nacional (E1)

Employer's representative: Contractors Chamber of Barcelona (E2)

Unionist representative CC.OO. General Secretary of Fecoma-Catalunya (U1)

Unionist representative U.G.T Secretary of Constrution Catalunya

Unionist technician Secretary of Union Education and Studies FECOMA.CCOO Madrid (U3)

Unionist Secretary of Inmigration, FECOMA Catalunya (U4)

Labour Inspector (LI)

Project Manager (PM)