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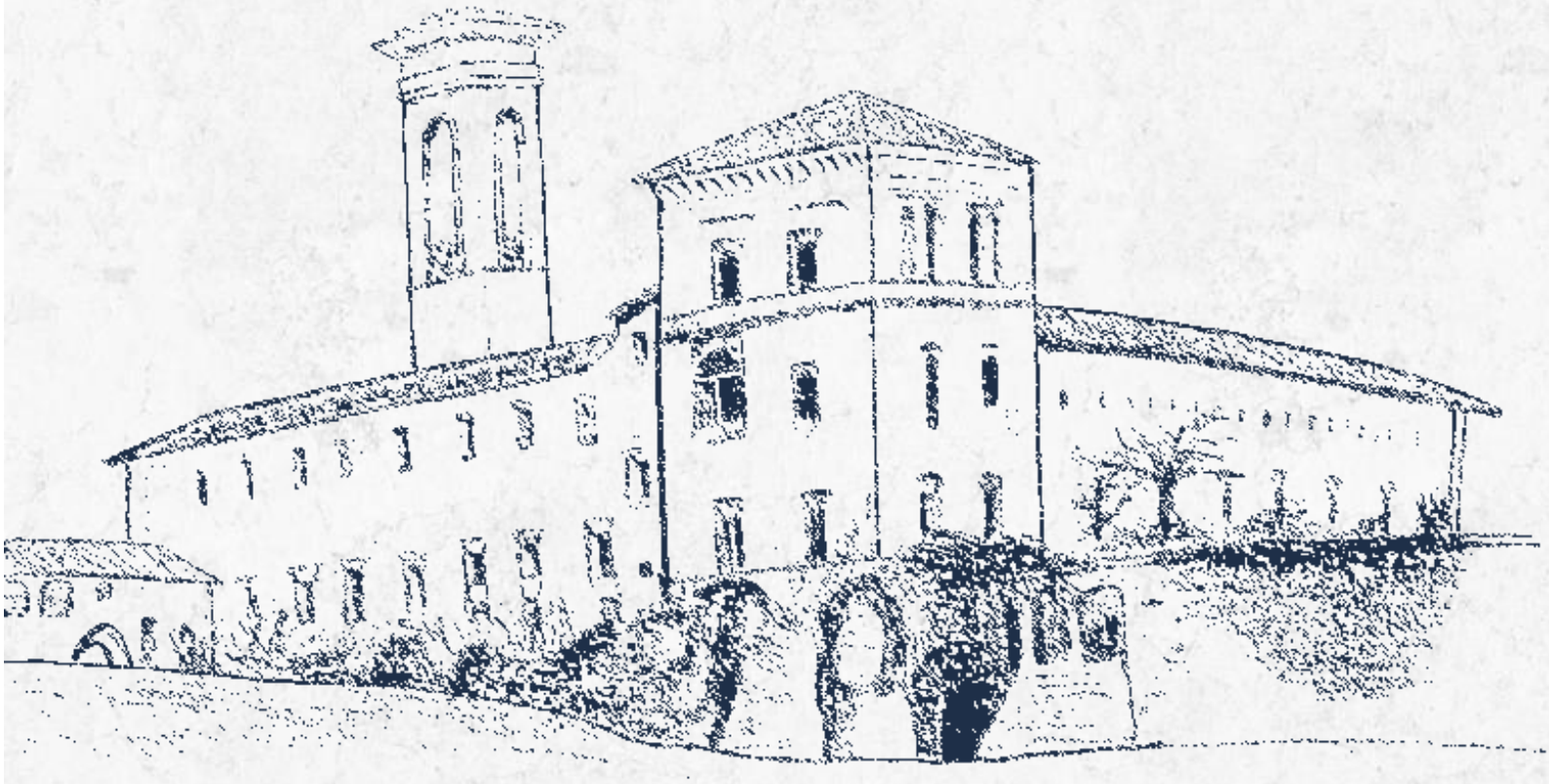

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# Some Reflections on "Environmental" Strikes in the Italian Legal System

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**Abstract.** In light of the growing focus among labour law scholars and trade unions on environmental sustainability, this paper seeks to provoke a critical examination of the potential for adapting the right to strike, as recognised within the Italian legal system, to address the imperatives of environmental protection. By exploring the intersections between labour rights and ecological concerns, this study aims to contribute to the discourse on how legal frameworks can evolve to better accommodate the pressing challenges posed by environmental degradation.

**Keywords:** *Just transition; Environmental sustainability; Right to strike.*

## 1. Introduction

In recent times, a shift in perspective appears to be consolidating, moving away from the longstanding emphasis on "growth" as the predominant indicator of progress. This new paradigm seeks to dismantle (or at least reconsider) the dichotomy between wealth accumulation and human well-being, while also taking into account the pressing concerns of environmental sustainability. The urgency of the climate crisis is, of course, not a novel development; since the 1970s, there has been a gradual accumulation of robust awareness regarding the collateral effects of progress[1]. The prevailing socio-economic model irrevocably compromises the Earth's ecological balance and the prospects for future generations, all

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[1] Since 1972, with the publication of the study *"Limits to Growth"* (D. H. MEADOWS, D. L. MEADOWS, J, RANDERS, W.W. BEHRENS III, *The limits to growth*, Universe books, New York, 1972.), the need to set limits on economic growth has been highlighted to avoid irreversibly compromising ecosystem balances.

in the name of the well-being of the current generation. Concurrently acknowledged is the necessity for a decisive shift towards alternative development models that can effectively integrate human well-being with environmental integrity. Rethinking our lifestyles and the complex mechanisms governing the economy appears to be the only viable path to halting the countdown towards the extinction of Homo sapiens.

In the past decade, environmental sustainability has gained significant importance on national and international regulatory agendas. This is evidenced by a variety of measures adopted, including the Paris Agreement, the 2030 Agenda for Sustainable Development, and the European Green Deal. In Italy, the National Recovery and Resilience Plan allocates approximately €60 billion for the green transition. Compared to previous years, the current context demonstrates a more determined approach to addressing climate issues. The magnitude of the funds allocated and the progressive adoption of supportive measures—such as the Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive—are triggering profound socio-economic transformations that collectively represent one of the most significant challenges in history: the ecological transition.

