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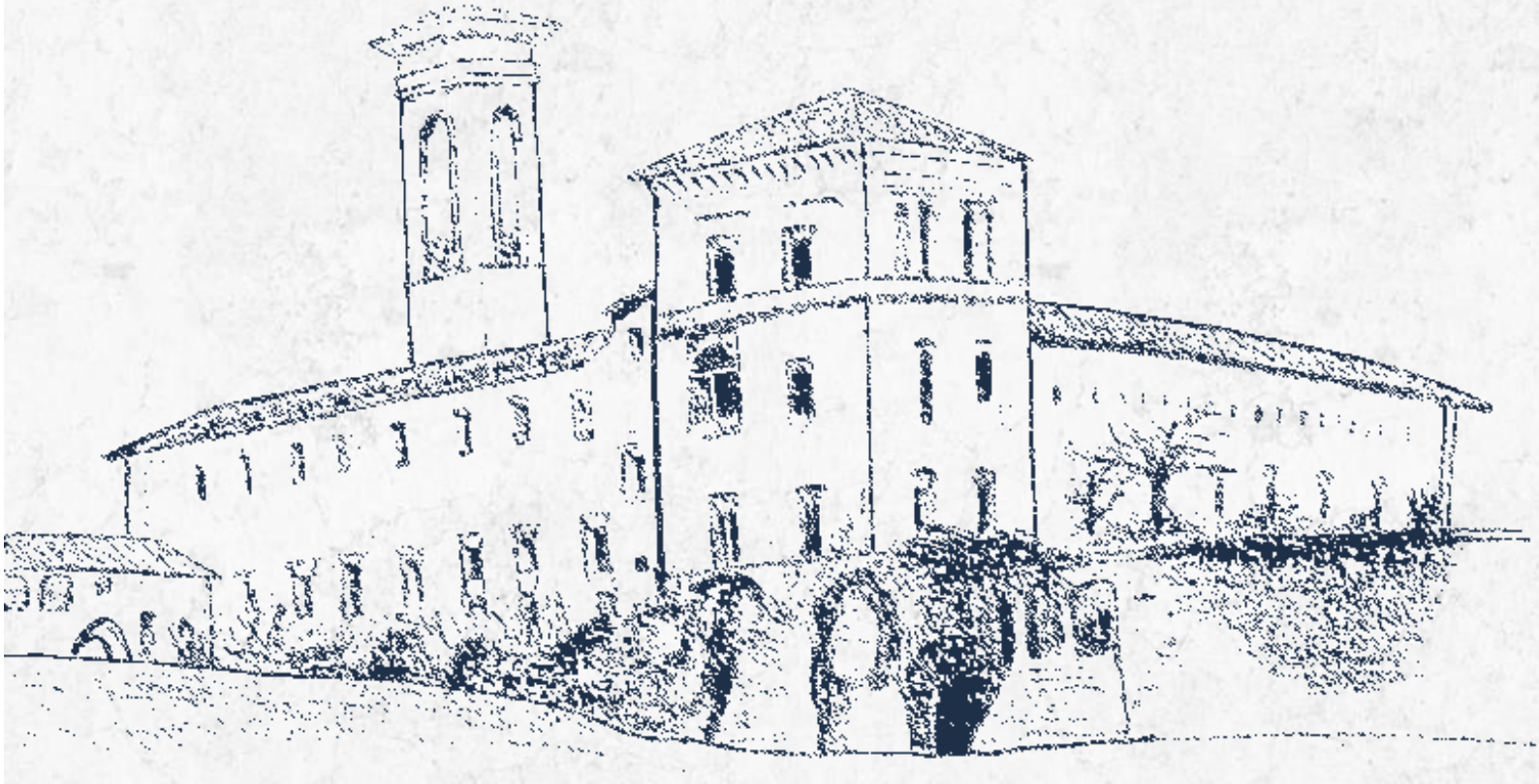

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The Right to Professional and Vocational Training: Between Individual and Collective Agreements

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Abstract. Since the beginning of this century, the European Union's approach – aimed at increasing labour market flexibility in terms of employment – was intended to be accompanied by a strengthening of social security policies. This approach has gradually led to a growing recognition of the role of vocational training in enhancing workers' employability. However, training is not necessarily positioned clearly between the right to education and, more broadly, the right to work and the duty to maintain professional competence. In Italy, unless expressly provided for by statute or collective bargaining, this duty still lacks a fully binding legal character and effective justiciability. This paper aims to examine the role of training within both individual and collective labour agreements, exploring the extent to which it may constitute a genuine subjective right.

Keywords: *Right to Vocational Training; Transitional Labour Markets; Collective Bargaining; Employment Contract.*

1. Training and Law: Introduction

In Italian legal scholarship, attempts to classify vocational training within the broader category of perfect subjective rights have given rise to a range of theoretical positions. While these theories differ in their reasoning and

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conclusions, they share a common tendency to link vocational training to the right to work. The identification of the constitutional foundation of the right to training in Articles 4 and 35 of the Italian Constitution has made it possible to define its significance for the full development of the individual through work[1].

Vocational training is thus understood as both an instrument of active labour policy and a service of public interest, the promotion of which is entrusted to the implementation of the programmatic (rather than mandatory) provisions of Article 35 of the Constitution – provisions that are "unsuitable to establish a subjective right in favour of the worker during the course of the employment relationship"[2]. As a result, "legal scholarship […] has generally overlooked the relevance of the constitutional recognition that the right to vocational training could also hold within the framework of the employment relationship".

The distinction between training provided within the employment relationship and that delivered within the wider labour market is only one of several analytical perspectives through which the issue may be examined. In particular, with regard to the relationship between training and active labour market policies, the recognition of a right to training has only been made possible by "rejecting interpretations of Article 4 of the Constitution that deny any binding force to the constitutional norm, and by emphasising the tasks entrusted by law to the decentralised public

[1] In this sense, it is an effective summary that "lifelong training enables the young to enter the labour market, the employed to remain in it, enhancing their professionalism and competitiveness, and the unemployed to re-enter it" (D. GAROFALO, *Formazione e lavoro tra diritto e contratto. L'occupabilità*, Cacucci, 2004, p. 324). Professional training is therefore linked to the concept of "employability," which evokes the constitutional aim of maximum employment. On the vagueness of the Anglo-Saxon term, v. M. BARBERA, *Dopo Amsterdam. I nuovi confini del diritto sociale comunitario*, Promodis, 2000, p. 147. On this point, reference is made to the consideration that "professionalism is a good deserving the interest of both parties to the employment contract: the worker and the employer" (M. BROLLO, *Tecnologie digitali e nuove professionalità*, in *DRI*, 2019, 2, p. 476). See also C. LAZZARI, *La tutela della dignità professionale del lavoratore*, in *DLRI*, 2017, 156, p. 668 ss.

[2] C. ALESSI, *Professionalità e contratto di lavoro*, Giuffrè, 2004, p. 8. In particular, the author highlights that the limited development of training is also attributable to its widespread perception as a public interest service or a tool of active labour market policy, rather than as a functionally integral component of the employment relationship – at least until the enactment of Law No. 53/2000. This legislation, by introducing the right to training leave, marked a turning point by recognising the existence of a "right to training" even beyond contracts explicitly aimed at training purposes.

employment services"[3]. This perspective affirms the existence of a duty of action on the part of the public administration and its corresponding liability in cases of non-compliance with the obligations associated with fulfilling that right. Among these obligations, vocational training undoubtedly plays a central role[4]: although it may not directly serve a "right to job placement"[5], it is nonetheless essential for facilitating access to the labour market[6], based on the implicit assumption that "in order to provide employment, training must first be provided"[7].

From this standpoint, the right to training – as an essential expression of the social right to work – takes on the character of a social right, aimed at ensuring the inclusion of the worker[8]. However, despite recognition of the

[3] M. RUSCIANO, *Il lavoro come diritto: servizi per l'impiego e decentramento amministrativo*, in *RGL*, 1999, 3 (suppl.), p. 37. See also D. GAROFALO, *Lo* status *di disoccupazione tra legislazione statale e provvedimenti regionali*, in *DRI*, 2006, 3, p. 645.

[4] In the proposed reconstruction, the connection – or at least the area of overlap – between education and vocational training is evident. Even the legislator has pursued this alignment by introducing initiatives such as school-work alternation programmes and the ITS Academy, thereby seeking to bring the world of education closer to that of work (in the previous system, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 310). On this point, see S. CIUCCIOVINO, *La formazione continua nel settore metalmeccanico: dal diritto soggettivo alla formazione al sistema dell'apprendimento permanente*, in T. TREU (ed. by), *Commentario al contratto collettivo dei metalmeccanici*, Giappichelli, 2022, p. 83 ss.

