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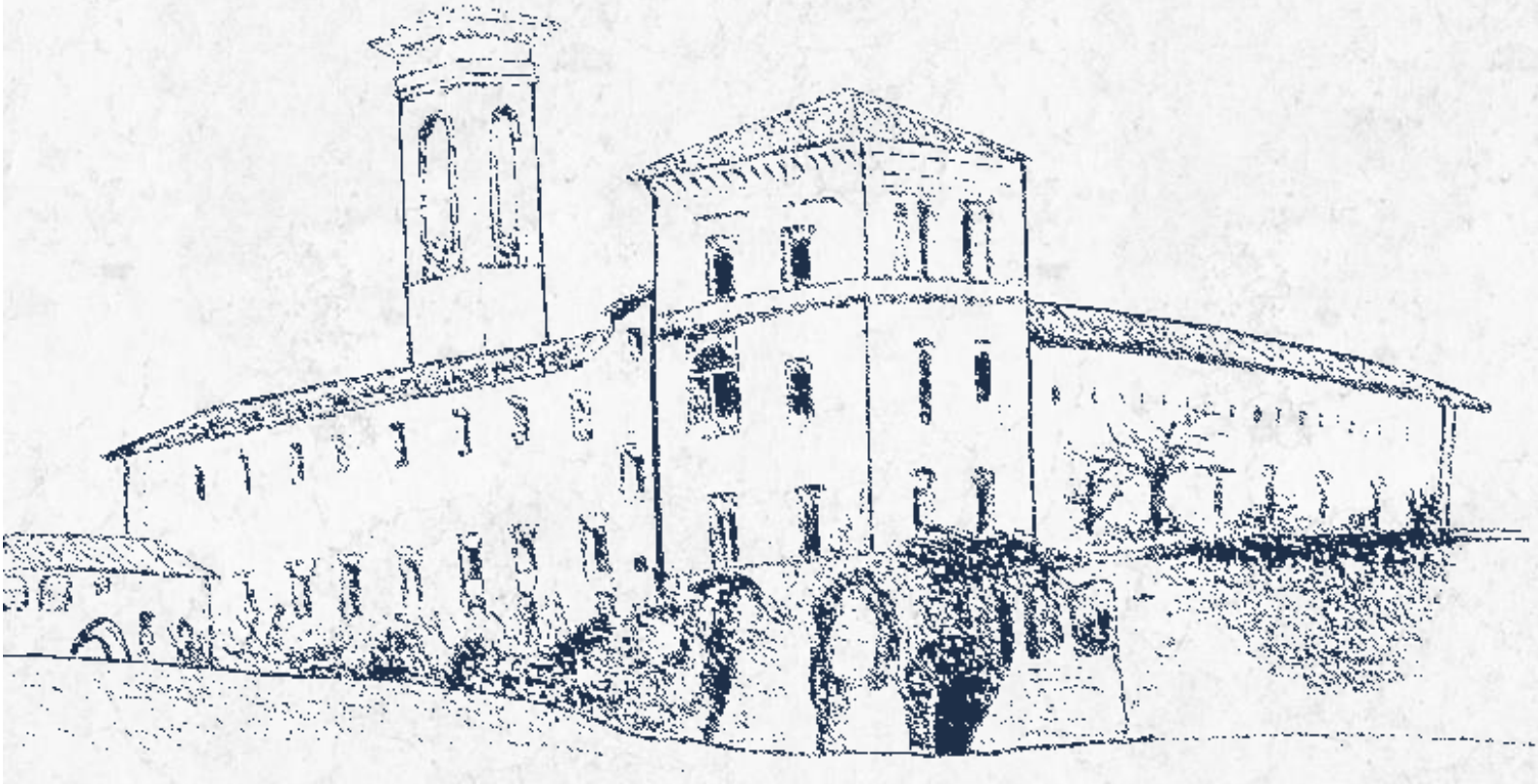

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Index

Special Section: Rethinking Labour Law in Health-Affected Societies

Labour Law

VI

Industrial Relations

Labour Issues

Sustainable Solutions for Social and Work Inclusion in Chronic Illness and Transplantation: Rethinking Labour Law in Health-Affected Societies

Valeria Filì *

Presentation of Research Results

European labour law stands at a critical juncture. The demographic ageing of the workforce, the growing prevalence of chronic illness, the long-term outcomes of organ transplantation, and the intensification of psychosocial risks are not marginal developments; rather, they constitute structural transformations that destabilise the traditional grammar of labour regulation. The archetype of the continuously available, fully fit worker—long embedded in both doctrinal constructions and organisational practice—no longer reflects the lived reality of contemporary labour markets.

This shift exposes a deeper normative tension. Labour law has historically oscillated between two paradigms: the protection of the "standard" employee through general rules of subordination, and the exceptional protection of "vulnerable" categories through targeted safeguards. Yet the expansion of long-term health conditions and fluctuating capacities blurs the boundary between normality and exception. Chronic illness, transplantation, and mental health conditions are no longer peripheral phenomena requiring episodic

* Full Professor at the University of Udine (Italy) and Principal Investigator (PI) of the nationally significant PRIN project *SUNRISE – Sustainable solutions for social and work inclusion in case of chronic illness and transplantation* (Call 2022 PNRR – Prot. P20229FEWC). Email address: valeria.fili@uniud.it. The project involves the following research units: University of Udine (Italy), with Prof. Valeria Filì as Head of the Research Team; University of Modena and Reggio Emilia (Italy), led by Prof. Michele Tiraboschi. This introduction forms part of the activities undertaken by the local research unit of the University of Udine (CUP G53D23007840001) within the framework of the project.

accommodation; they are constitutive features of ageing and heterogeneous societies. The question, therefore, is not simply how to protect specific groups, but whether the conceptual architecture of labour law remains adequate to govern work in contexts where capacity is dynamic, relational, and unevenly distributed.

It is within this broader reflection that the research initiative *"SUNRISE – Sustainable Solutions for Social and Work Inclusion in Chronic Illness and Transplantation"* has developed. Rather than treating chronic illness as a residual issue of incapacity or welfare compensation, the project interrogates the structural conditions under which participation in professional life can be sustained over time. Its central premise is that sustainability in employment cannot be reduced to income support during periods of absence, nor to formal anti-discrimination guarantees. Instead, it requires a reconfiguration of the relationship between health, organisational design, and continuity of employment.

The project proceeds from a normative premise that departs from traditional welfare logics. Employment sustainability cannot be reduced to income replacement during incapacity, nor to isolated anti-discrimination guarantees. Rather, it requires an integrated regulatory framework capable of preserving continuity of employment, ensuring adaptive organisational responses, and reconciling individual health trajectories with collective production structures. SUNRISE therefore investigates the interaction between disability law, health and safety regulation, collective bargaining, and return-to-work policies, drawing on a structured database of case law, contractual practices, and legislative developments at both national and EU levels. The aim is not merely descriptive: it is to assess whether existing legal instruments can be systematised into a coherent architecture of inclusion, and to identify where reform is necessary.

The papers collected in this Special Issue engage critically with this reconfiguration. They do not merely catalogue protective instruments; they interrogate their normative foundations and systemic implications. Across different perspectives, they confront a shared dilemma: whether contemporary labour law should continue to rely on incremental adaptations of existing categories, or whether a deeper paradigmatic shift is required.

In parallel with the SUNRISE initiative, the research conducted by Inmaculada Sandra Fumero Dios on psychosocial risks and mental health—while developed outside the formal consortium—runs alongside and significantly enriches this analytical endeavour. By foregrounding the structural determinants of mental vulnerability at work, her contribution strengthens the emerging scholarly network dedicated to rethinking inclusion beyond narrowly defined disability categories.

Introduction to the Papers

The first paper, by Claudia Carchio and Fulvio Cucchisi, addresses the definitional core of the debate by examining the bio-psycho-social model of disability as applied to chronic illness and transplantation. Their analysis reveals the instability generated by a fragmented regulatory framework in which protection has often been extended through judicial creativity rather than legislative coherence. By engaging with recent Italian reforms, particularly Legislative Decree No. 62/2024, the authors illuminate the promise—and the limits—of redefining disability in relational and socially embedded terms. The article thus raises a fundamental question: can a unified concept of disability serve as a stable gateway to inclusion, or does it risk expanding to the point of conceptual indeterminacy?

Francesco Alifano shifts the focus from definitional clarity to organisational practice. Through an analysis of collective bargaining and working-time regulation, he demonstrates how flexibility mechanisms—leave-sharing schemes, part-time conversion, and agile working—have emerged as pragmatic responses to ageing and health-related vulnerability. Yet his analysis also exposes the limits of contractual incrementalism. Without reconsidering the centrality of working time as the primary metric of performance, these measures remain embedded within a paradigm that presupposes temporal standardisation. The paper therefore invites a more radical inquiry: whether the sustainability of work requires decentring the "hour of work" in favour of capability- and outcome-oriented models of organisation.

In a doctrinally rigorous analysis, Giorgio Impellizzieri clarifies the contours of reasonable accommodation under EU law, focusing on the recent *Pauni* judgment of the Court of Justice. His analysis critically examines the temptation—present in some strands of national jurisprudence—to stretch the concept of accommodation so as to encompass prolonged absence from work. By reasserting the participation-oriented and process-based character of the duty of accommodation, the paper delineates what accommodation is—and what it is not. This clarification, however, also reveals a deeper tension: the line between enabling presence and managing absence is increasingly fragile in health-affected labour markets. The jurisprudential boundary may be clear in principle, but its practical application continues to test the balance between inclusion and organisational sustainability.

Finally, Inmaculada Sandra Fumero Dios expands the analytical horizon to the domain of mental health and psychosocial risk. Her paper underscores that vulnerability is not merely a function of individual impairment, but is often the product of structural inequalities, organisational strain, and social stigma. By situating mental health within occupational safety and health regulation, the

article challenges the persistent tendency to privatise psychological suffering and to treat it as external to the employment relationship. In doing so, it broadens the conceptual field within which inclusion must be theorised, integrating gender, age, migration status, and socio-economic disadvantage into the legal analysis.

Taken together, these papers do not offer a single doctrinal solution; rather, they illuminate a shared horizon of transformation. They suggest that the future of labour law lies neither in the indefinite expansion of exceptional protections nor in the rigid defence of managerial prerogatives, but in the reconstruction of a regulatory architecture capable of accommodating variability as a structural condition of work. In ageing societies marked by chronic conditions and mounting mental health pressures, inclusion ceases to be an adjunct principle and becomes a criterion of systemic legitimacy.

The challenge ahead is therefore both conceptual and institutional. It requires rethinking how disability is defined, how accommodation is delimited, how working time is measured, and how psychosocial risks are governed. More fundamentally, it calls for a labour law that recognises human fragility not as a deviation from the norm, but as an enduring feature of social life. From this perspective, sustainable employment is not the preservation of an abstract standard of productivity, but the construction of conditions under which diverse working lives can unfold with dignity, continuity, and fairness.

New Pathways to Work Inclusion: Applying the Biopsychosocial Model of Disability to Chronic Illness and Transplant Recipients

Claudia Carchio, Fulvio Cucchisi *

Abstract. This paper examines the employment inclusion of people living with chronic illnesses and transplant recipients, highlighting the legal uncertainty produced by the fragmented Italian regulatory framework. It outlines current labour-law protections and shows how, also due to the "forced" reliance on disability categories in EU case law, many safeguards have developed through interpretative extensions rather than coherent legislation. Building on the supranational affirmation of the biopsychosocial model of disability, the essay analyses the innovations introduced by Legislative Decree No. 62/2024 and reflects on the conditions for sustainable employment through risk-minimisation and workplace adaptation.

Keywords: *Labour inclusion, Chronic illness, Transplant recipients, Regulatory framework gaps, Biopsychosocial model of disability.*

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1. Introduction

The present contribution examines the inclusion in employment of individuals affected by chronic illnesses and of workers who have undergone organ transplantation – an issue which, in the Italian legal system, has yet to receive a comprehensive definition or an organic regulatory framework, despite its growing relevance.

The analysis adopts the biopsychosocial model of disability as its interpretative lens. Owing to its interdisciplinary matrix, this model allows conditions of health that affect work performance to be reinterpreted within labour law not as mere individual limitations, but as the outcome of the interaction between personal characteristics, work organisation, and available support measures.

The essay is structured into two parts. Part I reconstructs the existing regulatory framework and highlights its practical and systemic implications: it clarifies which forms of protection are currently recognised for workers with chronic illnesses or transplant recipients and, conversely, which areas remain insufficiently safeguarded. Part II takes a further step: it explores whether, and to what extent, the legal notion of disability – interpreted through the lens of the biopsychosocial model – may serve as a viable and coherent avenue of protection for these workers. Drawing on the shortcomings identified in Part I, it examines the potential of legal framework relating to disability to function as a systematic framework for regulating the employment relationship of workers whose health conditions have long-term effects on work performance.

The participation of chronically ill and transplanted workers in the labour market represents a significant testing ground not only for welfare systems and employment policies, but also – indeed, in a particularly meaningful way – for the legal regulation of the employment relationship. It is no longer sufficient to focus solely on incentives for labour market access or on measures, predominantly economic in nature, designed to address periods of impossibility or unfitness for work. Attention must instead shift towards the conditions that make it possible, in a medium- to long-term perspective, for workers living with health conditions that stably affect performance to remain in employment and progress professionally.

In this perspective, returning to work after a chronic illness or a transplant does not exhaust its significance at the individual level, although it profoundly affects the personal sphere of the workers concerned. It also generates important collective implications, at the level of organisational structures and welfare sustainability. This requires examining how employers and institutions can adapt work organisation, performance arrangements, evaluation systems and career pathways in order to ensure effective, fair and dignified

participation in employment, in line with the principles of non-discrimination and the protection of health in the workplace – principles whose operational expression includes the obligation to provide reasonable accommodation.
The inclusion of workers with chronic illnesses or transplant outcomes cannot be reduced to an individual protective measure: it constitutes a structural factor of social sustainability. Ensuring, within the limits of compatibility with the worker's health condition, their active presence in the labour market strengthens social inclusion and, at the same time, supports the overall stability of the economic and employment system, encouraging enterprises to become actors of organisational innovation and inclusion.
In this sense, the object of the analysis aligns with the broader rethinking of the relationship between work and non-work, prompted by the ageing of the active population, the increasing prevalence of chronic diseases, and the growing heterogeneity of workers' health conditions.
The adoption of the biopsychosocial model makes it possible to move beyond the traditional dichotomy between fitness and unfitness for work, emphasising the relational and contextual dimensions of disability and opening the way to a comprehensive reconsideration of employers' obligations, workplace adaptation techniques, and tools for managing the timing and modalities of work performance.

PART I

1. The Promotion of Employment for Persons with Chronic Illnesses and Transplant Recipients: A Matter of Systemic Relevance

Ensuring the effective retention in employment of individuals living with chronic illnesses or who have undergone organ transplantation has become a matter of growing significance, in light of the steadily increasing number of people who live long-term with such conditions[1].

[1] According to the World Health Organization (WHO), chronic diseases - including, among others, cardiovascular diseases (heart disease and stroke), cancer, diabetes, chronic respiratory diseases, musculoskeletal disorders, depression and other mental health conditions - represent the leading cause of death worldwide. They are responsible for approximately 41 million deaths each year, 17 million of which occur in individuals under the age of 70, accounting for 74% of all global deaths. See World Health Organization, *Noncommunicable diseases. Key facts*, 16 September 2023, https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases; see also World Health Organization, *World health statistics 2023: monitoring health for the SDGs, Sustainable Development Goals*, 2023, Licence: CC BY-NC-SA 3.0 IGO; World Health Organization, *Invisible numbers: the true extent of noncommunicable diseases and what to do about them*, 2022, https://www.who.int/publications/i/item/9789240057661.

A closer look at the quantitative dimension of the phenomenon, as well as at the structural dynamics driving its expansion, reveals that the increase in the number of individuals affected by these conditions is not an episodic occurrence. Rather, it represents the outcome of profound and long-term transformations: the extension of life expectancy, demographic ageing, advances in diagnostic and therapeutic techniques, and, not least, the progressive chronicisation of diseases once considered acute, coupled with improved survival rates following severe illnesses or complex medical procedures such as organ transplants.

An analysis of the prevalence of chronic diseases and post-transplant conditions further shows that, although their incidence rises markedly with age[2], these conditions are by no means confined to older cohorts[3]. On the contrary, they increasingly affect individuals who are fully of working age.

The growing presence of workers with compromised health must also be interpreted against the backdrop of a labour market characterised by the progressive ageing of the workforce. This trend is driven, on the one hand, by the rising participation rates of older workers[4] – facilitated by increased life expectancy and the consequent tightening of pension eligibility requirements[5] – and, on the other, by the contraction of the youth labour supply, with ever smaller cohorts entering employment[6].

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[2] Eurofound, *How to respond to chronic health problems in the workplace?*, Publications Office of the European Union, Luxembourg, 2019, which reports that individuals over the age of 50 are more than twice as likely to develop a chronic disease as those under 35, and that even among younger workers (aged 16 to 29) the share of those reporting chronic conditions is both high and increasing, rising from 11% in 2010 to 18% in 2017.

[3] Ibid., reports that chronic diseases affect one quarter of the EU's working-age population, with a growing share that increased by 8 percentage points between 2010 and 2017.

[4] See European Commission, *2024 Ageing Report. Underlying Assumptions & Projection Methodologies*, Institutional Paper 257, Luxembourg: Publications Office of the European Union, 2023, pp. 32 ff., which also projects that the participation of older workers (aged 55–64) will increase in all EU Member States, rising on average by 10 percentage points by 2070, from 65.4% in 2022 to 75.5% in 2070, with higher increases for women (+13 percentage points) than for older male workers (+6 percentage points). As regards the participation of people aged 65–74, a similar upward trend is observed, with the average participation rate increasing from 9.8% in 2022 to 18.4% in 2070.

[5] For an overview of pension reforms contributing to this trend at the global level, see the annual OECD surveys, the most recent of which is OECD, *Pensions at a Glance 2023: OECD and G20 Indicators*, OECD Publishing, Paris, 2023, https://doi.org/10.1787/678055dd-en. In Italy, the increase in the statutory retirement age was introduced by Art. 24 of Decree-Law No. 201/2011, converted into Law No. 214/2011 and subsequent amendments.

[6] On the topic of older workers, see M. Dagnino, *Ageing, Chronic Diseases, and Employment: Comparative Insights from Two Distinct Regulatory Models*, in E-Journal of International and Comparative Labour Studies, 2025, 2, vol. 14, pp. 1-35; Eurofound, *Keeping older workers engaged: Policies, practices and mechanisms*, edited by F.F. Eiffe, J. Muller, T. Weber, 2023; AGE Platform

The combined effect of these factors heightens the likelihood of encountering health-related limitations even in the core working-age population and is significantly reshaping the composition of the active labour force. As a result, an ever-larger share of workers is living with such conditions, with implications for labour-market participation, employment continuity, and, more broadly, the overall quality of the working experience.

It follows that workers' health acquires a structural relevance within productive systems: it extends far beyond the individual dimension and becomes a decisive factor for the organisational sustainability of enterprises and for the broader equilibrium of welfare systems[7].

In this context, enterprises are increasingly required to address new and often complex needs, as workers living with chronic illnesses or who have undergone organ transplantation present specific requirements linked to the nature of their health conditions. Such conditions may necessitate continuous therapeutic treatments, prolonged rehabilitation pathways, fluctuations in work capacity, and the need to reconcile time devoted to care with time devoted to work. Although these situations do not always fall neatly within the legally codified categories – such as disability, invalidity, or incapacity[8]– they share common features, including the long-term duration of the health condition, the fluctuating course of the illness (with alternating phases of exacerbation and

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Europe, *Barometer 2023 – Empowering older people in the labour market for sustainable and quality working lives*, AGE Platform Europe, 2023; F. Eiffe, *Eurofound's Reference Framework: Sustainable work over the life course in the EU*, in *European Journal of Workplace Innovation*, 2021, Vol. 6, No. 1, pp. 67–83; EU-OSHA, Cedefop, Eurofound and EIGE, *Joint report on Towards age-friendly work in Europe: a life-course perspective on work and ageing from EU Agencies*, Publications Office of the European Union, Luxembourg, 2017. For the Italian scholarly debate, see G. Ludovico, *Dalla società dell'invecchiamento alla società della longevità*, in *LDE*, 2025, 1, pp. 22 ff.; P. Pascucci, *Longevity economy e invecchiamento nel contesto lavorativo*, in *LDE*, 1, 2025; M. Marazza, *Lavoro, longevità e nuove dimensioni della prevenzione nell'approccio "total worker health"*, in *DSL*, 2024, pp. 127 ff.; Battisti, *Fattore demografico e misure per il lavoro*, Giappichelli, 2024, 1 ff.; Gambacciani, *Invecchiamento demografico e diritto del lavoro*, in *MGL*, 2020, 929; P. Bozzao, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, in *Riv. trim. scienza amm.*, 2022, 1, pp. 1 ff.; V. Filì, *Anziano/a*, in M. Brollo, F. Bilotta, A. Zilli (eds.), *Lessico della dignità*, Forum, 2021, pp. 25 ff.; V. Filì (ed.), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, ADAPT University Press, No. 95, 2022.

[7] For an in-depth and historically informed analysis of the evolving relationship between health protection and the management of the employment relationship, see M. Tiraboschi, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, in *DRI*, 2023, No. 2, pp. 229 ff., and the references therein. See also, with further reflections, C. Carchio, *Rischi e tutele nel reinserimento lavorativo delle persone con malattie croniche e trapiantate: prime riflessioni alla luce del d.lgs. n. 62/2024*, in DSL, 2024, 2, pp. 162 ff.

[8] See, among many others, M. Martone and M. Persiani, *Diritto della sicurezza sociale*, Giappichelli, Turin, 2024, pp. 158 ff.

remission), and, consequently, a significant impact on daily life and on the ability to perform certain tasks, or to perform them in the same manner as before the onset of the illness.

The presence of a chronic condition or the consequences of transplantation may affect, on the one hand, attendance at work and, on the other, the worker's functional capacity, reducing or temporarily suspending it; in some cases, these conditions may even lead to a permanent reduction in work capacity, culminating – in the most severe situations – in a complete inability to perform any work activity and, therefore, in a condition of incapacity. In this latter scenario, the social protection system intervenes through the provision of welfare and/or social-security benefits designed to compensate for the impossibility of participating in the labour market. When, instead, a residual work capacity remains, it becomes necessary to design pathways that ensure reintegration and employment continuity, through arrangements that are compatible with the worker's health condition and, at the same time, sustainable for the enterprise.

This requires targeted interventions to adapt job tasks, reorganise working time and workloads, and establish continuous dialogue among the worker, the employer, and the competent institutions, with the aim of identifying solutions that both enhance the remaining work capacity and safeguard the worker's health and the organisational balance of the firm[9].

However, data on inactivity rates among individuals with chronic illnesses and, more broadly, among persons with disabilities paint a markedly different picture, highlighting how far we still are from achieving full inclusion in the labour market.

According to OECD estimates, the employment rate of persons with disabilities is slightly above half that of the overall working-age population, while their unemployment rate is approximately twice as high[10].

In 2022, the OECD further reported that persons with disabilities were 42 per cent less likely to be employed than those without disabilities, with an unemployment rate of around 15 per cent[11].

Comparable findings emerge from other European sources[12]. Eurofound, drawing on data from the Survey of Health, Ageing and Retirement in Europe

[9] In particular, on the relationship between the protection of workers with chronic illnesses and organisational and managerial models, see P. Stolfa, *La tutela della salute e sicurezza dei lavoratori affetti da malattie croniche nell'organizzazione aziendale*, in *Professionalità studi*, 2025, 2/VIII, pp. 100 ff.

[10] OECD, *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries*, OECD Publishing, Paris, 2010.

[11] See OECD, *Disability, Work and Inclusion: Mainstreaming in All Policies and Practices*, OECD Publishing, Paris, 2022.

(SHARE), shows that even in the 50-59 age group the presence of one or more chronic conditions significantly affects labour-market participation: while 74 per cent of individuals without health problems are employed, the share falls to 70 per cent among those with a single chronic condition and drops to 52 per cent in the presence of two chronic conditions[13].

Added to this are the analyses conducted by EU-OSHA, which emphasise that, despite regulatory and organisational efforts, the labour-market participation of individuals with compromised health conditions remains significantly below the European average, signalling the persistence of structural obstacles in pathways of job retention and return to work[14].

Taken together, these data confirm the existence of deep and systemic barriers that continue to hinder access to employment, job retention, and reintegration into the labour market, thereby making it necessary to rethink labour-market inclusion policies and the support instruments available to workers with compromised health conditions.

The picture is further aggravated by the fact that workers with chronic illnesses experience employment trajectories marked by pronounced fragmentation. Transitions from employment to unemployment tend to occur relatively quickly, whereas the reverse transitions – returning to work after periods of inactivity – are slow and particularly difficult[15]. This asymmetry highlights the vulnerability of these workers during phases of occupational discontinuity and the need for instruments that facilitate re-entry, preventing short periods of absence from resulting in long-term exclusion from the labour market.

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[12] For data concerning the Italian context, see, among others, M. Giovannone, *L'inclusione lavorativa delle persone con disabilità in Italia*, Rome, International Labour Organization, 2022.

[13] Eurofound, *How to respond to chronic health problems in the workplace?*, Publications Office of the European Union, Luxembourg, 2019, p. 1. Similarly, according to the European Parliament, *Employment and disability in Europe. Briefing document*, May 2020, available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS_BRI(2020)651932_EN.pdf, the employment rate of persons with disabilities (aged 20–64) stood at 50.6% in 2017, compared with 74.8% for persons without disabilities, while in most EU Member States only a small proportion of working-age individuals with severe disabilities is employed.

[14] EU-OSHA, *Rehabilitation and return-to-work policies and systems in European countries*, 2016, updated in 2022, available at `https://oshwiki.osha.europa.eu/en/themes/rehabilitation-and-return-work-polices-and-systems-european-countries.

[15] Eurofound, *Employment Opportunities for People with Chronic Diseases, carried out within the framework of the European Observatory of Working Life – Eur-WORK*, 2014, available at https://www.eurofound.europa.eu/en/publications/2014/employment-opportunities-people-chronic-diseases, pp. 19–20; an interesting study by S. Leka, A. Jain, *A Mental Health in the Workplace in the European Union: Consensus Paper*, Brussels, Belgium, European Commission, Directorate General for Health, 2017, reports that 55% of people with mental health problems attempt unsuccessfully to return to work and, among those who do return, 68% have fewer responsibilities, work fewer hours, and are paid less than before.

The difficulties faced by individuals with chronic conditions upon attempting to return to work are manifold and arise on both sides of the employment relationship. From the employer's perspective, concerns often relate to potential costs: the risk of future absences, possible reductions in productivity, legal obligations associated with the return to work – such as restrictions on dismissals or the need to provide reasonable accommodations – as well as organisational burdens stemming from workplace adjustments or the reorganisation of production rhythms. From the workers' perspective, returning to work is frequently accompanied by uncertainty and reluctance: the perception of reduced capacity, fear of being unable to cope with workload demands, difficulties in reconciling care responsibilities with work obligations, and the risk of stigmatisation or discrimination by colleagues and supervisors[16].
A further element of considerable relevance emerges from numerous studies that have identified a significant association between labour-market exclusion and health status. Individuals outside the labour market report the highest levels of long-term limitations in their usual activities due to health problems; similarly, among the unemployed there is a higher prevalence of persons with chronic conditions and multiple chronic illnesses[17]. Job loss may therefore constitute a factor of vulnerability that contributes to the onset of chronic health problems or the worsening of pre-existing ones. At the same time, individuals living with a chronic illness are more exposed to interruptions in their employment relationship or to difficulties in maintaining stable employment. What emerges is a reciprocal interdependence between health status and labour-market participation[18].

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[16] On this point, see Eurofound, *Employment opportunities for people with chronic diseases*, cit., passim; L.C. Koch, P.D. Rumrill, L. Conyers, S. Wohlford, *A Narrative Literature Review Regarding Job Retention Strategies for People with Chronic Illnesses*, in *Work*, 2013, 133 ff.; S.H. Allaire, J. Niu, M.P. Lavalley, *Employment and Satisfaction Outcomes from a Job Retention Intervention Delivered to Persons with Chronic Diseases*, in *Rehabilitation Counseling Bulletin*, 2005, p. 101, which note that among the factors facilitating job retention for individuals with chronic illnesses are the removal of barriers to performing work, personal satisfaction, and the awareness of possessing the skills needed to continue carrying out one's tasks effectively.

[17] Eurofound, *Employment opportunities for people with chronic diseases*, cit., passim; R. Leahy, *Unemployment is bad for your health*, in www.huffpost.com, 7 April 2013; for the Italian context, see also Osservatorio Nazionale sulla Salute nelle Regioni Italiane, *Patologie croniche in costante aumento in Italia con incremento della spesa sanitaria. La cronicità non colpisce tutti allo stesso modo: si confermano le diseguaglianze di genere, territoriali, culturali e socio economiche*, 2019.

[18] Cf. on this point the literature cited by M. Tiraboschi, *Sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in M. Tiraboschi (ed.), *Occupabilità, lavoro e tutele delle persone con malattie croniche*, ADAPT University Press, 2015, p. 11, and S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, in RIDL, 2018, no. 1, pp. 118 ff.

A similar picture emerges when examining the relationship between health conditions and precarious forms of employment. Job instability – much like prolonged absence from employment – tends to have a negative impact on psychosocial well-being, contributing to a deterioration of health in the medium and long term. Available evidence shows a significant presence of chronic illnesses among workers employed on fixed-term contracts or reduced working hours[19], whereas the proportion of individuals reporting such conditions is lower among permanent employees and even lower among self-employed workers without employees[20]. One possible explanation lies in the more limited ability to adjust working time and modalities typical of subordinate employment, which makes it more difficult to manage care needs and ongoing therapeutic treatments.

Taken together, these elements suggest that the limitations – whether real or perceived – associated with a chronic illness may reduce labour-market participation; at the same time, weak or intermittent participation may negatively affect overall health, levels of social integration, and ultimately the economic stability of the individuals concerned. From this perspective, job retention and return to work for those who still possess residual work capacity acquire strategic importance.

At the individual level, continuity of employment supports a more complete recovery after illness, contributing to improved mental health, a strengthened sense of purpose, and economic and professional stability, often undermined by the costs of care and employment interruptions[21]. At the organisational level, the reintegration of workers with long-term health conditions – supported by appropriate workplace adjustments – helps reduce turnover,

[19] Eurofound, *Employment opportunities for people with chronic diseases*, cit., pp. 30–31, where it is also noted that workers with chronic illnesses report difficulties in requesting and obtaining a different distribution of working time or workload, thereby hindering access to so-called reasonable accommodations, with repercussions on their ability to perform work as well as on their prospects for professional development and career progression.

[20] Eurofound, *European Working Conditions Survey (EWCS)*, cit.; I.-H. Kim, Y.-H. Khang, C. Muntaner, H. Chun, S.-I. Cho, *Gender, precarious work, and chronic diseases in South Korea*, in *American Journal of Industrial Medicine*, 2008, vol. 51, no. 10, 748–757; P. Virtanen, V. Liukkonen, J. Vahtera, M. Kivimaki, M. Koskenvuo, *Health inequalities in the workforce: The labour market core-periphery structure*, in *International Journal of Epidemiology*, 2003, vol. 32, no. 6, pp. 1015–1021; cf. Osservatorio Nazionale sulla Salute nelle Regioni Italiane, *Patologie croniche in costante aumento in Italia con incremento della spesa sanitaria. La cronicità non colpisce tutti allo stesso modo: si confermano le diseguaglianze di genere, territoriali, culturali e socio economiche*, cit.

[21] On this point, see EU-OSHA, *Rehabilitation and return to work after cancer – instruments and practices. European Risk Observatory*, Luxembourg: Publications Office of the European Union, 2018, pp. 18 ff.; EU-OSHA, *Rehabilitation and return to work after cancer – Literature review*, Publications Office of the European Union, Luxembourg, 2017.

retain skills already present within the enterprise, and contain costs associated with absenteeism, reduced productivity, or presenteeism[22], as well as those linked to contract terminations, new hires, and the training of replacement staff.

At the collective level, the growing number of individuals with reduced work capacity has significant implications for the sustainability of pension systems and disability benefits, making it necessary to rethink welfare policies in a more dynamic direction, oriented towards continued labour-market participation.

The evidence presented thus far shows that the management of chronic illnesses in the workplace cannot be understood solely in terms of individual protection; rather, it must be addressed as a structural issue that affects the quality of human capital, the competitiveness of enterprises, and the overall resilience of welfare systems. The exclusion from employment of an increasing share of the working-age population produces effects that extend far beyond the personal dimension of illness, fuelling dynamics of social marginalisation, reducing the employment base, and increasing the demand for public support.

For these reasons, labour-market policies must be oriented towards models capable of sustaining continuous employment pathways even in the presence of complex health conditions, promoting flexible organisational solutions, effective support instruments, and a more strategic use of assistance measures. Within such a framework, chronic illness and organ transplantation can be removed from the logic of exclusion and situated within a paradigm of sustainable integration, in which participation in work becomes an essential component of the recovery process and, at the same time, a lever for economic development and social cohesion.

2. The State of the Art in the Protection of Workers with Long-Term Illnesses in the Italian Legal System

The analysis conducted thus far highlights the need to rethink labour market policies in a direction capable of supporting, even in the presence of complex and long-term health conditions, the continuity of professional trajectories and the return to work after periods of absence, by valuing the residual work capacity of individuals with chronic illnesses or transplant recipients.

[22] See in this regard, among others, A. McGregor, P. Caputi, *Presenteeism Behaviour. Current Research, Theory and Future Directions*, Palgrave Macmillan, 2022; K. Skagen, A. Collins, *The consequences of sickness presenteeism on health and wellbeing over time: A systematic review*, in *Social Science and Medicine*, 2016, pp. 169 ff.; K. Vänni, S. Neupane, C.-H. Nygard, *An effort to assess the relation between productivity loss costs and presenteeism at work*, in *International Journal of Occupational Safety and Ergonomics*, 2016, 23(1), pp. 1 ff.

However, when examining the Italian regulatory framework, it becomes evident that labour legislation has historically focused on illness as a condition of incapacity for work, treated almost exclusively as a state intrinsically incompatible with the performance of work activity[23]. This approach has produced a predominantly negative and residual conception of illness, orienting protective measures towards social security instruments – disability allowances, incapacity pensions, as well as sickness benefits, leaves of absence and time-off entitlements – designed to compensate for the inability to work, rather than towards active policies aimed at supporting job retention or reintegration[24].

From this perspective, particularly when the chosen vantage point is the protection of workers with long-term illnesses, a structural limitation of the current system clearly emerges. Legislation has concentrated primarily on the social and economic costs generated by the onset of such conditions[25], neglecting the development of tools capable of supporting continued participation in work. The traditional approach, grounded in the dichotomy between capacity and incapacity for work, has ultimately reduced the protection of vulnerable individuals to a welfare-based, medicalised approach, without recognising the possibility – and often the necessity – of maintaining the person in employment through appropriate adjustments[26].

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[23] It is sufficient to recall that the notion of illness relevant for the suspension of the employment contract under Article 2110 of the Civil Code has been defined by case law in a manner entirely autonomous from the medical definition. It does not coincide with the clinical diagnosis as such, but encompasses only those conditions that prevent the performance of the assigned duties and result in a concrete impossibility – whether total or partial – to carry out the activities inherent in the worker's position. In this way, protection is confined to situations of actual functional incapacity, assessed in relation to the concrete content of the work performance. On this point, see F. Cucchisi, *La malattia del lavoratore e lo svolgimento di altre attività durante il periodo di comporto*, in LG, 2025, no. 5, pp. 520 ff.

[24] Cf. M. Tiraboschi, *Sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., p. 15, who emphasises how an issue of protection in the labour market and within the employment relationship – namely, ensuring adequate safeguards for a vulnerable person whose work capacity is reduced or limited, whether permanently or only temporarily – tends to be transformed into a medical or welfare-based question, that is, determining whether the individual meets the standard requirements for the recognition of unfitness for work and the corresponding disability allowance or pension. Cf. idem, pp. 17 ff. and the references therein.

[25] Cfr. *idem*, 17 ss. e i riferimenti ivi contenuti.

[26] With specific regard to the relationship between illness and work, also in light of the reshaping of the concepts of working time and workplace, cf. D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, no. 2, pp. 359–360, who notes that "the widespread de-structuring of working time and place, and its impact on the rights and obligations of both parties to the employment relationship, may also affect the suspensive events of the relationship itself, which are currently regulated and shaped by law and collective bargaining with reference to the typical model of on-site work performed according to a full-time, fixed

This approach has produced a system that tends to place the ill worker at the margins, or even outside, the labour market: it provides economic support when the person is unable to work, but does not establish structural interventions capable of facilitating job retention or return to work after illness. In the case of individuals with chronic conditions, however, this model reveals all its inadequacy, as it ignores the variability of individual trajectories and the possibility of reconciling, at least in part, work activity and therapeutic pathways. Chronic illnesses, in fact, not only do not offer a prospect of definitive recovery, but also do not follow a linear course: rather, they present a long, irregular and unpredictable pattern, marked by alternating phases of stability and exacerbation. As a result, the work incapacity of those affected – and thus their absences from work – is not always absolute nor concentrated in a single continuous period, but may be partial and manifest itself in multiple (shorter or longer), recurrent and difficult-to-predict episodes. It is precisely this structural discontinuity that exposes the distance between a regulatory framework anchored in the model of acute illness – designed for unitary and temporally defined absences – and the nature of chronic conditions, with the consequence of leaving without adequate protection situations that would instead require flexible and continuous measures to support job retention.

In this regard, a clear asymmetry emerges between different levels of protection: while the social-security apparatus that intervenes in cases of temporary or permanent incapacity is articulated and equipped with diversified instruments, there is no equally structured regulation of the employment relationship capable of specifically addressing the needs of individuals with chronic illnesses, whose course is oscillatory. Although the system provides income-replacement or income-supplementing benefits for those with work incapacity, reserved quotas in access to employment for persons recognised as having disabilities[27], and mechanisms for suspension or job retention during

and continuous schedule". More recently, see V. Filì, *Breve riflessione (polemica) sulla possibile evoluzione della nozione di 'malattia comune' nel lavoro digitale a distanza: una proposta interpretativa*, in F. Visintin, A. Zilli (eds.), *Out of Office. La remotizzazione del lavoro nel settore ICT. Organizzazione, rapporto di lavoro e fiscalità*, Editoriale Scientifica, Naples, 2025.

[27] See, in particular within the Italian legal system, Law No. 68/1999; among the most recent contributions, cf. D. Tardivo, *L'inclusione lavorativa della persona con disabilità: tecniche e limiti*, Giappichelli, Turin, 2024; M.D. Ferrara, *L'avviamento al lavoro dei disabili: verso il collocamento mirato 'personalizzato' e la soluzione ragionevole 'a responsabilità condivisa'?*, in VTDL, 2020, no. 4, pp. 877 ff.; D. Garofalo, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in ADL, 2019, no. 6, pp. 1211 ff.; F. Malzani, *Dal collocamento mirato al diversity management. Il lavoro dei disabili tra obbligo e inclusione nella prospettiva di genere*, in RDSS, 2019, no. 3, pp. 720 ff.; A. Riccardi, *Disabili e lavoro*, Cacucci, Bari, 2018; C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i lavoratori disabili dopo il Jobs Act*, in DLM, 2017, I, pp. 39 ff.

acute phases of illness[28], there has been no parallel development of measures specifically aimed at intervening on the working conditions – both subjective and organisational – affecting chronically ill workers and the enterprises employing them[29].

Ensuring effective reintegration into the labour market, both after and during chronic illness, requires far more than the mere preservation of the job or a simple return to work after illness, as occurs in cases of suspension of the employment relationship and receipt of sickness benefits. Rather, it is necessary to support employment continuity throughout the various phases of the condition, whenever compatible with the worker's health, by establishing tools that allow the modulation of the timing, modalities and intensity of work performance in line with the evolution of the illness and therapeutic treatments.

In this sense, the challenge facing contemporary labour law in relation to the protection of workers with long-term illnesses lies in constructing a system that is not only inclusive but genuinely adaptive – one that does not confine its intervention to the labour-market dimension, promoting the entry of those deemed fit or facilitating the exit of those declared unfit for specific tasks, but extends protection to the regulation of the employment relationship, thereby enabling the continuation of work activity even in the presence of supervening partial unfitness through appropriate adjustments to work performance.

It is above all in this domain that an update of both statutory and collectively bargained rules becomes necessary, so that work organisation may effectively accompany workers with chronic illnesses or transplant outcomes, supporting their continued participation in employment and limiting, as far as possible, the risks of exclusion arising from their health conditions.

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[28] For an overview of the case law and scholarship on illness, see G. Della Rocca, *La malattia del lavoratore subordinato tra vecchie e nuove tutele*, Giappichelli, Turin, 2024; R. Del Punta, *La sospensione del rapporto di lavoro. Malattia, infortunio, maternità, servizio militare. Artt. 2110–2111*, Giuffrè, Milan, 1992.

[29] See G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, in *DSL*, 2025, no. 1, pp. 49 ff.; E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte del sistema*, in *DRI*, 2023, no. 2, pp. 336 ff., especially pp. 336–339; M. Tiraboschi, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in S. Fernández Martínez, M. Tiraboschi (eds.), *Lavoro e malattie croniche*, ADAPT University Press, 2017, pp. 25–26; E. Eichenhofer, *The European social model and reforms of incapacity benefits*, in S. Devetzi, S. Stendahl (eds.), *Too Sick to Work? Social Security Reforms in Europe for Persons with Reduced Earnings Capacity*, Milan, 2011, p. 19.

3. The right to absence from work on grounds of illness, in light of Law no. 106/2025

As previously noted, the protection traditionally afforded to workers affected by chronic illness during the employment relationship rests on the possibility of temporarily suspending work performance when the pathology – or the therapies required to manage it – results in a condition of total incapacity to carry out assigned duties. Under the framework established by Article 2110 of the Civil Code, absence due to illness suspends the worker's obligation to perform without interrupting the continuity of the employment relationship, which remains safeguarded for the entire job-retention period for sickness absence, the duration of which is determined by collective bargaining[30].
As is well known (in line with the guidance consolidated in case law), collective bargaining distinguishes between two methods for calculating the period of job retention. The first is the so-called "single-spell job-retention period", referring to a single, continuous spell of absence; the second is the "cumulative job-retention period", which allows for the aggregation of non-contiguous and fragmented absences within a defined temporal window. It is precisely this latter model that proves particularly suited to capturing the cyclical and discontinuous nature of chronic illnesses, preventing the mere frequency of illness episodes from being construed as a justified objective reason for dismissal where such absences generate organisational difficulties[31].