The green transition, having a significant impact on the economic system, will also lead to substantial changes in the world of work. Labour regulation, traditionally aimed at balancing the capital/labour conflict, cannot overlook the transformations that businesses must undergo to align with sustainability goals[2]. The cross-cutting nature of the ecological transition necessitates that legislators address its inevitable social repercussions, particularly in relation to the labour market. It will be essential to envision a variety of measures to achieve a just transition that does not exacerbate existing inequalities or impose negative consequences on workers[3]. This includes managing the retraining of workers in sectors

[2] About the openness of Italian labour law scholars to environmental sustainability, see R. DEL PUNTA, *Tutela della sicurezza sul lavoro e questione ambientale*, in *Diritto delle relazioni industriali*, 1999, 2, p. 151 ff.; P. TOMASSETTI, *Diritto del lavoro e ambiente*, Adapt University press, 2018, *passim*; A. LASSANDARI, *Il lavoro nella crisi ambientale*, in *Lavoro e Diritto*, 2022, 1, p. 7 ff.; L. ZOPPOLI, *Derecho laboral y medioambiente: stepping stones para un camino difícil,* in *Diritti lavori mercati Int.*, 2023, 1, p. 251 ff.; A. PERULLI, V. SPEZIALE, *Dieci tesi sul diritto del lavoro*, *Il Mulino*, 2022, p. 145 ff.; G. M. BALLISTRIERI, *Il lavoro nella transizione ambientale*, in *Massimario di giurisprudenza del lavoro,* 2023, 1, p. 9 ff.

[3] About the role of labour law in implementing a just transition, see B. CARUSO, R. DEL PUNTA, T. TREU, *Il diritto del lavoro nella giusta transizione. Un contributo "oltre" il manifesto*, *W.P. C.S.D.L.E*, 2023; F. MARTELLONI, *Sviluppo sostenibile e transizione giusta: il diritto del lavoro alla prova del limite*, in *Revista direito publico*, 2023, 20, p. 112 ff.; M. BARBERA, *Giusta*

profoundly affected by green conversion processes and addressing the potential dispersal of human capital in regions hosting such businesses[4].
It is crucial to consider the role of trade unions in this context, as their stance on combating climate change has historically displayed considerable variability. At times, trade unions have demonstrated limited sensitivity to environmental issues, as evidenced by their cautious response to the 2016 Italian referendum on offshore drilling. This referendum aimed to repeal laws governing hydrocarbon extraction concessions and to prevent their renewal upon expiration. In this instance, certain trade unions expressed reservations regarding the potential implications of the referendum, fearing significant repercussions for employment in the extractive sector[5].
Conversely, in other contexts, trade unions have embraced ecological concerns, advocating for measures that do not compromise environmental integrity. This is illustrated by the demands of specific Spanish trade unions in the 1970s[6] and by the emergence of the Just Transition framework, which arose thanks to contributions from certain American labour organisations[7]. The latter perspective appears to have gained traction in recent years. For example, in the document entitled "A

*transizione ecologica e diseguaglianze: il ruolo del diritto,* in *Giornale di diritto del lavoro e di relazioni industriali*, 2022, 3, p. 339 ff.; G. CENTAMORE, *Una just transition per il diritto del lavoro*, in *Lavoro e Diritto*, 2022, 1, p. 137 ff.; D.J. DOOREY, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, in *Journal of Environmental Law and Practice*, 2020, p. 201 ff.; D. CUNNIAH, *Preface*, in ILO, *Climate change and labour: The need for a "just transition"*, vol. II, 2010, p. 122; A. ROSEMBERG, *Building a Just Transition: The linkages between climate change and employment*, in ILO, *Climate change and labour: The need for a "just transition"*, vol. II, 2010, p. 141 ff.; A. CARACCIOLO, *Transizione ecologica: problemi definitori e questioni irrisolte*, in *Ambiente Diritto*, 2024, 2, p. 4 ff.

[4] About this topic see R. SALOMONE, *Transizione ecologica e politiche del mercato del lavoro*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 1-2, p. 29 ff.; V. SPEZIALE, *Impresa e transizione ecologica: alcuni profili lavoristici*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 3, p. 300 ff.; A. CARACCIOLO, *Transizione ecologica: greening skills to greener jobs*, in *Diritto delle relazioni industriali*, 2022, 4, p. 969 ff.;; L. CASANO, *Ripensare il "sistema" delle politiche attive: l'opportunità (e i rischi) della transizione ecologica*, in *Diritto delle relazioni industriali*, 2021, 4, p. 997 ff.; L. CASANO, *Formazione continua e transizioni occupazionali*, in *Variazioni su temi di diritto del lavoro*, 2022, 4, p. 659 ff.

[5] G. CENTAMORE, *op. cit.*, p. 136.

[6] M. A. GARCIA-MUNOZ ALHAMBRA, *Derecho del trabajo y ecologia: repensar el trabajo para un cambio de modelo productivo y de civilizacion que tenga en cuenta la dimension medioambiental*, in L. MORA CABELLO DE ALBA, J. ESCRIBANO GUITERREZ *(edited by)*, *La ecologia del trabajo. El trabajo que sostiene la vida*, Bomarzo, Albacete, 2015, p. 47 ff.; H. ALVARÈZ CUESTA, *Empleos verdes: una aproximaciòn desde el Derecho de Trabajo*, Bomarzo, Albacete, 2016, p. 105.

[7] D. STEVIS, R. FELLI, *Global labour unions and just transition to a green economy*, in *International Environmental Agreements: Politics, Law and Economics*, 2015, 15, p. 32.

Just Transition for Jobs, Personal Well-being, Social Justice, and Planet Preservation for a Green Economic Transition," the three major Italian trade union confederations (CGIL, CISL, and UIL) have reiterated the necessity of implementing a just transition.

In the current context of alignment between trade unions' actions and environmental issues, it is essential to examine the role of trade unions and the concrete legal instruments that can be employed to address this challenge. Among these instruments is collective bargaining, whose inherent flexibility makes it a particularly suitable tool for guiding companies through the green transition while simultaneously considering workers' interests. In the Italian industrial relations system, a notable—if not yet structural—trend exists towards promoting environmental protection: some collective agreements now include provisions aimed at integrating environmental sustainability concerns within workplace safety, remote working, and rights to information and training, thereby endorsing an approach that embraces sustainable development and acknowledges the complexity of the Just Transition challenge[8].