[5] M. RUSCIANO, *Il lavoro come diritto: servizi per l'impiego e decentramento amministrativo*, cit., p. 37.

[6] In this regard, it is evident that if a causal link could be established between the non-fulfilment of obligations derived from the essential levels of service provision and the failure to secure employment, "the right to work would no longer have as its (intangible) counterpart the State-legislator; rather, it could be asserted more concretely against the State-administrator" (M. RUSCIANO, *Il lavoro come diritto: servizi per l'impiego e decentramento amministrativo*, cit., p. 40).

[7] E. GHERA, *Intervento*, in AA. VV., *Formazione e mercato del lavoro in Italia e in Europa*, Atti del XV Congresso Nazionale di Diritto del lavoro – S. Margherita di Pula (CA) 1-3 giugno 2006, Giuffrè, 2007, p. 319.

[8] In this sense, the worker's socio-labour inclusion would be facilitated by an approach aimed at enhancing their "social capital", as framed within what has been referred to in the literature as the "capabilities approach". This refers to "the set of relational resources available to an individual, combined with their ability to utilise them effectively", and thus constitutes "a synthesis of the material and immaterial aspects of the relationship between the individual and their context" (A. GARILLI, *Le trasformazioni del diritto del lavoro tra ragioni dell'economia e dignità della persona*, in *W.P. C.S.D.L.E. "Massimo D'Antona" .IT*, 2020, 412, p. 5). For an analysis of the theory, see B. CARUSO, *Occupabilità, formazione e "capability" nei modelli giuridici di regolazione dei mercati del lavoro*, in AA. VV., *Formazione e mercato del lavoro in Italia e in Europa*, cit., p. 89 ss.; R. DEL PUNTA, *Labour Law and the Capability Approach*, in *IJCLLIR*, 2016, 32, p. 383 ss. (also by the same author, see lastly *Valori del diritto del lavoro e economia di mercato*, in *W.P. C.S.D.L.E. "Massimo D'Antona" .IT*,

need for proactive state intervention[9], this has not been matched by effective measures to guarantee the provision of adequate training opportunities. As has been noted, "the public system operating in the labour market has completely abdicated its role in favour of the private sector: it has done so specifically […] with regard to vocational training as well"[10]. Consequently, "it is therefore unsurprising that we are witnessing an intensification of that phenomenon […] whereby employability is increasingly oriented toward satisfying the needs of the labour market rather than the needs of the individual"[11].

An example of this market-oriented approach can be observed in the vocational retraining mechanisms activated during transitional phases following employment crises. One need only consider the scenarios during periods of wage supplementation (*Cassa Integrazione*) or collective redundancies, which offer a comprehensive picture of the prevailing approach to in-employment training. In such cases, remedial action is taken only after the employment situation has deteriorated, and with the sole objective of mitigating the effects of the crisis.

By contrast, far less attention is paid to the maintenance of professional skills – both as an organisational tool and a preventive measure. In the specific context of training under the employment contract, it becomes necessary to distinguish between general and specific training[12], continuing

2019, 395); M. C. NUSSBAUM, *Creare capacità. Liberarsi dalla dittatura del Pil*, Il Mulino, 2014, p. 177 ss.; A. SEN, *L'idea di giustizia*, Mondadori, 2009, p. 240 ss.

[9] "Obliged to provide the citizen not with the job, but, indeed, with every instrumental activity – such as training, information, and guidance – necessary for the fruitful search for a job" (M. RUSCIANO, *Il lavoro come diritto: servizi per l'impiego e decentramento amministrativo*, cit., p. 40).

[10] D. GAROFALO, *Il ruolo degli attori della formazione professionale*, in AA. VV., *Formazione e mercato del lavoro in Italia e in Europa*, cit., p. 270. Three decades have passed since the initial reflections were proposed, yet legal and policy choices have not shifted direction. This is evidenced by the persistent territorial fragmentation of training provision, which has hindered the realisation of a coherent lifelong learning framework. A concrete step towards the re-centralisation of competences – consistent with the approach adopted since the establishment of the now-defunct ANPAL under Legislative Decree No. 150/2015 – can be observed in the management of the *Fondo Nuove Competenze*, introduced by Decree-Law No. 34/2020 (converted into Law No. 77/2020), and implemented through Ministerial Decrees of 9 October 2020 and 22 January 2021.

[11] Cfr. D. GAROFALO, *Il ruolo degli attori della formazione professionale*, cit., p. 270.

[12] In other words, it is necessary to distinguish between "concrete know-how" (a static notion) and "potential professional capability" (the ability to perform a task), thereby delineating a form of professionalism that is "specific – possessed by the worker and applied in the performance of their duties" – and another that is "generic, by virtue of which the worker is able to acquire new skills through participation in vocational

and lifelong training[13], and between training provided as part of the ordinary course of employment and that provided in response to crisis situations[14]. Most importantly, it must be clarified whether the obligation to provide or to undertake training lies with the employer or with the employee[15].

retraining programmes" (D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., pp. 346-347).

[13] The latter can be considered to pertain to a sphere that goes beyond the individual's professional capacity - although it encompasses it - as a broader element of personal fulfilment; whereas the former, "even if not specifically linked to the contingent needs of the individual company arising from technological or organisational innovations, nevertheless responds to needs defined according to the sector in which the company operates and the role performed by the worker" (S. D'AGOSTINO, S. VACCARO, *Nuove tutele per i lavoratori: il diritto soggettivo alla formazione. Francia e Italia a confronto*, in *PS*, 2020, 2, p. 154).

[14] The shift in paradigm regarding the role of training within the employment relationship is evident when considering the growing attention to transitional labour market theory (see L. CASANO, *Contributo all'analisi giuridica dei mercati transizionali del lavoro*, ADAPT University Press, 2020; S. CIUCCIOVINO, D. GAROFALO, A. SARTORI, M. TIRABOSCHI, A. TROJSI, L. ZOPPOLI (ed. by), *Flexicurity e mercati transizionali del lavoro*, ADAPT University Press, 2021), which highlights a "plastic" (M. BROLLO, *Tecnologie digitali e nuove professionalità*, cit., p. 478) conception of professionalism, to be understood as the valorisation of the ability to adapt to rapid changes in the labour market. The traditional view that considered training as merely a preliminary element to the establishment of the employment relationship - aimed at building a theoretical and practical skill set, to be included in the CV and thereby increase hiring chances - and relegated training during employment to periods of company crisis or substantial changes in the employment relationship, is thus progressively giving way to an approach that regards training as a "physiological" element, even for those already employed.

[15] With regard to this issue, in the case of a change of duties, there is no doubt that the obligation to provide training lies with the employer, in accordance with the literal wording of the law. Indeed, the law excludes the nullity of the reassignment act due to non-compliance with the training obligation, making clear reference to the employer's position. In other cases, since at the time of hiring the employee declares to possess the professional qualifications necessary to perform the assigned tasks, it is evident that any inadequacy or substandard performance constitutes a contractual breach. However, when training becomes necessary due to professional obsolescence, it is preferable to adopt the interpretation according to which the obligation to provide such training still rests with the employer. Furthermore, training may be considered a form of reasonable accommodation in cases of supervening physical or psychological unfitness for the performance of duties. Ultimately, it has been argued that, where the employer fails to fulfil the training obligation—even in cases where the ius variandi is lawfully exercised—the employee may resign with just cause. On this point, it can be reasonably concluded that, "although the assignment to specific duties cannot be deemed null and void solely due to the employer's failure to provide the required training, it is nonetheless arguable that the employee may, on the one hand, legitimately refuse to perform the assigned

All these facets of the concept of training influence not only the existence of a training obligation but also the consequences that arise from a hypothetical failure to fulfil it. This includes the applicability of compensatory remedies in cases of non-performance, whether by the employer or by the employee. The analysis presented in this paper is grounded in the Italian legal framework and the most widely recognised doctrinal positions. It offers a reflection that ranges from the implications at the level of individual employment contracts to the provisions of collective bargaining agreements, particularly those emerging from recent rounds of negotiations, in which a true and binding training obligation has been identified and shaped through contractual means.

2. The Training Obligation in the Individual Employment Relationship

A preliminary issue in defining the role of training within the employment contract concerns whether it may be considered one of the contract's elements – potentially elevating it to part of the "synallagma"[16] and

tasks without incurring disciplinary liability; and, on the other hand, cannot be held liable for any damage caused to the organisation, to third parties, or to themselves, as a result of the lack of training and the consequent failure to maintain the necessary professional standards of diligence. Moreover, it cannot be excluded that the employee may bring legal action against the employer in order to obtain a judicial assessment of the employer's failure to fulfil its duty to provide the required training" (D. GAROFALO, voce *Formazione nel contratto di lavoro*, in R. DEL PUNTA, R. ROMEI, F. SCARPELLI (dir. by), *Contratto di lavoro*, in *Enc. dir.*, Tematici, VI, Giuffrè, 2023, p. 675). Nonetheless, all of the above scenarios share a common critical aspect: the employee, when faced with a violated right, is left with a mere palliative remedy—in the worst-case scenario, the bitter option of 'choosing to become unemployed'.