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[30] On the subject of the suspension of the employment relationship, the literature is extensive; among the many contributions, reference may be made to the more recent works of R. Vianello, *La sospensione della prestazione di lavoro*, in M. Martone (ed.), *Contratto di lavoro e organizzazione. Tomo I. Contratto e rapporto di lavoro*, in M. Persiani, F. Carinci (dirs.), *Trattato di diritto del lavoro*, vol. IV, Cedam, Padova, 2012, p. 726 ff.; R. Del Punta, *La sospensione della prestazione di lavoro*, cit.; P. Ichino, *Il contratto di lavoro*, in A. Cicu, F. Messineo (dirs.), *Trattato di diritto civile e commerciale*, vol. III, Giuffrè, Milano, 2003; M. Tatarelli, *La malattia nel rapporto di lavoro privato e pubblico*, Cedam, Padova, 2002.

[31] With regard to the inclusion of so-called *eccessiva morbilità* within the scope of the job-retention period for sickness absence, see the approach – later consolidated – that originated with Cass., Joint Sections, 29 March 1980, No. 2072, in GCM, 1980, no. 3, which held that «the 'case of illness' of the worker, for which Article 2110(2) of the Civil Code provides that the employer may terminate the employment relationship only after the impossibility of performance has continued for the period established by law, collective agreements, custom or equity (the so-called job-retention period for sickness absence), must be understood – also in light of the constitutional principles on the right to health – not as limited to a single or continuous illness, but as including the succession of intermittent or recurrent illnesses, even if frequent and discontinuous, associated with a fragile state of health (the so-called *eccessiva morbilità*). It follows, given the prevalence of this special provision over the general rules on termination of employment, that even in the case of repeated absences due to illness, the employer may not dismiss the worker for justified reason under Article 3 of Law

Alongside this general protection – which guarantees all workers the preservation of their position for the entire duration of the job-retention period for sickness absence – an additional layer of protection has progressively developed, first through judicial interpretation and subsequently through its incorporation into collective bargaining. This supplementary protection is directed at workers considered particularly vulnerable, most notably workers with disabilities, including where the disability stems from a chronic condition. As will be examined in greater detail in the second part of this contribution, numerous chronic illnesses fall within the broad notion of disability elaborated under the bio-psycho-social model. By their very nature, such conditions tend to generate a physiologically higher number of absences than ordinarily observed, whether in the form of continuous periods or recurrent episodes distributed over time.

It is precisely in light of this specific condition that the case law – drawing on the Ruiz Conejero judgment (CJEU, 18 January 2018, C-270/16)[32] – has begun to reinterpret the job-retention period for sickness absence through the lens of disability. From this perspective, both the Court of Justice of the European Union and, subsequently, the Italian Court of Cassation[33] have affirmed that a

No. 604 of 15 July 1966, but may exercise termination only after the period established for that purpose by collective bargaining or, failing that, determined according to equity. Moreover, where the collective agreement provides for the job-retention period for sickness absence but does not expressly regulate its duration in the case of multiple illness episodes within a given timeframe, the question of whether the job-retention period for sickness absence may be used once only – possibly by aggregating the absences relating to the individual episodes – or whether it restarts *ex novo* for each episode must be resolved through a primary analysis and interpretation of the collective provisions, in accordance with the notion of illness derived from Article 2110 of the Civil Code». This principle was reaffirmed more recently by Cass., Joint Sections, 22 May 2018, No. 12568, which held that dismissal imposed before the exhaustion of the *comporto* period is null for violation of Article 2110(2) of the Civil Code; see also Cass., 27 April 2023, No. 11174; Cass., 12 December 2022, No. 36188; Cass., 7 December 2018, No. 31763.

[32] See also Court of Justice, 18 January 2018, Case C-270/16, *Carlos Enrique Ruiz Conejero v. Ferroser Servicios Auxiliares SA and Ministerio Fiscal*, in *RGL*, 2018, 3, pp. 271 ff., with a note by L. Guaglianone, *Licenziamento per assenteismo e indiretta discriminatorietà per motivi di disabilità. A proposito della sentenza Conejero (C-270/16)*.

[33] On this point, see Cass. 21 December 2023, no. 35747, in DeJure; Cass. 31 March 2023, no. 9095, in GI, 2023, no. 10, pp. 2145 ff., with a note by V. Filì, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*.
For scholarly commentary, see, among many others, A. Maresca, *Disabilità e licenziamento per superamento del periodo di comporto*, in LDE, 2024, no. 2, pp. 1 ff.; M.G. Greco, *Il licenziamento per superamento del periodo di comporto del lavoratore disabile*, in VTDL, 2024, special issue, pp. 69 ff.; I. Zampieri, *La tutela antidiscriminatoria: dal lavoratore come contraente debole al lavoratore come persona umana*, ibid., pp. 45 ff.; D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, no. 2, pp. 41 ff.; E. Dagnino, *Comporto, disabilità, disclosure: note a margine di una querelle*

worker with a disability is inherently exposed, in comparison with a non-disabled worker, to a greater risk of accumulating absences attributable to illness episodes linked to their condition. It follows that the application of the ordinary job-retention period for sickness absence to workers with disabilities constitutes indirect discrimination, insofar as the apparently neutral criterion governing the calculation of the job-retention period fails to take account of the heightened morbidity risk affecting disabled workers. Consequently, dismissal imposed solely on the basis of that single threshold must likewise be regarded as discriminatory.

More recently still, the Court of Justice (CJEU, 11 September 2025, Case C-5/24)[34] clarified that the establishment of a maximum limit on absences is not, in itself, discriminatory, as it may pursue a legitimate employment-policy objective aimed at countering absenteeism. Such an objective, however, must be pursued through proportionate means: disregarding the greater morbidity risk to which disabled workers are exposed transforms an ostensibly neutral criterion – namely, the uniform calculation of the job-retention period for sickness absence – into a discriminatory practice vis-à-vis a particularly vulnerable group. It follows that collective bargaining, when determining the duration of the job-retention period for sickness absence, must take this need for differentiation into account.

In this respect, the solutions adopted by the social partners tend to follow two principal lines of intervention[35]: on the one hand, the introduction of mechanisms for extending the job-retention period for sickness absence period by excluding from its calculation certain absences linked to specific pathologies; on the other, the provision of periods of unpaid leave for workers

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giurisprudenziale, in ADL, 2023, no. 1, pp. 241 ff.; M. Salvagni, *Il "prisma" delle soluzioni giurisprudenziali in tema di licenziamento del disabile per superamento del comporto: discriminazione indiretta, clausole contrattuali nulle, onere della prova e accomodamenti ragionevoli*, in LPO, no. 3–4, 2023, pp. 215 ff.; G. Franza, *Quando l'effettività genera paradossi. Sull'esclusione dal periodo di comporto della malattia imputabile a disabilità*, in LG, 2022, no. 1, pp. 62 ff.

[34] See also Court of Justice, 11 September 2025, Case C-5/24, *Pauni*; for early commentary, M. Salvagni, *Il comporto unico e l'aspettativa non retribuita al banco di prova delle tutele antidiscriminatorie: prime riflessioni su CGUE 11 settembre 2025 – C-5/24 in tema di licenziamento del disabile*, in LPO News, 15 September 2025; G. Della Rocca, *I distinguo della Corte di Giustizia su comporto e accomodamenti ragionevoli*, in *Labor*, 27 October 2025.

[35] For an overview of the role played by collective bargaining in this specific area in Italy prior to the CJEU judgment of 11 September 2025, see F. Alifano, *Discriminazione per disabilità, comporto e contrattazione collettiva. Primi appunti ad un anno dalla pronuncia della cassazione*, "Working Paper", No. 7/2024, ADAPT University Press; see also the "Collective Bargaining" Database available on the institutional website of the PRIN 2022 PNRR research project *SUNRISE – Sustainable solutions for social and work inclusion in case of chronic illness and transplantation*, https://prinsunrise.uniud.it/.

with fragile health conditions, thereby preventing the automatic loss of employment upon exceeding contractual limits[36].

Within this general – albeit evolving – framework of protections, shaped in large part by judicial interpretation, the legislature has recently intervened with Law No. 106 of 18 July 2025, introducing a set of measures specifically directed at workers affected by oncological, disabling, and chronic illnesses.

The new legislation, entitled "Provisions concerning job retention and paid leave for medical examinations and treatments for workers affected by oncological, disabling and chronic illnesses," establishes a structured set of measures which, however, once again operate primarily by allowing the suspension of the employment relationship during periods of temporary incapacity and in anticipation of a return to work only after full recovery. These interventions therefore do not constitute genuine instruments of workplace reintegration, as they do not affect the management of the employment relationship in a way that facilitates its continuation; rather, they merely extend the temporal scope of legitimate absence. Nonetheless, these measures represent a significant step forward: they constitute the first legislative attempt expressly calibrated to address the employment-related needs associated with chronic illness – an area that, until now, had received only indirect attention and had been protected chiefly through interpretative developments.

The principal provisions introduced by Law No. 106/2025 consist in the creation of new forms of unpaid leave and paid time off for medical examinations and treatments for public and private-sector workers affected by oncological diseases or by disabling or chronic conditions, including rare diseases, provided that these entail a degree of disability equal to or greater than 74 per cent[37].

Taken together, these provisions construct a protective framework organised around two main pillars. The first concerns job retention through a period of unpaid leave, with a maximum duration of two years, available to employees suffering from serious illnesses that result in a disability rating of at least 74 per cent. This leave functions as a residual instrument, which may be activated only

[36]The institution of unpaid leave for health reasons supplements the *comporto* period established by statute as an additional and residual safeguard for workers with disabilities or affected by serious (including chronic) illnesses. As an instrument of exclusively contractual origin, its regulation is entirely entrusted to collective-bargaining clauses, which determine not only its duration, its possible cumulation with other forms of leave, and its relationship with the job-retention period for sickness absence, but also the nature of the eligibility requirements for workers. On this topic, see G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, cit., p. 67 ff., and the references therein.

[37] Article 1 of Law No. 106/2025..

once all ordinary forms of justified absence – whether paid or unpaid – have been exhausted, and it suspends the employment relationship without generating any entitlement to remuneration or social-security contributions[38]. Access to the leave is conditional upon certification of the medical condition by the worker's general practitioner or by a specialist operating within a public or accredited healthcare facility, with the possibility of verification through national health-information systems[39]. At the end of the leave period, the worker is also granted priority access to remote working arrangements, where compatible with the duties performed, thereby introducing a form of organisational adjustment aimed at facilitating a gradual return to work[40].

The second pillar concerns the introduction of paid leave for medical examinations, consultations and treatments, available to workers affected by the same categories of illness and, symmetrically, to parents of minor children in the same conditions[41]. This entitlement constitutes an additional quota of hours beyond those already provided under existing legislation, to be used for recurrent healthcare needs and accompanied by figurative social-security coverage. The new regime coordinates with existing instruments – most notably the therapeutic leave provided for under Legislative Decree No. 119/2011[42] and the leave entitlements recognised to persons with disabilities under Law No. 104/1992[43] – without replacing them, but rather expanding the range of tools available to manage ongoing therapeutic requirements.

The law also extends a form of protection to self-employed workers falling within Article 14(1) of Law No. 81/2017, namely those who perform services on a continuous basis for a single client, granting them the possibility of suspending performance for up to 300 days per calendar year. The decision to

[38] Article 1, par. 1, of Law No. 106/2025.

[39] Article 1, par. 2, of Law No. 106/2025.

[40] Article 1, par. 4, of Law No. 106/2025.

[41] Article 2 of Law No. 106/2025.

[42] Article 7 of Legislative Decree No. 119/2011 introduced a form of paid therapeutic leave, borne by the employer, for civilian invalids and workers with disabilities who have been recognised as having a reduction in working capacity exceeding 50 per cent. This leave may be taken each year, including on a fractional basis, for a maximum of 30 days per year (in addition to ordinary sick leave). It may be used exclusively to undergo necessary and non-deferrable treatments that are directly related to the recognised disability and have been prescribed by the worker's general practitioner or by a physician affiliated with the National Health Service.

[43] Article 33(6) of Law No. 104/1992 grants persons with disabilities requiring high or very high levels of support the possibility of using, alternatively, the leave entitlements provided for in paragraphs 2 and 3 of the same article. Paragraph 2 provides for two hours of paid daily leave (reduced to one hour where the daily working time is less than six hours), while paragraph 3 grants three days of paid monthly leave, covered by figurative social-security contributions.

limit the protection to "continuous" relationships, however, raises significant interpretative questions, given the absence of a statutory definition of continuity and the resulting uncertainty regarding the scope of eligible beneficiaries[44].

In addition to these measures, the legislature has established a dedicated fund to support training and scientific initiatives in the field of oncological diseases[45].

Despite the undeniable progress achieved, the 2025 reform presents a significant structural limitation: access to the protections is conditioned upon a disability rating of at least 74 per cent, a threshold so high that it risks excluding a substantial proportion of workers affected by chronic illnesses that are not immediately disabling but nonetheless exert a sustained and significant impact on work capacity.

Further critical issues arise on two fronts. First, the leave period is entirely devoid of remuneration and social-security contributions: it thus preserves the employment relationship but offers no compensation for the income loss resulting from the absence. The scheme provides no form of welfare support and effectively shifts the economic burden of illness entirely onto the worker and, indirectly, onto the employer, who remains obliged to retain the position.

Second, the absolute prohibition on engaging in any work activity during the leave is difficult to reconcile, on the one hand, with certain judicial decisions that, in specific circumstances, have recognised the possibility for workers to perform marginal activities compatible with their health condition or possessing a therapeutic or rehabilitative function; and, on the other hand, with the absence of any form of public economic support, which deprives the worker – already ill and unable to engage in alternative employment – of the supplementary income that such marginal activities might otherwise provide.

Taken as a whole, the 2025 reform therefore marks a non-negligible step forward, yet at the same time underscores the need for a more organic and systematic intervention capable of fully recognising the specificity of chronic

[44] This guarantee is supplemented by the protection introduced by Article 8(10) of Law No. 81/2017 for self-employed workers falling within the scope of that statute. This latter provision concerns social-security protection, as it stipulates that, for periods of illness certified as resulting from therapeutic treatments for oncological diseases or serious chronic-degenerative conditions of a progressive nature—or, in any event, resulting in temporary total incapacity for work (100 per cent)—the same economic and regulatory treatment applicable to hospitalisation shall apply. On this provision, see, among others, D. Lanzalonga, *La tutela della genitorialità e della malattia per i lavoratori iscritti alla Gestione separata Inps*, in D. Garofalo (ed.), *La nuova frontiera del lavoro: autonomo – agile – occasionale*, ADAPT University Press, Labour Studies, 2018, pp. 239 ff

[45] Article 3 of Law No. 106/2025.

illness and translating it into a framework of protections that is genuinely adequate and inclusive.

3.1 …and the Right to Work Flexibly

Finally, it is worth considering whether the Italian legislature has made available additional legal instruments capable of ensuring specific protection for workers with long-term illnesses within the employment relationship – during its ordinary performance, and not solely in situations of suspension (as is the case with leave and unpaid expectations).

As already noted, the Italian legal system lacks a genuine «statutory framework for workers with chronic illness»[46] both in definitional terms and with regard to the set of protections that might constitute a minimum core of specific rights, with the sole exception of the leave and paid time-off provisions introduced by Law No. 106/2025. Chronic illness continues, in fact, to operate as a juridical category only implicitly recognised, whose emergence has resulted more from judicial stratification and the influence of supranational sources than from any coherent legislative design[47].

Among the few and fragmented provisions that expressly identify (some) workers with chronic illnesses as their intended beneficiaries, a first reference must be made to Article 8(3) of Legislative Decree No. 81/2015. This provision grants workers affected by oncological diseases or by serious chronic-degenerative conditions of a progressive nature –whose work capacity remains reduced, including as a consequence of the disabling effects of life-saving therapies – the right to convert their employment relationship from full-time to part-time. It thus establishes a genuine right to a flexible mode of performing work, accompanied by the possibility, upon the worker's request, to return to full-time employment[48]. Although this represents a significant step forward, its scope remains limited: the right is not extended to all workers with long-term health conditions, nor to all those affected by chronic illnesses, but only to individuals whose pathology exhibits a progressive and worsening course, on the basis of an inherently prognostic assessment[49].

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[46] See E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, cit., p. 342.

[47] G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, cit., p. 54.

[48] On this point, see, among others, S. Bruzzone, F. Romano, *Patologie oncologiche, patologie cronico-degenerative e diritto al part-time*, in M. Tiraboschi (ed.), *Le nuove regole del lavoro dopo il Jobs Act*, Giuffrè, Milano, 2016, pp. 613 ff.

[49] Scholarly opinion has rightly criticised the introduction of the requirement of *ingravescenza*, which unjustifiably narrows the scope of the provision, ultimately excluding individuals

A further targeted provision is contained in Article 6(7) of the same Legislative Decree No. 81/2015, which allows workers affected by oncological diseases or by serious chronic-degenerative conditions of a progressive nature to withdraw their consent to the "elastic clauses" applicable in part-time employment. The possibility of avoiding unilateral increases in working hours or changes in their temporal allocation constitutes an important safeguard in phases in which the illness or its treatments require greater organisational stability. This provision, too, confirms the selective nature of the legislative intervention: the protection is constructed around a model of chronicity that is progressive and irreversible, thereby excluding a wide range of chronic conditions characterised by a permanent, fluctuating, or non-progressive course – conditions that generate equally significant needs for adaptation but lack corresponding statutory recognition.

Alongside the legislative framework, collective bargaining has also played a non-negligible role in recent years, moving along two principal trajectories[50]. A first model merely incorporates the statutory provision, extending its application to workers falling within the scope of Article 8(3) of Legislative Decree No. 81/2015. A second, more advanced model is represented by collective agreements that intervene in an expansive manner relative to the statutory discipline, extending protection to a broader group of workers with health-related difficulties—for example, by committing employers to grant requests for conversion of the employment relationship motivated by serious and documented health problems, or by assigning priority, in the assessment of such requests, to needs connected with certified health conditions.

Ultimately, the resulting picture is that of a regulatory framework that remains fragmented and constructed through successive additions, in which the protection of workers with long-term illnesses continues to depend on sector-specific interventions, on negotiated solutions, or on evolving judicial interpretations, rather than on a unified legislative design. The absence of an organic statute dedicated to chronic illness leaves unresolved many of the adaptation needs inherent in such conditions, subjecting workers to a protective pathway that is often uncertain, uneven, and contingent upon the willingness of individual employers or the sensitivity of collective bargaining.

affected by chronic conditions with a permanent or fluctuating course; see S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, cit., p. 132; E. Dagnino, *La tutela del lavoratore malato cronico*, cit., pp. 340–341.

[50] On this point, see below note no. 35.

PART II

1. The "Forced" Path to Disability in the Evolution of EU Case Law

This brief overview reveals the absence of a protective legal framework that directly and systematically involves workers affected by chronic illnesses or transplant recipients, thereby requiring a broader scope of inquiry to assess whether these individuals may benefit from other forms of protection through the application of regulations that, although not specifically designed for them, may nonetheless encompass their situation. It therefore becomes almost inevitable to follow the path outlined by the definition of disability, which has undergone a profound reform at the regulatory level.

A valuable aid in this regard has been provided by the Court of Justice of the European Union (CJEU), followed by Italian jurisprudence, which extended the protections established by Directive 2000/78/EC – setting out a general framework for combating discrimination based on […] disability – to workers affected by chronic illnesses.

The failure of the Directive 2000/78/CE to define the scope of the notion of disability has given rise to a long exegetical evolution by the Court of Justice concerning the proper meaning of the term[51]. In fact the original biomedical model, in which the cause of the "limitation" hindering the person's participation in professional life was identified in the "impairment" afflicting them[52], has been progressively replaced by the so-called biopsychosocial model, developed within the framework of the UN Convention on the Rights of Persons with Disabilities of 2006, to which the EU itself has adhered[53].

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[51] W. Chiaromonte, *L'inclusione sociale dei lavoratori disabili fra diritto dell'Unione europea e orientamenti della Corte di giustizia*, in VTDL, 2020, n. 4, p. 897 ff.

[52] The medical model found its fullest expression in the International Classification of Impairments, Disabilities and Handicaps (ICIDH), published in 1980 by the WHO. It identified three distinct concepts, causally linked: impairment (understood as any loss or abnormality of a physiological, anatomical, or psychological structure or function), which causes disability (understood as a limitation or loss, resulting from the impairment, of the ability to perform basic activities of normal daily life), which in turn causes handicap (understood as a social, cultural, economic, or environmental disadvantage). For further discussion, see M. Pastore, *Disabilità e lavoro: prospettive recenti della Corte di giustizia dell'Unione europea*, in RDSS, 2016, no. 1, p. 203. The reference is to the well-known judgment CJEU, 11 July 2006, Case C-13/05, Sonia Chacón Navas v. Eurest Colectividades SA, paragraph 43, which adopts the so-called biomedical model of disability.

[53] The Convention was adopted in New York on 13 December 2006 and was approved by the European Union through the Council Decision of 26 November 2009 (2010/48/EC) and ratified by Italy with Law No. 18/2009. In legal scholarship, see D. Garofalo, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in ADL, 2019, n. 6, p. 1225 ff., according

Under this model, the concept of disability encompasses any limitation of capacity, resulting from long-term physical, mental or psychological impairments, which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers[54].

Thus conceived, this condition emphasizes the interaction between the limitation and the surrounding environment, marking a clear shift in perspective compared to traditional approaches. Disability is seen as the outcome of a process that occurs when people with impairments encounter barriers to full participation in social life, recognition, and the enjoyment of human rights and fundamental freedoms in their civil, political, economic, social, cultural, or any other field of human activity[55] thereby framing it not merely as a medical issue but as a matter of social justice[56].

In other words, the biopsychosocial model of disability, while necessarily linked to a pathological condition, integrates a "relational construct"[57] whereby marginalization and disadvantage arise from the interaction between impairment (both biological and psychological) and the socio-relational environment. This becomes the structural element, so that even in the presence of a pathology or impairment, there is no disability if the conditions in the surrounding environment enable the individual to carry out normal activities and participate adequately in life contexts[58].

Moreover, starting with the landmark *HK Danmark* judgement, the evolving and dynamic nature of the concept of disability allowed the CJEU to acknowledge that the origin of the limitation may also be a long-term illness,

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to whom the notion of disability thus adopted has shifted the concept of equality from a formal to a substantive level.

[54] See Article 1, paragraph 2, of the 2006 UN Convention, as well as the Court of Justice of the European Union (CJEU), 11 April 2013, Cases C-335/11 and C-337/11, HK Danmark; CJEU, 18 January 2018, Case C-270/16, Carlos Enrique Ruiz Conejero v. Ferroser Servicios Auxiliares SA e Ministerio Fiscal.

[55] In these terms C. Garofalo, *Illegittimità del licenziamento del lavoratore disabile. I diversi regimi sanzionatori*, in VTDL, 2022, n. 2, p. 251, who also refers to letter e) of the Preamble of the 2006 United Nations Convention. F. Sanchini, *I diritti delle persone con disabilità tra dimensione costituzionale, tutela multilivello e prospettive di riforma*, in Federalismi.it, 2021, n. 24, p. 170, who speaks of the "inability of the social context to ensure full inclusion and participation in collective life."

[56] See D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, n. 2, p. 1224.

[57] F. Malzani, *Dal collocamento mirato al diversity management. Il lavoro dei disabili tra obbligo e inclusione di genere*, in RDSS, 2019, n. 4, p. 720.

[58] In these terms W. Chiaromonte, *cit.*, p. 910. In case law, CJEU, 18 March 2014, Case C-363/12, *Z. v. A Government Department and The Board of Management of a Community School*, which excluded from the notion of disability those conditions that do not impact the performance of work, such as infertility and the consequent recourse to surrogacy.

whether curable or incurable, thereby granting access to anti-discrimination protection to numerous chronic diseases[59] which, if capable of limiting the full development, both individually and socially, of the affected person, can potentially fall within the scope of disability[60].

Applying this important legal principle the CJEU, in the *FOA* judgment, classified long-term obesity as a disability under Directive 2000/78/EC, provided it hinders full and effective participation in professional life on an equal footing with other workers. Furthermore, in its subsequent *DW* judgment of 2019, the CJEU also included within the concept of disability a condition of particular sensitivity to occupational risks "which prevents a worker from carrying out certain jobs on the ground that such jobs would entail a risk to his or her own health or to other persons" provided that this condition results, according to the national court adjudicating the case, in a limitation of capacities consistent with the criteria established in *HK Danmark*.

Finally, the Court of Justice has addressed the meaning to be attributed to the "durability" of the limitation of the person concerned. In the *Daouidi* ruling[61], the CJEU clarified that, to be considered durable, the impairment need not have a well-defined prospect of overcoming in the short term nor must it necessarily extend significantly before recovery, thereby broadening the scope of the anti-discrimination framework to include impairments of short duration or uncertain duration which may also have limiting effects in the long term[62].

The outcome of this jurisprudential evolution has therefore led to the establishment of a broad concept of disability, independent of the specific definitions applied by individual Member States and irrespective of the

[59] Case law at first instance and appellate levels has recognized the condition of disability for workers affected by chronic diseases such as: lymphoproliferative neoplasm (Florence Court of Appeal, 26 October 2021, in *DeJure*); phlebolymphedema of the right lower limb (Milan Tribunal, 2 May 2022, in www.wikilabour.it); diabetes (Santa Maria Capua Vetere Tribunal, 11 August 2019, in *DeJure*); craniopharyngioma (Mantua Tribunal, 16 July 2018, no. 1060, in www.studiodirittielavoro.it); arterial hypertension (Genoa Court of Appeal, 21 July 2020, in *DeJure*); prostate adenoma (Turin Court of Appeal, 3 November 2021, no. 604, in www.adlabor.it); and coxarthrosis (Milan Court of Appeal, 7 December 2022, in *Boll. ADAPT*, 2023, no. 21).

[60] F. Nardelli, *Il difficile bilanciamento tra tutela della disabilità e della privacy*, in VTDL, 2023, n. 4, p. 1054. The landmark ruling that paved the way for this approach is the Court of Justice's judgment of 11 April 2013, in the joined cases C-335/11 and C-337/11, *HK Danmark*. See also the Court of Justice's judgment of 11 September 2019, in case C-397/18, *DW v. Nobel Plastiques Ibérica SA*, paragraph 42, which recalls that Directive 2000/78/EC is not limited to covering only disabilities that are congenital or caused by accidents, but also those resulting from an illness.

[61] CJEU, 1 December 2016, C-395/15.

[62] W. Chiaromonte, *cit.*, p. 912.

attainment of a particular threshold of work-related disability and/or an official or institutional recognition of disability or severe disability[63].

With reference to the Italian regulatory framework prior to the enactment of Legislative Decree No. 62/2024, the impact of the evolutionary interpretation promoted by the CJEU proved to be disruptive, as it allowed the extension of the scope of anti-discrimination law – and more generally of EU-derived legislation – to a plurality of situations not otherwise encompassed by the notion of disability protected under national law, which reflected a more restrictive biomedical model[64].

However, this jurisprudential evolution gave rise to several uncertainties in application.

Firstly, the jurisprudential development did not elevate chronic illness to an autonomous ground of protection, nor did it result in an automatic equivalence between chronic illness and disability, as it only became relevant "indirectly" and following a case-by-case assessment.

Secondly, the scope of application of the biopsychosocial model of disability was confined to the ambit of EU law, whereas the medical model of disability embodied in national legislation continued to apply in all other areas.

Finally, even where the EU framework was applicable, the absence of a binding assessment procedure for determining disability according to the biopsychosocial model entrusted the integration of such a condition to the subjective evaluation of individual interpreters, thereby lending itself to a remedial use and generating significant uncertainties – particularly regarding the proper fulfilment of the obligation to adopt reasonable accommodations[65].

4. Innovations introduced by Legislative Decree No. 62/2024: Embracing the biopsychosocial model of disability

It is within this state of profound ambiguity that the Italian legislator adopted Legislative Decree No. 62 of May 3, 2024, formally incorporating the biopsychosocial model of disability into Law No. 104/1992 and introducing a

[63] See, among many, Cassation Court judgment of 27 September 2018, n. 23338, which recognizes "the absolute autonomy of the concept of handicap, as a factor of discrimination, independent from the assessment of the condition of severe handicap pursuant to Law 104/1992."

[64] On the labour law front, reference is made to Law No. 68/1999 on targeted employment and to Law No. 104/1992 concerning assistance and social integration of persons with disabilities.

[65] E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, in DRI, 2023, n. 2, p. 349. See also A. Delogu, "Adeguare il lavoro all'uomo": l'adattamento dell'ambiente di lavoro alle esigenze della persona disabile attraverso l'adozione di ragionevoli accomodamenti, in www.ambientediritto.it, 29 February 2024, p. 8.

new assessment procedure for this condition (the so-called "basic evaluation"), which is structured according to medico-legal evaluation criteria that, in addition to identifying the residual capacities of persons with disabilities, assess the interaction between their health condition and the environment in which they operate[66].

The outcomes of the aforementioned jurisprudential evolution – which has enabled numerous chronic diseases to be recognized within the scope of disability understood in its social dimension – together with the absence of systematic protections, require interpreters to analyse the innovations introduced by Legislative Decree No. 62/2024 and evaluate whether they may also be applicable to workers with chronic conditions and transplant recipients.

Firstly, Article 3 of Legislative Decree No. 62/2024, implementing the enabling law, amends Article 3 of Law No. 104/1992 by incorporating the definition of "person with a disability" contained in the 2006 UN Convention and adopted by the CJEU's jurisprudence.

The break with the past is evident. Whereas disability was previously defined as "a physical, mental, or sensory impairment, stabilized or progressive, that causes difficulties in learning, relationships, or work integration and leads to a process of social disadvantage or marginalization" pursuant to Article 3 of Law No. 104/1992 (as amended by Article 3 of Legislative Decree No. 62/2024), it now constitutes the result of the negative interaction between the health condition – defined as "a long-term physical, mental, intellectual, neurodevelopmental, or sensory impairment" – and the environmental and personal factors that characterize the social and work life of the person and hinder "full and effective participation in various life contexts on an equal basis with others".

The innovations introduced by Legislative Decree No. 62/2024 thus allow for a definitive overcoming of the biomedical model of disability and extend the scope of the bio-psycho-social model beyond the regulatory framework of strictly EU-related legislation. This results in a significant expansion of the pool of potential beneficiaries of protection measures connected to the legal recognition of disability, in line with the principles outlined by the United Nations Convention on the Rights of Persons with Disabilities.

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[66] For a commentary on the provisions introduced by Legislative Decree No. 62/2024 see M.G. Elmo, *Condizione di disabilità e stato di salute del lavoratore alla luce del d.lgs. n. 62 del 2024*, in DSL, 2025, 1, I, p. 58 ff.; M.P. Monaco, *Il decreto legislativo 3 maggio 2024, n. 62: una lettura giuslavoristica*, in *Professionalità Studi*, 2024, 3, p. 3 ff.; M. Leonardi, *Reasonable Accommodation for Workers with Disabilities: Analysis of the New Italian Definitions within the Multi-level Legal System*, in DLM International, 2024, 1, p. 93 ff.; and A. M. Battisti, *Il legislatore accoglie (con qualche riserva) la nozione euro-unitaria di disabilità*, in AmbienteDiritto.it, 2024, 3, p. 1475 ff.

Pursuant to the new Article 3, paragraph 1, of Law No. 104/1992, the condition of disability according to the bio-psycho-social model constitutes the outcome of the so-called basic evaluation[67] – which is also conceived within the scope of Legislative Decree No. 62/2024 – and includes any assessment of civil invalidity provided for by current legislation followed – where requested by the interested party – by a subsequent multidimensional evaluation expressly based on a bio-psycho-social approach.

The basic evaluation begins with a specific application by the person concerned through the electronic submission to INPS[68] – which from January 1, 2027[69] will be exclusively responsible for managing the basic evaluation procedure – of a medical certificate in which, in addition to the person's personal data and any medical documentation, the diagnosis coded according to the ICD system and the course and prognosis of any identified pathologies are indicated. Specifically, the basic evaluation is tasked with identifying the "functional and structural deficits" that hinder the individual in performing their activities and subsequently assessing their impact on the qualifier of the person's capacities in relation to the "Activities and Participation" component of the ICF classification – including domains related to work and higher education – assuming a uniform and standard environment as a reference.

Furthermore, pursuant to Article 6, paragraph 2, of Legislative Decree No. 62/2024, during the basic evaluation visit, the applicant is required to complete the WHODAS questionnaire, which assesses their "level of functioning" across six domains: cognitive activities, mobility, self-care, interpersonal relationships, activities of daily living, and participation. Although the use of WHODAS allows for a more detailed description of a person's ability to perform daily activities (including work-related ones) and the level of difficulty they experience in interacting with their specific physical, social, and personal environment, its effective use presupposes actual assistance by the basic evaluation unit to the applicant, to prevent the risks associated with leaving the questionnaire's completion solely to their own discretion and perception.

Once the status of a person with a disability is certified, Article 23, paragraph 1, of Legislative Decree No. 62/2024 grants the option to initiate the subsequent (and optional) multidimensional evaluation. This evaluation is expressly based on a bio-psycho-social approach and is aimed at preparing the

[67] Artt. 5 ff Legislative Decree. n. 62/2024.

[68] The recognition of the condition of disability is carried out by INPS through the Basic Assessment Units, whose composition is defined by Article 4 of Law 104/1992, as amended by Article 9, paragraph 3, of Legislative Decree No. 62/2024.

[69] This deadline was extended by Article 19-quater of Decree-Law No. 202 of 27 December 2024, converted with amendments by Law No. 15 of 21 February 2025. Originally, Article 9 of Legislative Decree No. 62/2024 set this deadline on 1 January 2026.

so-called life project, intended to achieve the "goals of the person with a disability to improve their personal and health conditions in various areas of life". Indeed, this procedure considers both the capacity qualifier and the performance qualifier of the ICF, through which it is possible to describe an individual's abilities within their specific environment[70]. The use of the bio-psycho-social model – explicitly referenced in Article 25, paragraph 1, of Legislative Decree No. 62/2024, in relation only to the multidimensional evaluation – is justified by the objective of this procedure, which is to identify the goals and tools that make up the life project aimed at preventing or removing barriers and activating the necessary supports for the inclusion and participation of the person in various areas of life, including educational, higher training, housing, work, and social domains as well as overcoming conditions of poverty, marginalization, and social exclusion[71].

In other words, while the basic evaluation constitutes an essential step to ascertain the condition of disability and thereby access the related protections, the multidimensional evaluation operates in a complementary relationship with the former, contextualizing its results according to the specific needs and objectives that the person with a disability expresses in the various life contexts in which they operate, crystallizing the outcomes in the so-called life project.

In this context, pending the definition of the experimental procedure already initiated (expected by the end of 2025)[72], the impact of the reform could be disruptive, as it would allow access to the protections recognized by the legal system for persons with disabilities also to numerous workers affected by chronic diseases or those who have undergone transplants, provided they are expressly recognized as disabled.

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[70] See Article 25, Legislative Decree No. 62/2024, paragraph 2, which establishes that "the procedure is divided into four phases: a) respecting the outcome of the basic assessment, it identifies the person's goals according to their desires and expectations and defines the functioning profile, including in terms of ICF capacities and performance, across the different life domains freely chosen; b) it identifies the barriers and facilitators in the areas referred to in letter a) and the adaptive skills; c) it formulates evaluations concerning the profile of physical, mental, intellectual, and sensory health, the person's needs, and the domains of quality of life, in relation to the priorities of the person with a disability; d) it defines the objectives to be achieved through the life project, starting from the inventory of any specific support plans already in place and their objectives".

[71] Art. 18, paragraph 2, Legislative Decree. No. 62/2024.

[72] For the initial clarifications provided by INPS, see: INPS Message of 28 November 2024, No. 4014; INPS Message of 19 December 2024, No. 4364; INPS Message of 31 December 2024, No. 4512; INPS Message of 3 March 2025, No. 766; INPS Message of 23 June 2025, No. 1980; INPS Message of 10 July 2025, No. 2216; INPS Circular of 17 February 2025, No. 4.

5. Towards Sustainable Employment for Workers with Chronic Illnesses and Transplant Recipients: Minimising Health Risks and Adapting Workplaces

As previously outlined, the adoption of the biopsychosocial model of disability by the CJEU plays a decisive role, as it allows the extension to workers with chronic illnesses of the protections and guarantees that EU law expressly provides for disabled workers with the aim of facilitating their reintegration into the workforce and the retention of employment. These protections include occupational health and safety regulations, which seek to mitigate potential risks to workers' health, and anti-discrimination legislation, which aims to ensure equal treatment through the provision of reasonable accommodations.

These are two fields of regulation that play a decisive role in the broader context of the reintegration of workers with chronic illnesses and reflect the concept of sustainable employment[73], intended as an approach ensuring that individuals with physical or psychological impairments can continue working through adaptations that align with their need and abilities. Sustainable employment for chronically ill workers can be structured around two main pillars: 1) ensuring work does not harm health, by integrating universal workplace protections with targeted safeguards for individuals at higher health risk, in line with occupational health and safety regulations; 2) implementing additional measures, beyond risk prevention, to provide specialized protections for vulnerable groups, through workplace, role, and organizational adaptations tailored to individual needs.

Starting from the first pillar, it can be identified in the implementation of health and safety measures designed to safeguard the well-being and work capacity of these individuals. In this context, a specific legal obligation is placed on employers, who must guarantee both workplace safety and worker's health in all aspect related to work[74]. This duty is established in Italian law through the transposition of Directive No. 89/391/EEC into Legislative Decree No. 81/2008 which also implements the preventive obligation under Article 2087 of the Civil Code[75]. In the specific case of employees with chronic illnesses or

[73] This concept was initially introduced in reference to work sustainability throughout life, particularly in response to demographic shifts and the need to extend working life, as analysed in EUROFOUND, Sustainable Work and the Ageing Workforce, 2012, pp. 7-8.

[74] Art. 5 of the Directive 89/391/CEE.

[75] On the obligation laid down by Article 2087 of the Italian Civil Code and its implementation under Legislative Decree No. 81/2008, the literature is vast. Accordingly, reference is limited here to a selection of key contributions, including: A. Delogu, *La funzione dell'obbligo generale di sicurezza sul lavoro. Prima, durante e dopo la pandemia: principi e limiti*, Aras Edizioni, 2022; G.

transplant recipients, achieving this objective requires careful consideration of the characteristics of these individuals, the physical and/or psychological changes associated with their condition, as well as the effectiveness and invasiveness of the treatments they undergo and the progression of the disease. It should not be overlooked that, unlike acute illnesses, chronic diseases are irreversible, have a long and unpredictable course, and tend to worsen over time while alternating between critical phases and periods of improvement.

These specific characteristics must be taken into account by the employer, first and foremost when fulfilling one of the most important duties prescribed by the Italian Consolidated Law on Occupational Health and Safety (TUSL) from a preventive perspective: the risk assessment[76].

Article 28 explicitly requires that, as part of this assessment, all risks to worker's safety and health – including those affecting groups of workers exposed to specific risks – be identified and that appropriate preventive measures be implemented in the workplace, including with regard to the selection of work equipment and the organization of the work environment.

Groups of workers exposed to specific risks certainly include individuals with reduced work capacity, such as persons with disabilities and employees with chronic illnesses. Regarding these "specific" workers, the employer must evaluate, during the preparation of the Risk Assessment Document (hereinafter DVR), the characteristics that place them in a different, and often more disadvantaged, position compared to other workers and consequently determine the adoption of specific additional or tailored safety measures. Such assessments, however, must not overlook the fact that workers with chronic illnesses – as well as persons with disabilities – constitute a highly heterogeneous group, due to the diverse impairments they may have, which in turn result in vulnerabilities of varying severity and visibility and expose them to greater, additional, or aggravated risks compared to "healthy" workers[77].

In addition to the severity of the impairment, the types and levels of risk to which these workers are exposed also depend – as previously noted –on the

Natullo, *Ambiente di lavoro e tutela della salute*, Giappichelli, 2021; S. Buoso, *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020; PASCUCCI, La tutela della salute e della sicurezza sul lavoro: il Titolo I del d.lgs. n. 81/2008, Aras, 2014; M. Persiani – M. Lepore (edited by.), *Il nuovo diritto della sicurezza sul lavoro*, Utet Giuridica, 2012P. Albi, *Adempimento dell'obbligo di sicurezza e tutela della persona. Art. 2087*, *Il Codice Civile. Commentario*, Giuffrè, 2008.

[76] Article 17, Paragraph 1, Letter a) of Legislative Decree No. 81/2008 explicitly states that the evaluation of all workplace risks, leading to the drafting of the risk assessment document under Article 28, is among the non-delegable responsibilities of employers.

[77] On the specific features of risk assessment with particular regard to workers with disabilities or illnesses, see among many: A. Bordin, *Sicurezza sul lavoro e invecchiamento*, in I&S Lav, 2024, 1, p. 44 ff.; P. Pascucci, *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, in RDSS, 2023, 4, esp. p. 713 ff.

conditions and the work environment in which the tasks are performed. A proper risk assessment should therefore be conducted on the basis of a personalized approach that takes into account differences among workers and the contexts in which they operate, tailoring its content to specific characteristics and individual needs in order to protect members of groups particularly exposed to certain types of hazards. This activity should also be guided by principles of reasonableness, as it is not necessarily required to produce differentiated individual risk assessments solely because they involve a sick or disabled person, since doing so could itself constitute a form of discrimination.

The approach involves adopting a dynamic method, calibrated to the specificities of each individual and each work environment, moving away from standardized *"one-size-fits-all"* models and adapting both to the individual and the specific risks associated with them, as well as to the workplace and the modalities of task execution. In other words, as defined by the European Agency for Safety and Health at Work (EU-OSHA), what is required is a *"disability-sensitive risk assessment"*[78].

Risk assessment thus constitutes a complex and ongoing process, requiring continuous adjustments and updates. For this reason, the legislator has provided that, both in the drafting of the Risk Assessment Document (DVR) and more generally in the organization of the work environment, "personalized" solutions to ensure health and safety should be identified with the support of other key figures, such as the competent physician, the Head of the Prevention and Protection Service (RSPP), and the workers' safety representative (RLS), in accordance with a participatory occupational safety model that involves and holds accountable all those who have the power to intervene in the work environment. Consultation with workers can also be particularly important at this stage, especially when they are affected by a medical condition, as their involvement ensures a more precise identification and, consequently, prevention of the specific risks related to their health.