Beyond its contractual dimension, which, as is well known, serves a "conflict-pacifying function"[9], this paper aims to assess—exclusively with reference to the Italian legal system—the adaptability of the right to strike in light of the recent green trends adopted by certain trade unions. In this historical moment, it is imperative to question the legitimacy of strikes called to compel employers towards more environmentally responsible behaviours or to urge political institutions to intervene in this critical area. Consequently, a significant increase in strike actions advocating for the right to live in a healthy environment can be anticipated, bolstered by strategic alliances between trade unions and environmental groups, as

[8] C. CARTA, *La transizione ecologica nelle relazioni sindacali*, in *Lavoro e Diritto*, 2022, 2, p. 311 ff.; M. GIOVANNONE*, Le nuove dinamiche della contrattazione collettiva per la Just transition*, in *Rivista Giuridica del Lavoro*, 2021, 4, p. 637 ff.; F. TESTA, *La funzione sostenibile del contratto collettivo: spunti teorici ed empirici*, in A. BAVARO, C. CATAUDELLA, A. LASSANDARI, L. LAZZERONI, M. TIRABOSCHI, G. ZILIO GRANDI *(edited by)*, *La funzione del contratto collettivo. Salari, produttività, mercato del lavoro*, Adapt university press, Bergamo, 2023, p. 324 ff.; M. ZITO, *Il ruolo del dialogo sociale e della contrattazione collettiva transnazionale nella gestione delle tematiche legate all'ambiente e alla transizione verde*, in *Diritto delle relazioni industriali*, 2022, 3, p. 694 ff.;

[9] M. RUSCIANO, *Contratto collettivo e autonomia sindacale*, UTET, Torino, 2003, p. 114; F. SANTORO-PASSARELLI, *Autonomia collettiva*, in F. SANTORO PASSARELLI, *Saggi di diritto civile,* vol. I, Jovene, Napoli, 1961, p. 263 ff.

exemplified by the emerging collaboration between CGIL and the Fridays for Future movement[10].

## 2. Reconstructive remarks on the right to strikes in the Italian Legal System

For the purposes of this paper, it is necessary to recall the main reconstructive remarks regarding the exercise of the right to strike within the Italian legal system. As is well-known, this right is established in Article 40 of the Constitution[11]. Following an initial phase characterised by profound uncertainties regarding the direct effectiveness of the provision, over time, "judicial supplementation has largely been provided"[12] defining the limits related to the exercise of this right.
The entry into force of the Constitution radically transformed the Italian legal system and the trade union framework, moving beyond the corporatist order of the Fascist period to establish a system based on the principle of trade union freedom. This paradigm shift compelled the Constitutional Court to intervene on certain provisions of the Criminal Code that criminalised strikes. Although these provisions remained in force, they were "completely drained of vitality like an empty shell,"[13] rendering them incompatible with the current constitutional framework. Judicial activity focused on these criminal provisions, particularly regarding the purposes related to strikes[14]. In this regard, the Constitutional Court declared the illegitimacy of Article 502 of the

[10] Since 2022, the CGIL has fully endorsed the demonstrations organized by the collective founded by Greta Thunberg. As of writing, the CGIL has confirmed its participation in the Global Climate Strike on 03/03/2024, inviting «all its structures to ensure maximum participation for the day of mobilization... by joining the demonstrations organized at the local level by the #FFF movement and by immediately organizing moments of reflection on these issues with all the territorial entities involved in climate action».
[11] If the Italian government hasn't made a specific rule about the right to strike, it's different for essential public services. For those, the law no. 146 of 1990 tries to balance the right to strike with other important interests protected by providing these services.
[12] G. PERA, *Sciopero*, *Enciclopedia del Diritto*, Milano, 1989, Vol. 36, p. 705.
[13] P. PASSANITI, *Lo sciopero nella Repubblica fondata sul lavoro. Gli anni '50 di un diritto garantito a metà*, in *Lavoro e Diritto*, 2016, 3, p. 532.
[14] M. RUSCIANO, *Sciopero politico e attività creatrice della Corte costituzionale*, in R. SCOGNAMIGLIO *(edited by)*, *Diritto del lavoro e Corte costituzionale*, ESI, Napoli, 2006, p. 211 ss.; G. PERA, *Sciopero cit*., p. 706.

Criminal Code (which criminalised lockouts[15] and contractual strikes) on the grounds of incompatibility with the principle of trade union freedom[16]. This development dispelled any doubts about the full legitimacy of contractual strikes, which are the typical form of such action, aimed at "exerting pressure on the employer to obtain not only wage improvements but also other working conditions."[17]

However, uncertainties remained concerning the legitimacy of the political strike[18], which aims to advocate for issues beyond the employer's control, such as the adoption of legislative measures by public authorities. The Constitutional Court has significantly contributed to this point, liberating the strike from the "servitude of objectives"[19] and paving the way towards "the defunctionalisation of the strike concerning collective bargaining and the full legitimacy of political bargaining purposes."[20] Full legitimacy, however, should not be confused with civil legality. In the Italian legal system, it is necessary to distinguish between economic-political strikes and "pure" political strikes.

The Constitutional Court addressed the legitimacy of the economic-political strike in judgment no. 123 of 1962. In examining the constitutional legitimacy of Articles 330, 503, and 504 of the Criminal Code, the Court clarified that Article 40 of the Constitution encompasses not only cases of contractual strikes, aimed at advancing claims related to

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[15] It is appropriate to clarify that the lockout is not elevated to a right in our legal system. While the phenomenon of the strike takes on the characteristics of a «privilege for social purposes» (G. PERA, *Serrata e diritto di sciopero*, Giuffrè, Milano, 1969, p. 39), the lockout must be classified under the category of freedoms. Therefore, it must be considered fully lawful in criminal terms and unlawful in civil terms.

[16] See C. Cost., 04/05/1960, n. 29, in Consultaonline.it. The Court, referring to the strike and the lockout, has considered «the positive contrast that results... with the new system evident; a contrast not stemming from a generic lack of harmonious correlation, as frequently occurs between any new, rapidly introduced system, and those norms of the old which its survival still requires; but rather from a specific incompatibility touching upon an essential correlation. On one hand, there is Article 39 of the Constitution, which, expressing a distinctly democratic direction, declares the principle of trade union freedom; on the other hand, there is Article 502 of the Penal Code, a norm conceived and imposed to protect a system that denied that freedom».

[17] F. SANTONI, *Lo sciopero*, Jovene, Napoli, 1999, p. 40.

[18] See G. GIUGNI, *Il diritto sindacale,* (updated by L. BELLARDI, P. CURZIO, M. G. GAROFALO), Cacucci, Bari, 2012, p. 247 ff.

[19] G. GHEZZI, U. ROMAGNOLI, *Il diritto sindacale*, Zanichelli, Bologna, 1991, p. 203.