[16] This consideration does not apply to training-oriented employment contracts, in which the mixed nature of the relationship is well established. In such contracts, the specific nature of the *synallagma* lies in the employer's counter-performance, which consists of a combination of training and remuneration. This dual function justifies a proportional reduction in the amount of the latter. On this point, see in greater detail D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 342 ss., and the further bibliography cited therein; cf. V. FILÌ, *Il contratto di formazione e lavoro*, in C. CESTER (ed. by), *Il rapporto di lavoro subordinato: costituzione e svolgimento*, in F. CARINCI (dir. by), *Diritto del lavoro. Commentario*, UTET, 2007, p. 1914 ss.; D. GAROFALO, voce *Contratto di inserimento*, in *DDPComm.*, Torino, UTET, 2009; G. LOY, voce *Apprendistato*, in *DDPComm.*, UTET, 1987; ID., *Formazione e rapporto di lavoro*, Milano, Giuffrè, 1988; ID., voce *Contratto di formazione e lavoro*, in *DDPComm.*, UTET, 1989; I. PICCININI, *Il contratto di formazione e lavoro: appunti in tema di qualificazione giuridica e di forma scritta*, in *DL*, 1991, II, p. 10 ss. For

thereby configuring it as an enforceable right. It has been argued that training could be incorporated into the overall purpose of the employment contract[17].

Nonetheless, efforts to link training to contractual obligations have led to the development of various theories, based on the search for normative connections aimed at establishing the existence of a right to training on the part of the worker. These different interpretations intersect with multiple legal provisions, at times referring to Article 35 of the Italian Constitution – which is often regarded as conferring only a legitimate expectation, rather than a true subjective right[18], in respect of public active policies supporting employability – and at other times invoking the Civil Code provisions governing the employer's authority to vary duties, as well as the fulfilment of contractual obligations.

Among the provisions cited in support of the existence of a subjective right to training – closely tied to the regulation of the employment relationship – are Article 2103 of the Civil Code (in conjunction with Articles 2094 of the Civil Code and Article 35 of the Constitution); Article 2104, which outlines the worker's duty of diligence; and Article 2087, which imposes safety obligations on the employer. Other interpretations rely on general principles of civil law, such as fairness, good faith, creditor

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an early formulation of the idea of training as functionally impacting the contract's purpose, see M. RUDAN, *Il contratto di tirocinio*, Giuffrè, 1966.

[17] In this regard, see also L. GALANTINO, *Diritto del lavoro*, Giappichelli, 1998, p. 101; F. GUARRIELLO, *Trasformazioni organizzative e contratto di lavoro*, Jovene, 2000, p. 55 e 204 ss., M. NAPOLI, *Disciplina del mercato del lavoro ed esigenze formative*, in *RGL*, 1997, I p. 269 ss.; U. ROMAGNOLI, *Il diritto del secolo. E poi?*, in *DML*, 1999, p. 238 ss. On the same point, v. B. CARUSO, *Occupabilità, formazione e "capability" nei modelli giuridici di regolazione dei mercati del lavoro*, in AA. VV., *Formazione e mercato del lavoro in Italia e in Europa*, cit., p. 178 ss.; D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 349 ss. In other words, that "the employee's training has expanded the scope of obligations incumbent not only upon the employer—placing itself, with equal standing, alongside the traditional duties of remuneration and safety—but also upon the employee, becoming the object of a specific obligation and thereby entering into the very causa of the employment contract" (D. GAROFALO, voce *Formazione nel contratto di lavoro*, cit., 670).

[18] This view assumes that while the Constitution's recognition of the right to professional advancement may imply the importance of professional development within the employment relationship, it does not entail incorporating it into the *synallagma*. On this point, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 342; for an early reconstruction of this connection, see M. NAPOLI, *Commento alla l. 21 dicembre 1978, n. 845*, in *Nuove leggi civ. comm.*, Cedam, 1979, p. 50 ss.; this theory has recently been revisited by C. VALENTI, *La tutela della professionalità nel mercato del lavoro che cambia*, in *LD*, 2021, 1, pp. 149-150.

cooperation, and the proper performance of obligations[19].
One major line of reasoning, linked to the regulation of the *ius variandi*[20], is based on the thesis that "the worker's right to training, once the institutional mechanisms enabling its actual exercise have been established by law or collective bargaining, is connected to the dynamic safeguarding of professional assets"[21]. This approach finds support in judicial interpretations that have expanded the concept of professionalism. However, it has also been noted that, prior to its amendment by Article 3 of Legislative Decree No. 81 of 15 June 2015, Article 2103[22] did not explicitly recognise either a right to training for the worker or a corresponding obligation for the employer[23]. In its current form, although

[19] For a critical reading of this position, seeD. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 353 ss. It is emphasised that the performance of obligations "according to fairness and good faith" under Articles 1217 and 1375 of the Civil Code does not so much create new duties but rather clarifies the ways in which existing obligations must be interpreted.

[20] On this subject, see, among others, M. BROLLO, *Inquadramento e* ius variandi, in G. SANTORO PASSARELLI (ed. by), *Trattato di diritto del lavoro*, Utet, 2017, p. 768 ss.

[21] D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 344; in the same sense, see M. Napoli, *Disciplina del mercato del lavoro ed esigenze formative*, cit., p. 270 and cf. G. GIUGNI, *Mansioni e qualifica nel rapporto di lavoro*, Jovene, 1963, p. 190; U. ROMAGNOLI, *Commento all'art. 13*, in AA. VV., *Statuto dei diritti dei lavoratori (art. 1-13)*, in A. SCIALOJA, G. BRANCA, (ed. by), *Commentario del Codice civile*, Zanichelli, 1979, pp. 230-231. This theory is grounded in a dynamic conception of professional development, which has been adopted by case law concerning damages for injury to professional skills. On this, see M. BROLLO, *Il danno alla professionalità del lavoratore*, in AA. VV., *Scritti in memoria di Massimo D'Antona*, Giuffrè, 2004, I, I, p. 363 ss.; U. CARABELLI, *Intervento*, in Aa. Vv., *Formazione e mercato del lavoro in Italia e in Europa*, cit., p. 312 ss.; D. GAROFALO, *Lo ius variandi tra categorie e livelli*, in *MGL*, 2022, n. 1; and in case law, see Cass. civ., 10 January 2018, n. 330; Cass. civ., 1° July 2014, n. 14944; Cass. civ., 4 March 2011, n. 5237; Cass. civ., 3 March 2011, n. 5138; Cass. civ., 26 May 2004, n. 10157; Cass. civ., 8 November 2003, n. 16792.

[22] The same applies in case law regarding damages to professional skills. On this point, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 345; for a reasoned overview of subsequent rulings, see M. BROLLO, *Inquadramento e* ius variandi. *Modifica delle mansioni e trasferimento del lavoratore*, in G. SANTORO PASSARELLI (ed. by), *Diritto e processo del lavoro e della previdenza sociale*, UTET, 2020, p. 1014 ss. he reform of the relevant provision has made explicit what had already become consolidated in case law, so much so that today it is possible to state that «*the "training obligation" established in 2015 […] demands the employer to provide the necessary knowledge to workers who are assigned new tasks that differ from those previously performed*» (C. VALENTI, *Il diritto soggettivo alla formazione continua dei lavoratori: un'analisi delle buone pratiche nel panorama internazionale*, in *LLI*, 1, 2021, p. C.64).

[23] Cf. D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 348. It is noted that even under the previous legal framework, the training obligation could be considered implicit in the exercise of the *ius variandi*, since the assignment to new duties—entailing a

the provision refers to such an obligation, it does not establish any sanctions for non-compliance[24]. This lack of enforceability complicates the determination of consequences in cases – such as this – where a training obligation is explicitly set out in law or collective bargaining agreements[25]. It must therefore be concluded that the burden of alleging non-performance, proving damage, and demonstrating causation lies with the injured party. The burden then shifts to the party against whom non-fulfilment is claimed (typically the employer), who must demonstrate that they have discharged their obligations effectively.

Another source of the training obligation has been traced to Article 2087 of the Civil Code, which requires the employer to adopt "all the measures which, according to the particular nature of the work, experience, and technique, are necessary to protect the physical integrity and moral personality of the workers". From this perspective, the subjective right to training is framed as a necessary expression of the right to work, which in turn is fundamental to the development of the individual's personality[26].