Among these professionals, the occupational physician[79] plays a pivotal role in safeguarding the health of disabled and chronically ill workers. This figure is

[78] EU-OSHA, Workforce Diversity and Risk Assessment: Ensuring Everyone is Covered, 2009.

[79] The role of the occupational physician is described in Article 2, Paragraph 1, Letter h) of Legislative Decree No. 81/2008, as amended, as the "physician possessing one of the qualifications and professional training requirements set forth in Article 38, who collaborates, pursuant to Article 29, Paragraph 1, with the employer for risk assessment and is appointed by the latter to conduct health surveillance and fulfil all other duties prescribed by this decree"; on this figure in the Italian legal order see, among many, P. Pascucci, Dopo il d.lgs. 81/2008: salute e sicurezza in un decennio di riforme del diritto del lavoro, in ID. (edited by), Salute e

entrusted not only with identifying workplace risks but also with preventing and managing them through health surveillance programs[80]. This activity consists of a set of medical actions aimed at ensuring worker's health and safety in relation to their working environment, occupational risk factors and methods of task execution[81]. Implementation occurs through specific health protocols, which may include medical examinations, specialist consultations and instrumental or laboratory tests, whenever the risk assessment process highlights the need to mitigate occupational risks through health surveillance measures[82].

Turning to the second pillar of the "sustainable employment" concept, it consists of implementing reasonable accommodations, that is structural or organizational adjustments that are necessary and appropriate in relation to actual needs and are intended to ensure access to and retention in employment for disabled workers, including those affected by chronic illnesses or transplant recipients, once their disability status has been verified[83]. These measures seek

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sicurezza sul lavoro, cit., p. 20 ff.; C. Lazzari, I «consulenti» del datore di lavoro, in P. Pascucci (edited by), Salute e sicurezza sul lavoro, cit., p. 124 ff.; E. Gragnoli, *La sopravvenuta inidoneità del lavoratore subordinato allo svolgimento delle sue mansion*i, in F. Carinci, E. Gragnoli (edited by), *Codice commentato della sicurezza sul lavoro*, Giappichelli, 2010, p. 380 ff.; P. Monda, *La sorveglianza sanitaria*, in L. Zoppoli, P. Pascucci, G. Natullo (edited by), *Le nuove regole per la salute e la sicurezza dei lavoratori*, Ipsoa, Milan, 2010, p. 339 ff.

[80] Article 25, Letter b of Legislative Decree No. 81/2008.

[81] According to Article 2, Paragraph 1, Letter m of Legislative Decree No. 81/2008, as amended, while Article 41 of the same decree establishes the different types of medical examinations included in the health surveillance activities assigned to the occupational physician, detailing their objectives and timelines

[82] A relevant development was introduced by Article 14 of Decree-Law No. 48/2023, converted into Law No. 85/2023, which amended Article 18 of Legislative Decree No. 81/2008, adding that among the employer's and managerial duties is the appointment of an occupational physician not only in cases explicitly mandated by the Legislative Decree No. 81/2008, but also when required by the risk assessment under Article 28. This extends health surveillance to all instances where the risk evaluation suggests its necessity, rather than only in cases where the law expressly mandates it. On this point, see P. Pascucci, *Le novità del d.l. n. 48/2023 in tema di salute e sicurezza sul lavoro*, in DLRI, 2023, n. 3, p. 413 ff.; P. Rausei, *I ritocchi al Testo Unico: tra medico competente, formazione, attrezzature di lavoro e nuovi obblighi per lavoratori autonomi e imprese familiari (art. 14, d.l. n. 48/2023, conv. in l. n. 85/2023)*, in E. Dagnino, C. Garofalo, G. Picco, P. Rausei (edited by), *Commentario al d.l. 4 maggio 2023, n. 48 c.d. "decreto lavoro", convertito con modificazioni in l. 3 luglio 2023, n. 85*, ADAPT University Press, no. 100, pp. 125 ff.

[83] On this topic, legal scholarship is vast. See D. Tardivo *L'inclusione lavorativa della persona con disabilità: tecniche e limiti, Giappichelli, 2024;* P. Lambertucci, Nuove frontier della disabilità: soggetti protetti e accomodamenti ragionevoli, in DLM 2024, 2, 237 ff.; S. D'Ascola, *Il ragionevole adattamento nell'ordinamento comunitario e in quello nazionale. Il dovere di predisporre adeguate misure organizzative quale limite al potere di recesso datoriale,* in VTDL, 2022, n. 2, p. 179 ss.; D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1225 ff.; C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i lavoratori dopo il Jobs Act,* in DLM, 2017, n. 1, p. 39 ff.

to eliminate barriers in the work environment which, when combined with the individual impairments, hinder their full and equal participation in professional life.

The obligation to adopt reasonable accommodations is structured within a multi-level regulatory framework originating from the anti-discrimination system, which constitutes the "foundational paradigm" for removing obstacles to the full participation of persons with disabilities in social life[84]. Legislative Decree No. 62/2024 has intervened on this framework, not only introducing a national definition but also establishing a special procedure for their identification and implementation[85]. As for the scope of the obligation, it is defined by international law – explicitly referred to both in Article 3(3-bis) of Legislative Decree No. 216/2003[86] and in the new Article 5-bis of Law No. 104/1992 – under which "reasonable accommodation" means necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden, adopted, where needed in particular cases, to ensure persons with disabilities the enjoyment and exercise, on an equal basis with others, of all human rights and fundamental freedoms[87].

National case law – although referring only to paragraph 3-bis of Article 3 of Legislative Decree No. 216/2003, but with considerations that may also be deemed applicable to the new Article 5-bis of Law No. 104/1992 – has emphasized that, in transposing into domestic law the formula adopted by international sources, the Italian legislator relied on a concept with variable content, whose structural feature lies precisely in its indeterminacy[88].

Confirmations in this regard can also be found in the case law of the Court of Justice, which has excluded the exhaustive nature of any lists of reasonable accommodations, thereby requiring that the list contained in Recital 20 of Directive 2000/78/EC be read as purely illustrative. This recital refers to

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[84] D. Garofalo, cit. See also M. Barbera, *Le discriminazioni basate sulla disabilità,* in M. Barbera (edited by), *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale, Giuffrè, 2007,* p. 82 ff.

[85] On the participatory model see F. Cucchisi, *Accomodamenti ragionevoli e onere di interlocuzione: verso un modello partecipato di inclusione del lavoratore disabili*, 2025, n. 8-9, p. 811 ff.

[86] Paragraph 3-bis was introduced by Article 9, paragraph 4-ter, of Decree-Law No. 76/2013, converted, with amendments, by Law No. 99/2013, following the conviction of Italy by the Court of Justice for insufficient transposition of the directive. See Court of Justice, 4 July 2013, Case C-312/11, European Commission v. Italian Republic, in RIDL, 2013, No. 4, II, p. 935 et seq.

[87] Article 2 of the UN Convention of 2006. By contrast, under Article 5 of Directive 2000/78/EC, reasonable accommodation" refers to "appropriate measures, according to the needs of specific situations, to enable persons with disabilities to access employment, perform their work, or obtain a promotion, or to ensure that they can receive training.

[88] Cass., 9 March 2021, No. 6497, in *RIDL*, 2021, No. 4, II, with a note by C. Alessi, *Disabilità, accomodamenti ragionevoli e oneri probatori*, in ADL, 2021, n. 4, II.

"effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources"[89]. Consequently, reasonable accommodation must be understood as a measure shaped by the specific needs of the disabled worker and the production context in which they operate, translating into material modifications of the workplace (as a physical space) or organizational changes (such as task reassignment, flexible working hours, or shift arrangements) that affect all stages of the employment relationship – from its inception, through its functional phase, up to termination. Moreover, the teleological orientation of accommodation, together with its flexible and dynamic nature, implies that the reasonable solution adopted by the employer is not immutable but, on the contrary, subject to evolution throughout the employment relationship, in an osmotic relationship with the worker's disability[90], in order to remove barriers arising from the interaction between the person and the environment, thus constituting an *ex nunc* duty[91].

The impact of the obligation to adopt reasonable accommodations on the exercise of the employer's traditional organizational power raises questions about the crucial issue concerning the scope of the conduct required by the legislator, on which the recent amendment introduced by Legislative Decree No. 62/2024 is based[92].

A first limitation to the adoption of reasonable accommodations lies in the economic sustainability of the measure, which is established as a condition both by the 2006 UN Convention, which clarifies that accommodations must not impose "a disproportionate or undue burden" and by Article 5 of the Directive, which makes the obligation to take appropriate measures conditional

[89] See *HK Danmark* judgment, cited, paragraphs 49 and 56; Court of Justice, Case C-312/11, cited.

[90] See A. Delogu, *Adeguare il lavoro all'uomo*, cit., 13.

[91] COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, General comment No. 6 (2018) on equality and non-discrimination, 2018, CRPD/C/GC/6, § 24.

[92] See R. Voza, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, paper presented at the XXI AIDLaSS Congress, Diritto antidiscriminatorio e trasformazioni del lavoro, Messina, 22-25 May 2024, typescript, p. 52. The Author observes that today, the obligation to provide reasonable accommodations is assuming a systematic significance in assessing the legitimacy of the exercise of managerial powers, in their broader organizational dimension rather than solely in the context of an individual employment relationship. This tends to neutralize the effects of Article 30 of Law No. 183/2010, which traditionally shields the employer's "tech nical, organizational, and production-related decisions" from scrutiny. The resulting restriction of entrepreneurial prerogatives, brought about by the duty to provide reasonable accommodations, can be read in light of Article 41(2) of the Constitution—particularly following its reformulation, which added "health and the environment" to the foundational values of "safety, freedom, and human dignity".

unless such measures would impose a disproportionate burden on the employer. In other words, this involves an assessment of the feasibility of the measure based on the specific organization in which the worker is employed and thus a verification of proportionality in relation to the specific organizational context (for example, the number of employees) and the financial situation of the employer (for example, the presence of a crisis, profits/revenue)[93]. The economic sustainability of the measure is further influenced by the provision, under national policies, of specific compensatory measures for expenses incurred by the enterprise, such as public funds or other types of subsidies, capable of providing tangible financial support for the employment of persons with disabilities[94], in a form of shared responsibility between the State and enterprises in the implementation of reasonable accommodations[95]. In this legal framework, which establishes a shared responsibility between the employer and the State in implementing reasonable accommodations, public incentives contribute to defining the criterion of economic sustainability for workplace adaptations. At the same time, they mark the boundary between what is not legally enforceable and what is considered a mandatory obligation.

Beyond proportionality, the existence and scope of the obligation to adapt workplace structures to the needs of disabled workers are also governed by the criterion of reasonableness. This principle shapes and qualifies the measures employers must implement, ensuring they are practical, effective and tailored to both individual circumstances and organizational contexts. According to the interpretation offered by the Court of Cassation, reasonableness constitutes an additional limit to the obligation to adopt reasonable accommodation, as it is endowed with autonomous literal significance[96]. The Court argues that, while it is certainly true that a disproportionate economic cost renders a measure unreasonable *a fortiori*, the reverse is not necessarily true: an adjustment may

[93] See D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1230.

[94] As highlighted in Recital 21 of Directive No. 2000/78/EC, determining whether specific measures impose a disproportionate financial burden requires evaluating financial and other costs, the size and financial resources of the organization or company, and the possibility of accessing public funds or other subsidies. In the Italian context, Article 14, Paragraph 4, Letter b) of Law No. 68/1999, introduced by Article 11, Paragraph 1, Letter b) of Legislative Decree No. 151/2015, establishes the Regional Fund for the Employment of Disabled Persons, which provides financial contributions for the partial reimbursement of expenses related to the adoption of reasonable accommodations for workers with a reduction in work capacity exceeding 50%. Covered expenses include telework technologies, removal of architectural barriers that hinder workplace integration, and the establishment of a workplace inclusion officer.

[95] D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1230.

[96] Cass., 9 March 2021, No. 6497, cit.

lack reasonableness having regard, for example, to the interests of other workers who may be affected. Understood in this sense, the reasonableness assessment becomes an expression of the principle of fairness and good faith that underpins all contractual relationships. In other words, in the Court's view, the reasonableness test translates into the search for broadly organizational and practicable solutions that reconcile the disabled worker's interest in maintaining employment suited to their physical and psychological condition with the employer's interest in deriving utility from the work activity, as well as with the interests of any third parties. Thus, for an accommodation to be deemed "reasonable", it must entail a sacrifice that does not exceed the limits of tolerability considered acceptable according to 'common social evaluation.

Additionally, Legislative Decree No. 62/2024 has introduced two significant innovations about reasonable accommodations. The first is the introduction of a specific procedure aimed at identifying the reasonable accommodation, in which the worker must participate. In particular, for employees with chronic illnesses, emphasizing the participatory nature of the accommodation is especially important, since the worker's specific needs may not be immediately apparent or known to the employer. Indeed, the Court of Cassation has recently clarified that the dialogue and discussion between the parties, which are logically required as a prerequisite for adopting reasonable accommodations, therefore constitute an indispensable phase of the procedure for identifying the accommodation, characterized by its proactive nature, aimed at identifying reasonable organizational measures suitable to allow the disabled person to perform their work activities[97].

This brings into focus the second innovation: reasonable accommodations, which appear to assume new centrality following Legislative Decree No. 62/2024, which introduces the so-called "life project", of which reasonable accommodations constitute an important segment and are the result of a holistic and shared assessment, undoubtedly conducted with the disabled person. Article 18 of Legislative Decree No. 62/2024 establishes that the life project is an instrument aimed at achieving the objectives of the person with a disability, contributing to the improvement of (1) personal conditions, which evidently include working conditions, and (2) health conditions.

Since these measures result from a holistic assessment specifically tailored to the needs of the person with disabilities in relation to the various contexts in which they operate, the components of the life project tend to influence one another, with the aim of coordinating the needs and objectives identified during the multidimensional evaluation. This approach gives a new dimension

[97] See Cass., 22 May 2024, n. 14316.

to the concept of reasonable accommodation. The formalization of the reasonable solution within the life project therefore represents the outcome of a harmonization process with other interventions included in the project – such as measures dedicated to care and assistance – which, although not directly connected to the employment dimension, may nonetheless affect the identification of reasonable accommodation in the specific case. This is further confirmed by the requirement to schedule periodic updates of the life project, which entails the possibility of adjusting measures according to the progression of chronic illness or the health condition following transplantation and thus to the evolving needs of the person with disabilities.

5. Final Considerations

In conclusion, it is essential to underline that the absence of specific legislation protecting workers with chronic illnesses or transplant recipients has generated significant uncertainty that appears to be addressed only by Legislative Decree No. 62/2024. The number of individuals in these categories continues to grow, with far-reaching implications for the management of employment relationships and, above all, for ensuring their long-term stability and continuity, understood as the preservation of secure and lasting work arrangements despite evolving health conditions.

During the prolonged legislative gap, a regulatory source was found in the legislation designed for disabled workers, to which long-term patients could initially be linked only interpretatively, thanks to the adoption of the biopsychosocial notion of disability developed at the supranational level beginning with the 2006 UN Convention. The acceptance of this definition allowed the scope of EU-derived protections to be extended to those who, although lacking formal certification of disability under domestic law, suffer from a long-lasting condition that hinders full and effective participation in professional life over an extended period.

With the exception, therefore, of occupational anti-discrimination law and the right to health and safety at work – where the biopsychosocial notion of disability was used as a reference point – other aspects of employment relationship management relied on different regulations, the application of which was conditional on recognition of the disability status as defined therein.

The protection of workers with chronic illnesses or transplant recipients was therefore dependent either on the ascertainment of disability, the degree of incapacity, or the severity of the handicap according to biomedical criteria or on the more inclusive biopsychosocial assessment, which, however, was applicable only in specific regulatory areas. This situation complicated the identification of the regulatory framework, whose exact scope of operation in

favor of workers with chronic illnesses was determined on a case-by-case basis rather than being clearly delineated by general and, above all, certain rules.
The consequences were felt not only by employers but also by the most vulnerable workers because – as is self-evident – the uncertainty of the rules of the game calls into question the outcome of any engagement and, in this specific case, has generated a high risk of litigation with unpredictable outcomes and costs.
The legislative intervention introduced by Legislative Decree No. 62/2024, which provides for a single disability assessment procedure based on a social and dynamic model of disability, should therefore be welcomed.
This innovation produces a series of positive effects. First, the unified notion of disability adopted by the legislator is very broad and permeates all areas of protection provided for disabled persons, becoming the exclusive reference for the various regulations directed at these individuals. Second, access by workers with chronic illnesses to the various forms of protection becomes easier, since the necessary verification to include them within the category of disabled persons is no longer focused on the degree or permanence of impairments but rather on the extent to which these impairments affect their relational life, limiting and hindering participation, on an equal basis, in social and work contexts.
Finally, the application of existing regulations becomes more certain because Legislative Decree No. 62/2024 removes from the interpreter the often very difficult task of determining, case by case and independently of prior certification, whether a person qualifies as disabled and, consequently, is entitled to the specific protections provided for disabled persons. Once the new regulation is fully operational, it seems unlikely that the scope of protections for disabled workers could be extended to individuals not qualified as such under the specific procedure, unless the formal certification of disability recently introduced were to be disregarded entirely.
In this sense, one of the merits of the legislative intervention lies in defining the subjective scope of the protection system recognized for disabled workers, also limiting the interpretative role that jurisprudence has carried out in recent years. While the courts have commendably extended the scope of existing provisions, this has sometimes imposed excessively heavy burdens on employers, who were tasked not only with adapting their organization to the needs of disabled workers but also with determining in advance and without certain parameters whether a worker qualifies as disabled. By establishing clear criteria, the new legislation could potentially ensure that employment protections are appropriately applied, balancing the rights of chronically ill workers and transplant recipients with the responsibilities of employers and contributing to a more stable and inclusive labour market.

What Reasonable Accommodation at Work is—and is not: Reflections on a Recent CJEU Judgment Concerning Italian Law

Giorgio Impellizzieri *

Abstract. This article examines the evolving notion of reasonable accommodation at work under European Union law, with the aim of contributing to a clearer definition of its scope and limits. While reasonable accommodation has become a central instrument of disability equality in employment, its boundaries remain fluid and contested, particularly where accommodation intersects with job retention, sickness absence, and the continuity of the employment relationship.

The article addresses a specific legal dilemma that has not yet been fully explored in a systematic manner: whether the suspension of work performance and prolonged absence from work may qualify as reasonable accommodation for workers with disabilities. From a methodological perspective, the analysis is grounded in Directive 2000/78/EC and in the case law of the Court of Justice of the European Union, and is complemented by a case study of the Italian legal system, where extensive and sometimes divergent judicial approaches have developed in relation to sickness leave and dismissal for incapacity.

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Against this background, the article focuses on the recent *Pauni* judgment (Case C-5/24), examining its reasoning and implications for the construction of reasonable accommodation under EU law. It argues that the Court's approach supports an interpretation of reasonable accommodation as an instrument aimed at enabling participation in professional life, rather than legitimising the indefinite or quasi-indefinite suspension of work performance.
The originality of the article lies in highlighting the normative and systemic significance of the *Pauni* judgment in clarifying what reasonable accommodation at work is—and, crucially, what it is not—within contemporary European labour law.

Keywords: *Reasonable accommodation; Disability; Sick leave; Return to work; Inclusion.*

1. Introduction

Disability has long been recognised as a structural factor of disadvantage in access to, and participation in, the labour market[1]. Persons with disabilities are disproportionately exposed to barriers affecting employability and job retention, including health-related limitations, inaccessible working environments, rigid organisational models, and persistent social stigma. These factors do not operate solely at the point of labour market entry, but continue to shape employment trajectories over time, increasing the risk of unstable employment, prolonged absences, and premature exit from work. As a result, disability remains closely associated with reduced and discontinuous labour market attachment across different economic cycles and welfare regimes.
Empirical evidence at the European level confirms the persistence of this disadvantage. Across the European Union, the employment rate of persons with disabilities is consistently and significantly lower than that of persons without disabilities, with a gap of approximately 20–25 percentage points[2]. Moreover, persons with disabilities are over-represented in part-time and temporary employment and face higher risks of labour market exit following periods of sickness or reduced work capacity. These data suggest that the core challenge does not lie exclusively in access to employment, but increasingly in the ability to remain in work on a stable and continuous basis.
Against this background, European and international legal frameworks have progressively developed protections aimed at ensuring equal treatment and

[1] A. O'REILLY, *The Right to Decent Work of Persons with Disabilities*, IFP/Skills Working Paper No. 14, ILO, 2003.
[2] EUROFOUND, *Disability and labour market integration: Policy trends and support in EU Member States*, Luxembourg, 2021.

combating discrimination on the ground of disability. At EU level, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation, explicitly recognising disability as a protected ground. At the international level, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) reinforces this approach by framing access to employment as a fundamental right and by promoting a shift from formal equality towards substantive inclusion in working life.

Within this normative architecture, reasonable accommodation has emerged as a pivotal legal instrument[3]. Article 5 of Directive 2000/78/EC requires employers to take 'appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment', unless such measures would impose a 'disproportionate burden'. This formulation deliberately combines openness and limitation. On the one hand, the Directive refrains from exhaustively defining the content of accommodation, referring instead to a non-exhaustive range of possible adjustments; on the other hand, it leaves significant discretion to Member States in determining the concrete scope, conditions, and limits of the obligation, subject to judicial review and compliance with EU law. As a result, the duty to provide reasonable accommodation operates within a multilevel framework in which EU law sets minimum standards, while national legal systems retain a margin of manoeuvre in shaping its practical application.

The centrality of reasonable accommodation reflects the recognition that disability-related disadvantage cannot be adequately addressed through equal treatment alone. Accommodation is designed to respond to individual and situational barriers by adapting working conditions, organisation, and practices, thereby enabling persons with disabilities to perform and develop within an existing employment relationship. This focus is particularly significant because exclusion frequently materialises not at the moment of recruitment, but through difficulties in sustaining employment over time. Reasonable accommodation thus functions at the intersection between anti-discrimination law and labour law, addressing both access to work and, crucially, job retention and continuity.

At the same time, the legal notion of reasonable accommodation remains inherently dynamic. Its boundaries are neither fixed nor self-evident, and its content is continuously shaped through legislative choices, administrative practices, and judicial interpretation. The concepts of 'appropriateness' and

[3] R. BLANPAIN, F. HENDRICKX (eds.), *Reasonable Accomodotation in the Modern Workplace. Potential and Limits of the Integrative Logics of Labour Law*, BCLR, Wolters Kluwer, 2016; A. LAWSON, *Reasonable accommodation law in Europe: Where now and where next*, in C. O'CINNEIDE, J. RINGELHEIM, I. SOLANKE, *European Anti-Discrimination Law*, Edward Elgar, 2025, pp. 209-228.

'disproportionate burden' introduce a degree of flexibility that, while necessary, also renders the perimeter of the obligation fluid and, at times, uncertain. It is precisely within this space of indeterminacy that divergent national approaches and interpretative tensions have emerged.

The aim of this article is to contribute to a clearer delineation of what reasonable accommodation at work is—and what it is not—under European Union law. To this end, the analysis combines a case study of the Italian legal system, where extensive case law has developed around the limits of accommodation and job retention (Section 3), with an examination of the most recent developments in the jurisprudence of the Court of Justice of the European Union (Section 4). Through this approach, the article seeks to shed light on the evolving contours of reasonable accommodation and to assess how its function is being recalibrated within contemporary European labour law.

2. What is Reasonable Accommodation at Work?

Within the framework outlined above, reasonable accommodation has developed as a key operational concept of disability equality in employment, characterised by flexibility and an open-ended normative structure. Rather than being defined through a closed list of measures, accommodation functions as a relational obligation that emerges from the interaction between an individual worker's disability and the concrete organisation of work. Its content is therefore determined on a case-by-case basis, taking into account both the specific barriers encountered by the worker and the structural features of the workplace.

Three elements are generally recognised as central to the operation of reasonable accommodation. First, accommodation is individualised and resists abstract standardisation. Secondly, it is widely conceived as a collaborative process, requiring dialogue and good-faith engagement between employer and employee in order to identify effective solutions. Thirdly, accommodation is framed by the principle of proportionality, which requires an assessment of whether the proposed measures are suitable and necessary to enable work participation, and whether they impose a disproportionate burden on the employer. Reasonable accommodation thus does not amount to an unlimited obligation, but rather to a contextual duty shaped by necessity, adequacy, and balance.

These features also explain the structural difficulties surrounding the concept. Assessing the reasonableness of accommodation inevitably involves a balancing of competing interests between the worker's right to equality and inclusion in professional life and the employer's interests in organisational

autonomy, efficiency, and cost control. EU law deliberately refrains from providing rigid benchmarks or quantitative thresholds defining the material extent of the duty, thereby leaving significant discretion to national courts and adjudicatory bodies. This indeterminacy has fuelled concerns about legal certainty and, in some strands of the literature, about the compatibility of reasonable accommodation with freedom of contract and with traditional private law principles governing the employment relationship[4].

Recent guidance at EU level has sought to provide greater coherence without undermining the inherently flexible nature of the concept[5]. The European Commission has emphasised that reasonable accommodation measures should be timely, personalised, and oriented towards the effective enablement of work performance. From this perspective, accommodation may include assistive technologies; the physical and digital adaptation of the workplace; access to personal assistance services; flexible working-time arrangements; and telework or hybrid working solutions, provided that such arrangements are not imposed unilaterally and do not produce exclusionary effects. The reorganisation of tasks, allowing workers to perform duties compatible with their functional capacities, likewise reflects the enabling rationale of accommodation. What unites these measures is their functional orientation: they are designed to remove barriers arising from the interaction between individual conditions and work organisation, with the aim of achieving equality through effective participation.

The case law of the Court of Justice of the European Union has progressively consolidated this understanding. In *HK Danmark* (Joined Cases C-335/11 and C-337/11), the Court recognised the reduction of working time as a form of reasonable accommodation where it enables a worker with a disability to retain employment and perform essential job functions. In *Commission v Italy* (Case C-312/11), it clarified that technical and environmental adaptations constitute an individualised legal obligation and cannot be made conditional upon employer discretion or economic incentives. More recently, in *J.M.A.R. v Ca Na Negreta* (Case C-631/22), the Court held that EU law precludes national rules allowing for automatic dismissal on grounds of disability without a prior assessment of possible accommodation measures or internal reassignment. Taken together, these judgments articulate a dynamic and functional conception of reasonable accommodation, centred on adapting working conditions to the worker rather than excluding the worker from work.

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[4] K. KARJALAINEN, M. YLHÄINEN, *On the obligation to make reasonable accommodation for an employee with a disability*, in *European Labour Law Journal*, 2021, 12, pp. 547-563

[5] EUROPEAN COMMISSION: DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION, *Reasonable accommodation at work – Guidelines and good practices*, Pubblications Office of the European Union, 2023.

Comparative empirical evidence from national jurisdictions broadly confirms this orientation[6]. Across Member States, accommodation is predominantly conceived as an adjustment of working conditions, tasks, working time, or organisational arrangements, rather than as a suspension of the employment relationship.

At the same time, this body of practice reveals persistent uncertainty at the margins of the concept, particularly where accommodation approaches the boundary between the adaptation of work performance and relief from work obligations. It is within this zone of indeterminacy that the limits of reasonable accommodation continue to be shaped through judicial interpretation and legal debate.

3. Reasonable Accommodation and Sickness Absence: The Italian Case Law on the *Periodo di Comporto*

The analysis conducted so far has shown that, under EU law and in comparative perspective, reasonable accommodation is predominantly conceived as an enabling mechanism aimed at adapting work performance and working conditions in order to sustain continued participation in employment. Against this background, national legal systems provide a particularly fertile ground for exploring the outer limits of the concept, especially where accommodation intersects with sickness absence and job retention.

In Italy, this interaction has given rise to a notably expansive judicial approach. While some commentators have warned that the proportionality-based assessment inherent in reasonable accommodation might encourage overly defensive interpretations and allow employers to elude their obligations[7], Italian courts have moved in the opposite direction. In the absence of detailed legislative guidance, case law has progressively extended the reach of reasonable accommodation in order to strengthen the protection of workers with disabilities, particularly in situations involving dismissal following prolonged sickness absence[8].

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[6] D. MCGRATH, M. O'SULLIVAN, *What is Reasonable? The Operation of 'Reasonable Accommodation' and 'Disability' Provisions Under The Employment Equality Acts. 1998-2015*, in *Irish Journal of Management*, 2022, 41, 1, pp. 37-51; EQUINET, *Case law compendium on reasonable accommodation for persons with disabilities*, 2021.

[7] A. O'NEAL, *Accommodating 'Reasonable Accommodation': Encouraging Liabilit Evasion over Employment Integration*, in . BLANPAIN, F. HENDRICKX (eds.), *Reasonable Accomodotation in the Modern Workplace. Potential and Limits of the Integrative Logics of Labour Law*, BCLR, Wolters Kluwer, 2016, pp. 73-88.

[8] The literature on reasonable accommodation in Italy is extensive. For an initial overview, see, inter alia: O. BONARDI, *Le soluzioni ragionevoli per i disabili come tecnica di prevenzione delle discriminazioni*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2024, no. 3, pp. 376–396; P.

From the perspective of international scholarship on disability inclusion, the Italian experience is of particular interest for two reasons. First, it provides an opportunity to reassess which types of adjustments may realistically fall within the scope of reasonable accommodation when the core issue is not access to work but the continuation of the employment relationship. Secondly, it is precisely from Italian law that the most recent judgment of the Court of Justice of the European Union on reasonable accommodation, delivered in September 2025, originated—an issue to which this article will return in Section 4.

Italian case law has consolidated an approach according to which, before dismissing a worker for exceeding the *periodo di comporto*, the employer is under a duty to ascertain whether the absences are connected to a condition of disability[9]. This preliminary inquiry is deemed necessary in order to identify 'reasonable adjustments' capable of avoiding termination of the employment relationship. According to the Supreme Court, such adjustments may include, 'by way of example', both the 'extension of the *periodo di comporto*' and the 'exclusion from the *periodo di comporto* of periods of sickness related to the worker's disability'.

To appreciate the implications of this line of reasoning, it is necessary briefly to clarify the function of the *periodo di comporto* in the Italian legal system. The *periodo di comporto* denotes the maximum duration of paid sick leave during which the worker is protected against dismissal. Once this period—typically determined by collective bargaining—has been exceeded, the employer may lawfully terminate the employment relationship, irrespective of fault. The concept thus performs a general regulatory function, establishing an ex ante balance between the worker's right to health protection and income continuity, on the one hand, and the employer's interest in organisational certainty and productivity, on the other.

The judicial orientation described above, however, calls for critical reflection on at least three grounds.

First, the argument that conditions the lawfulness of dismissal for exceeding the *periodo di comporto* upon the extension of the period itself appears to entail a circular logic: the duration of paid sick leave is prolonged precisely in order to

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LAMBERTUCCI, *Nuove frontiere della disabilità: soggetti protetti e accomodamenti ragionevoli*, in *Diritti Lavori Mercati*, 2024, no. 2, pp. 237–261; D. GAROFALO, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in *Argomenti di Diritto del Lavoro*, 2019, no. 6, pp. 1211–1247; C. SPINELLI, *La sfida degli 'accomodamenti ragionevoli' per i lavoratori disabili dopo il 'Jobs Act'*, in *Diritti Lavori Mercati*, 2017, no. 1, pp. 39–59.

[9] See, inter alia: V. FILÌ, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*, in *Giurisprudenza Italiana,* 2023, n. 10, pp. 2145-2150; E. DAGNINO, *Comporto, disabilità e "disclosure": note a margine di una "querelle" giurisprudenziale*, in *Argomenti di Diritto del Lavoro*, 2023, no. 1, pp. 241-254.

prevent its exhaustion, thereby neutralising the very function of the concept. This reasoning also sits uneasily with earlier Supreme Court case law on dismissal for supervening unfitness, where termination has been deemed lawful provided that the employer demonstrates a 'diligent and reasonably required effort' to identify organisational solutions capable of avoiding dismissal. An asymmetry would thus arise—without clear normative justification—whereby dismissal for exceeding the *periodo di comporto* becomes more onerous than dismissal for permanent unfitness, even where the employer proves the impracticability of alternative organisational arrangements.

Secondly, further doubts emerge when this Italian approach is assessed in light of the consolidated orientations of the Court of Justice of the European Union and of national courts discussed in the previous section. As noted above, reasonable accommodation has consistently been framed as an adaptation of work performance and working conditions, rather than as the mere tolerance of prolonged absence from work. Treating the extension of the *periodo di comporto* or the exclusion of disability-related absences as reasonable accommodation risks shifting the focus of the concept away from work adjustment and towards the suspension of the employment obligation, thereby stretching it beyond its enabling rationale.

Thirdly, and more fundamentally, the individualised nature of reasonable accommodation stands in structural tension with the logic underpinning the *periodo di comporto*. Reasonable accommodation presupposes a concrete and contextual assessment: it requires dialogue between employer and worker, the exploration of alternative solutions, and a proportionate balancing of competing interests in the specific circumstances of the case. The *periodo di comporto*, by contrast, embodies a general and abstract balancing exercise, carried out ex ante by the legislator and, above all, by collective bargaining. Through this mechanism, the social partners determine in advance—at a systemic and policy-oriented level—the acceptable trade-off between health protection and productive needs for a given sector or category of workers. Assimilating this ex ante, collective, and uniform assessment to an ex post, individualised evaluation of reasonable accommodation risks conflating two distinct regulatory logics.

This tension has been explicitly acknowledged in recent appellate case law. In a judgment of the Bologna Court of Appeal[10], the court held that the mere tolerance of an exceptionally high number of sickness absences—amounting to 587 days—could not qualify as reasonable accommodation. The court emphasised that dismissing the worker only after such a prolonged period of absence did not amount to accommodation, in so far as no effort had been

[10] Corte App. Bologna, sez. lav., 15 aprile 2025, n. 169.

made to identify alternative solutions. The employer, the court noted, had confined itself to a rigid and impersonal application of the *periodo di comporto*, without engaging in any genuine dialogue aimed at assessing expectations, task reallocation, working-time reduction, or other proportionate options.
Ultimately, equating the extension of the *periodo di comporto* with reasonable accommodation appears conceptually inconsistent. The former is a general, collectively negotiated instrument designed to govern sickness absence through uniform rules; the latter is a personalised and situational mechanism aimed at removing specific barriers to participation in work. Blurring this distinction risks undermining the internal coherence of both institutions and obscuring the proper boundaries of reasonable accommodation at work.

4. The *Pauni* Judgment (Case C-5/24): Reasonable Accommodation and the Proceduralisation of Dismissal

The interpretative tensions highlighted in the previous section came before the Court of Justice of the European Union in *Pauni*, following a preliminary reference submitted by the Tribunal of Ravenna in January 2024[11]. The referring court was confronted with a dispute concerning the dismissal of a worker after prolonged sickness absence and questioned whether the application of a single, undifferentiated sickness-absence regime, laid down in a sectoral collective agreement, was compatible with Directive 2000/78/EC, particularly in light of the duty to provide reasonable accommodation. At the core of the reference lay the concern that a formally neutral rule on sickness absence might, in practice, place workers with disabilities at a particular disadvantage and operate as a substitute for the individualised assessment required under EU anti-discrimination law.
In its judgment of 11 September 2025, the Court of Justice articulated a nuanced position that is of central relevance for the present analysis. The Court rejected the view that EU law requires Member States to establish a distinct or automatically extended sickness-absence regime for workers with disabilities. At the same time, it made clear that the mere existence of a general—and even generous—job-protection period cannot, in itself, satisfy the requirements of Article 5 of Directive 2000/78/EC. A uniform sickness-absence regime is not *per se* incompatible with EU law; however, its compatibility is conditional and cannot be assessed in the abstract.

[11] O. BONARDI, *Le soluzioni ragionevoli per i disabili come tecnica di prevenzione delle discriminazioni*, cit., pp. 386-391; A. MARESCA, *Disabilità e licenziamento per superamento del periodo di comporto*, in *Lavori Diritti Europa*, 2024, n. 2.

The Court identified two cumulative conditions for such a regime to comply with EU equality law. First, the national or collectively agreed system must pursue a legitimate social policy objective and must not go beyond what is necessary to achieve that aim. Secondly—and this point is decisive—the regime must not hinder the effective application of reasonable accommodation. In particular, the Court stressed that rules on sickness absence must not operate in such a way as to relieve employers of their obligation to assess, in the individual case, whether appropriate measures could enable the worker with a disability to continue participating in professional life. The existence of a predetermined period of job protection cannot therefore replace, nor pre-empt, the concrete and contextual evaluation of accommodation measures required by EU law.

Read in this light, *Pauni* draws a clear conceptual and functional distinction between sickness-absence regimes and reasonable accommodation. The *periodo di comporto*—as a general, abstract instrument of labour law—cannot be reclassified as a form of reasonable accommodation. Its function is to regulate, *ex ante* and uniformly, the consequences of sickness-related absence within the employment relationship. Reasonable accommodation, by contrast, is an individualised and enabling mechanism aimed at removing specific barriers that prevent a worker with a long-term impairment from performing work on an equal basis with others. The Court thus implicitly rejects the equation, sometimes advanced in national case law, between the extension or application of the sickness-absence period and the fulfilment of the duty to accommodate.

More importantly, *Pauni* contributes to what may be described as a proceduralisation of the dismissal of workers with disabilities. Where dismissal is grounded in the exceeding of a sickness-absence threshold, EU law requires that termination be preceded by a genuine and documented assessment of reasonable accommodation. Before relying on the exhaustion of the sickness-absence period, the employer must verify whether any reasonable measure—such as adjustments to working time, duties, organisation, or modalities of performance—could enable the worker to remain in or return to employment, unless such measures would impose a disproportionate burden. Only where this assessment has been duly carried out and has yielded a negative outcome can dismissal be regarded as compatible with Directive 2000/78/EC.

From this perspective, the *periodo di comporto* does not operate as an autonomous justification for dismissal, but as a residual mechanism that becomes relevant only after the accommodation inquiry has been exhausted. The legality of termination therefore hinges not on the formal application of a temporal threshold, but on the prior fulfilment of a procedural obligation to explore reasonable accommodation. By anchoring dismissal to this sequence of assessments, the Court reinforces a model of disability protection centred on

participation rather than absence and confirms that EU anti-discrimination law does not protect inactivity as such, but the effective inclusion of persons with disabilities in working life wherever this remains reasonably possible.

5. Conclusions

This article has sought to contribute to the clarification of what reasonable accommodation at work is—and, equally importantly, what it is not—within the framework of EU disability equality law. By focusing on the relationship between reasonable accommodation and sickness-absence regimes, and by using the Italian legal system as a case study, the analysis has addressed a question that is increasingly central in contemporary labour law: whether the suspension of work performance and prolonged absence from work can be subsumed under the notion of reasonable accommodation.

The comparative and EU-level materials examined show a relatively stable core understanding of reasonable accommodation as an enabling and participation-oriented mechanism, aimed at adapting work performance and working conditions so as to sustain continued inclusion in professional life. Both EU-level guidance and the case law of the Court of Justice consistently frame accommodation as a set of measures designed to remove barriers arising from the interaction between individual impairments and work organisation, rather than as instruments that merely tolerate or extend absence from work.

The Italian jurisprudence on dismissal for exceeding the *periodo di comporto* illustrates, however, how this conceptual boundary may become blurred in practice. In an effort to enhance protection for workers with disabilities, national courts have at times expanded the notion of reasonable accommodation to include the extension or recalculation of sickness-absence thresholds. While motivated by inclusionary concerns, this approach risks conflating two distinct regulatory logics: a general, abstract balancing of interests embedded in sickness-absence regimes, and the individualised, case-specific assessment that characterises reasonable accommodation.

The *Pauni* judgment marks a significant turning point in this respect. Without calling into question the legitimacy of general sickness-absence schemes, the Court of Justice has made clear that such regimes cannot operate as functional substitutes for the duty to provide reasonable accommodation. The decision reinforces a procedural model in which the dismissal of a worker with a disability—when grounded in prolonged absence—must be preceded by a genuine and documented assessment of reasonable accommodation. Only after it has been established that no reasonable and proportionate measures could enable continued participation in work does the application of sickness-absence thresholds become legally decisive.

From this perspective, *Pauni* contributes to a clearer delineation of the perimeter of reasonable accommodation: it confirms that accommodation is not concerned with protecting absence as such, but with enabling presence wherever reasonably possible. The obligation imposed on employers is not to guarantee employment indefinitely, but to engage in a meaningful process of adaptation aimed at preserving work participation before resorting to dismissal.
More broadly, the analysis underscores the dynamic and evolving nature of reasonable accommodation as a legal concept. Its contours are shaped through the interaction between EU law, national legal systems, and judicial interpretation, and remain inherently open-ended. The Italian case study demonstrates both the risks of overextension and the corrective role played by EU jurisprudence in reorienting national practices towards the core participatory rationale of disability equality law. Following the *Pauni* judgment, the referring court ultimately upheld the dismissal, confirming that EU law does not guarantee job retention as such, but conditions the lawfulness of termination on the prior assessment of reasonable accommodation.
In this sense, the contribution of *Pauni* lies not in redefining reasonable accommodation in abstract terms, but in reaffirming its function as a concrete, individualised, and process-based instrument of inclusion in working life.

Active Ageing and Non-occupational Health in Contractual Policies on Working Time in Italy

Francesco Alifano *

Abstract. This article examines the main measures adopted in Italian collective bargaining to adapt working time arrangements to the needs of older workers, workers with chronic illnesses or disabilities, and family caregivers. The most relevant tools include paid leave and authorised absences, shared leave banks, the conversion from full-time to part-time work, flexitime, and agile working, with priority granted to vulnerable categories or those with caregiving responsibilities.
Collective bargaining has progressively expanded the scope of legal protections associated with these measures. However, despite their growing significance, their implementation remains fragmented, highlighting the need for a systemic approach that values workers' capabilities, promotes sustainable work, and fosters more flexible and inclusive forms of work organisation.