[20] V. BAVARO, *Lo sciopero e il diritto fra innovazione, tradizione e ragione pratica*, in *Lavoro e Diritto*, 2015, 2, p. 293, which also states that, in this way, «labour can... participate in shaping the country's economic policy through strikes, so that the trade union movement is recognized the macroeconomic role it has always claimed and exercised in practice».

the employment relationship against the employer, but also broader issues of an economic and social nature directed at the legislator, provided that they "concern the complex of interests of workers regulated under Title III, Part One, of the Constitution."[21] Therefore, a strike called to protect these interests is considered fully legitimate, both from a criminal and contractual perspective.

The Constitutional Court deliberated on the "pure" political strike in judgment No. 290 of 1974. In examining the reasoning behind the decision, it is evident that the Court distinguished the constitutional significance of the strike from two perspectives: the first, which considers it as a right; the second, which views it as an expression of a freedom that remains constitutionally protected. According to this approach, the strike is understood as a tool facilitating the participation of trade unions in the effective implementation of the principle of substantive equality. However, the Court clearly differentiates the economic-political strike from the "pure" political strike within the context of contractual responsibility, as the latter cannot be considered entirely overlapping with the notion of a strike-right as per Article 40 of the Constitution. Consequently, while the "pure" political strike is lawful in criminal terms, it constitutes a case of contractual non-compliance against which the employer may impose disciplinary sanctions[22].

[21] See also C. Cost., 15/12/1967, n. 141, in Consultaonline; C. Cost., 09/01/1974, n. 1, cortecostituzionale.it.

[22] See C. Cost., 19/12/1974, n. 290, cortecostituzionale.it, in the part where it states: «Collective abstention from work, if aimed at economic purposes, cannot even be considered a legitimate justifying cause for dismissal or other measures provided by the employment relationship discipline (as affirmed most recently in judgment No. 1 of 1974); but it does not follow that, if aimed at other purposes, such abstention, while retaining all relevance within the scope of the employment relationship discipline, must or at least can always be qualified as a criminal offense». This approach has been contested by some labour law scholars. See F. SANTORO-PASSARELLI, *Sciopero politico e diritto di sciopero*, in *Il Foro italiano*, 1975, 3, p. 551, according to which «once the strike has been elevated to a constitutionally guaranteed right, this right cannot fail to include political strikes, if these are exercises of freedom, indeed if, as the judgment says, is capable of promoting the pursuit of the purposes referred to in the second paragraph of Article 3 of the Constitution... it cannot but be intrinsically contradictory that workers, to pursue these constitutionally established purposes, incur the rigors of the employer's power for abstaining from work»; in this sense also M. RUSCIANO, *Sciopero politico e attività creatrice* cit., p. 218 ff.

## 3. The Legitimacy of Environmental Strikes in the Italian Legal System

Given these premises, one may explore the admissibility of strikes aimed at advocating for more sustainable practices by employers or the adoption of policies considering environmental protection. Since the legitimacy prerequisites of strikes in the Italian legal system are predominantly based on jurisprudence, such an investigation encounters numerous challenges. It must be clarified that the legitimacy of a strike should always be assessed in light of the specific circumstances of each case; consequently, it is essential to refer to several examples.

As previously noted, the proclamation of a strike can be directed either towards the employer or towards public authorities. In the former case, the purposes must be contractual in nature, as the employer cannot fulfill claims reliant on the exercise of legislative or executive power. A preliminary obstacle to the admissibility of a contractual strike aimed at environmental protection might arise from the assertion that, while this concern is a general interest of the community, it does not seem to align with the structure of the employment contract or fall within the scope of typical professional interests[23].

However, many Italian labour law scholars have begun to reconsider the relationship between labour law and environmental issues. Within this scholarly trend, there is a growing willingness to transcend the perceived artificial divide between the "internal work environment" (company/workplace) and the "external environment"[24] (surrounding environment), thereby highlighting the necessity of establishing an integrated protective model[25]. According to this perspective, the detrimental consequences of business production result in harm that does not distinguish between the workplace and the surrounding environment, thus affecting both workers and the wider population. For instance, the case of the ILVA steelworks illustrates this point; its operations release

[23] For some reflections on environmental protection as a professional interest in the Spanish legal system see J. ESCRIBANO GUTIÉRREZ, *The strike as an instrument for environment protection,* in CHACARTEGUI JÀVEGA C. *(edited by)*, *Labour law and ecology*, Aranzadi, Cizur Menor, 2022, p. 224 ff.

[24] R. DEL PUNTA, *op. cit.,* pp. 151 ff.; P. TOMASSETTI, *op. cit.*, p. 169 ff.

[25] P. PASCUCCI, *Modelli organizzativi e tutela dell'ambiente interno ed esterno all'impresa*, in *Lavoro e Diritto*, 2022, 2, p. 343 ff.

carcinogenic agents daily, compromising the health of both the Taranto community and its workers[26].

If a company's production contributes to the pollution of the area in which it operates, it is evident that this also adversely affects the health of employees while they carry out their work duties. One way to acknowledge the legitimacy of a contractual strike for environmental protection may therefore involve orienting the strike towards safeguarding the health of workers, an argument that undoubtedly qualifies as part of their professional interests. Alongside this approach, one might consider invoking the exception outlined in Article 1460 of the Italian Civil Code. This provision allows a contracting party to withhold performance if the other party fails to fulfil its contractual obligations, serving as a typical instance of individual self-protection[27]. The possibility of invoking this exception due to the employer's breach of obligations regarding workplace safety is now well-established in Italian case law[28]. This remedy differs from the legal institution of the strike, which cannot be fully elaborated here; nevertheless, it is worth noting that the exception provided in Article 1460 can also be exercised collectively, despite being an institution with individual entitlement and execution[29]. For these reasons, workers might choose to invoke this exception rather than strike, thereby preserving their right to remuneration[30]. However, in this context,

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[26] For a historical reconstruction S. LAFORGIA, *Se Taranto è l'Italia: il caso ILVA*, in *Lavoro e Diritto*, 2022, 1, p. 29 ff.; For a review on the spread of diseases related to the pollution caused by ILVA in Taranto v. L. SCARANO, *Taranto: malattie professionali, ecologia umana e diritto del lavoro*, in *Variazioni su Temi di Diritto del Lavoro*, 2023, 2, p. 305 ff.

[27] For an analysis of Article 1460 as a tool for protecting the integrity of the external environment see P. TOMASSETTI, *op. cit.*, p. 266.

[28] See Cass., 15/10/2021, n. 28353; Cass., 07/02/2013, n. 2943; Cass., 10/08/2012, n.14375.