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change in the standard for performance required from the worker at the employer's initiative (and to meet the employer's needs)—would nonetheless have necessitated a corresponding adjustment in terms of *creditor cooperation*. Cf. C. ALESSI, *Professionalità e contratto di lavoro*, cit., p. 181; C. PISANI, voce *Mansioni del lavoratore*, in *Enc. Giur.*, XIX, Treccani, 1993, p. 9.

[24] On this subject, see C. ALESSI, *Professionalità, contratto di lavoro e contrattazione collettiva, oggi*, in *PS*, 2018, II, 1, p. 26 ss.; M. BROLLO, *Quali tutele per la professionalità in trasformazione?*, in *ADL*, 2017, p. 495 ss., especially p. 503; M. FALSONE, *La professionalità e la modifica delle mansioni: rischi e opportunità dopo il Jobs Act*, in *PS*, 2018, II, 1, p. 36 ss.

[25] On this matter, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 347, who distinguishes between damage to generic professional skills (where, for example, the harm involves "social life, psycho-physical integrity, image, and the moral personality of the worker – that is, all cases of damage affecting the dignity, status, and prestige acquired by the worker within the company and undermined by de-skilling") and damage to specific professional skills (in cases of "a reduction in professional competence through downgrading or the failure to enhance theoretical knowledge, practical skills, experience, and abilities"), identifying Articles 2087 and 2103 of the Civil Code as the respective legal references.

[26] See also D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 351, and further references therein. The earliest doctrinal interpretations in this area linked the training obligation to the protection of workers' health in the workplace, specifically in compliance with Legislative Decree no. 626/1994. This interpretation is persuasive in relation to specific obligations regarding workplace safety but appears less convincing when extended to a general level. The scope of application has thus been broadened, considering longstanding case law on mobbing (on which, see D. GAROFALO, *Mobbing e tutela del lavoratore tra fondamento normativo e tecnica risarcitoria*, in *LG*, 6, 2004, p. 529). The connection becomes clearer when one considers that "within the 'general' right of personality, one can well place the worker's right to training during the employment

Indeed, the development of the person forms the foundation of the theory that, when interpreted in light of the principles of fairness and good faith, Article 2087 imposes a duty on the employer to safeguard the worker's professionalism – particularly as it evolves in response to organisational changes. Accordingly, training should be provided "both at the initial stage of the relationship, when the worker receives the necessary instructions for effective integration into the employer's organisation, and during events that may affect the functionality of the relationship, such as changes in duties or organisational modifications impacting the worker's role"[27]. In this sense, the protection of the worker's professionalism gives rise to a form of creditor cooperation on the part of the employer, aimed at ensuring the proper fulfilment of contractual duties[28].

With respect to the worker's obligation to adapt their skills, Article 2104 of the Civil Code has been invoked. By imposing a duty of diligence on the worker, proportionate to the nature of the work, the provision appears to impose a duty to undergo training[29]. However, it has rightly been observed that this provision "certainly cannot, on its own, oblige the worker to undertake training activities"[30]. By contrast, a genuine obligation to cooperate in enhancing one's employability arises within those

relationship, conceived, on the one hand, as a personal right to self-determination with regard to cultural and educational development; on the other hand, if and insofar as it is aimed at improving one's professional position, as a right instrumental to career advancement recognised by the contract." Therefore, "on the employer's side, the training obligation could be traced back to the duty of protection under Article 2087 of the Civil Code, regarding the worker's personality" (D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p 353).

[27] C. ALESSI, *Professionalità e contratto di lavoro*, cit., p. 180. Indeed, especially following the abandonment of the concept of task equivalence in the exercise of the *ius variandi*, the duty to train a worker assigned to new tasks is not only implied by the necessity to enable them to perform their duties but can also be inferred from the wording of the new Article 2103 of the Civil Code. Even before the reform, however, it was widely accepted that equivalence could be achieved through adequate training (or retraining, if provided retrospectively) for the worker. See in this regard M. BROLLO, *La mobilità interna del lavoratore*, cit., p. 156.

[28] See also, in this sense, C. PISANI, voce *Mansioni del lavoratore*, cit., p. 9; and C. ALESSI, *Professionalità e contratto di lavoro*, cit., pp. 180-181.

[29] See also U. CARABELLI, *Intervento*, cit., p. 312, particularly regarding Luisa Galantino's theory on the existence of a professional updating obligation on the part of the worker (in some ways comparable to the continuing professional education requirements set by some regulated professions).

[30] U. CARABELLI, *Intervento*, cit., p. 314.

instruments designed to manage workforce redundancies[31]. These mechanisms typically include training initiatives that benefit affected workers and operate by making training a *condition* for accessing or retaining certain protections, rather than a genuine obligation. This reflects the now-established model of conditionality[32]. in labour policy and employment support, wherein the receipt of certain benefits is contingent upon participation in training schemes.

The above considerations – particularly in light of recent legislative developments – support the conclusion that "it is now possible to identify a training obligation incumbent upon the employer, which varies in terms of beneficiaries, objectives, and placement within the course of the employment relationship, but which, in all cases, finds its legal foundation in the contractual synallagma"[33]. This interpretation, however, does not apply where the training need is identified solely by the employee in their own interest, as in such cases there is no corresponding employer obligation. In these situations, the employer has no stake in the training and is thus only required to adopt a neutral, non-obstructive stance, refraining from impeding the employee's access to training opportunities. Conversely, a right to training that entails a positive obligation on the employer arises when the training serves an entrepreneurial interest – such as ensuring the worker's skills remain aligned with organisational needs for the continuation of the employment relationship. This constitutes the

[31] This refers to procedures such as CIGS for company reorganisation (Art. 21 et seq., Legislative Decree No. 148/2015), the *Fondo Nuove Competenze* (Art. 88, Decree-Law No. 34/2020, converted with amendments into Law No. 77/2020), the Fund for professional upskilling (or, more generally, the use of interprofessional training funds under Law No. 388/2000), the GOL program (*D.M. Lavoro ed Economia*, 5 November 2021), the *contratto di ricollocazione* (Art. 24-bis, Legislative Decree No. 148/2015), and the agreements for occupational transition (Art. 22-ter, Legislative Decree No. 148/2015, as amended by Art. 1, para. 229, Law No. 234/2021). Each of these measures provides for the active participation of workers in training activities aimed at professional reskilling, with the goal of increasing employability in view of a successful placement within the same company or with a new employer.

[32] This is, in fact, the exact terminology adopted by the legislator in Articles 22-ter and 25-ter of Legislative Decree No. 148/2015, introduced respectively by Article 1, paragraphs 200 and 202 of Law No. 234/2021. These provisions foresee the imposition of real sanctions - ranging from the reduction of one month of wage supplementation to the complete loss of the benefit - on workers who, due to their own exclusive responsibility, fail to participate either in actions aimed at re-employment and self-employment (in the first case) or in initiatives for the maintenance or development of professional skills in view of the conclusion of a work suspension or reduction procedure (in the second case).

[33] D. GAROFALO, voce *Formazione nel contratto di lavoro*, cit., p. 671.

"maintenance" of professionalism, a shared responsibility of both parties[34]. Such obligations may also be contractually defined through individual agreement, thereby elevating training to an ancillary element of the employment contract. These are often accompanied by additional agreements—such as stability clauses—that reflect the employer's concern to avoid disproportionate costs in relation to the benefits derived from training. In such cases, the obligation to preserve the employee's professional skills, as articulated in Article 2103 of the Civil Code, is extended to the ordinary course of the employment relationship. Naturally, the same applies where such obligations are introduced through collective bargaining.

Beyond the contractual dimension, it is not unprecedented for obligations constitutionally imposed on the wider community to be transferred to individual employers. For instance, reference to Articles 4 and 38 of the Constitution has historically been used to justify, on constitutional grounds, the system of mandatory placement for persons with disabilities—a system whose ineffectiveness led to the legislature's radical shift under Law No. 68/1999[35], marking a transition from imposition to incentivisation[36].

Nevertheless, the fact that training is not a component of the contractual synallagma does not mean it is excluded from the employment relationship altogether. Indeed, it may be incorporated into the contract by mutual agreement between the parties, through the exercise of individual autonomy, thereby elevating it to an incidental element of the contract. In this way, the obligation to safeguard professionalism—enshrined in Article 2103—would become operative. In the absence of individual agreement, it falls to collective bargaining to intervene in its

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[34] C. ALESSI, *Professionalità e contratto di lavoro*, cit., p. 161. On the employer's duty to ensure the adaptation of the worker's professional skills, see also C. ALESSI, *op. ult. cit.*, p. 183: "the identification of professional skills as the object of the employment contract necessarily implies, as a contractual effect, the obligation to shape those skills in accordance with the (legitimate) demands of the employer".

[35] D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 380.