Keywords: *Work–life balance; Collective bargaining; Working time; Demographic change.*

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1. Introduction

For several years now, the demographic transformation affecting Italy and its labour market has been at the centre of labour law debate[1]. Statistical data collected by ISTAT show that the average age of employed workers has been steadily increasing[2], to the point that the largest relative share of the workforce now falls within the 50–64 age group[3]. The rise in the number of workers aged over fifty—whose vulnerability, due to certain objective psycho-physical characteristics, is higher than that of younger workers—has also led to an increase in the number of workers suffering from chronic illnesses[4]. At the same time, the general ageing of the population has resulted in a growing number of workers being required to care for non-self-sufficient family members[5].

Faced with this seemingly irreversible demographic trend, labour law scholarship initially tended to focus primarily on reforms of the pension system and on issues related to exit from the labour market, only more recently turning its attention to measures aimed at encouraging and facilitating the continued participation of older or vulnerable workers in employment[6], as well as safeguarding their health and well-being[7].

In this context, it is worth noting that the regulation of working time can play a fundamental role: especially in recent years, working time has become a key area in which both legislators and the social partners have sought to respond to emerging needs for work–life balance and adaptability expressed by workers[8].

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[1] P. BOZZAO, *Anzianità, lavori e diritti*, Editoriale Scientifica, 2017; V. FILÌ (ed), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, ADAPT University Press, 2022.

[2] ISTAT, *Rapporto annuale 2023. La situazione del Paese*, 2023, 71-76.

[3] As of October 2024, this amounts to over 8.9 million workers, representing 38.37% of employed persons aged between 15 and 64.

[4] See the estimates of the Italian National Institute of Health (Istituto Superiore di Sanità), according to which more than one quarter of Italians aged between 50 and 64 suffer from at least one chronic illness.

[5] ISTAT, *Condizioni di salute e ricorso ai servizi sanitari in Italia e nell'Unione europea – Indagine EHIS 2019*, 2022, shows that, out of the total population aged over 15, around 8 million people in Italy – predominantly women – provide care at least once a week to individuals (in more than 7 million cases, family members) with needs arising from ageing, chronic illnesses or disabilities.

[6] V. FILÌ, *L'invecchiamento da esclusione ad inclusione*, in *Argomenti di diritto del lavoro*, 2020, n. 2, I, 369-385; P. BOZZAO, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, *Rivista trimestrale di scienza dell'amministrazione*, 2022, n. 1.

[7] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, in *Diritto delle relazioni industriali*, 2023, n. 2, 252.

[8] R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, in *Diritti, lavori, mercati*, 2023, n. 1, 50.

From this perspective, the personalisation of working time in relation to the individual circumstances of each worker may represent an essential tool for ensuring the inclusion in the labour market not only of older employees, but also of those who are required to care for non-self-sufficient family members, as well as the (increasingly numerous) workers who, with advancing age, suffer from chronic illnesses or disabilities.

From this standpoint, the first legislative interventions should be understood as attempts—albeit within a fragmented and incomplete regulatory framework—to introduce measures affecting working time in favour of certain categories of workers. These include, for example, the possibility of converting full-time employment relationships into part-time arrangements[9], the granting of priority access to remote working[10], and the delegation to collective bargaining of the power to establish mechanisms for the solidarity-based transfer of leave and paid time off[11]. In addition, new experimental instruments have been introduced, such as the "New Skills Fund" (*Fondo Nuove Competenze*), which provides financing for training hours for workers involved in working-time reorganisation plans negotiated at company or territorial level[12].

Even more than the legislature, however, it has been collective bargaining—historically entrusted with the regulation of working time—that has attempted to provide responses to workers' new needs and to broader social change.

An examination of national collective bargaining renewals concluded after the Covid-19 pandemic—an exogenous factor that has undeniably influenced employment relations in terms of working-time regulation and work–life balance needs—reveals numerous interventions aimed at ensuring the inclusion of workers with specific subjective conditions. These interventions have taken the form of work–life balance measures tailored to different situations of vulnerability. In particular, among the 122 collective agreements renewed between 2021 and 2023 by the comparatively most representative trade union organisations, 55 national sectoral agreements introduced at least one measure addressing working time in relation to the subjective circumstances of older workers, workers with disabilities, workers suffering from chronic illnesses, or workers with significant caregiving responsibilities towards non-self-sufficient family members. This is a noteworthy figure, especially considering that it does not include agreements that already contained such measures.

[9] Article 8(3) et seq., Legislative Decree no. 81/201.
[10] Article 18(3-*bis*), Law no. 81/2017.
[11] Article 24, Legislative Decree no. 151/2015.
[12] Article 88, Decree-Law no. 34/2020, as converted into Law no. 77/2020.

Similarly, second-level bargaining has sought both to implement, at decentralised level, provisions laid down by the legislature or established in national collective agreements, and to introduce new working-time measures aimed at recognising specific forms of protection linked to employees' subjective conditions. This trend reflects the social partners' awareness of the need for targeted interventions in this area[13].

The objective of this study, therefore, is to examine the main solutions identified by company-level collective bargaining to protect workers in specific subjective conditions, observing how the social partners have sought to adapt and personalise working time in response to emerging worker needs.

To this end, the article reviews the provisions of a selected sample of forty company-level collective agreements. These were chosen from among those containing measures that exemplify the main lines of intervention by company-level collective bargaining in the field of working-time adaptability in response to demographic transformations. The agreements were concluded by comparatively most representative trade union organisations and cover different sectors of the economy[14].

On the basis of the selected contractual material, the contribution thus aims to assess the consistency of contractual clauses with statutory provisions, and ultimately to analyse the role of collective bargaining in shaping the protective framework in relation to workers' subjective conditions.

2. Collective Bargaining Interventions on Working Time in Relation to Demographic Transformations: The Role of Participatory Instruments

Before examining the specific interventions introduced by collective bargaining, it is necessary, as a preliminary step in the analysis of the individual measures adopted through decentralised bargaining, to note that a central role in identifying the subjective needs to be protected and in developing protective measures—also with regard to working time and work rhythms—is played by instruments of worker participation at company level.

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[13] ADAPT, *La contrattazione collettiva in Italia (2023). X Rapporto ADAPT*, ADAPT University Press, 2024, 141.

[14] The forty agreements were selected from among more than 2,000 company-level collective agreements concluded over the past five years and included in the *FareContrattazione.it* database. The agreements cover different sectors of the economy, with a predominance of manufacturing-related agreements: in 14 cases they concern the metalworking sector, in 9 the food industry, in 6 the chemical–pharmaceutical sector, in 2 the eyewear industry, and in one case each the cement and glass sectors. The remaining seven agreements, by contrast, relate in three cases to the banking sector, in two cases to the tertiary, distribution and services sector, and in one case each to the insurance and tourism sectors.

Indeed, a significant number of company-level agreements have established specific information and consultation obligations between trade union representatives and employers in order to define strategies concerning demographic change and generational turnover, often explicitly taking into account the modulation of working time[15]. In some cases, specific joint bodies have also been established to assess the solutions to be adopted[16].
Within this framework, it is therefore possible to observe that, in response to demographic transformations, the forms of protection developed by collective bargaining to adjust working time and work rhythms in favour of the categories of workers most affected develop along two main directions: on the one hand, measures aimed at securing, through the suspension of work performance, the release of time periods necessary to meet the employee's subjective needs; on the other hand, measures intended to ensure adaptations of work performance so as to guarantee its sustainability.

3. The Suspension of Work

As anticipated, a first category of interventions to consider consists of all those highly heterogeneous measures aimed at suspending work performance in order to protect interests related to the employee's subjective conditions. By providing for such measures, collective bargaining thus ensures that certain aspects pertaining to the personal dimension of the worker take precedence over the employment contract, rendering it permeable to the consideration of other legally relevant interests[17].

3. Leave and Time Off

Among the measures aimed at suspending work performance in order to free up portions of the employee's time to meet personal needs, a central role is played by the heterogeneous set of leave and time-off arrangements.
With respect to workers whose subjective conditions are affected by demographic change, the range of solutions developed through collective bargaining is diverse and not easily systematised. Nevertheless, among the needs protected, family care obligations and the possibility of attending medical appointments appear by far the most prevalent, often through measures that go beyond those already provided for by law. Moreover, there is

[15] Air Liquide (15/04/2021), Barilla (18/07/2023), Stiga (28/03/2022), TMB (19/04/2021) and Vincenzi (21/06/2023).
[16] Carraro Group (20/09/2022), Celanese (13/12/2019) and Bonfiglioli (21/03/2022).
[17] R. DEL PUNTA, *Diritto del lavoro*, Giuffrè, 2023, 654.

a strong interaction between national-level regulation and company-level clauses, as evidenced by frequent cross-references. For reasons of brevity, this analysis focuses on the food and metalworking sectors, which have recorded a large number of interventions in this area through collective bargaining.

In the food industry, the national collective agreement itself provides for a detailed set of cases in which paid leave may be taken, especially for family care reasons[18]. For example, under Article 40-ter(f), the so-called "intra-generational care leave" may be taken for two non-divisible half-days per year, "to assist elderly parents (aged 75 or over) in cases of hospital admission and/or discharge, and day hospital visits, as well as to attend specialist medical appointments"[19]. The food industry collective agreement also specifies that such leave cannot be used by employees who are already entitled to leave under Law No. 104/1992 for assistance to the same person.

Company-level bargaining in the food industry has mainly focused on providing enhanced benefits compared with national-level provisions, in particular by improving upon the treatment provided under Article 40-ter(f) of the national collective agreement. These improvements generally do not modify the eligibility criteria, including the incompatibility with Law No. 104/1992 leave, but increase the amount of time off available to the employee[20]. A notable example is the Ferrero agreement of 6 October 2023, which, "with the aim of strengthening support tools for the family context", grants four half-days of paid leave per calendar year, incompatible with both Law No. 104/1992 leave and Article 40-ter(f) leave. These may be used for alternative purposes, including "assistance to the spouse and/or parents in cases of documented serious illness" and "assistance to elderly parents (aged 75 or over) in cases of hospital admission and/or discharge, and day hospital visits, as well as to attend specialist medical appointments". Similarly, the Pedon agreement supplements the cases provided by the national collective agreement by granting ten days of unpaid leave for the care of non-self-sufficient parents.

The scenario is partially different in the metalworking industry, where the relevant national collective agreement does not provide specific provisions for leave or time off aimed at suspending work performance in relation to

[18] NCA for the Food Industry, articles 40-*bis* and 40-*ter*.

[19] NCA for the Food Industry, article 40-*ter*(f).

[20] Starting from the two half-days of leave provided by the NCA, Barilla (18/07/2023) increases the total leave to 16 hours, Ferrarelle (01/08/2023) adds an additional 8 hours, Campari (19/07/2023) and Manifatture Sigaro Toscano (26/07/2023) grant an additional half-day; Peroni (09/05/2023) provides two further half-days (to be taken alternatively to other parental leave-related entitlements) and Pedon (29/03/2024) grants one non-divisible full day.

subjective needs, except for those already established by law—namely, Article 4 of Law No. 53/2000 and Article 33 of Law No. 104/1992[21].

It is therefore company-level bargaining that has developed additional forms of leave beyond those established by law, providing supplementary time off, particularly for employees who have exhausted their annual paid leave but bear significant family care responsibilities. This occurs, for example, in Infocamere (agreement of 19 December 2022), where for employees who have used up their available leave and holidays, "the possibility of granting an additional two days of paid leave to workers with particular situations or serious family reasons" is provided (Article 8.3.5), and in Carel (agreement of 8 March 2022), where employees who have exhausted their leave may benefit from eight additional hours of paid leave for various reasons, including "medical–health reasons (for themselves and/or dependent family members)" (Article 15.3). There are also specific measures for the care of elderly or disabled family members. For instance, the Baltur agreement (1 June 2022) allows employees who need to assist a family member with high-support disabilities and have exhausted the unpaid leave provided under Article 4(2) of Law No. 53/2000 to benefit from additional paid leave at 20 per cent of pay for a period ranging from 30 days to six months (Article 13). Similarly, the Fincantieri agreement (27 October 2022) provides eight hours per year "for the assistance of elderly parents (aged 75 or over) in cases of hospital admission and/or discharge from care facilities".

Regarding health protection, several agreements also provide paid leave for medical visits, examinations, or treatments, such as in the Leonardo agreement (21 May 2021), which allows up to 64 hours per year for medical visits, examinations, or treatments concerning the employee or their family members (Title III, Article 9)[22].

Concerning employees approaching retirement, some company agreements in the metalworking industry allow, in derogation from the national collective agreement[23]—which requires unused leave to be paid out within two years—the carry-over of paid leave granted under the national collective agreement in

[21] NCA for the Metalworking and Plant Installation Industry, section IV, title VI, articles 10 and 11, which refer to paid leave under article 33(3) of Law no. 104/1992 for the care of a family member with a high-support disability, paid leave under article 4(1) of Law no. 53/2000 in cases of the death or serious illness of a spouse or relative, and unpaid leave under article 4(2) of Law no. 53/2000 for serious and documented family reasons.

[22] For the prevalence of similar cases, see ADAPT, *La contrattazione collettiva in Italia (2023). X Rapporto ADAPT*, cit., 142-143.

[23] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 5.

previous years[24]. This enables a modulation of working time during the employee's final period before retirement.
A similar clause, outside the metalworking sector, is included in the Italcementi agreement (25 September 2023), which provides that "employees approaching retirement and within three months thereof may take eight hours of paid leave per week (cumulative but non-monetisable) if they participate […] in a handover and skills-transfer process in favour of the employee(s) who will take over their duties", thus aiming to implement a generational handover model in which the reduction of working time for the retiring employee does not entail a reduction in pay.
Overall, it is evident that the provision of leave and time-off arrangements has sought to offer responses to the new personal needs of workers. It should be noted that, even following the pandemic experience, collective bargaining has paid particular attention to measures in favour of hybrid caregivers[25], albeit within a still fragmented framework, while the use of leave to modulate the working time of older employees has generally been limited to the period immediately preceding retirement, allowing for a gradual exit from the labour market. A different situation concerns chronically ill or disabled workers, whose working rhythms and possible periods of non-work due to illness are primarily governed through sick leave provisions, often differentiated according to the employee's specific vulnerability[26].

3.2. The Transfer of Rest Days and Leave

A second measure to consider is the solidarity-based transfer of leave and rest days. In this regard, Article 24 of Legislative Decree No. 151/2015 recognises an essential role for collective agreements, which may, while respecting the rights established by Legislative Decree No. 66/2003, regulate the practical implementation of the transfer of rest days and leave.

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[24] InfoCert (23/01/2019) provides that, "by way of derogation from the provisions of the NCA and the law, for personnel with a retirement horizon of less than five years, it is possible to set aside accrued annual leave and/or paid leave and use it for early exit, or alternatively for a gradual reduction of working hours (soft exit)"; ZF (05/05/2021) allows employees whose retirement is expected within five years to "request the allocation of leave exceeding the non-waivable quota and of paid leave exceeding the company's programmable quota. Exercising this option will allow periods of continuous or intermittent leave to be scheduled during the 12 months preceding retirement, compatibly with the company's technical and organisational requirements".
[25] M. D'ONGHIA, *Lavoro "informale" di cura e protezione sociale*, in *Diritto delle relazioni industriali*, 2024, n. 1, 85.
[26] E. DAGNINO, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, in *Diritto delle relazioni industriali*, 2023, n. 2, 336-356.

Specifically, the legislator has provided that only employees required to care for minor children who, due to particular health conditions, need constant attention may access transferred leave and rest days. However, collective bargaining—both at national and company level—has sought, within a logic of "extended solidarity"[27], to broaden the range of beneficiaries of this measure.
This has occurred, for example, in the food industry, where the national collective agreement provides that employees affected by serious illnesses or required to care for children under 14 with particular health conditions may access the solidarity hours bank[28]. At company level, collective bargaining has further expanded the cases in which this measure may be used. For instance, the Vincenzi agreement allows employees accessing the solidarity hours bank to take leave to care for themselves or to assist minor children, a spouse, a civil union partner, or a cohabiting partner. Similarly, the Barilla agreement (18 July 2023) extends access to the company-level solidarity hours fund to employees affected by acute or chronic illnesses listed in Article 2(1)(d) of Ministerial Decree No. 278/2000, or who have a family member affected by the same conditions.
In the metalworking industry, the national collective agreement also provides a broader group of beneficiaries for the transfer of rest days and leave than that envisaged by law, as the measure can be applied not only to employees caring for minor children in need of constant attention, but also to women victims of gender-based violence and to cases of serious necessity[29]. In this context, some company-level agreements have simply reproduced the national provisions[30], while others have further expanded the range of employees eligible for the solidarity hours bank, giving particular consideration to workers suffering from acute or chronic illnesses[31], or to employees who have exhausted their sick leave or need to care for family members requiring medical assistance[32].
Similarly, in the banking sector, the range of beneficiaries of the measure has been expanded beyond the statutory framework, as the national collective agreement allows access for employees "who, for various reasons, require more intensive support and assistance at certain times in their lives"[33]. It is therefore company-level bargaining that determines in concrete terms who may use leave and rest days donated by colleagues. For example, eligible beneficiaries of the

[27] D. GOTTARDI, *I diritti civili nella contrattazione collettiva: un dialogo che continua*, in *Lavoro e diritto*, 2023, n. 4, 804.
[28] NCA for the Food Industry, article 46-*bis*.
[29] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 11.
[30] Isval (22/12/2021).
[31] Fincantieri (27/10/2022).
[32] Leonardo (21/05/2021).
[33] NCA for Credit, Financial, and Instrumental Companies, article 61.

solidarity hours bank include employees entitled to leave under Article 33 of Law No. 104/1992, for themselves or for their family members[34], employees who need to care for elderly family members over 75 years of age or who are non-self-sufficient[35], and employees who have a remaining sick-leave period of less than 30 days[36].
In all cases, the use of donated leave and rest days constitutes a genuine last resort, since an employee may access the solidarity hours bank only after having exhausted all their own holidays, leave, and other forms of time off.

4. Modulation of Working Hours and the Conversion of Full-Time to Part-Time Employment

Among the measures aimed at addressing the needs of workers in connection with demographic change, one of the earliest concerns the possibility of converting a full-time employment contract into a part-time one. This possibility is currently regulated by Legislative Decree No. 81/2015, which, in Article 8(3), recognises the right of employees affected by oncological diseases or by serious progressive chronic-degenerative conditions to convert their employment contract from full-time to part-time. A different—and weaker[37]—form of protection is the priority in conversion provided in the following paragraph of the same article when the same conditions affect the employee's spouse (including civil union partners or cohabiting partners), children, or parents, or when the employee is caring for a cohabiting person who, under the terminology adopted by Article 4 of Legislative Decree No. 62/2024, has a high-support care requirement.
In this regard, it has been noted that the provision has a rather limited scope, as it not only does not grant a right to convert the employment contract to all workers with fragile health, but also does not extend to all employees with chronic illnesses, providing protection only to those whose chronic condition, on the basis of a necessarily prognostic assessment, is characterised by progressive deterioration[38]. In cases where a family member of the employee is affected by oncological or progressive chronic-degenerative conditions, or requires high-support care, it has been observed that the employee does not

[34] Intesa Sanpaolo (21/02/2023), Deutsche Bank (8/06/2023) and Banca di Ancona and Falconara Marittima agreement (2019).
[35] Intesa Sanpaolo (21/02/2023).
[36] Banca di Ancona and Falconara Marittima agreement (2019).
[37] E. DAGNINO, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, in *Il lavoro nella giurisprudenza*, 2023, n. 2, 147-148.
[38] S. VARVA, *Malattie croniche e lavoro tra normativa e prassi*, in *Rivista italiana di diritto del lavoro*, 2018, n. 1, I, 131-132.

hold a genuine subjective right[39], since priority in conversion amounts only to a preferential expectation.

It has therefore been collective bargaining that has broadened the scope of the legislative provision, aiming to recognise both the conversion of the employment contract and the modulation of working hours in relation to at least three different categories of workers affected by subjective conditions linked to demographic ageing.

A first category of employees for whom the social partners have sought to facilitate conversion to part-time comprises workers approaching exit from the labour market[40]. In this regard, collective bargaining has aimed to implement gradual exit schemes, with the objective of addressing the progressive increase in the retirement age while safeguarding the health and safety of employees by enabling them to work at sustainable rhythms.

In this sense, the clause provided in the Carel agreement is illustrative. This agreement, offering a more favourable framework than the applicable national collective agreement—which is itself already more advantageous than the statutory framework—provides that, with regard to the conversion of full-time contracts to part-time, "in addition to the methods and cases provided by the current CCNL, […] and within a maximum limit of 7% of full-time employees, […] employees with a projected retirement within the next 24 months" may request conversion. Here, the social partners have not only set a higher percentage of eligible employees than the 4% established by the metalworking industry national collective agreement, but also linked access to the measure to proximity to retirement. A slightly different solution is adopted in Verallia (agreement of 30 November 2022), where, in the absence of a specific provision in the national collective agreement[41]—which merely refers to Article 8(3) of Legislative Decree No. 81/2015—the company agreement provides that, "with specific reference to senior employees aged 60 or older, the feasibility of experimenting with work organisations providing horizontal and/or vertical part-time arrangements will be assessed". In this case, although the intervention pursues the same objective of protecting older workers, eligibility is based on age rather than retirement date, applying to all employees over 60. It should be noted, however, that the absence of a predetermined

[39] S. BRUZZONE, F. ROMANO, *Patologie oncologiche, patologie cronico-degenerative e diritto al part-time*, in M. TIRABOSCHI (ed), *Le nuove regole del lavoro dopo il Jobs Act. Commento sistematico dei decreti legislativi nn. 22, 23, 80, 81, 148, 149, 150 e 151 del 2015 e delle norme di rilievo lavoristico della legge 28 dicembre 2015, n. 208 (Legge di stabilità per il 2016)*, Giuffrè, 2016, 618.

[40] In this regard, it should be noted that the similar measure of the so-called "facilitated part-time", introduced by article 1(284), Law no. 208/2015, has not achieved particular success (see V. FILÌ, *L'invecchiamento da esclusione ad inclusione*, cit., 378).

[41] NCA for the Glass and Lamps Industry, article 59.

threshold for accommodating requests may affect the practical effectiveness of this provision.

Still with regard to older workers, certain collective agreements have introduced so-called "generational handover" measures[42]. A fairly structured framework is implemented in some companies in the chemical sector, where, on the basis of the national collective agreement, the "Progetto Ponte" is developed. This involves the creation, at company level, of a "generational solidarity pact […] based on the company's willingness to invest in new hires of young workers in exchange for the willingness of older employees to convert their contracts from full-time to part-time in view of retirement"[43]. On this basis, the Mallinckrodt agreement (28 February 2019) provides that employees expected to retire within the next 12 months may have their contracts converted to part-time—while maintaining full-time pension contributions—concurrently with the hiring of an apprentice. Similarly, in the Luxottica agreement (30 November 2023), even in the absence of a specific national provision[44], it is stipulated that for every employee eligible for retirement within the next 36 months whose contract is converted to part-time, the company guarantees the maintenance of full-time contributions and the hiring of a new full-time employee.

A second category of employees covered by provisions on contract conversion and working-time modulation comprises workers affected by specific chronic conditions not included in Article 8(3) of Legislative Decree No. 81/2015. The limitation of the right to convert the contract solely to employees with progressively worsening chronic illnesses has been considered overly restrictive, since a chronic condition—even without progressive deterioration over time—may nonetheless prevent the performance of work at the normal pace[45]. In this regard, the social partners have sought to provide forms of protection, usually limited to priority in conversion, independent of the requirements laid down in Legislative Decree No. 81/2015, and therefore applicable to all sick employees, including those with non-progressive chronic conditions.

Particular activity in this area has been observed among companies in the food industry, even though the framework established at national level largely mirrors the statutory provisions, aside from strengthening priority for contract conversion for employees with specific caregiving responsibilities, with

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[42] M. MARTONE, *Il diritto del lavoro alla prova del ricambio generazionale*, in *Argomenti di diritto del lavoro*, 2017, n. 1, I, 22.

[43] NCA for the Chemical-Pharmaceutical Industry, article 59(D).

[44] In the most recent renewal of the NCA for the Eyewear Industry the social parties committed to evaluating the promotion of generational handover initiatives.

[45] S. VARVA, *Malattie croniche e lavoro tra normativa e prassi*, cit., 132.

companies committing to consider up to 8% of requests[46]. Of particular interest are certain company agreements that grant priority, within the same 8% limit, to employees "with serious and documented health reasons"[47]. Similarly, even in the absence of a specific provision in the relevant national collective agreement, the Chiesi Farmaceutici agreement (20 February 2024) provides that the company undertakes to consider requests from employees with "reduced working capacity due to a precarious state of health".

Finally, a third category of employees for whom collective bargaining has established special measures regarding the modulation of working hours comprises those required to care for non-self-sufficient family members. In this case, collective bargaining has primarily sought to improve upon the conditions set out in Article 8(4) of Legislative Decree No. 81/2015, providing, instead of mere priority, an actual right to contract conversion.

A particularly noteworthy provision, still within the chemical sector, is found in the L'Oréal agreement (11 November 2021), which provides for a horizontal part-time schedule of 30 hours per week and six hours per day when the employee must care for elderly family members over 75 years of age or non-self-sufficient relatives. In this case, the employee is granted the right to convert their contract to horizontal part-time for a maximum duration of three years. Of particular interest is also the fact that conversion may be granted, where the family member is over 75, even in the absence of specific medical conditions. A similar approach is set out in the Carlson Wagonlit Italia agreement (30 May 2019), where, in the absence of a specific provision on contract conversion in the sectoral national collective agreement[48], it is stated that "in the case of serious illnesses affecting a family member, for which continuous care is required, the Company is willing to temporarily convert, for a maximum period of six months, the employment contract from full-time to part-time". Here too, the employee may benefit from temporary contract conversion, subject solely to the requirement of continuous care for the family member.

In conclusion, the widespread inclusion of clauses providing for working-time modulation and contract conversion to accommodate employees' individual needs has made these measures one of the main tools used by the social partners to address issues arising from demographic change. However, it has been noted that, for multiple reasons—ranging from social and cultural factors to economic considerations—the conversion of full-time contracts to part-time

[46] NCA for the Food Industry, article 20.
[47] Coca Cola (07/07/2023); Ferrero (06/10/2023).
[48] NCA for the Tourism Sector.

is rarely applied in practice[49], and, where the measure is intended for caregivers, there is the additional concern that it may reinforce gender imbalances, confining women to the "part-time trap" without encouraging men to adjust their working hours to meet caregiving responsibilities[50].

5. The Adjustment of Work Performance to Ensure its Sustainability

The measure of converting full-time contracts to part-time forms part of a broader set of provisions aimed at adapting work performance to the employee's needs in order to ensure its sustainability.

The possibility of accessing flexible working arrangements based on the employee's individual circumstances has also received particular attention at EU level, where Directive (EU) 2019/1158, in Article 9, imposes on Member States the obligation to introduce measures ensuring the right to request (or, more precisely, to obtain)[51] flexible working arrangements[52] for parents with children up to a certain age and—of particular relevance for this contribution—for carers, understood as those who provide personal care or support to relatives or household members requiring significant assistance due to serious health conditions. In particular, the flexible working arrangements envisaged may involve temporal flexibility, spatial flexibility, and the previously discussed reduction of working hours through the conversion of full-time contracts to part-time.

In any case, although the Directive applies only to a subset of the categories considered in this study, it is worth noting that collective bargaining has regulated similar flexible working arrangements, with particular attention to

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[49] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 259-261.

[50] C. ALESSI, *Lavoro e conciliazione nella legislazione recente*, in *Diritto delle relazioni industriali*, 2018, n. 3, 814; I. SENATORI, *La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2022, n. 4, I, 605; M. MILITELLO, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, in *Quaderni di diritti, lavori, mercati*, 2023, n. 14, 47-49; V. FILÌ, *«Mind the gap!» La professionalità per l'occupabilità in una prospettiva di genere*, in M. BROLLO, C. ZOLI, P. LAMBERTUCCI, M. BIASI (eds), *Dal lavoro povero al lavoro dignitoso. Politiche, strumenti, proposte*, Adapt University Press, Bergamo, 2024, 427 and 432.

[51] C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, in *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, cit., 91.

[52] E. DAGNINO, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, cit., 140-150; R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, cit., 74-81; C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 92.

temporal flexibility tools such as flexitime and remote working, in order to respond to needs arising from demographic change.

5.1. Flexitime

With regard to the possibility of adapting work performance to the employee's individual circumstances, a first measure to be considered is the introduction of flexible start and end time bands (flexitime), which allow employees to determine, within time slots established by collective agreements, the beginning and end of the working day, while respecting daily, weekly, or multi-weekly working hours.

Typically, company-level bargaining grants the right to flexible start or end times to all workers, although there are cases in which flexitime is linked to specific subjective conditions of the employee. This perspective informs, for example, the provisions of the Blue Health Center agreement of 7 July 2023, which, exercising the delegation conferred by the relevant national collective agreement with regard to working-time flexibility[53], provides—alongside various flexibility schemes available to all employees—the possibility of agreeing on a personalised working schedule tailored to individual needs, while respecting weekly working hours, for employees "in a condition of disabling illness or disability, or […] employees with a spouse who is not legally separated or a cohabiting partner […] or parents and/or children, even if not stably cohabiting with the employee, who require support and assistance because they are affected by serious/invalidating illnesses and/or are not self-sufficient, even temporarily".

The recognition of flexitime for employees, particularly those in specific subjective situations, also emerges in company-level bargaining within the manufacturing sector. In this respect, national collective agreements in the sector often delegate to decentralised bargaining the regulation of matters relating to the organisation of working time[54]. Within this framework, agreements may grant "workers returning to service following convalescence after illness, injury, non-work-related injury, maternity leave, or extraordinary leave to assist family members with disabilities […] the possibility of using flexible start and end times"[55], or may provide, upon request and subject to compliance with daily working hours, for flexible start and end times, granting

[53] NCA for insurance companies, article 84(d).

[54] NCA for the Metalworking and Plant Installation Industry, section IV, title III, article 1; NCA for the Eyewear Industry, article 6; NCA for the Chemical-Pharmaceutical Industry, article 47.

[55] Spindox (29/03/2023).

priority to employees required to provide "assistance to family members"[56]. Also noteworthy is the provision contained in the L'Oréal agreement, which, upon request and in a manner mirroring the provisions on part-time work, grants an "extension of start-time flexibility" to employees who provide "assistance to elderly family members over the age of 75 or who are not self-sufficient".

These provisions are therefore highly heterogeneous, both with regard to the categories of workers who may benefit from flexitime and the degree of autonomy granted to employees in organising their working time and determining the start and end of the working day. This autonomy may range from limited flexibility of a few minutes compared to standard hours to the possibility of designing fully personalised schedules based on individual needs. This has a twofold effect: from the worker's perspective, it expands the space for self-determination within the workplace; from the perspective of work organisation, even if with limited direct impact on the overall productive structure, it contributes to the construction of a flexible organisational model capable of adapting to the demographic changes affecting the population[57].

5.2. Priority in Access to Agile Working

A second measure adopted by collective bargaining to adapt work performance to the employee's needs concerns the recognition of specific rights of priority in accessing work performed in agile mode. Agile working is, in fact, regarded by collective agreements themselves as a key instrument for ensuring inclusion—also through a different organisation of working time—of the many workers who, due to their specific conditions, require personalised forms of protection.

Moreover, Article 18 of Law No. 81/2017 provides for the possibility of granting "priority to requests for the performance of work in agile mode" in connection with certain subjective needs of the worker, and specifically where the request is submitted by workers with children up to 12 years of age or with disabilities, by workers with disabilities requiring a high level of support, or by workers who are carers within the meaning of Article 1(255) of Law No. 205/2017[58]. This provision is complemented by Article 33(6-bis) of Law No. 104/1992, which establishes the same right of priority in access to agile working for workers who make use of the leave provided for in paragraphs 2 and 3 of the same Article 33. These provisions, however, do not encompass all

[56] Marcolin (12/10/2022).

[57] F. BUTERA, *Progettare e sviluppare una new way of working*, in *Lavori Diritti Europa*, 2022, n. 1, 4.

[58] Article 18(3-*bis*), Law no. (1/2017.

categories of workers for whom agile working could effectively respond to work–life balance needs[59].

It has therefore been collective bargaining—especially at company level—that has expanded the scope of this protection by identifying additional categories of beneficiaries entitled to priority access to agile working, in line with Article 10 of the National Protocol on Agile Working in the Private Sector signed on 7 December 2021, through which the social partners undertook "to facilitate access to agile working for workers in conditions of vulnerability and disability, also with a view to using this working arrangement as a reasonable accommodation measure".

Specific solutions in this area have been adopted, for example, in the chemical-pharmaceutical industry, where the relevant national collective agreement has entirely delegated the regulation of agile working to decentralised bargaining[60]. In this context, company-level agreements have provided facilitated access to agile working for vulnerable workers, understood as those for whom "there is a limitation on the performance of work at company premises or on reaching them"[61], granting not only priority rights but also other more favourable conditions, such as those relating to the maximum number of days of agile working permitted[62].

A similar situation can be observed in the metalworking sector, where there is significant dynamism at company level. Here, in order to "facilitate the reconciliation of work with other responsibilities or personal needs (e.g. […] the management of personal and family commitments, including those related to situations of disability)"[63], company agreements have granted priority in the allocation of agile working to various categories of workers, including vulnerable employees and those facing difficulties in caring for non-self-sufficient elderly family members[64].

The situation in the tertiary sector appears similar, with the national collective agreement merely incorporating the 7 December 2021 Protocol without providing a specific regulatory framework[65], and company-level bargaining instead establishing rights linked to workers' personal needs. This is the case, for example, in the Ifoa agreement of 15 February 2023, where certain categories of workers—including workers with disabilities and workers with

[59] M. BROLLO, *Lavoro agile: prima gli anziani?*, in V. FILÌ (ed), *Quale sostenibilità per la longevità?*, cit., 70; P. BOZZAO, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, cit., 24-25.
[60] NCA for the Chemical-Pharmaceutical Industry, articles 47 and 60.
[61] Linde (25/07/2022).
[62] Air Liquide (15/04/2021); Linde (25/07/2022).
[63] Leonardo (21/05/2021).
[64] IMA (04/12/2021).
[65] NCA for the Tertiary Sector, Distribution and Services, appendix no. 9.

elderly parents who are totally non-self-sufficient—are granted priority with regard to any extension beyond the maximum number of days during which work may be performed in agile mode. It should also be noted that, in some cases, collective agreements provide for recourse to telework in relation to the worker's specific subjective needs. This occurs, for example, in the HP Italy agreement of 1 March 2019, under which, in the presence of serious and documented family situations—including loss of personal autonomy or family care and assistance obligations—the worker may perform their duties in telework for a period not exceeding six months, extendable for a further six months. Without addressing here the conceptual differences between agile working and telework[66], it is likely that, through this provision, the company-level social partners intended—by means of a more intensive form of protection—to emphasise the possibility for workers with serious care responsibilities to perform their work entirely remotely[67].

In conclusion, it may be observed that, in the experience of company-level collective bargaining, priority rights in access to agile working are primarily recognised in cases involving carers and workers with disabilities, a category which, in light of established case law on sick-leave thresholds, can reasonably be understood to include workers with chronic illnesses as well[68]. By contrast, among second-level agreements there are no instances in which priority access to agile working is granted to older workers in the absence of specific pathological conditions[69].

6. Conclusions

The analysis carried out has made it possible to identify the main interventions implemented by collective bargaining with regard to working time in response to the needs of older workers, workers with chronic illnesses or disabilities, and

[66] M. TIRABOSCHI, *Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro*, in *Diritto delle relazioni industriali*, 2017, n. 4, 944-946.

[67] C. ALESSI, *Lavoro e conciliazione nella legislazione recente*, cit., 819.

[68] Supreme Court, 31 march 2023, no. 9095, in *Giurisprudenza Italiana*, 2023, no. 10, with a note by V. FILÌ, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*, 2145-2150, and in *Rivista italiana di diritto del lavoro*, 2023, no. 2, II, with a note by A. DONINI, *L'applicazione indistinta del comporto è discriminatoria se la malattia è riconducibile a disabilità*, 254-261.

[69] From this perspective, the provision recently introduced by article 5(2) of Legislative Decree no. 29/2024 does not, for the time being, appear to have met with particular success. That provision places an obligation on employers to adopt all initiatives aimed at facilitating older persons – defined as those over 65 years of age – in performing their work, even partially, in agile mode. In this regard, however, interesting insights had already emerged prior to the legislative decree: see F. MALZANI, *Il lavoro agile tra opportunità e nuovi rischi per il lavoratore*, in *Diritti, lavori, mercati*, 2018, no. 1, 34-35.

workers with significant family care responsibilities. These are undoubtedly important measures, but they suffer from the limitation of not being systemic and, in many cases, from shortcomings in terms of their actual enforceability.

From this perspective, renewed impetus to collective provisions on the modulation of working time in relation to the worker's subjective needs could derive from an assessment of the extent to which the measures in question are consistent with the EU legal framework. In particular, Article 9 of Directive (EU) 2019/1158, already referred to above, recognises in favour of parents and carers the right to request flexible working arrangements[70], which—by ensuring that the worker's personal needs may prevail over work organisation[71]—would entail an obligation on the employer either to adapt the organisation to the worker's needs or to provide reasons for refusing or postponing access to flexible working arrangements[72]. Alongside this provision, Article 5 of Directive 2000/78/EC has long established an obligation to provide reasonable accommodation in order to ensure compliance with the principle of equal treatment of persons with disabilities. In this regard, it should be emphasised that, by virtue of the bio-psycho-social notion of disability—already adopted in EU and domestic case law and now incorporated into the national legal system through the rewriting of Article 3 of Law No. 104/1992 by Legislative Decree No. 62/2024—the protection afforded by reasonable accommodation, defined as "necessary, appropriate and suitable measures and adjustments that do not impose a disproportionate or undue burden on the obligated party" [73], may concern all workers who present "a limitation […] which […] may hinder full and effective participation […] in professional life on an equal basis with other workers […] where that limitation is long-term"[74], as is the case, for example, with chronic illness.

Beyond the similarities and differences between the two normative frameworks[75]—and, above all, the rules through which the Italian legislature

[70] This right would be directly enforceable.: see C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 93-94.

[71] M. MILITELLO, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, cit., 61 and 65.

[72] C. ALESSI, *La flessibilità del lavoro per la conciliazione nella direttiva 2019/1158/UE e nel d.lgs. 30 giugno 2022 n. 105*, cit., 91-92.

[73] Article 5-*bis*, Law no. 104/1992. See F. CUCCHISI, *L'inclusione lavorativa delle persone con malattie croniche e trapiantate: il crocevia degli accomodamenti ragionevoli*, in *L'impatto delle dinamiche demografiche sul mercato del lavoro*, Adapt University Press, 2025, 42-73.

[74] Court of Justice of the European Union 11 april 2013, joined causes C-335/11 e C-337/11, *HK Danmark*.

[75] R. SANTAGATA DE CASTRO, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, cit., 66-71.

has transposed them into domestic law[76]—it is nevertheless clear that, also in the case of the obligation to provide reasonable accommodation, implemented in the Italian legal system through Article 3(3-bis) of Legislative Decree No. 216/2003[77], there arises, similarly to what occurs with access to flexible working arrangements, a right on the part of the worker to have their work performance adapted to their subjective conditions, while a breach of the general obligation to provide reasonable accommodation by the employer constitutes discriminatory conduct.

In this sense, it has been observed, for example, that access to agile working may constitute a reasonable accommodation[78], but the same could equally be said of other measures such as flexitime or other forms of flexible work aimed at adapting work performance to the employee's needs in order to ensure its sustainability.

With regard to the worker's subjective conditions, it has therefore been noted that the obligation to provide reasonable accommodation would assume "systemic importance in assessing the legitimacy of the exercise of managerial powers in their broader dimension, relating to the organisation as a whole rather than to the individual employment relationship"[79], since, through this obligation, the employer is required to redesign work organisation so as to allow the effective participation of all protected workers in professional life on an equal footing with other employees.

Despite the potentially disruptive effect that the application of the obligation to provide reasonable accommodation may have on organisational structures, it should nevertheless be emphasised that this solution too may appear, like many of those introduced so far both by the legislature and by the social partners, as "conservative or defensive in nature"[80].

The ongoing demographic changes would in fact call for a more comprehensive intervention on working time, one that aspires to have a

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[76] See above, note no. 52.

[77] D. GAROFALO, *La tutela del lavoratore disabile nel prisma degli accomoda-menti ragionevoli*, in *Argomenti di diritto del lavoro*, 2019, n. 6, I, 1228-1232.

[78] M. BROLLO, *Le dimensioni spazio-temporali dei lavori: il rapporto individuale di lavoro*, in *Le dimensioni spazio temporali dei lavori. Atti Giornate di studio AIDLaSS. Campobasso, 25-26 maggio 2023*, La Tribuna, 2024, 49; V. FILÌ, *Longevità vs sostenibilità. Prove di resistenza*, in V. FILÌ (ed), *Quale sostenibilità per la longevità?*, cit., p. XVII. In any case, it is also the National Protocol on Agile Work in the Private Sector, signed on 7 December 2021, which, in article 10, provides that access to agile work is to be considered as a form of reasonable accommodation.

[79] R. VOZA, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, in *Diritto antidiscriminatorio e trasformazioni del lavoro. XXI Congresso nazionale AIDLaSS Messina 23-25 maggio 2024*, La Tribuna, 2025, 100.

[80] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 260-261.

structural impact on the labour market through a rethinking of the techniques used to measure work performance, taking into account the changing composition of subjectivities present in labour markets and production contexts.

Such an intervention, which would therefore entail calling into question the centrality of the hour of work in measuring work performance[81] in order to reassess the contribution of the working person and their capabilities[82], would make it possible, in light of the worker's subjective needs, to free work performance from rigid temporal determination.

The outlined paradigm shift would also have significant implications for the organisational dimension of work, since it would make it possible to design "a less hierarchical and more network-based organisation of work, enabling people to work by objectives, possibly also ensuring greater flexibility in working hours in order to adapt to the different needs determined by more advanced age" [83], as well as by the need to protect workers' health through a preventive rather than exclusively curative approach[84], with particular attention to the individual worker's subjective conditions.

Taking up the challenge of governing this transformation of the labour market—by determining criteria alternative to working time for measuring work performance, starting from the specific results expected from the employee[85]—could therefore fall to collective bargaining, which, through coordination among its different levels, could develop more incisive solutions for adapting work performance to the needs of individual workers.