[29] About the distinction between strike and collective exercise of the exception provided for in Art. 1460 see A. RICCOBONO, *Profili applicativi degli strumenti di risoluzione alternativa delle controversie: l'autotutela individuale del lavoratore*, in *Rivista italiana di Diritto del Lavoro*, 2010, 1, p. 125 ff.; U. GARGIULO, *Rischio di contagio e rifiuto della prestazione: l'autotutela in tempi di pandemia*, in *Diritto delle relazioni industriali*, 2020, 3, p. 889, according to which «in the event of a sudden abstention of workers refusing to perform, revealing a lack of necessary health protection, the distinction between a (merely) contemporaneous exercise of the non-performance exception and a collective strike action can only be discerned by the detectability of a minimum level of organization of the protest, which presumes prior agreement among the workers, but above all, the collective purpose of the abstention itself»; see also V. FERRANTE, *Sciopero ed eccezione di inadempimento nella disciplina dei servizi pubblici essenziali*, in JUS, 2009, 1, p. 121 ff.

[30] See Cass., 01/04/2015, n.6631, according to which «in the event of the employer's breach of the safety obligation under Article 2087 of the Civil Code, it is legitimate, in

they would need to demonstrate the presence of a serious threat to their health arising from the external environment[31], as well as the employer's breach of safety obligations[32], to invoke the exception under Article 1460.
Another scenario for a contractual strike on environmental grounds could occur following the employer's failure to fulfil any sustainability obligations arising from a collective agreement[33]. As previously mentioned, certain collective agreements incorporate measures to align environmental protection with worker well-being, such as the establishment of the Workers' Representative for Safety, Health, and Environment (RLSSA)[34]. Should the employer neglect these obligations, a strike reacting to such conduct and demanding compliance with the collective agreement would certainly be legitimate.
A third scenario, perhaps more uncertain than those previously mentioned, could arise when a strike is declared to protect the increasingly widespread value of sustainability, particularly concerning the employer's conduct. Although this value does not inherently constitute a professional interest, there are circumstances where it might be regarded as such. Many companies have opted to embed environmental sustainability within their corporate missions; in such instances, aligning production with environmental protection ought to be considered a principal objective. This mission results from a complex amalgamation of factors, including the organisation of work: indeed, even the methods defined by the employer for executing work tasks have a certain environmental impact[35].

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response to the other party's non-performance, for the worker to refuse to perform their own service, while retaining the right to remuneration, as no adverse consequences can arise for them due to the employer's non-compliant conduct».

31 For an analysis on the possible intersections between risks in the "internal" and "external" environments, see K. ARABADJIEVA, P. TOMASSETTI, *Towards workers environmental rights. An analysis of EU labour and environmental law,* ETUI W.P., 2024, pp. 11-14 and 11-22.

32 An undeniable interrelation between environmental protection and the health and safety of workers concerns the risks associated with rising temperatures caused by climate change. See T. Palermo, 03/08/2022; the court, called to decide on an application filed by a delivery rider, ordered the company to provide the worker, during the summer season, with 'a thermal container with potable water sufficient to meet the average daily requirement, as well as mineral salt supplements in the same amount, and adequate sun protection".

33 See P. TOMASSETTI, *op. cit.*, p. 269.

34 The figure of the RLSSA is provided for in the Collective Labour Agreement of the Cement, Gas and water, Electrical Eyewear, Energy, and Oil sectors.

35 However, the well-known practice of greenwashing adopted by many production entities cannot be overlooked. This phenomenon refers to all actions taken by companies, organizations and institutions to create a sustainable public image of their

In this context, two relevant hypotheses for this paper may be identified: on one hand, workers may share the sustainability mission pursued by the company and demand the adoption of more sustainable organisational measures, as they cannot independently determine the methods for carrying out their work tasks; on the other hand, if the employer disregards the environmental impact of company production, workers may have a vested interest in altering such practices towards more sustainable models. In some situations, therefore, workers could hold a tangible professional interest in modifying the manner in which their tasks are executed or the overarching organisation of the company to protect environmental integrity. This interest could be rooted in the employer's previously adopted value of environmental sustainability or motivated by a desire to implement more sustainable practices should the current approach be deemed inadequate.

In these scenarios, the demands made fall squarely within the employer's discretion, who, through their managerial power, determines the organisation of the company and consequently how employees perform their work tasks. In light of these considerations, it is posited that contractual strikes aimed at advocating for the adoption of technical and organisational measures necessary to align more closely with the value of environmental sustainability—or to compel the employer to implement necessary adjustments if the current measures are found wanting—can be considered legitimate.

When addressing an "environmental" strike against public authorities, different factors must be considered. In this scenario, the strike could peacefully constitute a "pure" political strike; however, this would also breach contract. For these reasons, it is pertinent to examine whether the case analysed might represent a hypothesis of an economic-political strike, fully lawful from a civil perspective.

An examination of the positioning of environmental protection within the Italian Constitution reveals a systematic inconsistency that impacts the determination of the legitimising purposes of economic-political strikes. Constitutional Law No. 1 of 2022 revised Article 9 of the Constitution, with the third paragraph establishing the Republic's obligation to safeguard the environment, biodiversity, and ecosystems, not only in the interest of future generations, but also Article 41, whose new formulation positions environmental integrity as a limit to the exercise of economic

activities, which, in reality, proves to be significantly damaging to environmental integrity.

freedom and as a goal to coordinate public and private economic activities. Although environmental protection now finds explicit reference in Title III of the Constitution—namely in the revised Article 41—it appears difficult to argue that this value can inherently connect to the "complex of workers' interests," as it may be understood as a general interest of the community.

Adopting a different perspective, however, it is possible that this value could indirectly take on characteristics of a collective professional interest. The green transition represents a complex transformative phenomenon affecting the current economic-social model and involves multiple productive sectors. As noted in Italian doctrine, the implementation of the twin transition "will involve massive shifts of material resources and workers from sectors and companies compelled to restructure and reduce staff, towards sectors and companies with growth opportunities in the context of the new economy,"[36] and thus, the legislator cannot overlook the profound social repercussions of this phenomenon. It is within this context that the paradigm of the Just Transition emerges, aimed at achieving an ecological transition that does not exacerbate existing inequalities and considers the social impact of the necessary measures for its execution. Moreover, implementing a Just Transition necessitates the incorporation of social equity concerns into transition policies, which must strive to create an economic model that embraces environmental sustainability while also safeguarding the protection and dignity of workers.

This approach is substantiated by considering Articles 3, 4, 9, and 41, paragraphs 2 and 3 of the Italian Constitution in conjunction. The combined provisions of these norms require the Italian Republic to establish a system balancing the exercise of economic initiative freedom with environmental protection while concurrently addressing the associated social implications, such as the safeguarding of workers' rights[37]. Consequently, the Constitution compels the legislator to formulate labour laws that integrate environmental issues[38] without undermining the fundamental purpose of mitigating the imbalance of contractual power between employers and employees.