[36] This shift becomes all the more evident when considering that "a situation has developed [...] that is diametrically opposed to the one hypothesized by Napoli, who conceived training as a right enforceable against the company and usable within public structures: instead, we are now witnessing a right enforceable against the public system and usable within the company" (D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 381), thereby effectively assigning the company a function of public interest.

institutional role[37], serving as the mechanism through which "the training obligation [...] is linked with training as a social right"[38].

3. The Training Obligation in Collective Bargaining

Professional training, bolstered by the redefinition of the role of the social partners following the "flight from the public system"[39], has acquired particular significance both in the concertation phase – aimed at fostering a culture of employment and stability – and in the managerial phase, which is embodied in collective bargaining[40]. As early as the collective agreements of the 2000s, the focus of protection had already shifted from the static notion of employee professionalism to its continuous development, oriented towards the worker's growth, adaptability or stabilisation, prevention of technical obsolescence, or, in cases of restructuring and reorganisation, the promotion of employability[41].
The notion of training began to emerge as a "primary good or interest of the worker"[42], distinct from company-based training, which is inevitably "subordinated to its [the company's] interest". This new vision sought to protect a form of professionalism capable of supporting not only the worker's current role but also their transitions between jobs[43], facilitating

[37] As well as "as an institution governing the labour market" (M. TIRABOSCHI, *Mercati, regole, valori*, relazione alle Giornate di studio AIDLaSS, Udine 13 – 14 giugno 2019, in AA. VV., *Persona e lavoro tra tutele e mercato*, Atti delle giornate di studio di diritto del lavoro Udine 13-14 giugno 2019, Giuffrè, 2020, p. 112). Along similar lines, see A. LO FARO, voce *Contratto collettivo (lavoro privato)*, in *Enc. dir.*, Ann., VI, Giuffrè, 2013, p. 196 ss., spec. p. 197, although the concept recalls above all the reflections of Giugni and Santi Romano, whose works should be consulted for completeness (for all, see G. GIUGNI, *Introduzione allo studio dell'autonomia collettiva*, Giuffrè, 1960 and S. ROMANO, *L'ordinamento giuridico*, reprint, Sansoni, 1946).
[38] E. GHERA, *Intervento*, cit., p. 318.
[39] D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 325.
[40] Indeed, if the employer becomes a key social actor within the training system, entrusted with the task of providing training during the employment relationship (see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., pp. 381-382), then the limits and modalities of this obligation become the subject of negotiation between the social partners. This can represent either a positive incentive for the enhancement of professional skills or, conversely, a risk stemming from the concerted nature of the agreements reached through collective bargaining.
[41] D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., pp. 332-333.
[42] E. GHERA, *Intervento*, cit., p. 316.
[43] Regarding the theory of transitional labour markets, see L. CASANO, *Contributo all'analisi giuridica dei mercati transizionali del lavoro*, Adapt University Press, 2020; cf. S. CIUCCIOVINO, D. GAROFALO, A. SARTORI, M. TIRABOSCHI, A. TROJSI, L. ZOPPOLI, *Flexicurity e mercati*

the search for new employment. Within this framework, the employer is expected to safeguard not only the company's interests through training but also those of the individual worker, inseparably bound by the employment contract. Training – often described as the main component[44] of active labour policies – thus enters the domain of collective bargaining, which, although not traditionally concerned with regulating training[45], has increasingly taken on the protection of the worker's position in the labour market.

Nevertheless, it is essential to examine the consequences of this "elevation". A more ambitious role for collective bargaining in shaping the framework for professional training may come at the cost of sacrificing other rights, in the kind of negotiated "exchange" that typifies the dynamics of collective agreement drafting and renewal.

The formal recognition of a true subjective right to training did not materialise until 2016, with the signing of the National Collective Agreement for the Metalworking Industry. This agreement recognised, for the first time, the existence of such a right for all employees with an open-ended contract. The significance of this recognition lies not only in the acknowledgment of training as an enforceable right[46], but also in its

transizionali del lavoro. Una nuova stagione per il diritto del mercato del lavoro?, Adapt University Press, 2021; D. GAROFALO, *Lavoro, impresa e trasformazioni organizzative*, in AA. VV., *Frammentazione organizzativa e lavoro: rapporti individuali e collettivi. Atti delle giornate di studio di diritto del lavoro AIDLaSS. Cassino, 18-19 maggio 2017*, Giuffrè, 2018, p. 17 ss.; G. SCHMID, *Transitional Labour Markets: A New European Employment Strategy*, WBZ Discussion Paper.

[44] M. NAPOLI, *Le funzioni del sistema dei servizi per l'impiego: il nucleo forte della mediazione tra domanda e offerta di lavoro*, in M. NAPOLI, A. OCCHINO, M. CORTI, *I servizi per l'impiego. Art. 2098 c.c.*, in F. D. BUSNELLI (dir. by), *Il Codice civile. Commentario*, Giuffrè, 2010, p. 56. The growing attention collective bargaining has devoted to training has led to a fragmentation of protection. On this point, and for a reconstruction of relevant case studies, see G. MACHÌ, *Per una storia della contrattazione collettiva in Italia / XXX – La formazione professionale nella contrattazione collettiva*, in *Boll. ADAPT*, 8 March 2021.

[45] A general analysis of the most widely applied national collective labour agreements (on which see the *XXIII Rapporto mercato del lavoro e contrattazione collettiva 2021* by CNEL and, therein, the contribution by P. A. VARESI, esp. p. 66 ss.), shows that the provisions concerning active labour market policies are mostly limited to the regulation of flexible contract clauses or the allocation of training hours. It is extremely rare to find provisions for preventive measures aimed at potential employment transitions.

[46] The possibility of enforcing the right to training in court derives both from the specification of claims that can be asserted by the worker and from the directly prescriptive content of the clauses in the collective agreement. This does not apply, of course, to mere statements of intent and programmatic stimuli (among which, generally, are the intentions to establish observatories and committees to monitor professional

reconfiguration as a continuous learning opportunity – tailored to the evolving demands[47], of the labour market and essential for updating and enhancing workers' skills and knowledge[48].
The renewal of the same national agreement on 5 February 2021 marked a further step forward, contributing to the dismantling of the rigid job classification system[49]. This process had already begun with the introduction of the "roles" system in 2016[50], shifting the emphasis

needs and manage training programs). On this point, see G. MACHÌ, *Diritto alla formazione e formazione continua*, in *Boll. ADAPT*, 2021, n. speciale 1, 25 February 2021.

[47] Cf. D. GAROFALO, *Rivoluzione digitale e occupazione: politiche attive e passive*, in *LG*, 2019, p. 329 ss., spec. p. 338. The consideration that worker training must respond to the concrete needs of the market is clearly a natural consequence in a functioning system "that wants to create employment and not unemployment" (ibid.). Indeed, as emerges from the text of the collective agreement, even in its revised 2021 version (for which see the contributions in *Boll. ADAPT*, 2021, special issue 1, February 25, 2021), which follows the signing of the *Patto della Fabbrica* in 2018, vocational training and continuous education respond to the demands triggered by the digital and ecological transition. Given the dual function of these training activities, it is also necessary to reflect on the distribution of related costs, which should be shared between the public and private sectors, as long as retraining (either preventive or in the event of a critical situation) serves the private interest of the company or the public interest of combating unemployment. Cf. M. WEISS, *Tecnologia, ambiente e demografia: il diritto del lavoro alla prova della nuova grande trasformazione. Digitalizzazione: sfide e prospettive per il diritto del lavoro*, translated by E. DAGNINO, in *DRI*, 2016, 3, pp. 654-655; but for a reconstruction of possible solutions to the issue, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 407 ss.

[48] The criterion underlying this development comes from the consideration that workers need to possess additional skills and abilities beyond those strictly related to the duties defined in the contract, such as knowledge of a foreign language or specific software. Cf. C. VALENTI, *La tutela della professionalità nel mercato del lavoro che cambia*, cit., p. 147.

[49] On this, see A. MARESCA, *Il nuovo sistema di classificazione: valori ispiratori e tecniche applicative*, in T. TREU (ed. by), *Commentario al contratto collettivo dei metalmeccanici*, Giappichelli, 2022, p. 37 ss.; P. MASCIOCCHI, *CCNL Metalmeccanici*, Maggioli, 2021, p. 166 ss.; A. PRETEROTI, S. CAIROLI, *Il nuovo inquadramento professionale nell'industria metalmeccanica 4.0*, in G. ZILIO GRANDI (ed. by), *Commentario al CCNL Metalmeccanici 5 febbraio 2021*, Giappichelli, 2021, p. 141 ss.