In conclusion, the challenge of constructing "a human-centred system of law"[86], in a context characterised by major transformations reshaping the labour market and profoundly altering the relationship between the working person and their work, cannot but have an impact on working time. From this perspective, the recognition of new spaces of freedom and autonomy for workers in light of their subjective conditions should be viewed favourably, thereby giving concrete form to the aspiration for "a work activity that is less

[81] M. TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, cit., 263.

[82] R. DEL PUNTA, *Is the Capability Approach Theory an Adequate Normative Theory for Labour Law?*, in B. LANGILLE (ed), *The Capability Approach to Labour Law*, Oxford University Press, Oxford, 2019, 94-99.

[83] V. FILÌ, *Longevità vs sostenibilità. Prove di resistenza*, cit., p. XIV.

[84] M. PERSIANI, *A cinquanta anni dal Testo Unico degli infortuni sul lavoro: profili costituzionali*, in *Argomenti di diritto del lavoro*, 2016, n. 2, I, 233.

[85] M. BROLLO, *Le dimensioni spazio-temporali dei lavori: il rapporto individuale di lavoro*, cit., 83.

[86] U. ROMAGNOLI, *Un diritto a misura d'uomo*, in *Rivista critica del diritto privato*, 1989, n. 3, 285.

commodified and less driven by the imperatives of the clock, less blind and heteronomous: in a word, less alienated" [87].

[87] R. DE LUCA TAMAJO, *Il tempo nel rapporto di lavoro*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 1986, n. 31, 473.

The Particular Vulnerability of Workers in Relation to Mental Health Problems

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Abstract. Globally, more than twelve million working days are lost each year due to mental health problems, primarily arising from conditions related to depression and anxiety. In the aftermath of the COVID-19 health crisis, mental health has deteriorated, and the prevalence of mental disorders has increased among certain population groups. Furthermore, over 45 per cent of workers report being exposed to psychosocial risk factors that adversely affect their mental well-being.

Keywords: *Mental health; Vulnerable groups; Occupational safety and health; Psychosocial risks.*

1. Introduction

In 2023, the Pan-European Mental Health Coalition reported that more than 125 million people are affected by conditions associated with the deterioration of mental health[1]. Furthermore, the European Union has indicated that mental disorders account for the highest proportion of certified disabilities in developed countries[2]. It is therefore unsurprising that the protection of mental health has become a primary objective of the World Health Organization (WHO), which has directed its efforts towards establishing measures aimed at ensuring that no one is left behind.

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[1] WHO, *The Pan-European Mental Health Coalition.*, 2023.

[2] COM (2023) 298.

In this context, the *condicio sine qua non* underpinning inter-institutional action is based on several key priorities: the achievement of universal health coverage through improved access to comprehensive, high-quality healthcare services for the entire population[3]; the promotion of well-being through public mental health policies; the development of mental health databases to generate more robust evidence on these conditions and their relationship with work; and, consequently, the implementation of measures aimed at fostering psychosocial resilience in the workplace. To this end, it follows that, within their respective spheres of competence, the relevant stakeholders must provide and ensure enhanced protection for individuals experiencing psychosocial, intellectual, or cognitive disabilities, as well as mental illnesses, in order to prevent the risk of social exclusion. In this regard, the WHO adopted the *Comprehensive Mental Health Action Plan (2013–2030)*, whose strategic lines of action for the 2013–2020 period focus on improving the quality of health services, promoting mental health and its prevention, and systematising information[4], on the premise that "there is no health without mental health".

For these purposes, it is important to recall that, according to the *International Classification of Diseases for Mortality and Morbidity Statistics (ICD-11)*[5], mental disorders encompass depression, bipolar affective disorder, schizophrenia and other primary psychotic disorders, anxiety- and fear-related disorders, dementia, disorders due to substance use, intellectual disabilities, and behavioural disorders typically arising in childhood and adolescence, including autism, as well as suicidal behaviour associated with depression, anxiety, or psychological trauma.

As the WHO has stated, health "is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". This broad definition introduces a holistic dimension to health and well-being. Nevertheless, exposure to social, occupational, economic, political, cultural, and environmental factors significantly affects certain groups, placing them at a

[3] United Nations objective aimed at achieving Target 3.4 of the SDGs, defined as follows: «By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment, and promote mental health and well-being».

[4] WHO, *Mental Health Action Plan 2013–2020.*

[5] *WHO. International Classification of Diseases for Mortality and Morbidity Statistics (ICD-11).* Reference Guide, 11th Revision (February 2025). This classification provides a basic diagnostic framework for general epidemiological purposes and for health management. Its use is relevant for the analysis of financial aspects of a healthcare system, such as resource allocation. In addition, it is suitable for analysing the health status of population groups and for monitoring incidence and prevalence, which may be linked to the characteristics and circumstances of affected individuals. This latest revision has enabled the unification of terminology and classification criteria within a common platform.

higher risk of developing mental disorders. This issue, along with its various dimensions, will be examined throughout this paper.

2. Scope and Conceptual Delimitation of the Term Mental Health and Occupational Well-being

In earlier periods, and because of prevailing social attitudes, mental health problems were commonly associated with states of madness[6]. Accordingly, "psychological disorders were regarded as a form of condemnation, and those affected were perceived as dangerous or culpable"[7]. This historical perspective is particularly relevant in illustrating how cultural and social patterns have contributed to the persistence of inequalities linked to mental health over time. From an epidemiological standpoint, mental health disorders give rise to a wide range of health problems, including subclinical conditions that frequently go unnoticed and are now considered one of the major epidemics of the twenty-first century. Indeed, the deterioration of this dimension of health affects approximately one in six individuals in the European Union, representing a cost of more than six hundred billion euros[8].

This constitutes a global challenge. From the standpoint of universality, every individual has the right to mental health, particularly given that the right to both physical and mental health is recognised as a fundamental human right, without discrimination[9]. In response, the European Commission has assumed an active role in addressing this issue, encouraging Member States to examine the relationship between biomedical variables and the risk factors associated with poor mental health. The Commission advocates a priority-based strategic approach centred on the adoption of public policies encompassing all necessary measures to counteract the deterioration of mental health, with particular relevance for the protection of vulnerable groups.

In this context, and taking into account the empirical reality, it is appropriate to outline, albeit briefly, the conceptual framework of the term "mental health". In its broadest sense, the World Health Organization defines mental health as a state of well-being in which individuals recognise their own abilities, are able to

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[6] A. BADALLO, A. CARBAJOSA, *Estigma y Salud Mental*, in *Grupo 5*, 2012, 29.

[7] M. I. MARQUEZ-ROMERO, *De las narrativas de la locura: ¡Yo no estoy loco! ¿Por qué estoy aquí? Aproximación a las narrativas de enfermedad en una unidad de salud mental*, in *Revista de recerca i formación en antropología*, 2010, no. 12, 2.

[8] EUROPEAN COMMISSION. The data can be consulted on the following website: https://health.ec.europa.eu/state-health-eu/health-glance-europe/health-glance-europe-2018_en?prefLang=es

[9] United Nations General Assembly, WHO Human Rights Council, Resolution of 26 September 2017.

cope with the normal stresses of life and can contribute to their community. From an analytical perspective, mental health may be understood as a social value that fosters interpersonal relationships and enables individuals to confront present and future challenges, thereby facilitating positive development and personal growth[10]. This conception aligns with economic theories and public policy approaches, given the significant financial burden that mental health conditions impose on public services and households alike.

This, in turn, raises the issue of promoting occupational well-being. Although closely interrelated, mental health and occupational well-being may be distinguished in conceptual terms. The latter can be situated within the domain of individual psychology and encompasses elements such as job satisfaction, engagement, organisational commitment, retention, and contribution to both professional and personal development. These principles reflect a progression from the structural or systemic level to the individual level, as a productive economy ultimately depends upon the construction of an inclusive society in which mental health and well-being are integral components of the quality of working life.

Against this background, the notion of self-perceived health assumes renewed importance. According to European Union data (2021), 87.2 per cent of women aged 16 to 44 report being in good or very good health, compared with 88.7 per cent of men. Within the 25 to 64 age group, the corresponding figures are 65.9 per cent for women and 68.9 per cent for men[11]. In both cohorts, women report lower levels of perceived health.

It is also important to note that the health crisis caused by COVID-19 significantly exacerbated mental health problems across the population. Before the pandemic, more than nine hundred million people worldwide were affected by some form of mental disorder[12] . In addition, nearly 50 per cent of individuals in the European Union report having experienced a mental health problem within the past year[13]. In response, the World Health Organization, the International Labour Organization, and the European Commission have

[10] WHO, *World Mental Health Report: Transforming Mental Health for All*, 2022, 11.

[11] Eurostat (2021). Access to the dataset is available through the following link: https://ec.europa.eu/eurostat/databrowser/view/HLTH_SILC_01__custom_3560082/bookmark/table?lang=en&bookmarkId=b3a88ffa-33a9-469b-b4a0-e87548e6653e&c=1665500816000

[12] This estimate includes individuals with schizophrenia, anxiety, depressive disorders, autism spectrum disorders, attention deficit hyperactivity disorder, eating disorders, bipolar disorder, and idiopathic and developmental intellectual disability, among others. Institute for Health Metrics and Evaluation. Available at: Global Health Data Exchange (2019): https://ghdx.healthdata.org/

[13] Council of the EU, *Mental health: Member States will adopt measures at different levels, across various sectors and for different age groups*, 2023

intensified and refined their efforts, developing policy proposals and targeted action programmes to address emerging challenges in mental health and occupational well-being.

At the level of primary European Union law, Article 3 of the Treaty on European Union establishes the promotion of the well-being of peoples and the fight against discrimination on grounds of disability as fundamental objectives of the Union. These objectives are further elaborated in Article 168 of the Treaty on the Functioning of the European Union[14], as well as in Articles 31 and 35 of the Charter of Fundamental Rights of the European Union[15], which collectively require Member States to ensure a high level of human health protection. Failure to do so would not only constitute a breach of a fundamental right but would also undermine the objectives of inclusive and sustainable growth, particularly in relation to the interpretation of decent work and economic development within the framework of the Sustainable Development Goals (SDGs) of the 2030 Agenda[16].

In order to give effect to these mandates, policy initiatives have emerged across a range of sectors, areas, and population groups. Initially programmatic in nature, these initiatives acquired greater urgency following the outbreak of the COVID-19 pandemic, given its profound impact on mental health, particularly among women, owing to factors such as lower income levels, precarious employment, and the unequal distribution of care responsibilities. The crisis marked the beginning of a new phase characterised by enhanced preparedness and resilience in the face of future threats, with the overarching objective of promoting mental health and well-being for all while ensuring universal access to high-quality healthcare. Nevertheless, despite these efforts, progress remains insufficient, and mental health problems continue to rise at an alarming rate, particularly among vulnerable groups.

At this juncture, it is pertinent to emphasise that approximately one in six individuals in the European Union reports having experienced a mental disorder, including anxiety, depression, or chronic stress[17]. Despite increased

[14] The same purpose is reflected in arts. 4, 6, 9, 114, 169, and 191 TFEU.

[15] Official Journal of the European Union of 7 June 2016. The literal wording of art. 31 states: «1. Every worker has the right to working conditions which respect his or her health, safety and dignity. 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods, and to an annual period of paid leave».

[16] In this regard, decent work implicitly includes respect for social protection, labour rights, and social dialogue. J.L. GIL Y GIL, *El trabajo decente como objetivo de desarrollo sostenible*, in *Lex Social*, 2020, no. 1, 147-148.

[17] OCDE (2024): *Health at a Glance: Europe 2024: sate of Health in the UE Cycle.* J. SANCHEZ PÉREZ, *El controvertido encaje como accidente de trabajo del estrés laboral y la depresión. Comentario a la Sentencia del Tribunal Superior de Justicia de Castilla y León/Burgos 235/2021, de 26 de mayo,* in *Revista de Trabajo y Seguridad Social*, 2021, no. 465, 132-140.

societal awareness of the importance of protecting and promoting mental health, factors such as economic instability, social inequality, climate change, and humanitarian crises continue to exert a detrimental impact on the mental well-being of the global population. These dynamics are closely linked to short-term economic imperatives, profit maximisation, and the commodification of productivity, often at the expense of the rights of individuals experiencing mental health problems or disabilities arising from such conditions.

From an operational perspective, there is reason for cautious optimism, grounded in the potential for institutional coordination and the implementation of multilevel public policies aligned with principles of social inclusion. In accordance with Article 4 of the Convention on the Rights of Persons with Disabilities, States Parties are required to ensure and promote the full realisation of all human rights and fundamental freedoms for persons with disabilities, without discrimination of any kind[18].

In this context, and paraphrasing Byung-Chul Han, "the violence of positivity is not prohibitive, but saturating; it is not exclusive, but exhaustive. For this reason, it is inaccessible and not immediately perceptible" [19]. By way of illustration, a parallel may be drawn between the global health crisis caused by a virus and the contemporary crisis stemming from psychological strain associated with work overload. The metaphor suggests that such forms of violence may spread in a manner analogous to a contagion, producing detrimental effects on health. In this sense, work intensification—manifested in excessive workloads or self-imposed demands exceeding an individual's capacity—may arise from the pursuit of recognition, the pressures of competitive environments, identity-related factors, limited bargaining power, job insecurity, or the normalisation of excessive effort.

3. Psychosocial Risks and their Impact on Workers' Mental Health

Globally, approximately twelve billion working days are lost each year as a result of mental health problems, primarily due to conditions related to depression and anxiety[20]. When psychosocial risks are considered in general terms, they refer to deficiencies in job design, work organisation, and management practices—factors that contribute to the emergence of toxic social and working environments. In this regard, it is noteworthy that around 45 per cent of workers report being exposed to psychosocial risk factors that adversely affect their mental health.

[18] See *https://www.un.org/esa/socdev/enable/documents/tccconvs.pdf*

[19] H. BYUNG-CHUL, *La Sociedad del Cansancio*, Herder, 2024, 23.

[20] ILO, *Mental health at work*, 2022.

It should also be emphasised that the concurrence of multiple causes serves to intensify their impact on workers' health. Such factors include conflicting demands that employees are required to manage, incompatible requirements stemming from a lack of clarity in role allocation, job insecurity, insufficient support from management or colleagues, psychological and sexual harassment, excessive workloads, and the need to respond simultaneously to divergent functional demands involving clients, patients, or students.

Within the applicable legal framework, employers are required to adapt work to the individual, particularly in relation to job design. This obligation entails taking into account workers' professional capacities when assigning tasks, as established in Article 15.1(d) of Law 31/1995 of 8 November on the Prevention of Occupational Risks (LPRL) [21] and Article 36.5 of the Workers' Statute (LET)[22]. Ultimately, this reflects the binding nature of a rule aimed at preventing physical and/or psychological overload. This principle of adaptation is also enshrined in Article 13 of Directive 2003/88/EC of 4 November concerning certain aspects of the organisation of working time. Its effectiveness is typically assessed through task analysis and job evaluation. In cases of non-compliance, the employer may incur a surcharge on economic benefits in accordance with Article 164.1 of the General Social Security Act[23].

As noted in the introduction, workplace environmental factors can exacerbate the deterioration of mental health. Before examining workers' vulnerability in greater detail, it is appropriate to outline the underlying causes and nature of psychosocial risk. In this respect, reference should be made to data from the OSH Pulse Survey (2025)[24], based on a representative sample of more than 28,000 workers across the European Union. The findings indicate that 44 per cent of respondents report excessive workloads, while 34 per cent identify a lack of professional recognition or reward for their work. To a lesser extent, 29 per cent report limited participation in decision-making processes, and 17 per cent indicate low levels of autonomy in their work. Furthermore, 16 per cent report experiencing violence or verbal abuse from clients, patients, or students, compared with 8 per cent who report bullying or intimidation at, or related to, work.

Notably, 48 per cent of respondents consider that disclosing a mental health problem in the workplace could have negative consequences for their

[21] BOE no. 269, 10 November 1995.

[22] *Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*. BOE no. 255, 24 October 2015.

[23] *Real Decreto Legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social*. BOE no. 261, 31 October 2015.

[24] OSH Pulse Survey (2025). Available at: https://osha.europa.eu/es/facts-and-figures/osh-pulse

professional career. At the same time, 58 per cent express a desire for communication channels that would enable such issues to be addressed while safeguarding privacy and confidentiality. As a result, mental health problems are increasingly rendered invisible in both social and occupational contexts. This helps to explain why, over the preceding twelve months, many respondents report having experienced conditions such as stress or depression without disclosing them to their employer.

It should also be noted that, in many cases, the causal link between deteriorating mental health and exposure to psychosocial risks does not clearly reveal a structural organisational problem. Consequently, a direct relationship is not always established, except in cases where such a correlation has been explicitly identified. This creates persistent difficulties in assessing and identifying psychosocial risk factors and their effects, often resulting in periods of sick leave being classified as common illness without recognition of a work-related cause.

In this context, the European Union has called upon Member States to promote quality employment and to foster inclusive and resilient labour markets. This position[25] aligns with and reinforces the principles of the European Pillar of Social Rights, with a view to improving employment opportunities and working conditions across Europe[26].

3.1. Work-related Mental Disorders

Among the mental health conditions most frequently diagnosed in clinical practice, the following categories may be distinguished: (a) psychotic disorders; (b) neurotic disorders; (c) cognitive disorders; (d) disorders associated with work-related stress; (e) disorders arising from the abuse of psychoactive substances[27]; and, finally, (f) self-harming (autolytic) disorders[28].

Psychotic disorders are generally understood as those that may arise from exposure to chemical agents, psychoactive substances, medications, or narcotic drugs, as well as from adverse working conditions. Neurotic disorders, for their

[25] Council Decision (EU) 2025/2254 of 27 October 2025 on guidelines for the employment policies of the Member States. In this regard, Member States must ensure adequate working conditions, as well as occupational health and safety, which includes both the physical and mental health of workers. *Recital (14).*

[26] M.I. RAMOS QUINTANA, *El Pilar Europeo de Derechos Sociales ¿nos ponemos serios?,* in *Trabajo y derecho: nueva revista de actualidad y relaciones laborales*, 2016, no. 24.

[27] From a conceptual standpoint, drug abuse may cause physical or psychological harm and may even damage individuals' social relationships.

[28] VV. AA. *Salud mental y trastornos mentales en los lugares de trabajo*, in *Revista española de salud pública,* 2022, no. 96, 5.

part, are commonly associated with prolonged exposure to toxic or highly stressful workplace environments. Similarly, cognitive disorders may result from exposure to substances or compounds used, for example, in pest control affecting crops or livestock, insofar as such exposure can impair the nervous system, potentially leading to memory loss or long-term dementia when sustained over time.

In addition, there are mental disorders that are either caused by or closely linked to work-related stress. As regards autolytic disorders, these encompass behaviours such as suicide and self-harm. Various studies suggest that the consumption of psychoactive substances may be associated with inadequate and stressful working environments, often characterised by poor working conditions[29]. It should be emphasised that psychosocial occupational risk factors were, for a considerable period, relegated to a secondary position—an approach that proved both unfavourable and counterproductive for workers' health. A similar observation applies to the relationship between mental disorders and the use of psychoactive substances: at the global level, approximately one third of individuals who consume such substances also experience mental health disorders. The identification and mitigation of risk factors already constitute a form of preventive action. In this regard, the obligation to assess psychosocial risks in the workplace, as established in Article 16 of Law 31/1995 on the Prevention of Occupational Risks (LPRL), is of particular importance. Such assessment facilitates and supports intervention strategies that prioritise job retention through the implementation of preventive measures and appropriate health surveillance mechanisms.

In Spain, data concerning individuals admitted to treatment for the abuse of or dependence on illegal psychoactive substances reveal the following distribution according to employment status in 2023:

[29] ILO, *Management of alcohol- and drug-related issues in the workplace. Code of practice*, 1999.

Table 1 – Employment status (2023) in relation to the total number of individuals admitted to treatment for abuse of or dependence on illegal psychoactive substances, by previous treatment and sex.

	Total	Previous treatment		Sexo	
Employment status		**Yes**	**No**	**Men**	**Women**
Working	41,4	37,7	44,1	43,5	31,9
Unemployed, never worked	6,3	6,3	6,1	6,0	7,3
Unemployed, previously worked	36,2	40,5	33,5	35,5	39,6
Other	16,1	15,5	16,3	15,0	21,2
Spanish nationality	85,9	88,2	84,4	85,6	87,0
Foreign nationality	14,1	11,8	15,6	14,4	13,0

Source: Author's own elaboration based on data from the Spanish Observatory on Drugs and Addictions[30].

3.2. The Indelible Footprint of Work-related Stress

To further clarify the conceptual aspects addressed in this study, it should be recalled that stress constitutes a physical and emotional response that may damage an individual's health as a result of an imbalance between external demands and the resources and capacities perceived to meet them[31]. According to data from the European Trade Union Confederation, work-related stress is responsible for more than 10,000 deaths annually in Europe and entails an economic and productivity cost equivalent to approximately 12 million working days lost each year. Accordingly, physiological, psychological, and emotional disturbances arising from stress or from other working conditions with a significant impact on mental health may be attributed to psychosocial risk factors[32].

[30] See Informe 2025. *Alcohol, tabaco y dogas ilegales en España*. Observatorio Español de las Drogas y las Adiciones. Ministerio de Sanidad, 85.

[31] OIT (2016), *Estrés en el Trabajo. Un reto colectivo*, 2.

[32] Without aiming to be exhaustive, the following psychosocial factors are identified: a) those related to working time (shift work, night work, work–life balance); b) those related to autonomy (determination of work pace, distribution of breaks or tasks, resolution of incidents); c) those related to workload (time allocated to the task or to service provision, predictability of tasks, amount of work, difficulty, work outside normal working hours); e) those related to psychological demands (cognitive demands, concealment of emotions, requirement to work with third parties, demands for emotional responses); f) variety and content (routine work, recognition of work, meaningfulness of work); g) participation/supervision (degree of participation and supervisory control); h) interest in the worker/compensation (facilities for professional development, balance between effort and rewards, satisfaction with pay); i) role performance (ambiguity, conflict, and overload); j)

This assessment is reinforced where work demands exceed the individual's capacities, generating adverse effects not only on personal health but also on organisational functioning. In such circumstances, phenomena such as absenteeism, workplace conflict, deterioration in labour relations, and reduced productivity are to be expected.

In line with the foregoing, work-related mental health disorders are not easily diagnosed in preventive practice, particularly in relation to the identification and assessment of less severe conditions. It should also be noted that mental disorders frequently emerge at early stages of life and may develop progressively, depending on individual vulnerabilities and the surrounding socio-occupational environment. Thus, where work-related stress undermines occupational well-being, it is essential to avoid reaching a point of no return. Risks must therefore be addressed at their source through preventive control measures designed to reduce their incidence, severity, and likelihood, in accordance with Article 15.1(c) of Law 31/1995 on the Prevention of Occupational Risks (LPRL). In this respect, deterioration in health "encompasses not only physical harm but also trauma that leaves lasting impressions on the psyche"[33].

With regard to the gender dimension, men have traditionally been more reluctant to acknowledge or disclose experiences of work-related stress, often avoiding recourse to treatment. At the same time, they appear more inclined to report diagnoses of chronic physical illness. Returning to the findings of the OSH Pulse EU Survey (2025), 53 per cent of respondents across the European Union indicate that they receive awareness-raising activities or programmes on stress and well-being from their employer; in Spain, this figure is approximately 49 per cent. Furthermore, 45 per cent of respondents in the EU report being consulted about workplace stress risk factors, compared with 34 per cent in Spain. Finally, 40 per cent of respondents across the EU state that they have been offered psychological counselling by their employer, whereas in Spain the corresponding figure is 28 per cent. Taken together, this downward asymmetry is particularly noteworthy at the national level.

3.3. Suicidal Ideation: Not a Desire to Stop Living, but to Stop Suffering

The World Health Organization (WHO) identifies suicide as a major public health concern that must be addressed as a global priority through the implementation of comprehensive strategies encompassing promotion,

relationships and social support (exposure to situations of violence, interpersonal conflicts, discrimination). See INSST. NTP 926, *Factores psicosociales: metodología de evaluación.*

[33] STS, 22 March (5.194/97).

prevention, and rehabilitation, with the direct involvement of governments[34]. This approach underscores that preventive intervention cannot rely exclusively on therapeutic responses within healthcare systems; rather, the early management of suicide requires coordinated health, social, and occupational policies, preventive strategies, and multidimensional intervention protocols.

At the conceptual level, the WHO (2006) defines suicide as the deliberate act by which an individual takes their own life, thereby encompassing both ideation and behaviours—whether conscious or unconscious—directed towards self-inflicted death. Particular attention must be paid to the interplay between personal and social determinants of suicidal behaviour, including chronic health conditions, substance abuse, exposure to discrimination, unemployment, and social marginalisation. In all cases, the association between mental disorders and suicide is well established.

In Spain (2024), suicide cases account for approximately 2.2 per cent, compared with 0.5 per cent of individuals who report having contemplated suicide without acting upon it. A gender-based analysis suggests that women exhibit a higher propensity towards suicidal ideation, particularly within the 15 to 34 age group, indicating an increased level of vulnerability among young women. In other age groups, however, no significant differences are observed between men and women.

At the European level, suicide prevention has been prioritised within the framework of the 2030 Agenda, specifically under Sustainable Development Goal 3 and indicator 3.4.2, which aim to ensure universal health coverage and reduce mortality rates associated with suicide. In Spain, the suicide mortality rate in 2023 stood at 8.512 per 100,000 inhabitants, reflecting a slight decrease from the previous year, which recorded the highest figure (8.846) for the period 2011–2023, according to data from the National Statistics Institute.

Within this context, the European mental health agenda has emphasised the need to strengthen suicide prevention efforts in the workplace[35]. Although global suicide rates have declined by approximately 10 per cent, significant progress is still required to meet the target of a 33 per cent reduction by 2030[36].

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[34] WHO, 66th Assembly, 28 May 2013, *Resolution WHA66.8. Comprehensive Mental Health Action Plan 2013–2020.*

[35] For consultation: https://health.ec.europa.eu/publications/comprehensive-approach-mental-health_en?prefLang=es. S. OLARTE ENCABO, *Trabajo, salud mental y suicidio criterios técnicos para su consideración laboral,* in *Revista Internacional y Comparada de Relaciones laborales y Derecho del Empleo*, 2023, 11, no. 3, 43-63. J. SÁNCHEZ PÉREZ, *Una relación fatal: el estrés laboral lleva al suicidio,* in *Revista derecho del trabajo*, 2018, no. 19, 251-260.

[36] The Comprehensive Mental Health Action Plan 2013–2030 itself promotes the development of multisectoral national prevention programmes with the aim of providing health coverage through primary care. Its content can be consulted at:

As previously noted, work-related stress—particularly that arising from excessive workloads—constitutes a key triggering factor for suicidal ideation[37]. The case of the 19 workers at France Télécom, whose deaths were associated with extreme work pressure (often linked to the concept of *karoshi*), illustrates the profound social impact of psychosocially hazardous working environments, which continue to pose serious challenges in the field of occupational safety and health. With regard to autolytic disorders, various pathologies have been identified as potential risk factors for suicidal ideation[38].

Table 2 – Self-reporting (2024): Pathologies by age group and their relationship with suicide risk (percentages)

Pathology	**Total population (15–64)**	**Suicidal ideation (%)**
Gambling disorder	0.4	2.0
Anxiety	16.0	46.7
Depression	9.9	41.6
Insomnia	8.2	27.2
ADHD	1.0	7.1

Source: Author's own elaboration based on data from the Survey on Alcohol and Drugs in Spain (Ministry of Health).

Even a cursory analysis of these data highlights the need for a more nuanced and systematic approach to workplace mental health, given its multifactorial and multidisciplinary nature. As noted, contributory factors include economic hardship, chronic illness or pain, exposure to violence or abuse, work-related stress, social isolation, depression, emotional exhaustion, and loss of self-esteem[39]. Suicide rates are often higher among particularly vulnerable groups, including migrants, single mothers, older persons, individuals experiencing homelessness, young people, members of the LGBTI community, and prisoners[40]. Structural indicators such as poverty, instability, indebtedness, precarious employment, and long-term unemployment also play a decisive role in the emergence of self-harming behaviours.

https://iris.who.int/server/api/core/bitstreams/8899edda-64fb-4c2d-b857-f81c7104374c/content

[37] J. SÁNCHEZ PÉREZ, *El suicidio como riesgo laboral: claves para la prevención*, in *Observatorio de Riesgos Psicosociales de Andalucía. científico-técnica de prevención*, 2022, no. 5.

[38] Spanish Observatory on Drugs and Addictions. Ministry of Health, *2025 Report. Alcohol, tobacco and illegal drugs in Spain*, 157.

[39] J.M. PEIRÓ, *Desencadenantes del estrés laboral,* in *Eudema*, 1992, 53.

[40] WHO (2025), Press release. *Suicide.* Available at https://www.who.int/es/news-room/fact-sheets/detail/suicide

From a legal perspective, establishing a causal link between working conditions—within the meaning of Article 4.7 of Law 31/1995 on the Prevention of Occupational Risks (LPRL)—and suicide, traditionally regarded as a voluntary act, remains a complex and evolving issue. This question must be analysed in light of the interpretation of Article 156 of the General Social Security Act (LGSS), including: (i) the general criterion of "arising out of or in connection with work" (Article 156.1); (ii) the requirement that occupational diseases must be exclusively caused by work (Article 156.2); and (iii) the exclusion of events resulting from wilful misconduct or gross negligence on the part of the worker (Article 156.4(b)). These provisions must also be reconciled with the evidentiary recognition of implicit factors in suicidal acts.

In response to this legal controversy, three principal approaches have emerged: first, the determination of evidentiary standards; second, the consideration of reports issued by the Labour and Social Security Inspectorate supporting the existence of a causal link; and third, the use of the psychological autopsy[41] as a forensic tool. Case law has increasingly recognised employer liability where there has been a failure to conduct adequate psychosocial risk assessments or to implement appropriate preventive measures.

In this regard, judicial decisions have confirmed that suicide may, under certain conditions, be classified as an occupational contingency, specifically as a work-related accident. Courts have held that the decisive factor is not the location or timing of the act, but rather the existence of a sufficient causal nexus—often described as "relevant occasionality"—between the working conditions and the suicidal behaviour. Thus, even where the act occurs outside working hours, it may still be considered work-related if it can be demonstrated that harmful working conditions were a determining factor.

In several cases, courts have emphasised the absence of prior psychiatric history as reinforcing the causal link, particularly where the suicidal act is directly associated with workplace harassment or sustained occupational stress. Reports issued by the Labour Inspectorate and findings derived from psychological autopsies have played a crucial role in establishing this

[41] CENDOJ. Tribunal Superior de Justicia de Cantabria, judicial decision number and date: Judgment no. 118 of 27 February 2023. Appeal for review no. 798/2022. Following J.F. LOUSADA AROCHENA, *El suicidio como accidente de trabajo: ¿qué hay que probar y cómo probarlo?*, in *Revista de Jurisprudencia Laboral*, 2023, no. 4. See also J.L. MONEREO PÉREZ, B. LÓPEZ UNSUA, *El suicidio del trabajador en las fronteras de la presunción legal del accidente de trabajo: análisis técnico jurídico enmarcado en un debate doctrinal y jurisprudencial*, in *Lex Social: revista de los derechos sociales*, 2025, vol. 15, no. 1. 1-35. In the same vein, C. CHACARTEGUI JÁVEGA, *La calificación del suicidio como accidente de trabajo*, in *Aranzadi Social: Revista Doctrinal*, 2009, vol. 2, no. 5, 29-37.

connection, confirming that the suicide would not have occurred in the absence of adverse workplace circumstances[42].
Similarly, a judgment of 19 December 2024 classified suicide as an occupational contingency in a case involving workplace harassment and prolonged stress[43]. The ruling established joint and several liability among the employer entities and the insurer due to their failure to implement adequate psychosocial preventive measures. The Court identified a clear causal link between the working conditions and the worker's state of anxiety and distress, emphasising that the absence of employer support constituted a decisive factor in the outcome. The expert evidence further indicated that the worker had assumed responsibilities far exceeding his capacity, thereby exacerbating the psychological burden and contributing to the fatal outcome.

3.4. Depression and Anxiety: Their Correlation with Exposure to Psychosocial Risk Factors such as Stress

According to Eurostat data, 7.2% of the EU population report suffering from chronic depression, while 13% state that they feel vulnerable due to loneliness; however, only 2.7% have formally reported this situation[44]. At present, approximately 30% of workers in the EU experience depression or anxiety[45]. It is self-evident that not every disorder associated with depression or anxiety is work-related. Mental health conditions of this kind may originate outside the workplace; however, this does not preclude their exacerbation by occupational factors. By way of illustration, an individual diagnosed with epilepsy is more likely to experience depressive episodes and anxiety, a circumstance that must be assessed in the context of effective preventive management of mental health conditions[46].

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[42] In the same vein, see the Tribunal Superior de Justicia de Madrid, 30 October 2023, no. 619.
[43] See Juzgado de lo Social no. 2 de Tarragona, 19 December 2024, n. 537, in which suicide is considered an occupational accident. The company was found liable for failing to comply with its duty to assess the psychosocial risks to which the worker was exposed. The Court emphasises the importance of integrating the protection of mental health into the company's management system. See B. AGRA VIFORCOS, R. FERNÁNDEZ FERNÁNDEZ, R. TASCÓN LÓPEZ, *La repuesta jurídico-laboral frente al acoso moral en el trabajo,* in *Laborum*, 2004, 83.
[44] Eurostat, https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/edn-20210910-1
[45] WHO, Epilepsy*: a public health imperative*. 2019. https://iris.who.int/items/e74f31ae-9646-49ba-8b0b-50430f597609
[46] WHO (2022), *The WHO and the ILO call for new measures to address mental health problems at work*. Available at https://www.who.int/es/news/item/28-09-2022-who-and-ilo-call-for-new-measures-to-tackle-mental-health-issues-at-work

Moreover, emotional strain and dysfunctions associated with symptoms of distress and depression have been linked to the use of digital technologies[47]. From a complementary perspective, risks associated with climate change, such as extreme weather events or excessive heat, give rise to situations of eco-anxiety among workers, particularly in sectors including construction, agriculture, horticulture, forestry, fishing, and energy. In this regard, empirical evidence from the OSH Pulse Survey (2025) indicates that 10% of respondents report experiencing distress or fear, acknowledging that exposure to the sun constitutes a risk factor associated with cancer[48]. Furthermore, data published by the World Health Organization (2021) indicate that 359 million people suffer from some form of anxiety-related mental disorder. In light of its significant morbidity burden, the Annual Report of the National Health System highlights a marked gender asymmetry: anxiety affects 10% of the population, predominantly women (14%), a proportion twice that observed among men[49].

A recent judicial decision has consolidated an emerging line of case law by recognising temporary incapacity suffered by a content developer as a work-related accident. A causal link was established between working conditions and the detrimental impact on the employee's mental health[50]. The judgment clarified that there were no prior episodes of panic or severe anxiety that might have influenced the recognition of the occupational contingency[51]. The medical leave was deemed to be exclusively linked to the work performed and, therefore, lawful in accordance with the provisions of Article 156.2(e) LGSS.

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[47] COM (2005) 484 final, *Green Paper. Improving the mental health of the population. Towards a European Union strategy on mental health*, 4. E. ONTIVEROS BAEZA, *Digitalización, mercado de trabajo y estado del bienestar*, in *Revista Encuentros Multidisciplinares,* 2020, vol. 22, no. 64, 1-8.

[48] I.S. FUMERO DIOS, *Mitigar el impacto el cambio climático en la salud de las personas trabajadoras: una prioridad apremiante en el seno de la OIT*, in *Trabajo y derecho: nueva revista de actualidad y relaciones laborales*, 2025, no. 124.

[49] Ministry of Health (Spain). Reports, studies and research. *Annual Report of the National Health System 2023*.

[50] A. TODOLÍ SIGNES, *Salud mental y la prevención de riesgos laborales. Los problemas de salud mental como accidentes de trabajo*, in *Institut Valenciá de Seguretat i Salut en el Treball,* UGT, 2023.

[51] In this regard, attention should be drawn to the landmark judgment delivered by the Tribunal Superior de Justicia de Cataluña on 9 December 2024, which recognised post-traumatic stress and anxiety suffered by a worker (a content moderator) at Meta as an occupational accident, where the workload interfered with the employee's mental health. The court acknowledged that work-related stress caused extreme anxiety in the employee, "being the sole, exclusive and unequivocal triggering factor". The judgment reiterates that the work performed exposed the employee to an unevaluated psychosocial risk, as it involved exposure to content related to "violence, crime, abuse and illegal content", causing psychological harm and post-traumatic stress. Available at: https://www.poderjudicial.es/search/openDocument/c3df22237aa5b933a0a8778d75e36f0d

In this manner, the decision establishes a precedent that enhances legal certainty within the technology sector.
Another relevant vector is depression. In this respect, courts have recognised the existence of a causal link between the grounds for termination of the employment contract pursuant to Article 50.1(c) LET, due to serious failure to comply with preventive measures addressing psychosocial risk factors, and the onset of depressive disorder and chronic stress[52].

4. Guarantees of the Right to the Protection of Mental Health at Work

Affected by evolving patterns in working conditions, occupational health has been undermined by the obsolescence and inadequacy of the current regulatory framework. In this context, it is pertinent—albeit briefly—to revisit certain stages in the regulatory chronology that have consolidated the right to safety and health at work, without overlooking other significant instruments such as the Universal Declaration of Human Rights[53], the International Convention on the Elimination of All Forms of Racial Discrimination[54], the Convention on the Elimination of All Forms of Discrimination against Women[55], the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[56], and the Convention on the Rights of Persons with Disabilities[57]. The complementarity of these instruments has

[52] Juzgado de lo Social, núm. 1 de Ourense, 15 July 2025, no. 384 (case no. 345/2025). Tribunal Superior de Justicia. Las Palmas de Gran Canarias, 26 May 2020, no. 485 (case no. 1300/2019). In this respect, it is appropriate to refer to the Technical Notes on Prevention (Notas Técnicas de Prevención, NTP) *1122: Las tecnologías de la información y la comunicación 1: nuevas formas de organización de trabajo*, 2018; NTP *1123: Las tecnologías de la información y la comunicación II: factores de riesgo psicosocial asociados a las nuevas formas de trabajo, 2018;* NTP *730: Concepto, medida e intervención psicosocial, 2007,* in *Instituto Nacional de Seguridad y Salud en el Trabajo.* A. DESDENTADO BONETE, E. DESDENTADO DAROCA, *La segunda sentencia del TEDH en el caso Barbulescu y sus consecuencias sobre el control del uso laboral del ordenador,* in *Revista de información laboral*, 2028, no. 1, 19-39.

[53] United Nations, *Universal Declaration of Human Rights.* Available at: https://www.un.org/es/about-us/universal-declaration-of-human-rights.

[54] United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination.* Available at: https://www.ohchr.org/es/instruments-mechanisms/ instruments/international-convention-elimination-all-forms-racial

[55] United Nations, *Convention on the Elimination of All Forms of Discrimination against Women.* Available at: https://www.ohchr.org/es/instruments-mechanisms/instruments/ convention-elimination-all-forms-discrimination-against-women

[56] United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.* Available at: https://www.ohchr.org/es/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers

[57] United Nations, *Convention on the Rights of Persons with Disabilities.* Available at: https://www.un.org/esa/socdev/enable/documents/tccconvs.pdf

enabled workers to perform their professional activities under conditions of dignity, equality, and safety. Consequently, future regulatory developments should aim to articulate, integrate, and systematise a specific framework for protection against psychosocial risks.

Adopting an approach centred on hard law norms and focusing on those underpinning the protection of occupational health, it should be noted that, both at the international level and within the European Union, relevant provisions are embedded within legislative corpora, constituting the essential legal basis for recognising the right to well-being and occupational health. In line with the purpose of this study, reference may be made to some of the most significant instruments adopted by the International Labour Organization (ILO), particularly those with the greatest impact on health protection and promotion. Without claiming exhaustiveness, these include: Convention No. 111 on Discrimination (Employment and Occupation)[58]; Convention No. 155 on Occupational Safety and Health[59]; Convention No. 187 on the Promotional Framework for Occupational Safety and Health[60]; Convention No. 190 on Violence and Harassment[61] and Recommendation No. 206, which seeks to strengthen the protection of workers' mental health to foster a working environment free from hostility or psychosocial abuse. Notably, Articles 9(b) and (c) of Convention No. 190 and Article 8 of the Recommendation require the identification, assessment, and management of such risk factors through the participation of workers and their representatives. It is therefore unsurprising that the ILO included mental and behavioural disorders in its list of occupational diseases in 2010[62].

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[58] ILO (1958), Discrimination (Employment and Occupation) Convention no. 111. The Convention may be denounced between 15 June 2030 and 15 June 2031.

[59] ILO (1981) Occupational Safety and Health Convention no. 155. Adoption: Geneva, 67th Session of the International Labour Conference (22 June 1981). This Convention is accompanied by the Occupational Safety and Health Recommendation, 1981 (no. 164).

[60] ILO (2006), Promotional Framework for Occupational Safety and Health Convention no. 187. Adoption: Geneva, 95th Session of the International Labour Conference (15 June 2006).

[61] ILO (2019), Violence and Harassment Convention no. 190. Ratified on 25 May 2022. This Convention is accompanied by the Violence and Harassment Recommendation, 2019 (no. 206). See, *inter alia*, W. SANGUINETI RAYMOND, *El convenio 190 de la OIT sobre la violencia y el acoso y los desafíos de su aplicación por los Estados*, in *Trabajo y Derecho: New Journal of Current Affairs and Labour Relations*, 2022, no. 95.

[62] Revised list of 2010. The literal wording states: "2.4. Mental and behavioural disorders 2.4.1. Post-traumatic stress disorder

2.4.2. Other mental or behavioural disorders not mentioned in the previous point, where a direct link has been established, scientifically or by methods appropriate to national conditions and practice, between exposure to risk factors arising from work activities and the mental or behavioural disorder(s) contracted by the worker".

Within the EU regulatory framework, the protection of mental health may be considered to fall within the scope of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (hereinafter, the Framework Directive)[63]. The effectiveness of the Framework Directive is complemented by other Directives establishing employer obligations in specific areas, without excluding—albeit not explicitly—the protection against psychosocial risks. Several legal instruments indirectly regulate aspects related to such risks. First, Directive 2003/88/EC of 18 November concerning certain aspects of the organisation of working time establishes minimum safety and health requirements in this domain[64]. Secondly, Directive 90/270/EEC of 29 May on the minimum safety and health requirements for work with display screen equipment[65] (the fifth individual Directive within the meaning of Article 16(1) of the Framework Directive) addresses issues such as ergonomics, lighting, and health surveillance. Finally, Directive 2006/54/EC of 26 July on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation addresses workplace harassment[66].