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[36] T. TREU, *Il lavoro flessibile nelle transizioni ecologica e digitale*, in *Working papers C.S.D.L.E. «M. D'Antona»*, 2023, 465, p. 6.

[37] M. CECCHETTI, *La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione*, in *Istituzioni del federalismo,* 2022, 4, p. 815.

[38] See B. CARUSO, R. DEL PUNTA, T. TREU, *op. cit.*, p. 15.

In this context, a strike aimed at advocating for the implementation of a Just Transition does not appear inconsistent with the typical purposes of such rights, which, when understood in their economic-political form, are intended "to exert pressure on public authorities in order to obtain legislative measures of a social character."[39] Therefore, workers are justified in striking to call for a package of measures that, on one hand, accelerates the ecological transition of the economy, and on the other hand, considers the corresponding social impacts through the adoption of specific measures to manage, for example, occupational transitions. Such aims, relating to the general conditions of workers involved in an economic-social transformation process, possess the characteristics of a collective professional interest[40] and should therefore be regarded as fitting squarely within the framework of Article 40 of the Constitution as an economic-political strike, making it fully lawful at the contractual level. This approach also highlights the "political" function of trade unions. It is important not to overlook the established Italian institutional practice, which views the trade union as a constant "interlocutor of public power"[41] and acknowledges it as a "constituent part of civil society."[42] It is through this perspective that some scholars propose to interpret the phenomenon of political strikes as "a tool that fits well among the democratic freedoms recognised by the pluralistic system, within which the institutional participation of the trade union and workers in supporting the legislative and governmental action of the state is fully recognised."[43]

These considerations also apply to strikes in essential public services, where Law No. 146 of 1990 imposes limitations to ensure a fair balance with certain constitutionally relevant personal rights. However, the general rules concerning notice and limitation of strike duration are subject to exceptions under Article 2, paragraph 7, of Law No. 146 of 1990, specifically when the strike is called "to defend the constitutional order or in protest against serious events harmful to the safety and well-being of

[39] F. SANTONI, *Lo sciopero cit.*, p. 44.

[40] See V. SIMI, *Categoria professionale*, in *Enciclopedia del Diritto*, Vol. VI, Giuffrè, Milano, 1960, p. 516; in his opinion, «...it seems that there could well be recognized a collective interest...in obtaining a legislative or administrative measure or in opposing it if harmful to that common interest...».

[41] G. GHEZZI, U. ROMAGNOLI, *op. cit.*, p. 218.

[42] F. SANTORO-PASSARELLI, *Autonomia collettiva cit.*, p. 156.

[43] F. SANTONI, *La metamorfosi dello sciopero politico nella società pluralistica*, in *Diritto delle relazioni industriali*, 2013, 2, p. 451. About political dimension of trade union freedom see U. PROSPERETTI, *Libertà sindacale (premesse generali)*, in *Enciclopedia del Diritto*, Vol. XXIV, Giuffrè, Milano, 1974, p. 498 ff.

workers." For several reasons, these exceptions do not appear applicable to a strike aimed at environmental protection. Firstly, the exceptional nature of the provision does not permit a broad interpretation, as mandated by the Constitutional Court, and must be interpreted strictly[44]. Secondly, the purposes indicated by Article 2, paragraph 7, concern events characterised by such urgency as to necessitate an immediate response from workers, rendering the requirement for notice an impediment that could compromise the effectiveness of the strike. Specifically, the second exception provided by the provision applies in cases where the strike is called to respond to events characterised by such gravity[45] that they constitute an injury or concrete harm to the physical and mental integrity of workers[46]. Lower court case law and decisions of the Guarantor Commission interpret the provision quite stringently, asserting that trade unions cannot simply invoke a generic threat to workers' health but must demonstrate the actual occurrence of a specific harmful factor[47]. While the progression of climate change represents a serious threat to the survival of our species, this phenomenon does not presently seem capable of constituting a specific health risk event for workers requiring an immediate reaction. These considerations are corroborated by a judgement of the Rome Tribunal—later upheld on appeal—concerning a strike called in response to the Government's decision not to close non-essential offices during the initial phase of the pandemic, thus exposing workers to the risk of contagion. The tribunal upheld the Guarantor Commission's decision[48] concerning the impossibility of applying the exception because the strike had been called with reference to a general state of danger resulting from the pandemic and not to a concrete and

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[44] See C. Cost., 10/06/1993, n. 276; see also F. SANTONI, *La metamorfosi dello sciopero politico nella società pluralistica* cit., p. 450; G. SANTORO-PASSARELLI, *Vecchi e nuovi problemi in materia di sciopero nei servizi pubblici essenziali*, in *Rivista italiana di Diritto del Lavoro*, 1999, 2, p. 43.

[45] T. Roma, 05/11/2020, n. 7237. The court ruled that «...The harmful event to the safety and well-being of workers is serious when it materializes in an event of damage or concrete danger to the physical integrity and life of workers, in the sense that, due to the particular circumstances of fact and time, it translates concretely into an actual endangerment (with consequent probability of injury) of said legal assets; not when an event is only, by virtue of its existence, abstractly potentially injurious to the protected interest of the norm».

[46] C. Appello Roma, 02/08/2023, n. 2856.

[47] C. Appello Roma, 02/08/ 2023, n. 2856; T. Roma, 05/11/2020, n. 7237; C. di Stato, 19/01/2007, n. 108; Decisions of the Guarantee Commission on Strikes in Essential Public Services n. 183 of 21/02/2005, n. 1169 of 15/10/2021, n. 606 of 30/09/2009.

[48] Decision of the Guarantee Commission on Strikes in Essential Public Services 20/129.

specific harmful incident[49]. In theory, the second exception of Article 2, paragraph 7, Law No. 146/1990 could be invoked for an "environmental" strike in essential public services only in very rare situations where the environmental crisis assumes the characteristics of a tangible source of danger; that is to say, only if pollution were proven to have severe repercussions on the physical and mental integrity of the affected workers, such as in the event of an environmental disaster releasing highly toxic agents at the location where workers perform their tasks.

## 4. Suggestions for a Green Reinterpretation of the Strike Execution Phase

In light of the reflections presented in this paper, the inquiry has been made into the possibility of including environmental protection among the objectives safeguarded by the right to strike. For the sake of argumentative completeness, it is crucial to investigate whether the value of environmental protection also finds relevance in the execution phase of the strike, irrespective of the purposes for which it is proclaimed.