[50] On this point, see V. BAVARO, *Il contratto collettivo nazionale dei metalmeccanici 2016: una prospettiva sulle relazioni industriali italiane*, in *DLRI*, 2017, 4, p. 729 ss.; L. IMBERTI, S. MOIA, *Ccnl metalmeccanici 2016 e contrattazione aziendale: un tentativo di tipizzazione*, in *DLRI*, 2020, 3, p. 471 ss.; A. MARESCA, *Il* rinnov(ament)o *del contratto collettivo dei meccanici: c'è ancora un futuro per il contratto collettivo nazionale di categoria*, in *DLRI*, 2017, 3, p. 709 ss.; M. TIRABOSCHI, F. SEGHEZZI, I. ARMAROLI, *Il patto della fabbrica, note sul rinnovo dei metalmeccanici*, in *GL*, 2016, 49, p. 12 ss. However, it is still relevant to consider that, "despite the efforts of organisational literature that has built almost philosophical worlds around competences, the transition from the imperfect objectivity of tasks and qualifications to the subjective dimension of competences has so far proven impossible

towards workers' professionalism. The aim was to move beyond the traditional system of classification based on static job descriptions and predefined tasks[51], replacing it with a more dynamic, competence-based model.

This growing focus on professionalism – even at the expense of the existing job classification system – highlights the rising importance of the individual worker in an increasingly fluid labour market[52], where training plays a pivotal role. It is not only a "new generation" right linked to the broader right to work but also an essential component in the development of a dynamic professionalism, capable of enhancing employability.

Against the backdrop of a rapidly evolving labour market, the emergence of a clear legal categorisation – the subjective right to training – offers stability in the protection of professionalism. This protection is no longer limited to the mere enrichment of existing skills but is extended to their adaptation in response to shifting market demands.

It is no coincidence that the collective agreement[53] was chosen as the instrument through which this recognition was granted. It is a clear sign that industrial relations have embraced the idea that "the personal,

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to achieve" (R. DEL PUNTA, *Un diritto per il lavoro 4.0.*, in A. CIPRIANI, A. GRAMOLATI, G. MARI, *Il lavoro 4.0. La quarta rivoluzione industriale e le trasformazioni delle attività lavorative*, Firenze University Press, 2018, p. 233).

[51] "Thus framed, the principle of 'same work, same pay' has generated, from the 1970s to today, a flattening of professional skills around the minimum wages established by collective bargaining" (D. MOSCA, P. TOMASSETTI, *La valorizzazione economica della professionalità nella contrattazione aziendale*, in *DRI*, 2016, 3, p. 793).

[52] In this sense, M. TIRABOSCHI, F. SEGHEZZI, I. ARMAROLI, *Il patto della fabbrica*, cit., p. 18; cfr. L. CASANO, *Quadri nazionali delle qualifiche: la situazione italiana alla luce degli sviluppi europei*, in *DRI*, 2015, 3, p. 907; C. LINCARU, S. PIRCIOG, A. GRIGORESCU, *Mapping Transitional Labour Markets Models in Europe*, in *PS*, 2020, 3, p. 86; G. Schmid, *Sharing Risks of Labour Market Transitions: Towards a System of Employment Insurance*, in *British Journal of Industrial Relations*, 2015, p. 70 ss.

[53] Particularly the metalworking sector (CCNL per l'Industria Metalmeccanica, signed on February 5, 2021, by Federmeccanica, Assistal, FIM-CISL, FIOM-CGIL, UILM-UIL, sez. IV, art. 7) has repeatedly shown leadership in terms of innovations. Also, see the CCNL for workers in small and medium metalworking industries, jewelry, and installation of plants, signed on July 3, 2017 by Unionmeccanica-Confapi, FIOM-CGIL, FIM-CISL, UILM-UIL (art. 61); the for workers in the electrical sector, signed on October 9, 2019, by Elettricità Futura, Utilitalia, Enel Spa, GSE Spa, SOGIN Spa Terna Spa, Energia Libera, e FILCTEM-CGIL, FLAEI-CISL, UILTEC-UIL (art. 36, esp. par. 5); the CCNL for the Food Industry, signed on July 31, 2020, by ANCIT et al., FAI-CISL, FLAI-CGIL, UILA-UIL (art. 3); the CCNL for workers in the chemical industry, signed on July 31, 2020, by Federchimica, Farmindustria, Associazione Cerai d'Italia, FILCTEM- CGIL, FEMCA-CISL, UILTEC-UIL (art. 63).

economic, and professional security of workers is built on effective support in accessing employment and transitioning from old to new work, much better than on the rigidity of production structures"[54]. This also reflects the evolving significance of the collective agreement itself, which is now capable of capturing the dynamic reality of a labour market where, for the worker, "it is better to have routes than roots"[55].

However, collective bargaining has not yet fully adapted to the increasingly prevalent trend towards flexible career paths. Despite the growing use of atypical employment contracts, there is a noticeable absence of a comprehensive framework capable of reconciling the temporal nature of these contracts with the need to support the inevitable phases of transition – particularly in the case of fixed-term contracts. In such instances, the notion of "training-risk" is embedded in the very nature of the contractual arrangement: any investment made by the employer in the training of a worker is likely to follow the worker throughout their career and thus represents an economically inefficient cost for the employer.

At the same time, the establishment of a training obligation specifically for workers engaged on flexible contracts could function as a form of "counterbalance" to the use of these arrangements, which are undoubtedly less burdensome for employers and legally more advantageous. This would contribute to the framework already advanced in legal scholarship[56] for the "socialisation" of the "employability risk"—that is, a sustainable distribution of the costs associated with an increasingly uncertain labour market. In such a market, workers face longer and more frequent periods of inactivity, the financial burden of which ultimately falls upon the public purse as a result of legal and policy decisions that favour business flexibility and streamlined organisational models.

[54] P. ICHINO, *Il nuovo articolo 18: la formazione come diritto soggettivo*, in *www.pietroichino.it*, p. 1 of the digital manuscript.

[55] R. REICH «*better to have routes, instead of roots*», cited by P. ICHINO, *op. loc. ult. cit.*

[56] See D. Garofalo, *Formazione e lavoro tra diritto e contratto*, cit., p. 402 ss., particularly with reference to the "risk of employability," meaning employability as a "new social risk," which should be understood potentially as a real event protected to replace unemployment in the contributory-redistributive logic that has always characterised the relationship between passive and active policies.

4. EU Perspectives and Implementation in Italian Law

Among the obligations introduced by Directive (EU) 2019/1152 – concerning transparent and predictable working conditions in the European Union – the provisions on mandatory training set out in Article 13, anticipated by Recital 37, are particularly noteworthy. On closer analysis, the Directive does not establish a new or distinct training obligation beyond those already provided for under national legislation or collective agreements. Rather, it regulates the modes of implementation of existing obligations. Specifically, it introduces a requirement that training necessary for the performance of the job must be treated as working time, be provided at no cost to the employee (i.e., paid), and, where feasible, take place during normal working hours.

This provision was transposed into the Italian legal system through Article 11 of Legislative Decree No. 104/2022. The decree categorises training into three distinct types – each corresponding to a subsection of the provision – based on the predominant interest being served[57]. The first category encompasses training mandated by law or required under the applicable collective agreement, that is, training directly related to the execution of work duties. The second category concerns training aimed at the "maintenance" or "adaptation" of the worker's competencies. The third relates to occupational health and safety training.

A distinctive feature of this regulatory framework is that the informational obligation arises only when the worker has a right to receive training provided by the employer, where such training is required[58]. As a result, in instances where the existence of a training obligation is uncertain, the employee's right to receive relevant information is also ambiguous. This creates a problematic grey area in the implementation of the directive.

With regard to the first category, the reference to the exercise of the *ius variandi* is apparent, as the duty to inform applies to any task the employee may be assigned. In other words, regardless of the specific task the worker is performing at the time of hiring – or may be assigned subsequently –

[57] The goal underlying the entire legislative intervention is, according to some, to rebalance the informational disparity that exists between the employer and the employee. In a similar sense, see G. PROIA, *Trasparenza, prevedibilità e poteri dell'impresa*, in *Labor*, 2022, n. 6, p. 641 ss.