Returning to the inclusion of mental disorders in the ILO list of occupational diseases, it should be observed that, at the national level, the incorporation of psychosocial-origin conditions into official lists of occupational diseases remains contingent upon legislative action. As a rule, such conditions are classified as common illnesses unless a causal link with work is established under a unified criterion, in which case they may be recognised as occupational accidents pursuant to Article 156.2(e) LGSS. Accordingly, this issue is not solely one of preventive technique aimed at minimising or mitigating risk factors leading to the deterioration of mental health, but also one of political will. As noted, the right to health is enshrined as a fundamental principle and right in Articles 15 and 40.2 of the Spanish Constitution, Article 4.2(d) of the Workers' Statute, ILO Convention No. 155[67], and Article 14 of the Occupational Risk Prevention Act. This reflects the employer's duty of care with respect to psychosocial risks as an integral component of the employment relationship from its inception. The instrumental value of judicial decisions is

[63] OJEC no. 183 of 29 June 1989. Directive adopted pursuant to Article 118 A of the EEC Treaty.
[64] OJEU no. 199 of 18 November 2023.
[65] OJEC no. 156 of 29 June 1990.
[66] OJEU no. 204 of 26 July 2006.
[67] I.S. FUMERO DIOS, *Un entorno de trabajo seguro y saludable: un principio y un derecho fundamental en el trabajo*, in *Trabajo y derecho: nueva revista de actualidad y relaciones laborales*, 2023, no. 102.

particularly noteworthy, as they affirm that this duty of protection necessarily encompasses psychosocial risks[68].

Having established these considerations, attention may be turned to soft law instruments. Such norms have addressed regulatory lacunae in this field, performing an anticipatory function pending the adoption of binding legal provisions. This has been especially evident in relation to preventive measures against psychosocial risks. Thus, the European Framework Agreement on Work-Related Stress of 8 October 2004 recognised the issue of work-related stress and the need to analyse risk factors associated with age, gender, occupation, and sector. Similarly, the European Framework Agreement on Harassment and Violence at Work of 8 November 2007 addresses related concerns. Particular emphasis should also be placed on the Mental Health Action Plan 2013–2030[69] and the WHO Guidelines on Mental Health at Work (2021)[70]. Of particular relevance in the latter are recommendations aimed at training managers in mental health, raising awareness among workers, and facilitating return to work following absences due to mental health conditions.

Reference should also be made to the European Commission's renewed approach to mental health, which promotes reintegration into, and retention in, employment irrespective of mental health status. It is both necessary and advisable for undertakings to implement support and healthcare assistance mechanisms for affected individuals within their management and planning systems. In this regard, the European Framework Agreement on Work-Related Stress of 8 October 2004 provides guidance for the prevention, mitigation, and control of such risks. Consideration should also be given to the Porto Social Commitment (7 May 2021), a tripartite agreement between EU institutions, social partners, and civil society, reaffirming their commitment to fair and sustainable competition in the internal market under the premise of ensuring safe and healthy working environments[71]. Consistent with this commitment, the European Commission adopted the Strategic Framework on Health and Safety at Work 2021–2027[72].

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[68] STS of 17 May 2018.

[69] WHO (2022). *Comprehensive Mental Health Action Plan 2013–2030*, Geneva. Website: https://www.who.int/publications/i/item/9789240031029

[70] WHO. Executive summary available at: https://iris.who.int/server/api/core/bitstreams/1eccc58b-5e82-4901-822a-8dca2f490015/content

[71] Agreement available at: https://www.consilium.europa.eu/es/meetings/european-council/2021/05/07/social-summit/

[72] COM (2021) 323 final. Available at: https://home-affairs.ec.europa.eu/policies/ migration-and-asylum/migrant-integration/migrant-integration-hub/progress-tracker-action-plan-integration-and-inclusion-2021-2027_en.

More broadly, the European Parliament Resolution of 5 July 2022 on mental health in the digital world identifies mental health as one of the most pressing challenges facing Europe, highlighting the impact of digitalisation[73]. In this field, the European Parliament's 2023 Report on Mental Health[74] calls upon Member States to integrate prevention, awareness-raising, intervention, and treatment into public policies, with particular emphasis on vulnerable groups. This approach was further reinforced by the Declaration of La Hulpe on the Future of the European Pillar of Social Rights (16 April 2024)[75]. In this context, the principles of the Pillar are reaffirmed under a "vision zero" approach aimed at preventing work-related fatalities, adapting standards and strategic frameworks to incorporate psychosocial risks effectively, and eliminating violence and harassment in the workplace. Given the continued absence of a specific Directive on the management and prevention of psychosocial risks at work, it remains incumbent upon the European Parliament and trade unions to maintain pressure on the Commission to adopt, without undue delay, a Directive on well-being and the protection of mental health at work. This initiative is aligned with the EU-OSHA "Healthy Workplaces" Campaign 2026–2028 under the slogan "Together for mental health at work".

At the national level, the significance of Technical Criterion No. 104/2021 of 13 April of the Labour Inspectorate on psychosocial risks[76] should not be underestimated, as it provides operational guidance for labour inspections in the field of occupational safety and health. This criterion reinforces the obligation to integrate preventive measures addressing psychosocial risks effectively into organisational management systems. In parallel, Article 96 of Law 36/2011 of 10 October regulating the social jurisdiction[77] places the

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[73] European Parliament (2022), Resolution (2021/2098 (INI)). Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0279_ES.html. In this regard, see D. MEGINO FERNÁNDEZ, L*a formación como principio y fin de la acción preventiva frente a los riesgos psicosociales derivados de la digitalización y la automatización,* in *Lan Harremanak*, 2023, no. 49, 115-120. In the same vein, R. TASCÓN PÉREZ, *Reflexiones a partir de la resolución del Parlamento europeo, de 5 de julio de 2022, sobre la salud mental en el mundo laboral digital,* in *Revista Crítica de Relaciones de Trabajo*, Laborum, 2022, no. 5, 39-42.

[74] European Parliament, *Report on mental health* (2023/2074 (INI)). See: https://www.europarl.europa.eu/doceo/document/A-9-2023-0367_ES.html

[75] Its text is available at: https://data.consilium.europa.eu/doc/document/ST-10676-2024-INIT/es/pdf

[76] For online consultation: https://oeitss.gob.es/content/dam/oeitss/documentos/4-0-informaci%C3%B3n-y-normativa/4-1-a-criterios-t%C3%A9cnicos/CT_104_21.pdf. F. TRUJILLO PONS, *La imperiosa aplicación del Criterio Técnico nº 104/2021, de la Inspección de Trabajo y Seguridad Social, en Riesgos Psicosociales en el actual entrono laboral,* in *Revista de Derecho Laboral vLEX*, 2022, no. 6, 73-85.

[77] BOE no. 245 of 11 October.

burden of proof on the employer in cases involving breaches of occupational health and safety obligations. This approach is consistent with the Labour Inspectorate's criterion, reinforcing the understanding that mental health forms an integral part of the fundamental right to the physical and moral integrity of workers. Similarly, the Mental Health Strategy of the National Health System 2022–2026[78] includes the prevention of suicidal behaviour as a key line of action.

In this vein, on 14 March 2023, the Council of Ministers approved, in conjunction with the Autonomous Communities and the social partners, the Spanish Strategy on Occupational Safety and Health at Work 2023–2027 (EESST)[79]. The purpose of the EESST is to establish a reference framework for preventive and protective action against work-related risks. The Strategy is structured around six priority axes aligned with emerging socio-economic trends and the integration of a gender perspective in occupational safety and health. It emphasises the need to improve the prevention of occupational accidents and diseases; to manage changes arising from new forms of work organisation, demographic developments, and climate change from a preventive standpoint; to enhance safety and health management in small and medium-sized enterprises; to strengthen the protection of workers in situations of heightened risk or vulnerability; to incorporate a gender perspective; and to reinforce the national occupational safety and health system in order to address future crises effectively. In practical application of these principles, the Government approved, on 11 November 2025, an institutional declaration designating 2026 as the "Year of Safety and Health at Work". It is to be hoped that all relevant stakeholders will promote, and advance agreements, policies, and initiatives aimed at preventing what has aptly been described as a "silent pandemic" [80].

[78] Online: https://www.sanidad.gob.es/areas/calidadAsistencial/estrategias/saludMental/docs/Ministerio_Sanidad_Estrategia_Salud_Mental_SNS_2022_2026.pdf

[79] Resolution of 20 April 2023 of the Secretary of State for Employment and the Social Economy, publishing the Agreement of the Council of Ministers of 14 March 2023 approving the Spanish Strategy on Occupational Safety and Health at Work 2023–2027. BOE no. 101 of 28 April 2023. In this respect, J. ROMERAL HERNÁNDEZ, *Estrategia Española de Seguridad y Salud en el Trabajo 2023-2027 desde la perspectiva de género,* in *Revista de Trabajo y Seguridad Social*, 2024, no. 480, 61–83.

[80] S. RODRÍGUEZ ESCANCIANO, *Vigilancia y control de la salud mental de los trabajadores: aspectos preventivos y reparadores*, in *Revista de Estudios Jurídicos Laborales y de Seguridad Social*, 2021, no. 2, 19–55.

5. Vulnerable/Sensitive Groups: Subjects of the Same Reality?

A key issue that must be addressed in relation to certain categories of workers concerns the precise determination of the nature of the duty of protection against psychosocial risk factors. The matter turns on the applicable regulatory framework governing this duty and the legal obligation from which the right to effective and efficient protection derives. As noted, the public-law duty of protection forms part of the guiding principles of social and economic policy, imposing on public authorities the obligation to safeguard occupational safety and health, as established in Article 43.2 of the Spanish Constitution. This entails a unified employer obligation of protection against psychosocial risks.

In this respect, two distinct dimensions must be distinguished. On the one hand, the identification of vulnerable subjects; on the other, the specific guarantee of protection for these groups against the risk of developing work-related mental disorders—both of which present a degree of conceptual and practical complexity. About the first dimension, occupational risk prevention legislation does not expressly define "vulnerable workers"; rather, the legal system employs the concept in a transversal manner across various regulatory domains. By way of illustration, reference may be made to provisions addressing vulnerability in different contexts, including Law 4/2022 of 25 February, which conceptualises vulnerability in relation to consumers[81]; Royal Decree-Law 2025 of 23 December, extending measures to address situations of social vulnerability and adopting urgent fiscal and social security measures[82]; and, within labour law, recurrent references to groups requiring priority attention, such as persons with disabilities, individuals at risk of social exclusion, victims of gender-based violence, older workers, or the long-term unemployed. In this latter regard, Law 3/2023 of 28 February on Employment replaced the notion of "vulnerable workers" with that of "groups of priority attention". A further example is Royal Decree-Law 1/2025 of 28 January, adopting urgent measures in economic, transport, and social security matters, including responses to situations of vulnerability[83].

However, where the objective is to ensure protection for specific categories of workers, it must be noted that the Law on the Prevention of Occupational Risks (LPRL) does not expressly define "vulnerable workers" but instead refers to workers who are particularly sensitive to certain occupational risks, pursuant to Article 25 LPRL. Such sensitivity derives from three factors: the personal

[81] Law 4/2022, of 25 February, on the protection of consumers and users in situations of social and economic vulnerability. BOE no. 51 of 1 March 2022.
[82] BOE no. 309 of 24 December 2025.
[83] BOE no. 25 of 29 January 2025.

characteristics of workers, their known biological condition, and any recognised disability. In any case, these are not entirely separate categories. In the first scenario, under Article 25 LPRL, enhanced protection is limited to specific occupational risks; in the second, protection extends to psychosocial risk factors arising from work.

It should be emphasised that vulnerability is often linked to structural features of work organisation and to the distribution of costs and risks among the State, employers, workers, and society. Accordingly, certain groups are not vulnerable due to inherent fragility or pre-existing health conditions, but rather because of structural determinants such as low income, educational disadvantage, precarious employment, limited access to channels for representation of rights and interests, or their position within the broader socio-economic hierarchy. It must also be recalled that it is the personal characteristics of the worker that determine the specificity and relevance of the job role, such that, under Article 25 LPRL, if the same task were performed by a worker who is not particularly sensitive, the enhanced protective regime would not apply.

In light of the foregoing, a brief analysis is undertaken below of the groups commonly characterised as vulnerable.

5.1. The Particular Vulnerability of Workers

It is evident that workers are exposed to any characteristic of work that may significantly influence the emergence of risks to occupational safety and health. A clear connection, therefore, arises between subjective vulnerability and the effects that psychosocial risk factors may have on the mental health of those exposed to them. Engaging with this debate requires acknowledging that the greater the degree of vulnerability, the higher the risk of developing mental health problems. In this sense, and for purely illustrative purposes, the vulnerable groups addressed in this study include women, young people, older workers, migrants, and individuals living with chronic illnesses.

First, in order to examine the determining factors underlying workers' particular vulnerability to mental health problems, it is useful to adopt a critical perspective on inequality, discrimination, and stigmatisation. According to influential twentieth-century scholarship, stigma arises from the relationship between attribute and stereotype, and three forms may be distinguished: physical (or bodily impairments), psychological (such as mental disorders), and social (attributes associated with culture, poverty, or ethnicity)[84]. There is sufficient evidence to suggest that discrimination and stigmatisation related to mental health disorders disproportionately affect the most vulnerable groups.

[84] E. GOFFMAN, *Estigma: La identidad deteriorada*, Amorrortu, Prentice-Hall, 2009, 14.

In this regard, stigmatising perceptions may lead individuals to feel excluded to the extent that they become convinced they will be discredited, rejected, or socially marginalised[85]. In other words, it may be argued that a common denominator exists: workers experiencing mental disorders often find themselves confined within situations of structural and, at times, institutional discrimination. Some authors have noted that stigmatisation operates as a defining characteristic of the individual, occasionally resulting in professional discredit[86]. Such an interpretation supports the view that employment opportunities may be adversely affected, leading, inter alia, to educational dropout or difficulties in accessing or maintaining employment. It should be emphasised that mental disorders are exacerbated among
more vulnerable groups[87], particularly among unemployed individuals, those with low levels of education or income, migrants, and persons with disabilities. Moreover, demographic factors such as population ageing also contribute to the neglect of mental health. For this reason, the legal system cannot remain indifferent to this reality, as mental illness intensifies inequality, discrimination, and occupational and social stigmatisation. By way of illustration, decent work can only be achieved where labour rights are protected, inequalities are addressed, and safe and healthy working environments are promoted, particularly for individuals with mental health problems, older workers[88], migrants, and persons with disabilities[89]. The central issue lies in access to quality healthcare coverage, which remains a significant challenge, especially for the most vulnerable. Furthermore, addressing mental disorders requires a multidimensional understanding of their determining factors.
Unemployment, in turn, constitutes another stigmatising risk factor, as it is frequently associated with a loss of self-esteem and may lead to depressive

[85] WHO (2024), *Mosaic toolkit to end stigma and discrimination in mental health*, for an in-depth analysis, see J. BREA IGLESIAS, H. GIL RODRÍGUEZ, *Estigma y salud mental. Una reflexión desde el Trabajo Social*, in *Trabajo Social Hoy,* 2016, no. 78, 95-112.
[86] E. GOFFMAN, *STIGMA: Notes on the Management of Spoiled Identity*, Simon and Schuster, New York, 1963.
[87] M. MARMOT, *The disease of poverty*, in *Scientific American*, 2016, vol. 314, no. 3, 23–24.
[88] On occupational risk factors associated with age, A. PASTOR MARTÍNEZ, *La protección de la seguridad y salud de los trabajadores de edad avanzada. El derecho a la adaptación de las condiciones de trabajo como límite al despido por ineptitud sobrevenida*, in *Documentación Laboral*, 2017, no. 12, 70-73. For a more in-depth study on decent work, C. MOLINA NAVARRETE, *La salud psicosocial, una condición de trabajo decente. El neo-taylorismo digital en clave (de pérdida de) bienestar*, in M. CORREA CARRASCO, M.G. QUINTERO LIMA, (eds*), Los nuevos retos del trabajo decente: la salud mental y los riesgos psicosociales (Objetivos de Desarrollo Sostenible 3,5,8,10),* Universidad Carlos III, 2020, pp. 11 ff.
[89] In this regard, see the CCOO report, *Estudio para la detección de riesgos psicosociales en el Trabajo del Hogar*, in *Ministerio de Trabajo, Migraciones y Seguridad Social*, Madrid, 2019, 26-30.

states. Thus, although it cannot be unequivocally demonstrated, contrary to overly simplistic assertions, there is no objective evidence that women are more vulnerable due to biological or physiological characteristics. However, there is clear evidence that violence against women plays a significant role in mental health problems, placing them in a situation of heightened vulnerability and simultaneously contributing to underrepresentation in the labour market[90]. Consequently, it is essential to consider the gender dimension in relation to the social determinants of mental health inequality[91]. This unequal pattern has a marked impact on workers' mental health and well-being.

Finally, attention should be drawn to the private and intimate nature often attributed to mental health problems. On the one hand, this stems from persistent resistance to their acknowledgement; on the other, from a lack of employer awareness in certain sectors, where the issue remains a taboo subject. This raises concerns regarding the assurance of a safe and healthy working environment, which in turn affects periodic health surveillance linked to work-related risks under Article 22 LPRL. This is by no means a minor issue: the absence of recognition renders preventive action and effective treatment invisible, thereby increasing the risk of progression to more severe mental health conditions. The perception of the delayed or absent application of preventive measures may itself be a defining factor contributing to workers' sense of vulnerability. The limited regulatory framework and insufficient preventive resources further contribute to insecurity and occupational uncertainty.

5.2. Groups of Workers in Situations of Vulnerability Women

A further advancement from a gender perspective is reflected in the European Gender Equality Strategy 2020–2025[92], which highlights women's vulnerability across multiple intersecting factors. Of relevance is Article 6 of the Convention on the Rights of Persons with Disabilities, which recognises that women with disabilities experience multiple and intersecting forms of discrimination. Recent studies on women in employment indicate increased levels of work-related stress due to the extension of working hours, alongside a disproportionate burden of domestic responsibilities, which affects career continuity and progression. Women frequently report underrepresentation, contributing to feelings of insecurity. It should be noted that higher levels of depression among women are often associated with sexual violence, or the

[90] Mental Health Strategy of the National Health System 2022–2026, 58.
[91] *Ibid.*
[92] COM (2020) 152 final.

gender pay gap. Within the workplace, they report exposure to non-inclusive practices and frequently continue working while in pain, generating stress linked, for example, to menstruation-related conditions or fluctuating emotional states associated with menopause or pregnancy[93]. In many cases, such conditions are not disclosed, as they are perceived not to affect performance. Although case law in this area remains limited, it is essential to underline that the effectiveness of preventive action depends on a balanced approach combining identification, assessment, and the implementation of appropriate measures. Prevention of mental illness, therefore, requires specific provisions grounded in a holistic and practical approach, both in primary healthcare and in corporate governance.

Young people: Among young people, suicide remains the leading cause of death among individuals aged between fifteen and nineteen[94]. This situation is exacerbated when additional triggering factors are present, such as early parenthood. Other relevant factors affecting mental health in this group include difficulties in accessing employment, unemployment[95], and limited expectations of social mobility—the so-called "social elevator"[96]—which contribute to apathy and disengagement from public policy. Furthermore, the impact of the 2019 health crisis led to a deterioration in the mental health of adolescents and young adults, resulting in depressive and anxiety-related conditions, including eco-anxiety[97]. Mental health among young people[98] is

[93] Deloitte Global (2024), *Women at Work 2024: A Global Outlook*. According to data from the report *Improving Perinatal Mental Health Care* (2023), 7% of women suffer from depression during pregnancy, and between 11% and 15% experience anxiety disorders. In the postpartum period, 14% of women experience depression and 8% anxiety. Available at: https://www.consaludmental.org/publicaciones/Mejorar-cuidado-salud-mental-perinatal.pdf

[94] UNICEF (2021), *The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health. Regional brief: Europe.*

[95] VV. AA., *Jóvenes y salud mental. La experiencia del proyecto "PasaXT Hacia el Empleo". Estudio de impacto,* Federación Salud Mental Castilla y León, 2024. Available at https://saludmentalcyl.org/wp-content/uploads/2024/06/Estudio-PasaXT-Hacia-El-Empleo.pdf. Of interest, the following online article: *Plataforma para la Salud mental y la Empleabilidad juvenil: una experiencia de éxito de Fundación Sandra María la Real para la atención a jóvenes en desempleo o en precariedad laboral*. Available in https://www.sepe.es/HomeSepe/es/que-es-observatorio/Hipatia/cuadernos-mercado-trabajo/revista-cuadernos-mercado-trabajo/detalle-articulo.html?detail=/revista/Brechas -del-Mercado-de-trabajo/plataformaparalasaludmentalylaempleabilidadjuvenilunaexperienciadeexitodefundacionsantamarialarealparalaatencionajovenesendesempleooenprecariedadlaboral

[96] T. PIKETTY, *Capital e ideología*, Deusto, 2019.

[97] VV. AA., *Global Climate Change and Trauma*, International Society for Traumatic Stress Studies, 2021, 5.

[98] ILO, *Mental Health and COVID-19: Initial Data on the Impacts of the Pandemic*, 2022. Available at: WHO-2019-nCoV-Sci-Brief-Mental-health-2022.1-spa.pdf (367.5 KB)

increasingly fragile: access to the labour market is precarious and uncertain, self-esteem and autonomy are undermined, and these conditions create fertile ground for heightened vulnerability. Within organisations, particular attention should be given to psychosocial support and guidance, including occupational therapy where appropriate.

Older workers: Older workers are often exposed to a higher prevalence of disability and chronic health conditions. The extension of working lives contributes to fatigue, musculoskeletal disorders, and reduced functional capacity, all of which may give rise to psychological distress. The longer the working life, the greater the likelihood of developing illness. An increasing trend in suicide rates within this group has been observed[99]. Consequently, longer periods of sickness absence are unsurprising, with implications for economic, professional, and functional capacity. During transition and reintegration into work, there is a heightened risk of stigmatisation, discrimination, and insufficient professional support. Evidence from EU-OSHA (2016) highlights that a significant proportion of individuals with mental health problems struggle to re-enter the labour market, and those who do often experience reduced wages, working hours, and responsibility[100]. Social isolation further increases the risk of mental disorders. In this context, simplistic approaches to job adaptation require greater nuance. On the one hand, insufficient intergenerational solidarity exacerbates occupational stigma; on the other, compliance with job adaptation obligations requires employers to provide training and develop adaptive skills. In this regard, the Spanish Ministry of Social Rights presented, on 4 November 2025, the National Strategy against Loneliness, aimed at addressing unwanted loneliness as a matter of social justice, promoting inclusion and combating discrimination through an approach grounded in age, gender, and disability.

Migrants, asylum seekers, and refugees: Migrants, asylum seekers, and refugees are frequently exposed to psychological trauma arising from limited protection and enforcement of labour rights. Increasing migration flows—driven by economic inequality or geopolitical instability—have a negative impact on mental health. Disorders such as anxiety, depression, psychosis, and post-traumatic stress disorder are more prevalent among migrant populations. These risks are exacerbated by instability, unemployment, and poverty, particularly among migrant women, who face increased exposure to violence

[99] OECD (2021). Available at: https://www.oecd.org/en/publications/health-at-a-glance-2021_ae3016b9-en.html

[100] S. FLEKA, A. JAIN, *Mental Health in the Workplace in Europe*, Available at: https://health.ec.europa.eu/document/download/ca07dcc7-2ec3-4d1c-998d-abee657611e8_en

and consequently higher risks of mental health deterioration. As a marginalised group, migrants are also more likely to experience segregation, discrimination, marginalisation, racism, and xenophobia[101]. According to ILO data (2024), approximately 123 million people have been forcibly displaced, making access to mental health services a significant challenge and undermining the right to health[102]. Finally, psychosocial risks associated with poor working conditions are particularly prevalent in sectors such as education, healthcare, and care work. For this reason, the EU-OSHA Healthy Workplaces Campaign 2026–2028 focuses on mental health and psychosocial risks in "new and overlooked groups, sectors, and occupational areas".

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[101] ILO, *Mental Health of Refugees and Migrants*, 2025

[102] *Ibid.*

Artificial Intelligence at Work: A Driver of Inequality or a Catalyst for Better Job Quality?

Marcel Dolobáč, Eva Lacková *

Abstract. The paper examines artificial intelligence (AI) in the context of labour law and broader legal frameworks, highlighting its ambivalent role as both a potential source of inequality and as a catalyst for improved job quality. The aim is to identify the main risks and benefits associated with AI deployment in societal processes, the former including algorithmic discrimination, social selection and privacy concerns, monopolisation of technologies, and labour market disruption; the latter enhancing job quality by optimising tasks, supporting occupational health and safety and overall workers' wellbeing. Methodologically, the analysis draws on a comparative review of selected case studies and court decisions in Europe and the United States, complemented by an examination of current regulatory framework, strategic documents and reports of international organisations. The findings indicate that, although AI entails significant risks of reproducing historical biases and deepening inequalities, it can also serve as an instrument to promote personalised education, enable inclusivity and improving work-life balance. Crucially, the realisation of these benefits depends on the presence of a strong and comprehensive regulatory framework that guides AI deployment towards fair, safe, and high quality work, ensuring that technological innovation serves the collective good rather than reinforcing existing disparities.

Keywords: *Artificial Intelligence; Algorithmic discrimination; Job quality*

1. Introduction

Today, amidst a multitude of scientific, professional, popular, or lifestyle contributions, no one doubts that the development of artificial intelligence

(hereinafter "AI") is among the most significant technological and societal changes of the 21st century. This new phenomenon can confidently be regarded as a source of a new technological revolution, comparable to Gutenberg's printing press, Watt's steam engine, or, more recently, the rise of the internet.

Similarly, speaking from historical experience – like in every industrial revolution – the potential of new technological changes associated with AI is ambivalent: on one hand, there is fear and anxiety about the unknown, awareness of the risks of losing control over decision-making, and fundamental changes in social relations; on the other hand, it enables more efficient service delivery, accessibility for a wide range of people, and unexpected opportunities at a relatively low cost.

The aim of this contribution is to analyse the legal (*rectius*: labour law-related) risks of the advent of AI in relation to the principle of non-discrimination. We examine the risk of reproducing societal biases, deepening the digital divide, and weakening individual rights.

At the same time the contribution reflects on AI's potential to enhance job quality: whether by creating safer working conditions, boosting career prospect and wages, automating tedious and boring tasks or fostering more inclusive working environment. It poses the fundamental question: is AI a tool of inequality, or can it, on the contrary, serve as a catalyst for improving the quality of work?

2. AI as a Tool of Inequality

AI can be defined as systems that exhibit intelligent behaviour by analysing their environment and taking actions with a certain degree of autonomy to achieve specific goals[1]. These can include software solutions (voice assistants, voice and image recognition systems, search engines, large language models) as well as hardware devices (autonomous vehicles, robots, drones, Internet of

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[1] OECD, *Recommendation of the Council on Artificial Intelligence*, 2019, OECD Legal Instruments, OECD/LEGAL/0449, available at: https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449. See the analysis of K, Yeung, *Introductory Note to Recommendation of the Council on Artificial Inteligence*, in *International Legal Materials*, 2020, Vol. 59 , Iss. 1, 27-34. Legally binding definition in the EU is provided in Reg. 2024/1689 (AI Act); according to Art. 3, par. 1, n. 1, AI is «a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments».

Things devices). Thanks to deep learning, performance in tasks such as image or speech recognition has improved to the point that, in some cases, it exceeds human capabilities[2]. AI systems, however, are fundamentally dependent on data. Machine learning relies on large amounts of labelled data to identify patterns and apply them to new cases. These technical foundations have significant implications for labour law, data protection, and issues of equality. AI introduces a new model of human-machine collaboration, which can be emancipatory on one hand, yet reproduce or deepen inequalities on the other[3].
The types and definitions of risks associated with AI's integration into work and daily life vary. From the authors' perspective – and for the purpose of this streamlined discussion – they can be grouped into four main categories:

- algorithmic discrimination – the risk of transferring historical biases hidden in data into decision-making processes;
- social selection, excessive monitoring, and intrusion into privacy – the risk of discrimination arises from the evaluation of personal and private information, which may also carry biases;
- technology monopolization – the risk of advantage by large multinational corporations controlling access to data and infrastructure, potentially creating a digital divide;
- labour market distortion – the risk of precarisation and the disadvantage of less-skilled workers.

2.1 Algorithmic discrimination

According to available statistics, following the COVID-19 pandemic, up to 88% of companies worldwide utilise AI in the field of human resources, with 67% of HR professionals believing that its application positively impacts the recruitment process[4]. The main advantages are generally considered to be the acceleration of the selection process and the reduction of employer costs. The use of AI in recruitment is therefore often referred to as a "new era of human resources": the technology assumes routine tasks, allowing HR professionals to devote more time to strategic planning and transforming the traditional recruitment model. A key benefit, in most cases, is the improvement of the quality of the selection process and, frequently, the mitigation of unconscious

[2] Y. LeCun, Y. Bengio, G. Hinton, *Deep learning*, in *Nature*, 2015, Vol. 521, 436–444.
[3] See V. De Stefano, "*Negotiating the algorithm*":*Automation, artificial intelligence, and labor protection*, in *Comparative Labor Law & Policy Journal*, 2019, Vol. 41, Iss. 1.
[4] A. Pantelakis, *Top AI in Hiring statistics in 2024*, in *Resource for employers*, 2024, cited from D. Rudžiková, *Vplyv AI na pracovné právo*, in *Inovatívne právo a inovácie v práve*, University of P.J.Šafárik, Košice, 2024., 30-38.

biases, which can significantly contribute to promoting workplace diversity. Many authors, however, rightly highlight the opposite phenomenon, known as algorithmic discrimination[5].

The essence of algorithmic discrimination can be illustrated by several prominent cases. One of the most widely discussed is the Amazon case. Amazon developed an internal recruitment algorithm designed to automate resume screening and candidate selection. However, the system demonstrated bias against women: the algorithm downgraded female candidates or favoured them less for technical positions because it had been trained on historical data predominantly featuring male applicants. Specifically, the algorithm was trained on resumes reflecting the fact that the majority of technical roles at Amazon had historically been filled by men. The system penalised terms such as "women's" (e.g., "women's chess club captain") and resumes from schools with higher female enrolment. The testing team observed that the AI assigned lower scores to female candidates and reinforced gender stereotypes. When Amazon identified these biases, the project was ultimately suspended and the algorithm withdrawn[6].

Algorithmic discrimination has also gained attention in the United States outside the context of labour law. A notable example is *State v. Loomis* (2016)[7], in which a court's sentencing decision was influenced by the COMPAS algorithm[8]. This system relied on historical data containing elements of racial and gender bias, producing a tangible risk of discriminatory outcomes. The case involved Eric Loomis, who faced charges relating to a shooting and subsequent flight from the police. During sentencing, the court used the risk-of-recidivism score generated by COMPAS, which prompted significant objections from the defence. Loomis argued that this procedure violated his right to due process on several grounds: the algorithm was proprietary, and its internal workings were inaccessible to the defence ("black box"); there was potential discrimination based on race and gender; and the judge explicitly referenced the algorithmic output when justifying the sentence. The Wisconsin Supreme Court ultimately ruled that the use of COMPAS was not unconstitutional but established limits on its application: algorithmic assessments could not serve as the decisive factor in sentencing and were to be

[5] D. Rudžiková, *op.cit.*

[6] M. Langekamp, A. Costa, Ch. Cheung, *Hiring Fairly in the Age of Algorithms,* 2021, available online https://ssrn.com/abstract=3723046 or http://dx.doi.org/10.2139/ssrn.3723046.

[7] Available at: https://harvardlawreview.org/print/vol-130/state-v-loomis/.

[8] COMPAS is an abbreviation for Correctional Offender Management Profiling for Alternative Sanctions. See F. Lagioia, R. Rovatti, G. Sartor, *Algorithmic fairness through group parities? The case of COMPAS-SAPMOC*, in *AI & SOCIETY*, 2023, 38, 2, 459-478; J. Larson *et al.*, *How we analysed the COMPAS recidivism algorithm*, in *ProPublica*, 2016.

considered only as supplementary informational tools. This case is now frequently cited as an illustration of the risks associated with algorithmic decision-making in criminal law, particularly concerning transparency, discrimination, and the protection of defence rights.

Another example is the Chicago Police Department's predictive policing tool, which in 2013 identified hundreds of young Black men as likely perpetrators or victims of gun violence – even though many had no prior criminal record. Known as the Strategic Subject List, or informally the "Chicago Heat List," this system was designed to flag individuals deemed at high risk of involvement in violent incidents. Its assessments were based on aggregated data, including a person's proximity to gun-related crime and their social connections to individuals involved in shootings, whether as perpetrators or victims. In practice, inclusion on the list had tangible consequences, as some individuals were subjected to police visits or increased surveillance solely because they had been flagged by the algorithm[9].

These cases illustrate how prediction – long a cornerstone of legal practice – is now being significantly enhanced by recent advances in AI, which enable more accurate forecasting of legal outcomes through the analysis of vast datasets and complex patterns[10].

Similar debates are ongoing in the European legal context regarding the use of so-called risk assessment systems in criminal justice[11]. However, despite growing research, real-world applications in European context remain limited, especially within judicial systems, most uses being still experimental or private-sector oriented. In Italy, predictive justice initiatives are relatively advanced but remain mostly in experimental or pilot phases. Several projects – often led by courts, universities, or research centers – focus on tasks such as case classification, estimating the duration of proceedings, annotating judgments, and extracting summaries using AI techniques[12]. While these initiatives show

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[9] B.E. Harcourt, *Exposed: Desire and Disobedience in the Digital Age*, in *Harvard University Press*, 2015.

[10] For the rich debate on predictive justice see, for all: F. Pasquale, G. Cashwell, *Prediction, persuasion, and the jurisprudence of behaviourism*, in *University of Toronto Law Journal*, 68, 1, 2018, 63-81; F. Bex, H. Prakken, *Can predictive justice improve the predictability and consistency of judicial decision-making?*, in *Proceeding of The Thirty-fourth Annual Conference* (JURIX2021), Vilnius, Lithuania, 2021, 207-214. For Italian scholarship on the matter: M. Ferrari, *Predizione algoritmica, intelligenza artificiale generativa e rischi di cristallizzazione dell'ermeneutica giurisprudenziale*, in *Il Foro italiano*, 2023, 3, 5, 117-122.

[11] See, for instance G. Cascone, *The use of artificial intelligence in EU criminal justice systems: first insights and emerging trends in an evolving landscape*, in *Open Research Europe*, 2025, 5, 361, available online: https://open-research-europe.ec.europa.eu/articles/5-361.

[12] For a comprehensive analysis of Italian (and not only) predictive justice applications, see F. Galli, G. Sartor, *AI approaches to predictive justice: a critical assessment, in Humanities and rights global*

strong development and institutional interest, fully operational AI systems are not yet integrated into judicial decision-making.

A comparable phenomenon occurred in the United Kingdom during the COVID-19 pandemic (A-level scandal, 2020). In 2020, traditional written A-level and GCSE examinations were cancelled in the UK. In their place, a system of so-called calculated grades was introduced, in which teachers proposed expected grades (centre-assessed grades, CAGs) and ranked students within each subject. These proposals were not directly approved but were adjusted through an algorithm developed by the regulatory body Ofqual[13]. The algorithm aimed to ensure that the final grade distribution aligned with historical trends and to prevent grade inflation. It took into account the historical performance of schools in each subject, students' previous results (particularly GCSEs), and the teacher-assigned rankings. In practice, this meant that teachers' proposed grades were frequently significantly reduced. Up to 40% of students received lower than expected grades, with major implications for university admissions and further educational trajectories. Students from schools with poorer historical performance or less prestigious backgrounds were particularly disadvantaged, as their proposed grades were systematically reduced more often. Conversely, students from prestigious, often private schools were more likely to retain or even improve their grades. This approach was widely perceived as unfair and discriminatory. Following extensive public criticism, student protests, and pressure from professional and political stakeholders, the government and Ofqual abandoned the algorithmically adjusted grades, and students ultimately received the grades originally proposed by their teachers (CAGs)[14]. This case is now frequently cited as a textbook example of "bias in AI": the algorithm was not a neutral technical tool but reproduced existing structural inequalities in the educational system.

These cases demonstrate that algorithmic discrimination constitutes a qualitatively new form of discriminatory conduct. It is not merely the result of technical flaws or programming errors; rather, it must be recognised that AI systems learn autonomously and assess historical data according to broad, predefined guidelines. Discrimination is latent, emerging from the complex interplay of model parameters, historical data, and statistical patterns. Consequently, it operates subtly, is difficult to detect, and is systematically reproduced. A significant consequence is its invisibility: affected individuals are

network journal, 5, 2, 191-194, available online: https://www.humanitiesandrights.com/journal/index.php/har/article/view/118.

[13] Office of Qualifications and Examinations Regulation.

[14] A. Kelly, *A tale of two algorithms: The appeal and repeal of calculated grades systems in England and Ireland in 2020*, in *British Educational Research Journal*, 2021, Vol. 47, Iss. 3, 725-741.

often unaware that they have been evaluated automatically and lack access to information regarding which factors influenced the outcome, thereby undermining their ability to mount an effective challenge. The situation is further exacerbated by the societal legitimisation of AI: its outputs are perceived as objective and neutral, even though they may, in reality, conceal and perpetuate deeply embedded structural biases.

2.2 Social Selection, Excessive Monitoring, and Intrusion into Privacy

The risks of social selection and disproportionate intrusion into privacy by AI can be illustrated through two case studies. The *SyRI v. Netherlands* (2020) case represents a key moment in the debate on the limits of algorithmic systems in public administration. The SyRI system (System Risk Indication) was designed by the Dutch government to detect social fraud, such as unlawful claims for social benefits, illegal employment, or tax evasion. It operated by linking and analysing extensive data from various public databases, including social security, tax records, housing, and healthcare information. Based on this data, the system flagged individuals or groups as "high risk".
The national court in the Netherlands (*Rechtbank Den Haag*) ruled that the operation of SyRI violated Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private life[15]. The court's reasoning rested on several key grounds. Firstly, the court highlighted the principle of proportionality: the extensive collection and linking of sensitive data were not sufficiently justified by the needs of a democratic society. Secondly, the court emphasised the lack of transparency, as citizens had no means of understanding how the system operated or the criteria it applied, effectively preventing any meaningful oversight of its legality. Thirdly, the court noted the high risk of discrimination: although direct discriminatory effects were not proven, there was a genuine concern that the system would lead to systematic profiling of the poor and vulnerable groups. The SyRI ruling thus established a clear framework for assessing proportionality, transparency, and potential discriminatory effects when implementing algorithmic tools in the public sector[16].

[15] File reference number: C-09-550982-HA / ZA 18-388.

[16] See N. Appelman, R. Ó Fathaigh, J. Van Hoboken, *Social Welfare, Risk Profiling and Fundamental Rights: The Case of SyRI in the Netherlands*, in Journal of Intellectual Property, Information Technology and E-Commerce Law, 2021, Vol. 12, 257 para 1, available online: https://www.jipitec.eu/jipitec/article/download/324/317/1610.

In C-203/22 *CK v. Magistrat der Stadt Wien*[17], the Court of Justice of the European Union (CJEU) addressed the scope of a data subject's right to access "meaningful information about the logic" used in automated decision-making under Article 15(1)(h) of the GDPR. The dispute arose after the Austrian company Dun & Bradstreet refused to provide CK with a full explanation of the algorithm used to assess her creditworthiness in contract negotiations, citing protection of trade secrets. The district and federal administrative courts in Austria found that the right of access to information had been violated, and the matter was referred to the CJEU to balance the right to transparency against trade secret protection. In its judgment of 27 February 2025 (ECLI:EU:C:2025:117), the CJEU emphasised that controllers must provide sufficiently understandable information enabling individuals to comprehend the essence of an automated decision, even where algorithmic details are protected as trade secret.

What conclusions can be drawn? Both cases share a common emphasis on the need for transparency and proportionality in the use of algorithmic systems by public or private institutions. In *SyRI*, the Dutch court stressed that the extensive linking of data by the state, without adequate oversight or citizen access to information about the system's operation, was disproportionate and violated the right to privacy under Article 8 ECHR. In *CK v. Magistrat der Stadt Wien*, the CJEU confirmed that, even in private law contexts, individuals must have access to comprehensible information about the logic of algorithmic decision-making under Article 15 GDPR, even when controllers rely on trade secret protection. The common denominator of both cases is the tension between the efficiency of algorithmic tools and individuals' fundamental rights. Both courts highlighted that technological complexity, economic interests, or administrative convenience cannot justify complete opacity. The overarching lesson from these cases is that algorithmic systems must be designed and implemented in a manner that is not only legally predictable and controllable but also fair and accessible to affected individuals. These rulings advance the standard of fundamental rights protection in the digital environment and reinforce the requirement that AI and automated decision-making serve the public interest without discriminatory or non-transparent effects.

2.3. Technology Monopolisation

In the field of AI and data technologies, concepts such as the digital divide and data colonialism are increasingly emerging, highlighting the imbalance in access

[17] Court of Justice of the European Union. (2025, February 27). *Case C-203/22, CK v. Magistrat der Stadt Wien*, ECLI:EU:C:2025:117.

to resources, power, and profit. The digital divide is not limited to access to hardware or the internet: while large technology companies possess enormous computational power, extensive datasets, and specialised expertise, many smaller actors, poorer regions, or individuals are excluded from this ecosystem. Those who control data and computing capacity can dominate technological processes, decision-making, and innovation, further deepening the gap between "major players" and peripheral actors.

The concept of data colonialism criticises the fact that technology giants "extract" data from the public – acquiring raw data from social networks, applications, sensors, and infrastructure – while the value, analysis, and decision-making processes remain concentrated in their hands. According to parts of the academic and professional literature, this relationship resembles colonial patterns, in which colonised territories were stripped of natural resources while control, processing, and profit remained with the colonial power. In the digital realm, this means that countries or communities provide data but have only very limited access to how it is processed, used in decision-making, or leveraged, thereby restricting their ability to benefit from its potential[18].