In the Italian legal system, it is important to distinguish the execution phase of the strike. While Law No. 146/1990 introduces a series of constraints in relation to essential public services, a legal vacuum persists in other contexts, necessitating jurisprudence to identify—by reference to constitutional norms—the specific constraints pertinent to the execution phase of the strike.

Having moved beyond an initial phase that sought to define its limits within the theory of "unjust harm,"[50] the Court of Cassation initiated a significant shift in direction with judgment No. 711 of 1980. This decision posits that the limits of the right to strike are to be found in the "external limits," referring to "concurrent subjective positions, on a prioritised or at least equal footing"[51] with the right to strike, such as the right to life, personal safety, and the freedom of economic initiative[52]. These

[49] T. Roma, 5/11/2020, n. 7237, upheld on C. Appello di Roma, 02/08/2023, n. 2856.

[50] F. BORGOGELLI, *Sciopero e modelli giuridici*, Giappichelli, Torino, 1998, p. 45 ff.

[51] Cass., 30 gennaio 1980, n. 711. About this topic see G. PERA, *Serrata e diritto di sciopero cit.,* p. 102; O. ROSELLI, *Sub art. 40*, in R. BIFULCO, A. CELOTTO, M. OLIVETTI *(edited by)*, *Commentario alla Costituzione*, UTET, Torino, 2006, p. 835 ff.

[52] With regard to the freedom of economic initiative as a limit to the exercise of the right to strike, the Supreme Court has established the legitimacy of damage to production (consisting of the lower economic outcome achieved by the employer), and conversely, the illegitimacy of abstention from work that generates damage to productivity, namely when the enterprise "as an institutional organization" is compromised. Such a situation

considerations are widely accepted and pertain to the application of every right recognised within the Italian legal system. In ruling on the legitimacy of the first of the "Salva Ilva" decrees, the Constitutional Court excluded the possibility of establishing a hierarchy among constitutional principles, asserting that "all fundamental rights protected by the Constitution are in a relationship of mutual integration, and it is therefore not possible to identify one of them as having absolute precedence over the others"[53]. Consequently, it follows that "protection must always be systemic and not fragmented into a series of uncoordinated norms potentially in conflict with each other... Otherwise, one of the rights could expand limitlessly, becoming a "tyrant" over other constitutionally recognised and protected legal situations, which together constitute an expression of human dignity."[54] Given this perspective, it is pertinent to consider whether the right to strike should also be exercised with regard to the value of environmental protection, which was elevated to a fundamental principle of the Italian legal system by Constitutional Law No. 1 of 2022.

The need to adopt a balanced approach to the plurality of constitutional rights suggests, at least in theory, the integration of environmental protection into the execution phase of the right to strike. The range of legal positions concurrent with the right to strike identified in judgment No. 711/1980 cannot be seen as exhaustive; instead, adherence to this interpretative stance requires a case-by-case evaluation of the potential repercussions of the strike on other constitutional rights that pertain to the specific situation. There may, albeit infrequently, be scenarios in which the execution of a strike can cause significant harm to the environment. For instance, consider the strike by ASIDEP workers in Avellino, a company operating in the water purification sector. This strike, proclaimed for purely professional reasons, resulted in a total and prolonged shutdown of water purification activities for several weeks. The failure to implement measures to mitigate the effects of the strike posed a grave risk of environmental disaster due to the lack of filtration in the plant's water purification process[55].

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arises, for example, in the case of the destruction of productive facilities used in the company.

[53] C. Cost., 9/05/2013, n. 85.

[54] C. Cost., 9/05/2013, n. 85.

[55] Some local newspapers have reported this news. Vertenza Asidep, +Europa Avellino: "Diritto al lavoro e alla tutela dell'ambiente negati" (avellinotoday.it); https://www.corriereirpinia.it/asidep-lo-sciopero-ad-oltranza-la-depurazione-a-rischio-e-la-vertenza-che-si-inasprisce/;.

It is certainly untenable to impose upon striking workers, based solely on constitutional norms, the obligation to ensure total environmental neutrality during their strike. Nonetheless, the external limit represented by the constitutional value of environmental protection—alongside the right to health as enshrined in Article 32 of the Constitution—may be deemed violated if the execution of the strike results in irreparable harm to the integrity of the surrounding environment. In situations involving continuous cycle plants and strikes that could potentially inflict serious damage to environmental integrity, it may be crucial to agree upon specific measures, including designating a group of workers responsible for mitigating the possible adverse repercussions of the strike on the external environment.

However, the primary challenge of this approach lies in the uncertain delineation of the boundaries within which the right to strike, in relation to environmental protection, can be exercised. This uncertainty stems from the lack of clarity about the precise notion of the environment as articulated in the Italian Constitution, and consequently, its minimum content that must be deemed inviolable when balancing it against other values[56]. The search for this point of "mobile equilibrium" can only be entrusted to case-by-case evaluations that take into account the specific peculiarities of the circumstances at hand.

## 5. Conclusions: The Indispensable Role of Social Dialogue in Implementing a Just Transition

The investigation conducted demonstrates the limited capacity of the right to strike, as established in the Italian legal system, to adapt to the surge of environmental mobilisations which, as noted in the introductory paragraph, sometimes appear to converge with trade union disputes. The right to strike could only be legitimately exercised as a means of exerting pressure on employers or public authorities to align with the paradigm of sustainable development in certain instances. The prevailing jurisprudential interpretation remains tethered to a predominantly economic-professional conception of the strike. While purely political strikes are recognised as an exercise of constitutional freedom, they are often construed as breaches of contract. The challenges to reinterpreting the right to strike from an environmental perspective appear

[56] M. CARTABIA, *I principi di ragionevolezza e proporzionalità nella giurisprudenza costituzionale italiana*, in cortecostituzuonale.it, 12/11/2013, p. 11; A. MORRONE, *Bilanciamento (giust. Cost.)*, in *Enciclopedia del Diritto*, vol. II, Giuffrè, Milano, 2008, p. 195 ff.

surmountable only in cases where the value of environmental protection is embraced as a corollary to the typically professional objectives claimed by workers.