[58] See Art. 4, par. 2, lett. h, of Directive (EU) 2019/1152, as well as Art. 1, par. 1, lett. i, of Legislative Decree No. 152/1997, as amended by Art. 4, par. 1, lett. a, of Legislative Decree No. 104/2022.

any associated training is to be regarded as working time, even if it takes place outside regular working hours.
The second category raises definitional concerns. Textually, the provision refers only to training "in the interest of the employer". However, the maintenance or renewal of professional qualifications ("obtaining, maintaining, or renewing a professional qualification"), even when not required by legislation or collective agreements, still produces a benefit for the employer by ensuring the effective use of the employee's services. This excludes training activities that are pursued solely in the employee's personal interest and unrelated to their assigned tasks. A more precise legislative formulation would have been desirable to clearly distinguish between these scenarios.
The third category concerns training obligations already provided for under Legislative Decree No. 81/2008 on workplace health and safety[59]. Once again, it is difficult to clearly delineate the boundary between training serving the employer's interest and training aimed at protecting the physical and psychological well-being of the worker – an interest that, although framed as individual, also indirectly benefits the employer by reducing risks and ensuring compliance.
In practical terms, it is worth noting that the relatively low administrative fine[60] for non-compliance allows employers to weigh the cost of non-fulfilment. This may incentivise strategic "efficient default" behaviours, whereby employers choose to pay the penalty rather than comply with the requirement to provide full and accurate information to workers.
Moreover, it is legitimate to question whether the mere provision of comprehensive information satisfies the full scope of workers' rights. In this context, the formal fulfilment of an informational duty may not equate to the substantive realisation of the right to training – particularly if the training is not effectively accessible or relevant to the worker's role and development.

5. Comparative Insights

Among the various European models offering valuable insights, the French system stands out as the most innovative in its approach to

[59] See Art. 37, Legislative Decree No. 81/2008.
[60] Art. 19, par. 2 of Legislative Decree No. 276/2003, in application of Art. 4, par. 1 of Legislative Decree No. 152/1997, as amended by Art. 4, par. 1, lett. e, of Legislative Decree No. 104/2022, provides for an administrative penalty ranging from €250.00 to €1,500.00 for each worker for whom the employer is non-compliant.

professional training. The relationship between active labour market policies and the right to training has been regulated through the introduction of the *Compte personnel de formation* (CPF) under Law No. 288/2014. This system was further expanded into a tripartite model of "professional accounts" – the *Compte personnel d'activité*, the *Compte professionnel de prévention*, and the *Compte engagement citoyen* – by Law No. 1088/2016. These reforms significantly broadened the pool of beneficiaries eligible for publicly funded vocational training and introduced the portability of accrued training entitlements which had not yet been converted into training hours. This development culminated in Law No. 771/2018, whose title[61] ("Freedom to Choose One's Professional Future") encapsulates its central aim.

Upon closer examination, the French system represents a *right-duty* structure, activated under specific conditions[62]. Central to this is the *devoir d'assurer l'adaptation des salariés à l'évolution de leur employ* – a "duty of adaptation" – which stems from the interplay between Article L.6321-1 (formerly 230-2) of the *Code du travail* (the French counterpart to Article 2087 of the Italian Civil Code) and the overarching duty of good faith in contract execution[63].

In this sense, the French model does not focus solely on the employer's obligation to create conditions for professional development. Rather, it adopts a model of *shared responsibility* between employer and employee, wherein the employee also bears a duty to maintain and develop their

[61] See L. CASANO, *Quadri nazionali delle qualifiche: la situazione italiana alla luce degli sviluppi europei*, in *DRI*, 2015, 3, p. 990 ss.; S. D'AGOSTINO, S. VACCARO, *Nuove tutele per i lavoratori: il diritto soggettivo alla formazione. Francia e Italia a confronto*, cit., p. 127 ss.; C. VALENTI, *The individual right to continuous training of workers: an analysis of best practices in the international framework*, in *LLI*, 2021, 1, p. 72 ss.

[62] The configuration is entirely comparable to what has been argued by Italian scholars, both regarding the obligation of "*repêchage*" (*reclassement*, in French jurisprudence) in the case of dismissal for economic reasons, and – in a broader sense – the duty of professional retraining following the exercise of *jus variandi* (regarding this, see M. BROLLO, *La mobilità interna del lavoratore. Mutamento di mansioni e trasferimento. Art. 2103 c.c.*, in P. SCHLESINGER (dir. by), *Il Codice civile. Commentario*, Giuffrè, 1997, p. 673 ss.). What stands out, on the other hand, is the configuration of an obligation d'employabilité (employability obligation) on the part of the employer, which materialises in the duty to offer "an orientation interview to all workers every two years during which information is provided on both professional development advice, training rights accumulated, and possibilities for validation and certification of skills" (L. CASANO, *Contributo all'analisi giuridica dei mercati transizionali del lavoro*, cit., p. 117).

[63] See C. ALESSI, *Professionalità e contratto di lavoro*, cit., p. 129 ss. e p. 143.

professional competencies[64]. It may thus be argued that what began as "a right intended to support individuals in developing their own professional growth projects" – as initially presented to the social partners – has, over time, shifted towards "an excessive individualisation of responsibility, primarily aimed at making forced mobility more acceptable"[65]. This reflects a broader trend in French labour policy, which places increasing emphasis on the worker's ability to manage their professional identity as a form of occupational vocation[66].

The regulatory framework introduced by Law No. 771/2018 reinforces this orientation. By defining the elements constituting a subjective right to training, it affirms the universal vocation[67] of the right – extending it to all individuals from the legal working age onwards. In practice, this detaches the French CPF from the confines of the individual employment relationship and instead links it to the person of the worker, thereby transforming it into a portable component of their professional portfolio. This is underscored by the operational characteristics of the CPF: the worker is free to determine how to use the allocated training funds, enrol independently in courses without intermediary approval, and act without employer objection (who otherwise risks breaching their *obligation d'employabilité*), regardless of any change in employment status (including unemployment or a change of employer).

With regard to the interaction between the training system and the labour market – particularly in relation to the transferability of skills – the establishment of the *Répertoire National des Certifications Professionnelles* (RNCP) by Law No. 73/2002 marked a significant step forward. It aimed to consolidate and simplify the previous framework of sector-based qualification registries managed by bipartite bodies since 1971. France has since become a pioneer in skill certification for the recognition of professional qualifications. These are categorised according to whether prior authorisation is required for their exercise and listed in the *Répertoire spécifique des certifications et des habilitations*. The entire system is coordinated through a public–private governance structure under the *Commission*

[64] See S. D'AGOSTINO, S. VACCARO, *Nuove tutele per i lavoratori: il diritto soggettivo alla formazione. Francia e Italia a confronto*, in *PS*, 2020, n. 2, p. 150.

[65] L. CASANO, *Contributo all'analisi giuridica dei mercati transizionali del lavoro*, cit., p. 117.

[66] But the reference might also lead to the reflection of Y. SUWA, *Innovazione tecnologica, diritto del lavoro e protezione sociale: dal «lavoro» alla «carriera» come forma di proprietà*, in *DRI*, 1996, 2, p. 69 ss.

[67] S. D'AGOSTINO, S. VACCARO, *Nuove tutele per i lavoratori: il diritto soggettivo alla formazione. Francia e Italia a confronto*, cit., p. 139.

nationale de la certification professionnelle, comprising representatives from public institutions and social partners. It also recognises skills acquired through informal learning and professional experience.
Finally, in terms of enforceability, the French model contrasts sharply with the Italian approach. The more the right to training is transferred into the individual sphere of the worker – granting them autonomy over its exercise – the less feasible it becomes to conceptualise non-compliance on the part of the employer. From this perspective, and in continuity with the notion of the worker's duty to maintain their skills, French law envisions a "right-duty" of the employee to participate in employer-mandated training within the framework of the *plan de formation de l'entreprise*[68]. This reinforces the contractual dimension of training obligations in France, where the *devoir d'adaptation* is formulated in a considerably more robust and explicit manner than in Article 2103 of the Italian Civil Code.

6. Concluding Remarks

The attempt to confer upon continuous training the legal status of a subjective right suggests that such a development is not only feasible but increasingly necessary. This is especially true in light of the evolving

[68] C. ALESSI, *Professionalità e contratto di lavoro*, cit., p. 161, and further references therein also to the Spanish legal system. However, in the Spanish legal system, professional training underwent a significant revision under Law No. 3/2022. Against the backdrop of a renewed need to manage occupational transitions considering technological innovations (especially those related to digitisation), training has taken on a central role in Spanish labour policies, despite the numerous overlaps – like what occurs in Italy with the ITS educational system – with the right to education. The structure of the "right to training" in Spain is fully in line with the considerations made regarding the Italian legal system, starting with the combination of training and the development of professionalism in line with the freedom to choose one's occupation and personal realization (Articles 9, 10, 27, 35, and 40 of the Spanish Constitution). Therefore, the introduction – with Article 4, paragraph 2, letter b), R.D.L. No. 2/2015 – of the right to "*la promoción y formación professional*" is not surprising, which is then fully expressed in the rights outlined in Article 23 of the same Royal Legislative Decree (for this point, see O. REQUENA MONTES, *Los derechos individuales de formación en el art. 23 del Estatuto de los Trabajadores*, Tirant lo Blanch, Valencia, 2019, p. 46 et seq.). The configuration of this provision is structured based on the identification of instrumental rights (leave, facilities for remote work access, the right to choose work shifts or adjust working hours to facilitate participation in training courses) and substantive rights (notably, the right to training in case of changes in the tasks to be performed). The provision also acts as a transposition of Directive 2019/1152/EU, as it establishes the inclusion of training time within working hours and places the associated costs on the employer.

structure of the labour market, in which ecological and digital transitions are gradually giving rise to new professional roles. These roles, in turn, reflect a redefinition of work itself – not based solely on specific technical competencies, but also on so-called soft skills.