Finally, some economic scholars have even argued that new technologies have fundamentally transformed entire current capitalistic system into a modern feudalism. According to Durand[19] and Varoufakis[20], techno-feudalism would explain a new economic order in which a few technology giants control digital "lands"– data, platforms, and digital infrastructures – forcing users and workers to comply with their rules to participate in economic life. In this system, value and power derive not only from traditional waged labour but also from unpaid digital work and platform rents, turning platform workers into "digital serfs" subject to pervasive algorithmic control and surveillance. For example, online merchants on Amazon must pay commissions and follow the platform's unilateral rules to reach customers, while riders on delivery apps have no control over customers, schedules, or algorithmic evaluations, and cannot leave the platform without losing their livelihood. Similarly, streaming services such as Spotify or Netflix extract value from both content creators' unpaid contributions and users' engagement, concentrating control and profit in the hands of the platform operators.

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[18] N. Couldry, U.A. Mejias, *The costs of connection: How data is colonizing human life and appropriating it for capitalism.* Stanford University Press, Stanford, CA, 2019, https://doi.org/10.1515/9781503609754.

[19] C. Durand, *How Silicon Valley Unleashed Techno-Feudalism: The Making of the Digital Economy*, Verso, 2024.

[20] Y. Varoufakis, *Technofeudalism: what killed capitalism*, Bodley Head, 2023.

2.4. Labour Market Distortion

Labour market distortions will be addressed here only briefly, although the change is indisputable. In its January 2024 report, the International Monetary Fund (IMF) warned that the development of AI could affect up to 40% of jobs worldwide, with this proportion reaching as much as 60% in advanced economies[21]. These figures suggest that the impact will not be evenly distributed, but will depend heavily on the structure of individual economies and the share of jobs susceptible to automation. Similar conclusions were drawn in a May 2024 analysis by McKinsey & Company, which predicted that up to 12 million job transitions in Europe will be required by 2030 due to automation and the implementation of AI. This projection also indicates that the pace of change is approximately twice as fast compared with the pre-COVID-19 period, illustrating the rapid acceleration of labour market transformation.

The risks associated with technological change are also highlighted by the Organisation for Economic Co-operation and Development (OECD). Its July 2023 report states that, on average, up to 27% of jobs in member countries are highly susceptible to automation. Eastern European countries are particularly vulnerable, given that their economic structures contain a higher proportion of routine and manual tasks.

Taken together, these findings suggest that automation and AI not only fundamentally alter the nature of work but also exacerbate regional and structural inequalities. Addressing these challenges will require proactive state policies focused on reskilling, supporting labour mobility, and ensuring a fair and equitable transformation of the labour market.

3. Job Quality as a Lens for Assessing AI's Potential

In the first part of our analysis we have tried to illustrate how the AI's transformative potential adversely affects multiple dimensions of work, including equal treatment, privacy, labour market and overall societal dynamics. In order to provide a more comprehensive assessment, it is now essential to identify and analyse the positive contributions that AI can make in these areas.

[21] M. Cazzaniga, F. Jaumotte, L. Li, G. Melina, A. J. Panton, C. Pizzinelli, E. J. Rockall, M. M. Tavares, *Gen-AI: Artificial Intelligence and the Future of Work* (IMF Staff Discussion Note No. 24/001), 2024, International Monetary Fund. https://doi.org/10.5089/9798400262548.006.

This requires drawing on real-world examples, policy and normative approaches that highlight AI potential to be used for good[22].

The academic, institutional, and public discourse has so far been dominated by risk-centred narratives. While precautionary approaches remain indispensable, they should be complemented by a balanced assessment of AI capacity to generate improvements.
Lately some noteworthy scholars have started to explore also the AI's beneficial potential. Some of the experts argue that current AI regulation focuses too narrowly on preventing harms and should instead adopt a more balanced, cost-benefit approach that also recognizes the value of automation in advancing public goals like fairness, welfare, and justice, even proposing a set of "AI-for-good rights", such as a right to automated decision making and a right to data collection[23]. Others rather explore how to achieve the beneficial potential of AI through a coherent accountability framework that integrates data protection, equality and employment law, collective bargaining, and regulatory oversight to ensure transparent and fair algorithmic management in the workplace[24]. Similarly, robust and effective regulatory framework – already partly outlined at both the European and national levels – appears in the literature as a key mechanism capable of transforming algorithms from drivers of discrimination into powerful tools for its prevention[25].
Against this backdrop, assessing the impact of AI through a comprehensive analytical framework – namely job quality indicators – appears particularly useful. Job quality, however, is not a *strictu sensu* legal category, while it occupies a central place in economic analysis[26] and has long been a key concept for the sociology of work[27] and occupational psychology[28]. For the purposes of this

[22] See European Commission's pursuit of "AI for public good" AI for Public Good | Shaping Europe's digital future, as well as ILO's mission to use AI in line with UN Sustainable Development Goals, see: ILO Live - AI for Good.
[23] See O. Lobel, *The Law of AI for Good*, in *Florida Law Review*, 75, 2023. For Italian labour law scholarship attempting more balanced approach in assessing AI see M. Biasi, *The bright side of the AI for work: from (unbrindled) risks to (regulated) opportunity*, in M. Biasi (ed.), *Artificial Intelligence and Labour Law: a Global Overview*, Routledge-Giappichelli, forthcoming
[24] A. Blackham, *Setting the framework for accountability for algorithmic discrimination at work*, in *Melbourne University Law Review*, 47, 2023, 63-113.
[25] G. Gaudio, *Le discriminazioni algoritmiche*, in *Lavoro Diritti Europa*, 2024, 1.
[26] B. Burchell, K. Sehnbruch, A. Piasna *et al., The quality of employment and decent work: definitions, methodologies, and ongoing debates*, in *Cambridge Journal of Economics*, 2013, 38, 2, 459-477.
[27] See, for instance, M. Adamson, I. Roper, *'Good' Jobs and 'Bad' Jobs: Contemplating Job Quality in Different Contexts*, in *Work, employment and society*, 2019, vol. 33, n. 4, 551-559.
[28] Their approach typically concentrates on the determinants of subjective well-being and productivity at the level of task characteristics, including variety, challenge, meaningfulness of

contribution, an attempt is therefore made to translate job quality into a concept that is ontologically meaningful for labour law.

The notion of job quality attracted systematic scholarly attention in the United States during the 1960s as a part of "social indicators movement"[29], linked to the broader efforts to conceptualise and measure quality of life. Early definitory approaches were predominantly subjective, relying on workers' self-evaluations of job satisfaction and on the aspects of work perceived as contributing to well-being, but were criticised for their lack of objective benchmarks and methodological robustness[30]. This strand of research emphasised the impact of job characteristics on the well-being of workers: instead of measuring the inputs (the quality of numerous work characteristics) they prioritised looking at one single indicator in the form of desired output: the level of job satisfaction[31].

Nowadays, job quality is predominantly conceptualised as a complex, multidimensional construct encompassing a range of relevant job characteristics[32].

Despite decades of research, however, the absence of a shared set of indicators for job quality continues to constrain effective policy and regulatory responses[33]. Moreover, as workplaces have been reshaped by both internal and external forces – for instance introducing new health risks, shifting tasks from predominantly physical to increasingly cognitive and psychosocial demands – the criteria for measuring job quality has also been necessarily evolving[34]. More recent developments, including algorithmic management and AI, add further variables to job quality assessments, which this analysis seeks to explore.

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work, autonomy, and teamwork. See J.R. Hackman, G.R. Oldham, *Development of the job diagnostic survey*, in *Journal of Applied Psychology*, 1975, vol. 60, no. 2, 159-170.

[29] H.H. Noll, *Social indicators and quality of life research: background, achievements and current trends*, in N. Genov (ed.), *Advances in Sociological Knowledge*, VS Verlag für Sozialwissenschaften, Wiesbaden 2004, pp. 151-182.

[30] J.C. Taylor, *Job satisfaction and quality of working life*, in *Journal of Occupational Psychology*, 1977, 50, 4, 243-252.

[31] R. Muñoz de Bustillo, E. Fernández-Macías, J. I. Antón, F. Esteve, *Indicators of job quality in the European Union*, 2009, Policy Department Economic and Scientific Policy, Brussels, 34 ff. https://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24284/20110718ATT24284EN.pdf,

[32] Other methods consider different weight of the indicators, their interaction and so on. See S. Vandekerckhove, *Norm-based job quality indicators: an application to European survey data*, 2021, Deliverable 13.3, Leuven, InGRID-2 project 730998 – H2020, 4 ff, available online: https://www.inclusivegrowth.eu/files/Output/D13.4-Quality-indicators.pdf.

[33] A. Piasna, B. Burchell, K. Sehnbruch, *Job Quality in European Employment Policy: One Step Forward, Two Steps Back?*, in *Transfer: European Review of Labour and Research,* 2019, 25, 2, 165–180.

[34] See B. Burchell, K. Sehnbruch, A. Piasna *et al., The quality of employment and decent work*, cit., p. 3-4.

From the policy standpoint, what clearly emerges as urgent priority is ensuring that all AI-enabled working arrangements are of good quality, and that AI is deployed to enhance working conditions and the overall functioning of the labour market. Looking at the job quality is consistent with the long-standing EU policy going beyond quantitative indicators of the healthy labour market. Since the launch of the Lisbon Strategy in 2000, the EU has consistently framed labour market success in terms of both quantity and quality of employment, embedding the objective of "more and better jobs"[35] at the core of its socio-economic model and ushering in what is often characterised as a "golden age" of job quality in EU policymaking[36]. Job quality was framed as a transversal objective, encompassing working conditions as well as broader dimensions of social policy, education and training, and industrial relations. This approach was institutionalised in 2001 through the recognition of the qualitative dimension of employment as a horizontal objective of the European Employment Strategy, the adoption of a set of job quality indicators at the Laeken European Council, and the European Commission's first Communication on job quality[37]. Together, these initiatives placed job quality at the centre of EU employment and social policy.

The interest in job quality is not only visible in the EU context through its policies, but its measurement through harmonised EU-wide surveys. There is good access to comparative data on working conditions and the political will to explore such data through surveys.

Early attempts to operationalise job quality at EU level, such as the aforementioned Laeken indicators, were limited by their inability to capture key

[35] "The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion". Par. 5, Title I of Lisbon Strategy, 2000, *https://www.europarl.europa.eu/summits/lis1_en.htm*.

[36] P. Caillaud, D. Ghailani, R. Peña-Casas, *Conceptual and Legal Framework for Quality of Work and Employment in International Institutions – The European Union and the International Labour Organisation*, in S. Borelli, P. Vielle, (eds.), *Quality of Employment in Europe Legal and Normative Perspectives*, Peter Lang, 2012, 33-68, Collection: Travail et Société/Work and Society, 35.

[37] European Commission, *Communication From The Commission To The Council, The European Parliament,The Economic And Social Committee And The Committee Of The Regions Employment And Social Policies: A Framework For Investing In Quality*, Brussels, 20.6.2001 COM (2001) 313 Final https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0313:FIN:EN:PDF. The so called Laeken job quality dimensions are: intrinsic job quality, lifelong learning and career development, gender equality, health and safety at work, flexibility and security, inclusion and access to the labour market, work organisation and work–life balance, social dialogue and worker involvement, diversity and non-discrimination, and overall economic performance and productivity.

aspects of the working environment, including wages, working time arrangements and the nature of work tasks[38]. Furthermore, they represented more conceptual framework, not necessarily adequate for monitoring purposes. Subsequent policy frameworks have addressed these shortcomings. Eurofound, for example, identifies seven key dimensions of job quality – physical environment, work intensity, working time quality, social environment, skills and discretion, prospects, and earnings – which are systematically analysed through the European Working Conditions Survey, conducted since 1990[39].

Within evolving work landscape, social partners played a crucial role in steering EU initiatives towards better-quality jobs. Recent developments, such as the European Commission's Quality Jobs Roadmap of December 2025 and the EMCO Opinion of June 2025, underline the centrality of social dialogue and collective bargaining, opening of first phase of consultation leading to Quality Jobs Act[40]. The EMCO Opinion seeks to foster a shared understanding of job quality at EU level by identifying thirteen policy dimensions[41].

Beyond the EU context, parallel frameworks have been developed, both contingent and diverging from the European approach to job quality. Most notably, the International Labour Organization's concept of decent work[42],

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[38] See OECD, *OECD Guidelines on Measuring the Quality of the Working Environment*, 2017, Chapter 2, available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/11/oecd-guidelines-on-measuring-the-quality-of-the-working-environment_g1g7ca23/9789264278240-en.pdf.

[39] https://www.eurofound.europa.eu/en/topics/job-quality#eurofound-research.

[40] European Commission, *First-phase consultation of social partners under Article 154 TFEU on possible direction of EU action to improve working conditions, health and safety at work and implementation of workers' rights – Quality Jobs Act*, Brussels, 4.12.2025 C(2025) 9944 final. https://employment-social-affairs.ec.europa.eu/document/download/059a1e18-2508-4520-9b15-5831c50e0f91_en?filename=Consultation_Quality-Jobs-Act_2025.pdf.

[41] Including earnings, working conditions (with particular attention to stress and psychosocial risks), job security, work–life balance, access to training, social protection, collective bargaining coverage, and equal opportunities, see: Council of the European Union, *Opinion of the Employment Committee on the dimensions of job quality*, Brussels, 6 June 2025,(OR. en), 9417/25, https://data.consilium.europa.eu/doc/document/ST-9417-2025-INIT/en/pdf.

[42] The concept of decent work was first introduced in the report of ILO Director-General Juan Somavia to the 1999 International Labour Conference, which proposed a new integrated approach to the Organisation's activities. Its aim was to bring coherence to the ILO's work by framing it around a shared purpose and a common interest between the ILO and its Member States in improving the conditions of people across the world of work. At the time, the ILO presented decent work - promoted as a global objective shaped by regional challenges - as the pursuit of productive work carried out in conditions of freedom, equality, security and human dignity, in full accordance with the ILO's mandate as set out in the Declaration of Philadelphia. Report of the Director-General Juan Somavia: *Decent work*, 87th Session of International

introduced in 1999, has been widely used alongside – and at times as a substitute for – the notion of job quality. From its inception, decent work combined a strong normative orientation grounded in fundamental rights, rather than the analytical framework[43]. While its broad scope has facilitated global uptake and policy relevance, this normative breadth has also posed challenges in terms of operationalisation, measurement, and cross-country comparability[44]. A parallel effort is reflected in the OECD framework, which conceptualises job quality through three core dimensions: earnings quality, labour market security, and the quality of the working environment[45].

In contrast, the EU concept of job quality has evolved as a more operational and policy-oriented framework, explicitly designed to support monitoring, benchmarking, and regulatory intervention within specific labour market contexts.

Despite these advances, the conceptualisation of job quality indicators is not straightforward and lacks necessary neutrality. This has reprecussions on the legal understanding and use of the concept.

4. Legal References for Quality AI-enhanced Work

In primis, the notion of job quality must be disaggregated into legally intelligible components.

Job quality is understood through a core distinction between the characteristics of the job itself and the wider employment context, following the interpretation of the concept as coined in afforementioned European Commission's first Communication on job quality from 2001. This separation differentiates quality of work (covering intrinsic job features such as pay, working time, job content, skills, career prospects, and job satisfaction) from quality of employment (which refers to the broader policy and institutional conditions of the labour market, including health and safety, gender equality, flexibility and security, work–life balance, social dialogue, and non-discrimination). While closely interrelated, the distinction is legally relevant, as

Labour Conference, Geneva, June 1999, available online: https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm.

[43] For the list of indicators see P. Caillaud, D. Ghailani, R. Peña-Casas, *op. cit.*

[44] B. Burchell, K. Sehnbruch, A. Piasna *et al., The quality of employment and decent work*, cit., 459-477.

[45] OECD, *OECD Employment Outlook 2014*, OECD Publishing, Paris, 2014, https://www.oecd.org/en/publications/oecd-employment-outlook-2014_empl_outlook-2014-en.html.

it links job quality both to individual working conditions and to labour market governance[46].

Various soft and hard law initiatives at the EU level make explicit reference to the job quality.

The European Pillar of Social Rights aims to foster convergence across the EU towards fairer working and living conditions[47]. While the majority of the Pillar's 20 principles do not explicitly address job quality, the pillar on fair working conditions substantially overlaps with its core dimensions, including contractual arrangements, wages, social dialogue, work-life balance, and occupational health and safety. The only explicit reference to quality of working conditions appears in Principle 5(c), in connection with the promotion of innovative forms of work, entrepreneurship, and self-employment, providing a normative foundation for regulatory intervention against the most severe manifestations of poor-quality work.

European Pillar of Social Rights constitutes a non-binding soft law instrument and does not entail direct implementation obligations for Member States; nevertheless, it functions as an important reference framework for the European Commission in the development of social policy and related regulatory initiatives. This guiding function is clearly reflected in recent legislative efforts addressing AI and algorithmic management at work. The Recital 3 of Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work (hereinafter Platform Work Directive) expressly recalls the aforementioned Principle 5(c), according to which innovative forms of work – such as platform work – should be promoted only where they guarantee quality working conditions. This quality-centred orientation is further strengthened in Recital 4, which acknowledges that new forms of digital interaction and technological innovation in the labour market may enhance access to decent and high-quality employment – particularly for groups traditionally excluded

[46] P. Caillaud, D. Ghailani, R. Peña-Casas, *op. cit.,* 36.

[47] Monitoring is ensured through the Social Scoreboard, which tracks convergence using indicators on employment and social trends, https://ec.europa.eu/eurostat/cache/dashboard/social-scoreboard/. However, these indicators predominantly emphasise quantitative aspects of work – for example, the employment rate measures the volume of jobs without accounting for the nature of employment contracts or working time arrangements – and therefore capture only to a limited extent the qualitative dimensions of jobs. For the overall critical assessment see: A. Piasna, B. Burchell, K. Sehnbruch, *Job Quality in European Employment Policy*, cit. 8 ff, https://researchonline.lse.ac.uk/id/eprint/102888/1/2018_11_30_Transfer_Job_quality_in_the_European_employment_policy.pdf; for the employment rate indicator see ETUI, *The social scoreboard revisited*, 2017, 20-23, https://www.inclusivegrowth.eu/files/Call-42/4-2017.03-Background-analysis-Social-Scoreboard-Web-version.pdf.

from the labour market – provided that such developments are subject to appropriate regulation and effective enforcement.

More recently, in its resolution on a need to regulate algorithmic management and use of AI at work[48], European Parliament has called for a regulatory approach that goes beyond both the narrow application scope of Platform Work Directive and the non-work specific content of AI Act, advocating for rules that „enhance job quality"[49]; in parallel, the European Commission is considering addressing these issues in another forthcoming legislative initiative, the aforementioned Quality Jobs Act.

Labour law has traditionally been characterised by a strong reliance on qualitative notions – such as reasonableness, standard, and fairness – through which its executes its regulatory function[50]. Similarly, many labour law categories possess an intrinsic normative quality that aligns closely with measurable indicators of work and employment quality, creating a conceptual coherence between legal principles and empirical assessment. Some of the most salient of these indicators, which help translate these qualitative notions into observable dimensions of job quality, will be examined in the following sections.

4.1 The Impact of AI on Earnings Quality

Earnings quality refers both to the material well-being of individual workers, as reflected in wage levels, and to the broader distributional patterns of income within society[51].

Existing empirical evidence on the AI's wage effects is, however, heterogeneous and at times contradictory. A growing strand of literature points to the emergence of an "AI penalisation effect", whereby workers who rely on AI tools may experience reduced compensation because their individual

[48] European Parliament, *Digitalisation, artificial intelligence and algorithmic management in the workplace – shaping the future of work*, 2025/2080(INL), 17/12/2025, https://oeil.europarl.europa.eu/oeil/en/document-summary?id=1881354.

[49] Proposal reiterated in recent years also by ETUC, see for instance: ETUC, The *EU needs a Dedicated Directive on Algorithmic Management and AI at work*, 18 October 2025, https://www.etuc.org/en/circular/eu-needs-dedicated-directive-algorithmic-management-and-ai-work.

[50] See A. Perulli, *I concetti qualitativi nel diritto del lavoro: standard, ragionevolezza, equità*, in *Diritti, lavori, mercati*, 2011, 3, who sustains that labour law uses qualitative notions to guide behaviour and to assess whether economic and organisational practices align with social values and norms, but simultaneously create legal uncertainty, because it moves away from purely calculable and predictable rules.

[51] OECD, *OECD Employment Outlook 2014*, cit., 80.

contribution is perceived as diminished[52]. This dynamic appears to affect not only wage-setting practices but also workers' behaviour, as employees often report reluctance to disclose the use of AI in routine work tasks for fear of devaluation[53]. Such negative wage effects are most clearly documented in non-standard forms of work, particularly freelancing, crowdwork, and platform-based labour, where weaker legal safeguards and limited collective bargaining leave workers more exposed to unilateral wage adjustments[54].

By contrast, studies focusing on standard employment relationships tend to identify neutral or even positive wage effects associated with AI exposure. Evidence from Germany between 2010 and 2017 shows that occupational exposure to AI technologies was associated with wage growth among certain segments of the workforce, especially non-professional workers such as technicians, clerical staff, service and sales workers, suggesting that AI adoption may have supported task upgrading and productivity gains[55]. Similarly, research based on Italian data from 2011 to 2019 indicates positive wage effects concentrated among highly qualified employees and top occupational positions, pointing to a skill-biased dimension of AI-related wage dynamics[56].

At the same time, these results must be interpreted with caution. Most available studies rely on data from the pre-generative AI era, preceding the rapid diffusion of tools such as ChatGPT and other large language models. As a result, the wage effects of generative AI specifically cannot yet be directly observed, and systematic empirical evidence on its distributional consequences

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[52] J. Kim, S. Schweitzer, C. Riedl, D. De Cremer, *The AI Penalization Effect: People Reduce Compensation for Workers Who Use AI*, in *arXiv.org*, 2025.

[53] M. Morrone, *Secret chatbot use causes workplace rifts*, 29 May 2025, https://www.axios.com/2025/05/29/secret-chatgpt-workplace.

[54] Research indicates that crowdworkers in areas affected by generative AI experienced significant income losses, with earnings on platforms like Upwork declining by about 5%, and freelance translators facing drops of up to 30% after the introduction of tools such as ChatGPT. Upwork: X. Hui, O. Reshef, L. Zhou, *The short-term effects of generative artificial intelligence on employment: Evidence from an online labor market*, CESifo Working Papers, 2023, available online: https://www.ifo.de/DocDL/cesifo1_wp10601.pdf; Freelance translators: D. Qiao, H. Rui, Q. Xiong, *AI and Jobs: Has the Inflection Point Arrived? Evidence from an Online Labor Platform*, in *ArXiv*, ArXiv231204180, 2023.

[55] E. Engberg, M. Koch, M. Lodefalk, S.Schroeder, *Artificial intelligence, tasks, skills, and wages: Worker-level evidence from Germany*, in *Research Policy,* 2025. Vol. 54, Iss. 8, 9-11, https://www.sciencedirect.com/science/article/pii/S0048733325001143.

[56] I. Brunetti, C. Mussida, *AI occupational exposure and wage distribution:the case of Italy*, Inapp Working paper n. 135, Inapp, Roma, 2025, https://oa.inapp.gov.it/server/api/core/bitstreams/12e6e437-c122-4766-afe8-457c02a43469/content.

remains scarce[57]. What can nonetheless be inferred is a differentiated pattern: workers possessing AI-specific or complementary skills are more likely to benefit in terms of wages, whereas general exposure to AI tools does not automatically translate into higher earnings[58].
Moreover, AI may have ambivalent effects on lower-skilled workers, potentially enhancing their productivity and skill sets, but also exposing them to intensified monitoring and downward pressure on pay in less regulated labour market segments[59].
Taken together, the emerging evidence suggests that labour law plays a crucial mediating role in shaping AI-driven wage outcomes. Employment status, contractual stability, and collective protections appear to transform AI exposure into a positive factor by limiting arbitrary wage reductions, fostering reskilling and upskilling, and enabling workers to capture productivity gains. Conversely, in contexts characterised by weak legal safeguards, AI adoption risks reinforcing existing structural vulnerabilities and exacerbating earnings inequality, raising important questions for future research and policy intervention.

4.2 Task Approach in Evaluating Job Quality. The Specific Impact of GenAI

Attention to task content and execution is considered central for understanding how new technologies may affect job quality[60].
Task characteristics – ranging from routine and monotonous to complex and creative – interact with task execution factors such as pace, intensity, and overall workload.
Work intensity is a widely recognised indicator of the quality of the working environment, signalling situations in which excessive workload or accelerated work pace can undermine job quality and increase psychosocial risks[61]. The

[57] What is possible to measure as for the effects of generative AI on work are the productivity gains of individual workers and improving subjective working experience. See: E. Brynjolfsson, D. Li, L. Raymond, *Generative AI at Work*, in *The Quarterly Journal of Economics*, Vol. 140, Iss. 2, 2025, 889-942.
[58] OECD, *OECD Employment Outlook 2023*. Artificial intelligence and the labour market, OECD Publishing, Paris, 2023, 131, available online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/07/oecd-employment-outlook-2023_904bcef3/08785bba-en.pdf.
[59] OECD, *OECD Employment Outlook 2023*, cit., 144-145.
[60] D.H. Autor, *The "task approach" to labour markets: an overview*, in *Journal for Labour Market Research*, Vol. 46, 2013.
[61] EMCO, *Quality in Work – Thematic Review 2010*, Publications Office of the European Union Brussels, 2010.

introduction of labour-intensifying technologies, including algorithmic management and AI, has frequently been associated with heightened work intensity, as routine tasks are automated and more cognitively demanding or complex activities are concentrated on workers, potentially reducing opportunities for mental recovery and increasing stress[62].

Generative AI (herinafter GenAI), with ChatGPT as a prominent example, exemplifies a new wave of technologies affecting task execution. OpenAI's own analysis reports substantial global adoption in professional roles, particularly in knowledge-intensive work, with U.S. usage rates ranging from 28% to 43% among workers using ChatGPT on a daily basis[63].

While ChatGPT's use in paid work is increasing in absolute terms, work-related queries constitute a declining share of overall activity, suggesting that ChatGPT is becoming more embedded in everyday, non-work practices rather than being driven mainly by employment-related tasks. Legal and compliance concerns – such as copyright, confidentiality, and privacy – have prompted some organisations to develop internal AI models or host LLMs on approved infrastructure to safeguard data and ensure regulatory compliance.

In Europe, GenAI adoption remains lower – between 5% and 20% of the workforce – with significant cross-country variation (e.g., approximately 5% in Italy, 8% in Slovakia, and 20% in Belgium)[64]. Despite overall lower adoption rates in Europe, existing evidence consistently identifies specific professions as more exposed to GenAI. These include clerical occupations (such as data entry clerks, typists, accounting and bookkeeping staff and administrative secretaries), as well as professional and technical roles characterised by a high cognitive content of work, including financial analysts, software and multimedia developers, translators, and investment advisers. This pattern confirms that GenAI use is more prevalent in occupations where tasks are predominantly cognitive, analytical, or language-based[65].

Again, given the very recent and rapid diffusion of GenAI, empirical evidence on its actual workplace use and on its broader consequences – both positive

[62] OECD, *OECD Employment Outlook 2023*, cit., p. 142.

[63] OpenAI, *ChatGPT usage and adoption patterns at work*, 22 January 2026, https://openai.com/business/guides-and-resources/chatgpt-usage-and-adoption-patterns-at-work/.

[64] Eurofound, *European Working Conditions Survey 2024. First findings*, 21, available online: https://www.eurofound.europa.eu/en/surveys-and-data/surveys/european-working-conditions-survey/ewcs-2024. Complete data to be available in February 2026.

[65] Using Polish datapool, P. Gmyrek, J. Berg, K. Kamiński, F. Konopczyński, *et al.*, *Generative AI and Jobs: A Refined Global Index of Occupational Exposure*, ILO Working Paper 140, International Labour Office, Geneva, 2025.

and negative – remains partial and evolving[66]. Preliminary findings nevertheless suggest a generally positive perception among workers. According to the Apply AI Strategy survey, approximately 67% of European workers report that AI helps them perform tasks more efficiently[67].

The advent of GenAI introduces a qualitatively new element into the labour process, often described as computational agency: the capacity of AI systems to autonomously perceive, generate outputs, and act within work processes, frequently without a corresponding clarification of accountability or liability. This development raises concerns within the scholarly literature[68] about a potential erosion of human agency at work, particularly where GenAI systems increasingly shape decision-making and task execution. From a task quality perspective, however, GenAI may also offer novel opportunities in positive sense. *In primis*, it can enhance job quality by supporting productivity, efficiency and overall enjoyment of the worktask[69]. Early evidence suggests that lower-skilled workers may see particular benefits, as GenAI can enhance engagement with cognitively demanding tasks and consequently reduce productivity inequality[70].

It can provide guidance and training resources that promote upskilling and reskilling. Some large companies already use AI to identify skills gaps, a method considered more effective than procedures based on assumptions or simple direct questions to employees. Employers can collect detailed information on employee performance and certifications and employ machine learning algorithms to pinpoint areas requiring further training[71]. GenAI (and,

[66] In November 2022, OpenAI introduced ChatGPT as a consumer-oriented application, marking a turning point in the diffusion of generative AI. The system achieved exceptionally rapid uptake, reaching approximately 30 million weekly users within two months of launch, and expanding to around 100 million users within its first year of deployment. By November 2025 it counts 810 million users. F. Duarte, *Number of ChatGPT users* (January 2026). Exploding Topics. Last updated December 14, 2025.

[67] European Commission, Communication from the Commission to the European Parliament and the Council. Apply AI Strategy, Brussels, 8.10.2025, COM(2025) 723 final.

[68] J. Adams-Prassl, *Platform workers' rights in the age of generative AI*, in P. Hacker et al. (eds), *The Oxford Handbook of the Foundations and Regulation of Generative AI*, online edn, Oxford Academic, 2025; see also E. Walkowiak , *Generative AI at the Workplace and Protection of Workers' Rights*, in SSRN Electronic Journal, 2024, 3.

[69] S. Noy, W. Zhang, *Experimental evidence on the productivity effects of generative artificial intelligence*, in Science, 2023, 381, 187-192, https://www.science.org/doi/10.1126/science.adh2586.

[70] S. Noy, W. Zhang, *op. cit.*

[71] For example, IBM has been able to reskill its workforce in strategic areas such as cybersecurity through AI-based micro-credential systems (see Upskilling and Reskilling for Talent Transformation in the Era of AI, 15 October 2024, available at: AI Upskilling Strategy | IBM). The world's largest private employer, the US-based company Walmart, has launched a

more broadly, other innovative AI-related techno-legal tools) can thus contribute to creating new infrastructures for skills development and recognition in today's labour market[72].
GenAI can automate repetitive or low-value tasks, freeing workers to focus on higher-order, creative, or strategic activities[73]. Finally, streamlined processes may improve schedule flexibility and facilitate better work–life balance. By increasing the proportion of time spent on core, meaningful work, these developments could even support structural innovations such as a four-day working week[74].

4.3 AI for Improvement of Occupational Health and Safety

Empirical research and institutional survey data provide relatively clear and immediate evidence regarding AI's positive impact on occupational health and safety, a field that constitutes a long-standing and highly regulated dimension of EU labour law[75]. The widespread development of technology notably

partnership with OpenAI to develop a customised AI certification programme for its employees (Walmart taps OpenAI for employee training | Retail Dive.)

[72] Such tools can support the recognition of skills actually acquired, the traceability and enhancement of professional trajectories, and the reliable certification of reputational profiles, thereby ensuring their transferability and applicability to new employment opportunities, including across diverse sectoral contexts. See: E. Lackova, *Riconoscimento e portabilità delle competenze nel mercato del lavoro europeo: norme, tecnologie e prospettive future*, Franco Angeli, curatela del progetto PRIN "Politiche attive attive del lavoro, divari Nord-Sud e aree di crisi. I nuovi programmi per lo sviluppo territoriale, le transizioni e il mercato del lavoro, ruolo degli attori pubblici e delle parti sociali", 2025, forthcoming.

[73] Even if there is still the potential of cycling back to routine tasks when controlling the GenAI outputs. See: M. Law, R.A. Varanasi, Generative AI & Changing Work: Systematic Review of Practitioner-led Work Transformations through the Lens of Job Crafting, in Arxiv, arXiv:2502.088542025, https://arxiv.org/pdf/2502.08854.

[74] E. Bennet, AI could make the four-day workweek inevitabile, BBC, 26 February 2024, https://www.bbc.com/worklife/article/20240223-ai-could-make-the-four-day-workweek-inevitable.

[75] EU regulation on occupational health and safety has developed progressively since the adoption of the founding treaties, with early references already present in the ECSC Treaty of 1951 and the Treaty of Rome of 1957. A major step was taken with the 1974 Social Action Programme, which introduced a broad set of measures on health and safety at work. The cornerstone of EU OHS legislation is the 1989 Framework Directive on Safety and Health at Work (Council Directive 87/391/EEC of 12 June 1989), which establishes minimum requirements across Member States and emphasises prevention of workplace accidents and occupational diseases. This framework has been complemented by a series of individual directives addressing specific risks and working conditions, including the Working Time Directive (Dir. 2003/88/EC), which sets minimum health and safety standards for the organisation of working time, such as rest periods, maximum working hours, and protections related to night and shift work.

impacts job quality in multiple ways. Through the reconfiguration of working time and place, changes in organisational and management practices, as well as the broader fragmentation of social classes and weakening of trade unions, it can either foster the conditions for the emergence of increasing work-related stress and new forms of labour vulnerability[76], or contribute to improved overall well-being and safety in the workplace.

EU-OSHA has conducted extensive studies concerning the impact of AI-based worker management on the workplace safety and health[77]. The findings suggest that such AI systems can improve job quality by optimising task allocation, monitoring workplace risks, supporting workers' health and well-being, and providing personalised assistance. Moreover, the data generated can also be used to develop more effective occupational health and safety training and programmes, as well as support the targeted planning of health and safety inspections[78]. And this is without even considering the implementation of AI application embedded in hardware, such as the use of robots to perform heavy and hazardous tasks, exoskeletons that can help reduce the risk of musculoskeletal disorders, and other applications that improve the quality of human work.

Also findings from OECD surveys and selected case studies suggest that the introduction of AI is generally associated with improvements in both physical and mental well-being at work. In particular, a majority of AI users report increased job enjoyment and satisfaction, as well as a greater perceived attractiveness of their tasks. These positive effects, however, are not evenly distributed and vary according to workers' roles and modes of interaction with AI: the most favourable outcomes are reported by those involved in developing, maintaining, or supervising AI systems, whereas workers directly subject to AI use or algorithmic management tend to experience more limited benefits[79].

There is also some evidence[80] of GenAI being increasingly used to address concrete work-related challenges – such as stress, career transitions, and

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[76] See C. Di Carluccio, *Lavoro e salute mentale, dentro e fuori l'istituzione*, Editoriale Scientifica, Napoli, 2022, 313 ff.

[77] For the list of publications see: https://healthy-workplaces.osha.europa.eu/en/tools-and-publications/publications?f%5B0%5D=publications_priority_area%3A1707.

[78] EU-OSHA, *The future role of big data and machine learning in health and safety inspection efficiency*, 2019.

[79] OECD, *OECD Employment Outlook 2023*, cit., 139 ff.

[80] Even if, based on an analysis of 4.5 million Claude conversations, emotional support constitutes only 2.9% of GenAI interactions, McCain, M. *et al.*, *How People Use Claude for Support, Advice, and Companionship*, 2025, available online: https://www.anthropic.com/news/howpeople-use-claude-for-support-advice-and-companionship.

workplace conflicts – indicating its potential to support worker well-being and job quality in digital workplaces.

4.4 From non-discrimination to Inclusive AI

As already analysed (*supra*, par. 1.1), without adequate legal safeguards, AI and algorithms can reproduce historical biases and exacerbate structural inequalities; conversely, when embedded within an appropriate regulatory framework, they also hold the potential to mitigate such biases and contribute to more equitable outcomes[81].

Transparency laws can play a critical role in converting the inherent opacity of algorithmic decision-making into a mechanism for preventing systemic discrimination. By mandating that companies disclose the functioning, logic, and consequences of automated decision-making processes, current regulatory framework allows workers to obtain prior knowledge of algorithmic reasoning and potential biases. Unlike human cognitive biases, which are well hidden and unobservable (the highest form of black box[82]), algorithmic rules and outputs are formally codified, making discrimination potentially detectable and auditable.

European regulations provide a layered and complementary system of rights that operationalise this principle. The GDPR (Articles 13(2)(f), 14(2)(g), and 15(h)) guarantees that all individuals whose personal data are processed have rights to information and access regarding automated decision-making, including profiling, when it affects employment, job access, or contract management. These rights apply equally to employees and self-employed workers, and impose obligations on both data controllers and processors – including employers and digital platforms – to disclose the logic, significance, and potential consequences of algorithmic processes. Building on the GDPR, the AI Act (Articles 14 and 86) codifies a more explicit framework for high-risk AI systems, establishing both a right to explanation and the obligation for

[81] G. Gaudio, *op. cit.*

[82] Human decision-making is inherently affected by systematic imperfections – "bugs" – that often operate silently and remain unnoticed. These imperfections may ultimately manifest as distorted judgement or random chance variability in decisions. The former is better known unconscious bias, understood as a lack of awareness of the cognitive shortcuts individuals rely on when processing information. The latter is commonly referred to as judgement noise, which affects decision-making not through consistent directional bias, but through the undue influence of irrelevant, contextual, or purely incidental factors, resulting in inconsistency across decisions. Both biased or otherwise distorted forms of human judgement constitute basis of discrimination. See: K. A. Houser, *Can AI solve the diversity problem in the tech industry? Mitigating noise and bias in employment decision-making*, in *Stanford Technology Law Review*, 2019, Vol. 290, No. 22, 318-323.

human oversight to mitigate risks to health, safety, and fundamental rights. The Platform Work Directive (Articles 9-11) extends these principles specifically to platform-mediated work, requiring transparency obligations not only toward individual workers but also toward their representatives and, upon request, national authorities.

A crucial feature of this regulatory ecosystem is the interdependence of transparency, explainability, and human oversight. The GDPR rights to information and explanation are meaningful only if they enable effective human review of automated outputs; the AI Act similarly links the right to human supervision with obligations for traceability and comprehensible documentation. Under the Platform Work Directive, transparency rights are embedded alongside participatory and consultation rights, recognising that collective mechanisms are often better equipped to analyse complex aggregated data, identify systemic bias, and engage experts for technical assessment[83].

In this way, the combined effect of these regulations transforms the traditional opacity and unpredictability of algorithmic systems into structured mechanisms for accountability and discrimination prevention. By codifying algorithmic logic "in black and white" and pairing it with legally enforceable rights, the European legal framework enables both individual and collective actors to detect, challenge, and mitigate systemic biases.

Not only preventing discrimination and enforcing anti-discriminatory legal mechanisms, but – in the light of prescriptive (rather than descriptive) nature of the principle of equality[84] – it appears necessary also actively impose the obligation for inclusive AI in the workplace. Some scholars call for extending the principle of reasonable accommodation – duty for the employers towards employees with a disability, introduced in the Council Directive 2000/78/CE – beyond its traditional, reactive, and disability-specific scope. According to this interpretation employers would have a responsibility to develop and deploy AI and algorithmic systems in ways that proactively prevent discrimination. This would entail evaluating the potential and actual impacts of the AI system, and, wherever possible, implementing adaptive or flexible measures to minimise risks and ensure equitable outcomes[85], thereby securing fair access to work, balanced task allocation and equal opportunities for career progression.

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[83] Thus avoiding information overload for the workers, J. Adams-Prassl *et al.*, *Regulating algorithmic management: a blueprint* in *European Labour Law Journal*, 2023, 14, 3, 12 ss

[84] R. Voza, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, Aidlass – XXI Congresso nazionale Messina, 23-25 maggio 2024, 11 ff, https://aidlass.it/wp-content/uploads/2024/05/Relazione-VOZA.pdf.

[85] F. Palmirotta, *Disruptive, yet Inclusive AI: Solutions and Boundaries from a Labour Law Perspective*, in *Italian Labour Law e-Journal*, 2025, vol. 1, no. 18, 83-111, argues for a proactive reinterpretation of the principle of reasonable accommodation toward inclusive AI.

Ultimately, embedding this principle in AI governance could steer technological innovation to become a tool for inclusive and high quality employment.

5. Final Remarks

The reflections presented in this contribution suggest that AI is a technology with multiple effects: it is not *a priori* a tool of inequality, but neither is it a guarantee of inclusion and job quality. The social impact of AI depends on its design, transparency, the possibilities for oversight, and above all on the legal framework that determines the limits of its deployment. The case law examined confirms that, in the absence of adequate safeguards, AI tends to reproduce historical biases, amplify inequalities, and interfere with rights to privacy and equal treatment.

Conversely, when systems are designed in accordance with principles of equality and accessibility, AI has the potential not only to transform work but to contribute to fairer, healthier, and more fulfilling employment. Assessing AI's impact on work through the lens of job quality provides a comprehensive framework in this sense.

AI has differentiated effects on job quality: workers with AI-complementary skills tend to benefit from wage growth, while those in non-standard or precarious work face greater risk of pay reduction and devaluation of their contribution. Generative AI directly affects task execution by automating repetitive tasks and supporting more complex activities, improving productivity, engagement, and opportunities for upskilling. These effects positively influence well-being and work–life balance, though benefits are unevenly distributed depending on the role and interaction with AI.

Overall, ensuring that AI-enhanced work is of high quality requires a multi-faceted approach. This involves embedding AI within robust legal frameworks, operationalising job quality indicators, and fostering inclusive, adaptive practices that anticipate risks while amplifying benefits across the workforce.

The above considerations show that the future of AI is not determined by the technology itself but by the value-based decisions made by society. Regulation grounded in the principles of equality, transparency, and human dignity can transform AI from a potential source of inequality into a tool for the common good. The task of legal scholarship is therefore not only to retrospectively analyse these developments but also to actively propose normative and policy solutions that enable AI to uphold the principles of equality, justice, and participation. Only in this way can technological progress be translated into an inclusive framework in which innovation serves society as a whole rather than a narrow group of actors.