Rethink the regulation on strikes to support the fight against climate change requires initiating reflections on the constituent elements of the right to strike, the role it occupies within the legal framework, and the responsibilities that social partners are called upon to fulfil in the current context. The history of collective autonomy in the Italian legal system attests to the gradual attribution of functions with a general interest to trade unions, as exemplified by concertation—whereby social partners "contribute to shaping the country's political direction."[57] The enrichment of trade union functions has followed an expansive interpretation of Article 39, paragraph 1, of the Constitution, which reveals the freedom to determine the scope of trade union action and the legal interests to be safeguarded through collective bargaining. However, the expansion of prerogatives[58] pertaining to the right to strike has not progressed in tandem with the institutionalisation of trade unions, lagging substantially behind[59]. This discordance becomes evident when considering the earlier observations: if it is possible to regulate the relationship between the signatories of collective agreements or employment contracts concerning the general interests of the community through collective bargaining[60], it is

[57] B. G. MATTARELLA, *Il ruolo di interesse pubblico del sindacato italiano*, in *Rivista delle Politiche Sociali*, 2008, 4, p. 177. On this topic see also. F. SANTORO-PASSARELLI, *L' evoluzione del sindacato cit.*, p. 156, which considered the trade unions' action as a concurrent factor in achieving the common good, albeit not having a public nature.; M. RUSCIANO, *Contratto collettivo e autonomia sindacale* cit., p. 247 ff., which highlights the progressive elevation of trade union actors in the Italian legal system to institutional subjects, involved in the management of general interests.

[58] See F. SCARPELLI, *La libertà sindacale*, in C. ZOLI *(a cura di), Le fonti. Il diritto sindacale*, UTET, Torino, 2007, p. 98; M. TIRABOSCHI, *Sulla funzione (e sull'avvenire) del contratto collettivo di lavoro*, in *Diritto delle relazioni industriali*, 2022, 3, p. 789 ff., considering the collective agreement as a "legal institution" highlights that «the systematic study of legal reality indicates, on the other hand, how the collective agreement expresses multifaceted economic and social functions, which are those assigned by the signing parties to each specific case» (p. 814).

[59] F. SANTORO-PASSARELLI, *Autonomia collettiva, giurisdizione, diritto di sciopero*, in F. SANTORO PASSARELLI, *Saggi di diritto civile,* vol. I, Jovene, Napoli, 1961, p. 200.

[60] The complexity of the topic does not allow for adequate treatment in this context. Among the various cases in which the typical function of the collective agreement has been enriched with additional purposes, characteristic of political interest, one might consider the phase of "functionalization of collective bargaining for economic policy objectives" initiated in the second half of the 1970s. See M. RUSCIANO, *Contratto collettivo e autonomia sindacale cit.*, p. 162.

not entirely lawful to extend the notion of collective professional interest to encompass the proclamation of a strike. Moreover, this incongruity appears to contradict the complementary relationship articulated by the Constitutional Court between the principle of trade union freedom and the right to strike, which underscores the "full affirmation of trade union action"[61] and the freedom of collective autonomy[62].

At this juncture, two primary pathways may be pursued in future discussions regarding the subject matter of this paper.

The first would involve a comprehensive reconsideration of the "environmental" strike to fully incorporate it within the ambit of Article 40 of the Constitution[63]. Within the current constitutional framework, the value of environmental sustainability constitutes a general interest of the community that both restricts the exercise of economic initiative (Article 41, paragraph 2 of the Constitution) and serves as a focus for coordinating public and private economies (Article 41, paragraph 3 of the Constitution). Essentially, Constitutional Law No. 1 of 2022 has connected the general interest of environmental protection to the array of economic and professional interests regulated by Title III of the Constitution, aiming to forge a virtuous link. The revitalised framework of the "Economic Constitution" could catalyse future interpretative developments, supporting the full legitimacy of strikes proclaimed to safeguard the environment and integrating the interplay of professional interests and environmental protection underscored in the constitutional text into the practice of collective conflict. Furthermore, through this approach, the right to strike could acknowledge the interdependence of environmental and social crises, serving as a supplementary tool to address climate justice demands[64].

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[61] C. Cost., 04/05/1960, n. 29.

[62] F. SANTORO-PASSARELLI, *Autonomia collettiva, giurisdizione, diritto di sciopero cit.*, p. 261, according to which «the legal system recognizes to intermediate social groups the power to regulate their own interests, in the same way it recognizes it to individual individuals... The legal system leaves to groups, as to individuals, to freely define and satisfy their interests, limiting itself to providing individuals and groups, where it deems it appropriate, with the most suitable tools for the realization of their interests».

[63] J. ESCRIBANO GUTIÉRREZ, *op. cit.*, p. 250, according to which «it is necessary to make an interpretive effort with concepts such as professional interest, to enable the extension of traditional instruments of collective action to the reality of environmental protection, which was not thought of when they were first recognized by our respective legal systems».

[64] The climate crisis is unequal both in its source and its effects. With respect to the first characteristic, in fact, some studies have highlighted how overall pollution is not evenly caused by everyone but by the few who hold the majority of wealth (see OXFAM,

The second alternative is to acquiesce to the prevailing interpretation of the legitimate purposes of the right to strike. However, this option does not necessitate that trade unions sacrifice their commitment to other general interests that, due to their transversality, affect the working class. In this regard, the EU Council Recommendation on strengthening social dialogue within the EU urges Member States to create conditions conducive to promoting social dialogue concerning the green transition, with the aim of ensuring its genuine fairness[65]. This approach reaffirms what has already been established by the Recommendation on ensuring a fair transition towards climate neutrality, which advocates for the structural inclusion of trade unions in shaping transition policies[66]. Social dialogue must therefore be understood as an essential tool for ensuring the social equity of this transformative process, which, as previously mentioned, will extensively impact the labour market. Trade unions will be called upon to fulfil their historical role as the custodians of workers' professional interests, particularly in the face of a transformative process that is necessary to halt the environmental crisis before it is too late[67].

*Confronting carbon inequality*, 2020, which states that the richest 10% of the global population is responsible for 52% of carbon dioxide emissions over the past 25 years; A. PORCIELLO, *Filosofia dell'ambiente. Ontologia, etica, diritto*, Carocci, Roma, 2022, p. 123 ff.). With respect to the second characteristic, however, other studies focus on the repercussions of the phenomenon, whose effects are more severe for less developed countries (see M. BARBERA, *op. cit.,* p. 345 ff.): an example confirming this is the environmental disaster caused by the trade in used clothing, which has affected Ghana, becoming one of the world's largest open-air landfills. See https://www.africarivista.it/i-nostri-vestiti-usati-inquinano-il-ghana/203579/.

[65] See the article 1, letter d).

[66] The structural involvement of social partners is clearly evident from objective 2) of the recommendation as well as from Articles 4, 5, letter b), 8, letter c), 9, letters c), d), and e).

[67] About this topic see P. TOMASSETTI, *op. cit*., p. 247 ff.; E. LEONARDI, *La giusta transizione tra questione sociale e questione ambientale: il potenziale ecologico delle mobilitazioni operaie*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 1-2, p. 99 ff.

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