The construction of professional identity thus becomes a personal and individualised process, the protection and promotion of which must be "conceived and cultivated primarily outside the enterprise, anchoring it to the individual rather than exclusively to the employment contract"[69]. In this transformed labour market[70] – where the emphasis has shifted from securing employment to ensuring employability[71] – the recognition and development of the professional skills accumulated throughout one's career[72] enables what has been described as "the indispensable cultural shift needed to definitively transcend the outdated notion of a job position", a concept still embedded in traditional classification and grading systems[73].

It is precisely during periods of occupational transition that training, as a mechanism of professional protection, assumes a central role. In such instances, it becomes a vital instrument for making individuals not merely employed, but *employable*[74]. From this perspective, "training that updates or adapts professional skills to evolving market needs may function as both a security incubator for the worker and a productivity driver for the employer"[75].

Nevertheless, despite the evident advantages of continuous training for businesses, employers frequently view the associated costs with scepticism – particularly given the fluid and "open" nature of the labour market,

[69] M. TIRABOSCHI, *Mercati, regole, valori*, cit., p. 88.

[70] Or, in other terms, "in" the new labour markets: see M. TIRABOSCHI, *Mercati, regole, valori*, cit., p. 177 ss.

[71] The concept is closely tied to the theory of transitional labour markets: it has been argued that "it is time to take a step forward, that is, to move from a perspective of job stability (where workers expect to retain their position indefinitely) to a perspective of employability (where workers, at one or more points in their lives, will seek work elsewhere, supported by the company's investments in training and human resource development activities)" (M. BIAGI, *L'impatto della* european employment strategy *sul ruolo del diritto del lavoro e delle relazioni industriali*, in *RIDL*, 2000, I, pp. 433-434).

[72] See M. BROLLO, *Tecnologie digitali e nuove professionalità*, cit., p. 478.

[73] M. TIRABOSCHI, *Mercati, regole, valori*, cit., p. 88.

[74] Cf. D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 411; M. TIRABOSCHI, *Mercati, regole, valori*, cit., p. 89.

[75] M. BROLLO, *Tecnologie digitali e nuove professionalità*, cit., p. 478.

which increases the risk that such investments may not yield returns[76]. In this context, "there is a growing need for a labour market right that accounts for the discontinuities of working life and protects individuals not simply as holders of a specific type of contract, but as citizens of working age"[77].

Only by focusing on the individual – regardless of their contractual or employment status – can a right to training emerge that transcends the limitations imposed by the existence of an employment relationship. This would allow training to function as "a tool for combating social exclusion and promoting equal opportunities within the labour market"[78].

In this formulation, training would become a right designed to "facilitate an informed choice of activity or function contributing to the material or spiritual advancement of society"[79], reaffirming the full freedom of the individual. Such freedom is inseparable from human dignity[80], for "to deny the right to freedom is to deny the person as a human being, and to treat them as a thing"[81].

[76] On the one hand, seen as "a luxury" (M. BIAGI, *Recessione e mercato del lavoro: la formazione alla flessibilità*, in *DRI*, 1993, p. 261), and on the other hand, as "a period of recreation" (L. TRONTI, *Capitale umano e nuova economia. Riorganizzazione dei sistemi formativi e sviluppo dei mercati delle conoscenze*, in *DLM*, 2003, I, p. 79), training cannot yet be considered an essential part of the employment relationship, especially in a perspective of maintaining and developing the skills necessary to stay in the labour market, at least until retirement age. See M. BROLLO, *Tecnologie digitali e nuove professionalità*, cit., pp. 475-476. Yet, employability can be considered a true social risk, requiring participation from both parties in the employment contract as well as the state (on this, see D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 381 ss.).

[77] C. VALENTI, *La tutela della professionalità nel mercato del lavoro che cambia*, cit., p. 148.

[78] M. ROCCELLA, *Formazione, occupabilità, occupazione nell'Europa comunitaria*, in *DLRI*, 2007, 113, 1, p. 194.

[79] D. GAROFALO, *Formazione e lavoro tra diritto e contratto*, cit., p. 86.

[80] "The concept of professionalism has a dimension related to the dignity of the person working, realised in the employment relationship" (M. BROLLO, *Tecnologie digitali e nuove professionalità*, cit., p. 477).

[81] F. PERGOLESI, *Il diritto del lavoro come diritto personale*, in *Riv. int. sci. soc. e disc. aus.*, 1927, II, 6, p. 88.

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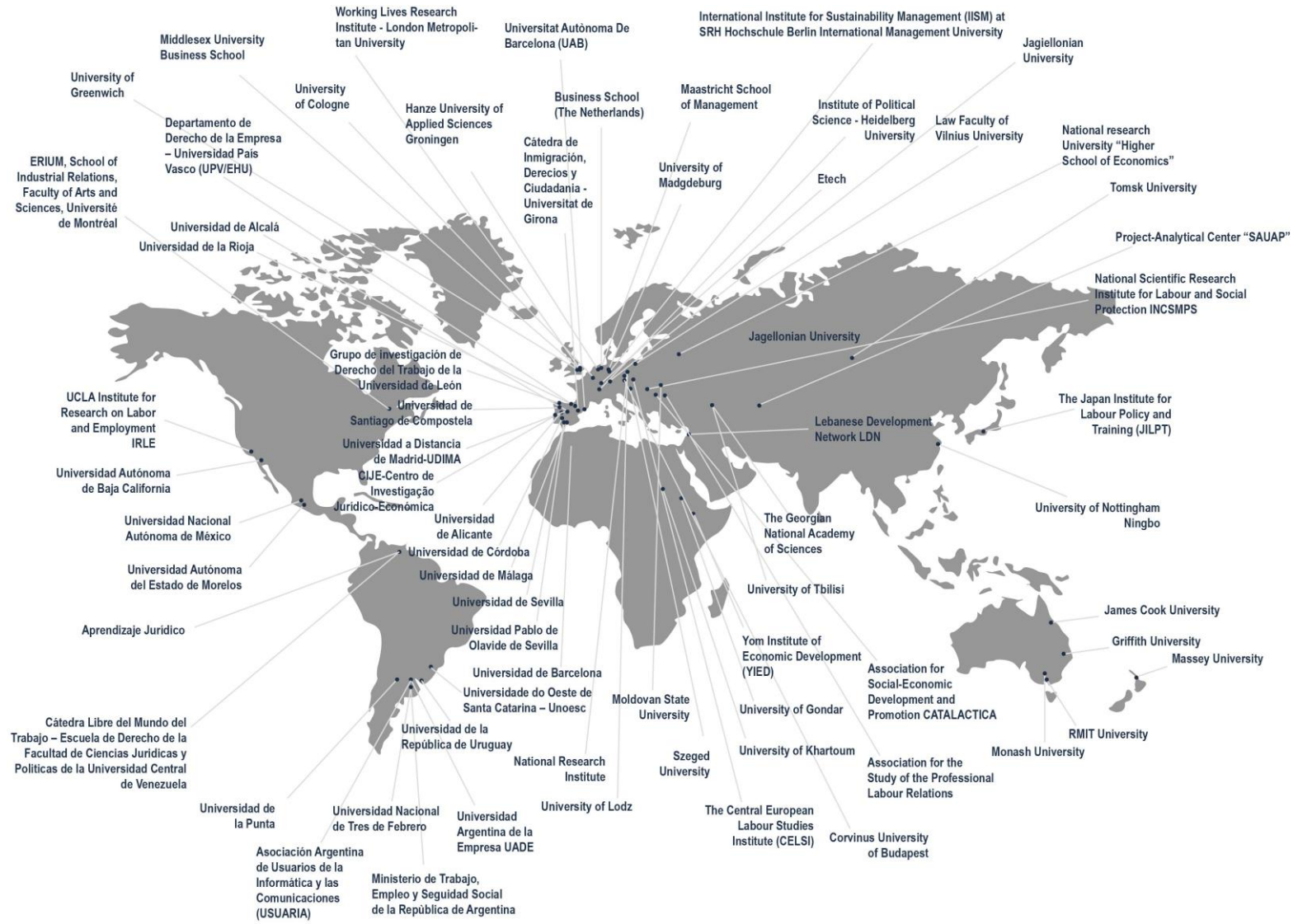

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