International Labour Standards and Labour Law in the Countries of the Central Asian Region

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Abstract. The aim of the study was to determine the level of compliance of national legislation in Central Asian countries with international labour standards. The study was carried out by applying a set of methods, including comparative legal analysis of national legal acts of these countries and analysis of relevant statistical indicators on the labour market. It is established that despite the ratification by Kyrgyzstan, Kazakhstan and Uzbekistan of the key conventions of the International Labour Organization and formal enshrining of basic labour rights at the legislative level, there are significant problems with their practical implementation and the effectiveness of law enforcement. The identified problems include restrictions on the freedom of association and collective bargaining, systemic violations of migrant workers' rights (including exploitation and limited access to social protection), and a high level of informal employment. Statistical analysis has shown that the share of informal employment in Uzbekistan is estimated at 60%, and in Kyrgyzstan at around 30%. The unemployment rate in 2023 in Kyrgyzstan was recorded at 4.1%, while in Uzbekistan it was 8.9% in 2022. There was a significant gender pay gap, reaching about 25.2% in Kazakhstan and 36.6% in Uzbekistan. Differences in occupational injury

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rates were also recorded: the highest rate in Kazakhstan was 0.415 cases per 1,000 employees, in Kyrgyzstan – 0.221, and in Uzbekistan – 0.078. Based on the analysis, the authors formulate recommendations for Central Asian countries aimed at further improving their labour legislation in line with international standards, strengthening mechanisms for monitoring its observance, developing social dialogue and ensuring more effective protection of workers' rights, especially those of migrant workers and those employed in the informal sector of the economy.

Keywords: *Social Dialogue, Gender Equality, Labour Migration, Informal Employment, Unemployment Rate*.

1. Introduction

A study of the implementation of international labour standards in Central Asian countries is relevant and important for several reasons. Firstly, it will allow assessing the degree of compliance of national legislation with international standards and identifying problematic aspects in each country. Secondly, it will make it possible to identify factors that affect the effectiveness of implementation and develop recommendations for improving the situation. Third, it will help raise awareness of labour rights and encourage social dialogue between government, trade unions and employers, which is an important condition for social stability and economic growth.

In the first quarter of the 21st century (2001-2025), characterised by dynamic processes of globalisation and integration, ensuring decent working conditions and respect for labour rights is an integral part of any country's sustainable development. Labour, as the main human activity, should be not only a source of livelihood, but also a sphere of realisation of its potential, ensuring a decent standard of living and social protection.[1] In this context, the issue of implementing international labour standards into national legislation is of particular importance. International labour standards developed by the International Labour Organisation (ILO), the United Nations and other international organisations define minimum guarantees for employees in the field of labour, such as freedom of

[1] B. Miethlich, S. Kvitka, M. Ermakova, L. Bozhko, O. Dvoryankin, S. Shemshurina, I. Kalyakina, *Correlation of educational level, labor potential and digital economy development in Slovakian, Ukrainian and Russian experience, TEM Journal – Technology Education Management Informatics*, 2020, 9(4), pp. 1597–1605.

association, prohibition of discrimination, ensuring labour safety, regulation of working hours, protection of wages, etc. These standards are designed to ensure social justice, protect workers' rights and create favourable conditions for human capital development. The Central Asian countries – Kyrgyzstan, Kazakhstan and Uzbekistan – are at different stages of socio-economic development and have their own specific labour relations. Kyrgyzstan and Uzbekistan have high levels of informal employment and labour migration. In Kazakhstan, which has a more developed economy, the issues of gender equality and protection of the rights of foreign workers are relevant.[2] However, all three countries are members of the ILO and have committed to implementing international labour standards.

In addition to the conventions already ratified by the Central Asian states, particular attention should be paid to other ILO instruments that address issues analysed later in this study, even where these have not yet been formally ratified at the national level. The normative significance of ILO conventions does not depend exclusively on ratification status. As noted in the literature and reflected in ILO supervisory practice, non-ratified conventions may still exert interpretative and political influence by shaping legislative reform agendas, guiding judicial reasoning, and informing the expectations of social partners. In this sense, they function as persuasive standards that contribute to the progressive development of labour law, especially in areas such as labour inspection, occupational safety and health governance, protection of migrant workers, and safe working environments.

In particular, the Labour Inspection Convention (No. 81, 1947)[3] establishes detailed requirements regarding the independence, powers, and resources of labour inspectorates, which are directly relevant to the enforcement deficiencies identified in the region. The Occupational Safety and Health Convention (No. 155, 1981)[4] and the Promotional Framework for Occupational Safety and Health Convention (No. 187, 2006)[5] provide a systemic approach to the prevention of workplace injuries through

[2] Z. Khamzina, Y. Buribayev, B. Taitorina, G. Baisalova, *Gender equality in employment: A view from Kazakhstan, Anais da Academia Brasileira de Ciencias*, 2021, 93(4), e20190042.

[3] International Labour Organization, *Labour Inspection Convention* (No. 81), International Labour Organization, Geneva, 1947.

[4] International Labour Organization, *Occupational Safety and Health Convention* (No. 155), International Labour Organization, Geneva, 1981.

[5] International Labour Organization, *Promotional Framework for Occupational Safety and Health Convention* (No. 187), International Labour Organization, Geneva, 2006.

national OSH policies and continuous improvement mechanisms, an area of concern in sectors such as mining, construction, and agriculture.

Furthermore, the Migrant Workers (Supplementary Provisions) Convention (No. 143, 1975)[6] offers comprehensive standards aimed at combating irregular migration, exploitation, and discrimination, thereby addressing structural vulnerabilities faced by labour migrants from and within Central Asia. Even in the absence of ratification, these instruments may serve as authoritative benchmarks for assessing compliance with broader principles of decent work and social justice. Their consideration enables a more nuanced evaluation of national labour systems and highlights concrete directions for future harmonisation with evolving international labour standards, reinforcing the argument that effective implementation requires not only formal adherence but substantive alignment with global normative developments.

In 2021-2025, a number of researchers paid attention to labour rights issues in Central Asia. The role of international organisations, such as the ILO, in protecting the rights of labour migrants was considered by Toshpo'latov.[7] The study emphasised the importance of international cooperation and the conclusion of agreements that ensure the portability of social benefits as key elements to guarantee the economic security and well-being of migrants. The impact of the ILO on national labour legislation was analysed in Koliev.[8] His key finding was that the ILO's influence was not only through ratification, but also to a large extent during the process of drafting and adopting conventions, when states could improve their norms even without ratifying the document later.

Bruzelius and Seeleib-Kaiser[9] analysed the problems of applying minimum labour standards and institutional exploitation of seasonal agricultural workers in the EU, which is relevant for Central Asian countries given the development of agriculture and the use of migrant labour. In general, the study showed not only that the welfare state remains relevant, but also

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[6] International Labour Organization, *Migrant Workers (Supplementary Provisions) Convention* (No. 143), International Labour Organization, Geneva, 1975.

[7] D. Toshpo'latov, *The role of international organizations in protecting the rights of international labor migrants*, *International Journal of Law and Criminology*, 2024, 4(11), pp. 17–22.

[8] F. Koliev, *Promoting international labour standards: The ILO and national labour regulations*, *British Journal of Politics and International Relations*, 2025, 24(2), pp. 261–380. Кратко: Koliev, *op. cit.*

[9] C. Bruzelius, M. Seeleib-Kaiser, *Enforcement of minimum labor standards and institutionalized exploitation of seasonal agricultural workers in the EU*, in S. Börner, M. Seeleib-Kaiser (eds.), *European Social Policy and the COVID-19 Pandemic: Challenges to National Welfare and EU Policy*, Oxford University Press, Oxford, 2023, pp. 165–184.

that social policy can potentially develop and expand its competences at the European level. Khakberdiev[10] investigated the limitations of Uzbekistan's labour legislation, in particular in terms of protecting the rights of non-standard workers (e.g., those working part-time or on temporary contracts). The study pointed to the need to reform Uzbekistan's labour legislation to ensure more effective protection of the rights of all categories of workers. Akhmetzharov and Orazgaliyev[11] examined the role of trade unions in Kazakhstan in the context of institutional corruption. The authors argue that trade unions in Kazakhstan are weak and do not always effectively protect the interests of workers. The study emphasises the importance of strengthening the trade union movement in Kazakhstan and enhancing its role in protecting labour rights.

Ramankulov et al.[12] analysed trends in labour law reform in Kyrgyzstan. The authors identified a number of problems related to the deregulation of the labour market and insufficient protection of workers' rights. This study pointed to the need for further reforms in Kyrgyzstan to ensure more effective protection of labour rights. Bozorov[13] studied the organisational and legal framework for the protection of labour of minors in Uzbekistan. The author pointed out the need to strengthen the protection of children's and adolescents' rights at work. It also emphasised the importance of complying with international standards on child labour in Uzbekistan. Thus, the analysis of these studies shows that the problem of labour rights protection in Central Asian countries is multifaceted. Important areas of research include analysis of legislation, study of the role of trade unions, protection of the rights of vulnerable groups of workers (migrants, minors, etc.), as well as analysis of factors that affect the effectiveness of the implementation of international labour standards.

However, despite the available research, the issue of a comprehensive analysis of the implementation of international labour standards in Central Asian countries remains insufficiently studied. Most studies focus on specific aspects of labour rights, such as the protection of migrants' rights

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[10] A. Khakberdiev, *Current constrains of Uzbekistan labor law*, *Galaxy International Interdisciplinary Research Journal*, 2021, 9(12), pp. 590–597.

[11] S. Akhmetzharov, S. Orazgaliyev, *Labor unions and institutional corruption: The case of Kazakhstan*, *Journal of Eurasian Studies*, 2021, 12(2), pp. 133–144.

[12] K.S. Ramankulov, U.T. Andashev, G. Kachkyn kyzy, *Trends in the legal labour reform policy in the Kyrgyz Republic*, *SHS Web of Conferences*, 2021, 108, 01004.

[13] U.S. Bozorov, *Organizational and legal bases of legal protection of minors' labor in the Republic of Uzbekistan*, *International Scientific and Current Research Conferences*, 2022, 1(1), pp. 78–83.

or the prevention of child labour. Further research is needed that would cover a wider range of issues related to the implementation of international labour standards and take into account the specifics of each country in the region.

The aim of the study was to determine the degree of compliance of national labour legislation in Central Asian countries with international labour standards. The objectives of the study were to: analyse the compliance of individual countries' legislation with key ILO conventions on labour rights; identify and systematise gaps and shortcomings in the legal regulation of labour relations and provide recommendations for the countries under study.

2. Materials and Methods

This study was conducted between January 2024 and March 2025. To achieve this goal, a comprehensive approach was used, which included the following research methods. A comparative analysis of the labour legislation of Kyrgyzstan, Kazakhstan and Uzbekistan with key international labour standards, including ILO conventions, was carried out.

The following legislative acts were considered in the course of the analysis: the Constitution of the Kyrgyz Republic[14], the Law of the Kyrgyz Republic No. 130 "On Trade Unions"[15], the Labor Code of the Kyrgyz Republic[16], the Law of the Kyrgyz Republic No. 4 "On External Labor Migration"[17], Constitution of the Republic of Kazakhstan[18], the Law of the Republic of Kazakhstan No. 211-V "On Trade Unions"[19], the Labor Code of the Republic of Kazakhstan[20], the Law of the Republic of Kazakhstan No. 477-IV "On Population Migration"[21], the Law of the Republic of Uzbekistan No. ZRU-410 "On Amendments and Additions

[14] *Constitution of the Kyrgyz Republic*, Government of the Kyrgyz Republic, Bishkek, 2021.
[15] *Law of the Kyrgyz Republic No. 130 "On Trade Unions"*, Government of the Kyrgyz Republic, Bishkek, 1998.
[16] *Labor Code of the Kyrgyz Republic*, Government of the Kyrgyz Republic, Bishkek, 2004.
[17] *Law No. 4 "On External Labor Migration"*, *op. cit.*
[18] *Constitution of the Republic of Kazakhstan*, Government of the Republic of Kazakhstan, Almaty, 1995.
[19] *Law of the Republic of Kazakhstan No. 211-V "On Trade Unions"*, Government of the Republic of Kazakhstan, Astana, 2014.
[20] *Labor Code of the Republic of Kazakhstan*, *op. cit.*
[21] *Law of the Republic of Kazakhstan No. 477-IV "On Population Migration"*, Government of the Republic of Kazakhstan, Astana, 2011.

to the Law of the Republic of Uzbekistan 'On Labor Protection'"[22], Law of the Republic of Uzbekistan No LRU-588 "On Trade Unions"[23]. The following international labour standards, including conventions, were also considered: Freedom of Association and Protection of the Right to Organise Convention[24], Right to Organise and Collective Bargaining Convention[25], Equal Remuneration Convention[26], Worst Forms of Child Labour Convention[27], Domestic Workers Convention.[28]

The study analysed statistical data on labour relations in Kyrgyzstan, Kazakhstan and Uzbekistan, including data on unemployment, gender pay gap, occupational injuries, etc. Data sources included national statistical services and international organisations: International Trade Union Confederation (ITUC)[29], International Labour Organization[30,31], World Bank Group.[32] Descriptive statistics methods were used to process and analyse statistical data: National Statistical Committee of the Kyrgyz Republic[33], United Nations Economic Commission for Europe[34,35], Bureau of National Statistics of the Agency for Strategic Planning and

[22] *Law of the Republic of Uzbekistan No. ZRU-410 "On Amendments and Additions to the Law of the Republic of Uzbekistan 'On Labor Protection'"*, Government of the Republic of Uzbekistan, Tashkent, 2016.
[23] *Law of the Republic of Uzbekistan No. LRU-588 "On Trade Unions"*, Government of the Republic of Uzbekistan, Tashkent, 2019.
[24] International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention*, International Labour Organization, Geneva, 1948.
[25] International Labour Organization, *Right to Organise and Collective Bargaining Convention*, International Labour Organization, Geneva, 1949.
[26] International Labour Organization, *Equal Remuneration Convention*, International Labour Organization, Geneva, 1951.
[27] International Labour Organization, *Worst Forms of Child Labour Convention*, International Labour Organization, Geneva, 1999.
[28] International Labour Organization, *Domestic Workers Convention*, International Labour Organization, Geneva, 2011.
[29] International Trade Union Confederation, *ITUC Global Rights Index 2023*, International Trade Union Confederation, Brussels, 2023.
[30] International Labour Organization, *World employment and social outlook: Trends 2022*, International Labour Organization, Geneva, 2022.
[31] International Labour Organization, *World employment and social outlook 2023: The value of essential work*, International Labour Organization, Geneva, 2023.
[32] World Bank Group, *World development indicators*, World Bank Group, Washington, 2025.
[33] National Statistical Committee of the Kyrgyz Republic, *Unemployment rate (in percent)*, National Statistical Committee, Bishkek, 2023.
[34] United Nations Economic Commission for Europe, *Non-fatal occupational injury rate per 100,000 workers*, United Nations Economic Commission for Europe, Geneva, 2025.
[35] United Nations Economic Commission for Europe, *Unemployment rate*, United Nations Economic Commission for Europe, Geneva, 2025.

Reforms of the Republic of Kazakhstan[36], Khon[37], International Labour Organization.[38,39]Three case studies were analysed to illustrate problems in the field of labour rights in Kyrgyzstan, Kazakhstan and Uzbekistan. The sources of information for the case studies were court decisions: Supreme Court of the Republic of Kazakhstan[40], Supreme Court of the Republic of Uzbekistan[41], Supreme Court of the Kyrgyz Republic.[42]

The case study method based on official court documents was used to obtain objective, detailed and practically oriented data on the real state of affairs with the protection of labour rights in Kyrgyzstan, Kazakhstan and Uzbekistan. The research was conducted on personal computers with Windows 10/11 and macOS operating systems. Microsoft Word and Google Docs were used to process textual information. Information was searched for in Internet resources using Google Chrome, Mozilla Firefox and Safari web browsers. Bibliographic information management software such as Zotero, as well as the Microsoft Excel spreadsheet processor and Google Sheets services were used to systematise and analyse the information found. Where data visualisation was required, Google Slides was used. The study complied with the ethical standards of scientific activity, including objectivity, impartiality, accuracy and completeness of information. All the research methods used are scientifically sound and provide reliable results. A comprehensive approach to the study ensured a comprehensive analysis of the issues and the formulation of reasonable conclusions.

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[36] Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, *Key indicators of the labor market in the Republic of Kazakhstan (Q3 2024)*, Bureau of National Statistics, Astana, 2024.

[37] E. Khon, *Closing the gender pay gap: A closer look at the issue*, United Nations Development Programme, Astana, 2023.

[38] International Labour Organization, *Women and the world of work in Uzbekistan: Towards gender equality and decent work for all*, International Labour Organization, Geneva, 2023.

[39] International Labour Organization, *Gender-sensitive diagnostics of the informal economy and employment in Uzbekistan: Consultations with social partners*, International Labour Organization, Geneva, 2022.

[40] Supreme Court of the Republic of Kazakhstan, *The Supreme Court pointed out that the termination of housing payments to an internal affairs officer was unjustified*, Supreme Court of the Republic of Kazakhstan, Astana, 2025.

[41] Supreme Court of the Republic of Uzbekistan, *Case 2-1001-2408/22033*, Supreme Court of the Republic of Uzbekistan, Tashkent, 2024.

[42] Supreme Court of the Kyrgyz Republic, *Case GD-1778/24-D4*, Supreme Court of the Kyrgyz Republic, Bishkek, 2024.

3. Results

An analysis of the compliance of labour legislation and practice with ILO international standards in Kyrgyzstan, Kazakhstan, and Uzbekistan shows that all three countries have formally integrated key conventions into national law; however, their practical implementation faces significant challenges and differs in terms of the specific problems. In Kyrgyzstan, which has ratified key ILO conventions, notably: Freedom of Association and Protection of the Right to Organise Convention[43], Right to Organise and Collective Bargaining Convention[44], and Equal Remuneration Convention.[45] Article 35 of the Constitution of the Kyrgyz Republic[46] guarantees citizens the right to freedom of association in political parties, trade unions, and other public associations. The Law of the Kyrgyz Republic No. 130 "On Trade Unions"[47] regulates the activities of trade unions, defining their rights and guarantees of operation. According to Article 15 of this law, "trade unions have the right to represent and protect the labour, socio-economic rights and interests of their members in state authorities and local self-government bodies, as well as in organisations".

Article 28 of the Constitution of the Kyrgyz Republic[48] prohibits forced labour and guarantees equal rights and freedoms for all, regardless of race, ethnic origin, sex, language, origin, religion, political and religious beliefs, property, or other status. The Labor Code of the Kyrgyz Republic[49] contains provisions prohibiting discrimination in the workplace. According to Article 9 of the Labor Code of the Kyrgyz Republic, any discrimination in the workplace is prohibited, in particular the restriction of rights or the granting of advantages based on sex, race, colour, language, religion, political or other beliefs, national or social origin, property, birth, or other status.

Kyrgyzstan is a country of origin, transit, and destination for migrant workers. The Law of the Kyrgyz Republic No. 4 "On External Labor Migration"[50] regulates the employment of Kyrgyz citizens abroad and the

[43] International Labour Organization, *Freedom of Association Convention*, *op. cit.*
[44] International Labour Organization, *Right to Organise Convention*, *op. cit.*
[45] International Labour Organization, *Equal Remuneration Convention*, *op. cit.*
[46] *Constitution of the Kyrgyz Republic*, *op. cit.*
[47] *Law No. 130 "On Trade Unions"*, *op. cit.*
[48] *Constitution of the Kyrgyz Republic*, *op. cit.*
[49] *Labor Code of the Kyrgyz Republic*, *op. cit.*
[50] *Law of the Kyrgyz Republic No. 4 "On External Labor Migration"*, Government of the Kyrgyz Republic, Bishkek, 2006.

protection of their rights. According to Article 2 of this law, the state guarantees the protection of the rights and legitimate interests of citizens of the Kyrgyz Republic who are abroad for the purpose of employment. However, according to the International Labour Organization[51], legislation needs to be improved in terms of ensuring equal rights and opportunities for migrant workers in the areas of employment, social protection, and healthcare. The Labor Code of the Kyrgyz Republic[52] contains provisions on the regulation of non-standard forms of employment, such as temporary work, part-time work, and homeworking. However, there are problems with the practical application of these provisions, especially in terms of ensuring the social protection of workers engaged in non-standard forms of work. Section IV "Labour Protection" of the Labor Code of the Kyrgyz Republic establishes the basic requirements for ensuring workplace safety. According to Article 211 of this code, the employer is obliged to ensure safe working conditions in every workplace. However, the level of industrial injuries and occupational diseases in Kyrgyzstan remains high, especially in sectors such as agriculture, construction, and the mining industry.[53]

The International Labour Organization[54] notes that it is necessary to strengthen control over compliance with labour protection legislation and raise the level of workplace safety culture. In Kyrgyzstan in 2018, the average wage for women was only 71.6% of the average male wage. This represents a deterioration of the situation compared to 2016, when this ratio was 75.3%. Thus, over three years, the gap between men's and women's earnings increased by 3.7 percentage points. Regionally, the lowest ratio of female to male wages in 2018 was recorded in the Jalal-Abad (60.7%) and Talas (63.0%) regions. In the Kyrgyz Republic at the beginning of 2019, the proportion of women among civil servants was 40.3%. However, their representation was unevenly distributed: women held 29.3% of political and special positions, while in administrative positions they held 40.7%. According to the World Economic Forum[55], Kyrgyzstan ranked 93rd in the world for the integrated indicator of the expansion of political rights.

[51] International Labour Organization, *World employment and social outlook 2022*, *op. cit.*
[52] *Labor Code of the Kyrgyz Republic*, *op. cit.*
[53] Bruzelius, Seeleib-Kaiser, *op. cit.*
[54] International Labour Organization, *World employment and social outlook 2022*, *op. cit.*
[55] World Economic Forum, *Global gender gap report*, World Economic Forum, Geneva, 2019.

In Kazakhstan, the Constitution of the Republic of Kazakhstan[56] guarantees the right to freedom of association (Article 24). The Law of the Republic of Kazakhstan No. 211-V "On Trade Unions"[57] regulates the activities of trade unions. According to Articles 4 and 6 of this law, trade unions are established without prior permission based on the free choice of their members to represent and protect their labour rights and interests. However, according to the International Trade Union Confederation[58] report, there was a systematic suppression of the activities of the independent trade union movement in Kazakhstan. It was found that workers were subjected to surveillance, deprivation of liberty, and ill-treatment by state structures that showed signs of authoritarianism. More attention was paid to the persecution of trade union leaders and activists who defended workers' rights.

Frequent cases of their detention and prosecution on fabricated charges were reported. Court proceedings in such cases were often characterised by significant procedural violations and a lack of impartiality, which called into question their legitimacy. In the context of corporate responsibility, cases of violations of workers' rights by individual companies were identified. In particular, Kezbi LLP (Kazakhstan) was mentioned as an entity involved in violating rights or failing to take adequate measures to protect them. Emphasis was placed on the general obligation of businesses to comply with internationally recognised human rights standards, including collective labour rights, and to refrain from any actions that could hinder their practical implementation by workers.

According to the ITUC, Kazakhstan was assigned a rating of 5 ("No guarantee of rights"). Countries in this category were identified as some of the worst in the world for working people. It was noted that even with formal legislation declaring certain rights, workers effectively had no access to them, suffering from autocratic management practices and unfair working conditions. Article 24 of the Constitution of the Republic of Kazakhstan[59] prohibits forced labour and guarantees protection against discrimination. The Labor Code of the Republic of Kazakhstan[60] contains provisions prohibiting discrimination in the workplace. According to Article 6 of the Labour Code, any discrimination in the workplace is prohibited, which has the purpose or effect of violating equal

[56] *Constitution of the Republic of Kazakhstan*, *op. cit.*
[57] *Law No. 211-V "On Trade Unions"*, *op. cit.*
[58] International Trade Union Confederation, *ITUC Global Rights Index*, *op. cit.*
[59] *Constitution of the Republic of Kazakhstan*, *op. cit.*
[60] *Labor Code of the Republic of Kazakhstan*, Government of the Republic of Kazakhstan, Astana, 2015.

opportunities or creating obstacles to the exercise of rights in the field of labour. However, according to the International Labour Organization[61], women in Kazakhstan face discrimination in hiring and wages. The report states that measures need to be taken to ensure gender equality in the workplace, including through information campaigns and the implementation of support programmes for women. In Kazakhstan, there has been a decrease in the gender pay gap, which has narrowed from 32.2% in 2017 to 21.7% in 2021.[62] Data for 2021 show that the highest earners included heads of organisations (521,336 tenge), translators (412,527 tenge), and heads of specialised departments (342,864 tenge). Notably, in all these categories, men earned more than women, by an average of 2,000 tenge.

Kazakhstan is an attractive country for migrant workers from Central Asia and other countries.[63] The Law of the Republic of Kazakhstan No. 477-IV "On Population Migration"[64] regulates issues of entry, exit, stay, and employment of foreign citizens. However, according to the World Migration Report, migrant workers in Kazakhstan often face exploitation, violation of their rights, and limited access to social protection.[65] The report states that it is necessary to strengthen the protection of the rights of migrant workers, in particular by improving migration legislation and strengthening control over compliance with migrants' rights. The Labor Code of the Republic of Kazakhstan[66] contains provisions on the regulation of non-standard forms of employment.

However, according to the International Labour Organization[67], there is a growth in non-standard forms of employment, which may lead to a deterioration of working conditions and a reduction in the level of social protection for workers. The report notes that it is necessary to develop effective mechanisms for regulating non-standard forms of employment to ensure compliance with labour rights and social protection for workers.

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[61] International Labour Organization, *World employment and social outlook 2023*, *op. cit.*

[62] Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, *Gender statistics*, Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, Astana, 2022.

[63] N.O. Baigabylov, K.B. Maslov, M.M. Kozybayeva, Z.Z. Tuleubayev, *The current development trends of relations between Kazakhstan and Turkey: The Eurasian idea, the religious question and migration in the context of studying social history, Middle East Journal of Scientific Research*, 2013, 16(12), pp. 1648–1652.

[64] *Law No. 477-IV "On Population Migration"*, *op. cit.*

[65] M. Mcauliffe, A. Triandafyllidou, *World migration report 2022*, International Organization for Migration, Geneva, 2022.

[66] *Labor Code of the Republic of Kazakhstan*, *op. cit.*

[67] International Labour Organization, *World employment and social outlook 2023*, *op. cit.*

The Labor Code of the Republic of Kazakhstan[68] establishes the basic requirements for ensuring workplace safety. According to Article 201 of this code, the employer is obliged to ensure safety and hygiene at every workplace. However, the level of workplace injuries in Kazakhstan remains high, especially in the mining and construction industries. The International Labour Organization[69] report states that it is necessary to strengthen control over compliance with labour protection legislation and raise the level of workplace safety culture.

In Uzbekistan, active work has been observed on reforming labour legislation and bringing it into line with international standards during the period of 2019 to early 2025.[70] As part of this work, a number of key ILO conventions have been ratified, including Worst Forms of Child Labour Convention[71] and Domestic Workers Convention.[72] A number of laws aimed at protecting workers' rights have been adopted, including the Law of the Republic of Uzbekistan No. ZRU-410 "On Amendments and Additions to the Law of the Republic of Uzbekistan 'On Labor Protection'"[73] and the Law of the Republic of Uzbekistan No LRU-588 "On Trade Unions".[74] According to Article 8 of the Law, trade unions are independent public organisations that are created by citizens on a voluntary basis to represent and protect their social and labour rights and interests. Despite the positive changes, problems remain in ensuring freedom of association, especially in some sectors of the economy. According to the International Trade Union Confederation[75] report, at the regional level, in the Asia-Pacific region, to which Uzbekistan geographically belongs, there was an increase in the level of violence against workers.

The proportion of countries in the region where such incidents were recorded increased from 43% in 2022 to 48% in 2023. Separately, it was reported that ethnic Kazakhs and other Turkic Muslim peoples were subjected to systematic persecution and mass detentions. Cases of the use of forced labour, particularly in the garment industry, were documented, which was classified as a gross violation of human rights. According to the assessment, the Asia-Pacific region was recognised as the second worst in

[68] *Labor Code of the Republic of Kazakhstan*, *op. cit.*
[69] International Labour Organization, *World employment and social outlook 2022*, *op. cit.*
[70] Khakberdiev, *op. cit.*
[71] International Labour Organization, *Worst Forms Convention*, *op. cit.*
[72] International Labour Organization, *Domestic Workers Convention*, *op. cit.*
[73] *Law No. ZRU-410*, *op. cit.*
[74] *Law No. LRU-588 "On Trade Unions"*, *op. cit.*
[75] International Trade Union Confederation, *ITUC Global Rights Index*, *op. cit.*

the world for the observance of workers' rights, with an average score of 4.18 on the ITUC index.

According to the International Labour Organization[76] report, women in Uzbekistan face discrimination in hiring and wages. The effectiveness of the application of legislation in practice also remains a problem. 1.43 million Uzbeks went abroad for work in 1995, mainly to Russia and Kazakhstan. According to International Organization for Migration (IOM) data, migrant workers from Uzbekistan often face exploitation, violation of their rights, and limited access to social protection.[77] The data states that it is necessary to strengthen the protection of the rights of migrant workers. An analysis of the labour market in Uzbekistan revealed significant gender differences related to the level of education, material well-being, and the presence of children. There is a strong correlation between women's participation in the labour market and their level of education. Only 10% of women with general secondary education or lower and 33% of women with full secondary education are employed, compared to 15% and 77% of men, respectively.

However, having higher education drastically changes the situation, as 74% of women with a bachelor's degree or higher are active in the labour market, which is much closer to the employment rate of men with similar education, which stands at 92%. In addition to education, the level of well-being also significantly affects employment, especially for women. The probability that women (aged 16 and over) from the two lowest wealth quintiles will be economically inactive or unemployed exceeds 50%, while among men from the lowest wealth quintile this figure is 39%, and from the second lowest quintile – 32%. The presence of young children also has a different impact on the labour force participation of women and men. In the case of men, a larger number of young children is associated with a higher probability of employment, while for women the opposite trend is observed: they are significantly less likely to work outside the home if they have more children.

Insufficient effectiveness of law enforcement mechanisms is one of the key problems in the field of labour rights in all three countries. According to the International Trade Union Confederation[78] report, Kyrgyzstan, Kazakhstan, and Uzbekistan experience problems with the effective application of labour legislation. This manifests itself in insufficient control over compliance with labour rights, limited access to justice for

[76] International Labour Organization, *World employment and social outlook 2023*, *op. cit.*
[77] Mcauliffe, Triandafyllidou, *op. cit.*
[78] International Trade Union Confederation, *ITUC Global Rights Index*, *op. cit.*

workers, and a low level of legal awareness. One of the reasons for the low effectiveness of law enforcement is the lack of resources in state bodies responsible for monitoring compliance with labour legislation.[79] Limited access to justice for workers is also a serious problem.

In all three countries, there are barriers for workers to go to court, such as high court costs, lengthy litigation procedures, and the risk of persecution by employers. According to the study "National baseline assessment on business and human rights in Kazakhstan"[80], it is necessary to simplify the procedures for resolving labour disputes in courts, reduce court costs, and ensure the protection of workers from persecution by employers. The low level of legal awareness among workers also complicates the protection of their rights. According to the International Labour Organization[81] study, many workers are unaware of their rights or do not know where to turn in case of their violation. Informal employment is a widespread phenomenon in the countries of Central Asia.

According to the International Labour Organization[82], the share of informal employment in Kyrgyzstan is about 30%, in Kazakhstan – 20%, and in Uzbekistan – 60%. This makes it difficult to ensure compliance with labour rights and social protection for a significant proportion of workers. Workers employed in the informal sector often do not have employment contracts, do not receive the minimum wage, do not have social insurance, and are not entitled to leave. Informal employment also contributes to the exploitation of workers, as employers can exploit their vulnerable situation.[83] Labour migration is an important phenomenon in the countries of Central Asia. Citizens of these countries go abroad for work, mainly to Russia and Kazakhstan. Migrant workers often face discrimination, exploitation, and violation of their rights.[84]

According to the report of the International Organization for Migration, 16,000 victims of human trafficking were identified in Europe and Central Asia.[85] Of these, 7,000 were victims of sexual exploitation and 5,900 were

[79] Z. Khamzina, Y. Buribayev, P. Almaganbetov, A. Tazhmagambet, Z. Samaldykova, N. Apakhayev, *Labor disputes in Kazakhstan: Results of legal regulation and future prospects, Journal of Legal, Ethical and Regulatory Issues*, 2020, 23(1), pp. 1–14.

[80] United Nations Development Programme, *National baseline assessment on business and human rights in Kazakhstan*, United Nations Development Programme, Astana, 2023.

[81] International Labour Organization, *Women and the world of work*, *op. cit.*

[82] International Labour Organization, *World employment and social outlook 2023*, *op. cit.*

[83] B.V. Shahin, M.S. Rashad, H.A. Leyla, A.S. Elnur, J.E. Rufat, *Modeling the assessment of the connection of migration and economic development: Case of Azerbaijan, Journal of Eastern European and Central Asian Research*, 2021, 8(1), pp. 110–120.

[84] Toshpo'latov, *op. cit.*

[85] Mcauliffe, Triandafyllidou, *op. cit.*

victims of forced labour. The rest were victims of other forms of exploitation. One of the problems is illegal migration, which makes migrants even more vulnerable to exploitation. Illegal migrants cannot seek help from law enforcement agencies or trade unions because they fear deportation. In addition, there are problems with the recognition of migrants' qualifications and their integration into the society of the host country.

The effectiveness of the implementation of international labour standards is influenced by a complex set of factors, including economic, political, and social aspects. The economic development of the country, the structure of the economy, and the state of the labour market significantly affect the possibilities for implementing international labour standards.[86] Countries with a higher level of economic development have more resources to ensure compliance with labour rights and social protection. The structure of the economy also plays an important role. For example, in countries (such as Kyrgyzstan and Uzbekistan) with a high proportion of agriculture or informal employment, it is more difficult to ensure compliance with labour standards. Political will and the level of democracy in a country are important factors determining the priority of protecting labour rights.[87]

In countries with authoritarian regimes (Kazakhstan, Russia, Myanmar), violations of trade union rights and obstruction of collective bargaining are often observed. The level of corruption can also negatively affect the application of labour legislation.[88] Social factors, such as the level of social awareness, the culture of compliance with laws, and the activities of civil society, also affect the effectiveness of the implementation of international labour standards. In countries with a high level of social awareness and active trade unions and human rights organisations, more effective protection of labour rights is observed.[89] For example, Germany: influential industry trade unions (such as IG Metall), a unique system

[86] World Bank Group, *op. cit.*

[87] S. Nenko, N. Tyukhtenko, T. Krasnopolska, *Administrative and legal support for the management of integrated economic structures in a globalized business processes, Baltic Journal of Economic Studies*, 2021, 7(4), pp. 145–152.

[88] A. Oleksy-Gebczyk, *Inflation in Poland: Macroeconomic Analysis, Academy Review,* 2024, 2, pp. 242–255.

[89] B. Miethlich, A.G. Oldenburg, *Employment of persons with disabilities as competitive advantage: An analysis of the competitive implications, Education Excellence and Innovation Management through Vision 2020*, International Business Information Management Association, Granada, Spain, 2019, pp. 7146–7158.

(Mitbestimmung) that gives employee representatives seats on the supervisory boards of large companies.

A court case in Kyrgyzstan in 2024.[90] Senior bailiff K.M.K. appealed in court against the disciplinary sanction "Катуу сөгүш" (reprimand) imposed on him by the head of the Zhalal-Abad Office of the Judicial Department under the Supreme Court of the Kyrgyz Republic. The penalty was imposed for violations committed before K.M.K.'s appointment to the position. The court found the plaintiff's arguments to be substantiated and cancelled the disciplinary sanction. This case demonstrates the importance of following the procedure for imposing disciplinary sanctions and taking into account all the circumstances of the case. Authorities imposing disciplinary sanctions must act within the law and take into account the rights of employees.

The court considered a case in Uzbekistan, a citizen of Shokenov K.T., who filed a claim for recognition of his right to a privileged pension.[91] The basis for the claim was the fact that the plaintiff had worked in harmful proceedings for a certain period of time. The court, having examined the evidence (employment record book, witness statements, etc.) and applied the relevant legal provisions, concluded that the plaintiff was entitled to a privileged pension. The court's decision is motivated by the fact that the plaintiff's work in harmful proceedings during the specified period entitles him to a reduced retirement age. This decision is important for protecting the rights of employees, especially those working in hazardous industries. It confirms that the absence of formal documents should not deprive employees of their right to benefits if other evidence confirms their rightfulness.

In a court case in Kazakhstan in 2024, an employee of the internal affairs bodies in Astana was seconded to study for a master's degree.[92] In connection with this, his housing allowance was suspended. The court of first instance dismissed the claim to resume the payments, but the appeal and cassation courts found this decision to be unlawful. This case demonstrates the importance of clear legal regulation of labour relations and social guarantees for employees. The absence of clear regulations can lead to violations of employees' rights and labour disputes. Social dialogue could help improve the legislation and prevent similar situations in the future. In order to present the results of the analysis of the compliance of the labour legislation of Kyrgyzstan, Kazakhstan and Uzbekistan with

[90] Supreme Court of the Kyrgyz Republic, *op. cit.*
[91] Supreme Court of the Republic of Uzbekistan, *op. cit.*
[92] Supreme Court of the Republic of Kazakhstan, *op. cit.*

international labour standards, Table 1 has been developed to reflect the key aspects of this study.

Table 1: Comparative analysis of the compliance of labour legislation with international standards.

Country	Freedom of association	Prohibition of forced labour and discrimination	Protection of migrants' rights	Regulation of non-standard forms of employment	Ensuring labour safety
Kyrgyzstan	Key ILO Conventions have been ratified and are guaranteed by the Constitution and legislation. However, there are restrictions on the establishment and operation of independent trade unions	Guaranteed by the Constitution and legislation	There are gaps in the legislation on the protection of migrants' rights, in particular in terms of access to social protection	Regulated by law, but there are problems with practical application, especially in terms of ensuring social protection of employees	Legislation sets basic requirements, but injury rates remain high, particularly in agriculture, construction and mining
Kazakhstan	Key ILO conventions are ratified and guaranteed by the Constitution and legislation	Guaranteed by the Constitution and legislation, but there are problems with discrimination against women in recruitment and pay	There are problems with exploitation of labour migrants, violation of their rights and limited access to social protection	Regulated by law, but there is a tendency to increase non-standard forms of employment, which may lead to deterioration of working conditions and lower level of social protection of employees	Legislation sets out basic requirements, but injury rates remain high, particularly in the mining and construction industries
Uzbekistan	Problems with freedom of association in some sectors of the economy. There are restrictions	Guaranteed by law, but there are problems with the protection of vulnerable groups of workers, such	There are problems with exploitation of labour migrants and access to social	Regulated by law, but there are problems with practical application	Legislation sets basic requirements, but injury rates remain high

	on the establishment and operation of independent trade unions	as women, youth and persons with disabilities	protection.		

Source: compiled by the authors based on Constitution of the Kyrgyz Republic[93], Constitution of the Republic of Kazakhstan[94], Law of the Republic of Uzbekistan No. ZRU-410 "On Amendments and Additions to the Law of the Republic of Uzbekistan 'On Labor Protection'"[95], International Trade Union Confederation[96], International Trade Union Confederation[97], International Labour Organization[98,99], World Bank Group.[100]

The analysis suggests that all three countries have made some progress in implementing international labour standards. At the same time, there are still problematic aspects that require further attention, including the protection of migrants' rights, gender equality, regulation of non-standard forms of employment and improvement of working conditions. The data presented here allows us to outline the key labour issues in the three Central Asian countries, demonstrating both common challenges and national specificities. In Kyrgyzstan, the unemployment rate in 2023 was 4.1%[101], which is relatively low, but as noted, it may conceal problems of underemployment or workers being forced to accept worse working conditions. More telling is the estimate of the share of informal employment at 30%[102], which indicates that a significant proportion of Kyrgyz workers do not have access to social protection and guarantees provided by labour legislation. An additional problem is the insufficient level of occupational safety, as evidenced by the occupational injury rate of 0.221 cases per 1,000 employees.[103]

In Kazakhstan, the unemployment rate in 2024 was slightly higher at 4.9%[104], which is also a relatively low figure, but does not exclude the

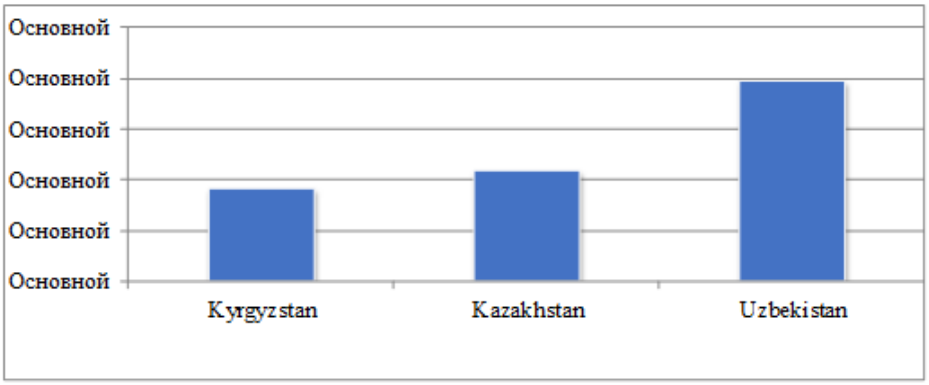
[93] *Constitution of the Kyrgyz Republic*, *op. cit.*
[94] *Constitution of the Republic of Kazakhstan*, *op. cit.*
[95] *Law No. ZRU-410*, *op. cit.*
[96] International Trade Union Confederation, *ITUC Global Rights Index*, *op. cit.*
[97] International Trade Union Confederation, *ITUC Global Rights Index*, *op. cit.*
[98] International Labour Organization, *World employment and social outlook 2022*, *op. cit.*
[99] International Labour Organization, *World employment and social outlook 2023*, *op. cit.*
[100] World Bank Group, *op. cit.*
[101] National Statistical Committee, *op. cit.*
[102] National Statistical Committee, *op. cit.*
[103] United Nations Economic Commission for Europe, *op. cit.*
[104] Bureau of National Statistics, *op. cit.*

existence of structural problems. One of these problems is significant gender inequality: the gender pay gap is about 25.2%[105], indicating significant discrimination against women in the workplace. The situation with occupational safety is particularly alarming: the occupational injury rate of 0.415 cases per 1,000 employees[106] is the highest among the three countries under review and indicates serious systemic shortcomings in this area.

Uzbekistan demonstrates the most acute problems with employment and labour formalisation. The unemployment rate in 2022 was 8.9%[107], the highest in the region, indicating serious difficulties in the labour market. The situation is exacerbated by the extremely high share of informal employment, estimated at 60%[108], also the highest in the region, which means that most workers in the country are deprived of social protection. The gender pay gap in Uzbekistan is even higher than in Kazakhstan, at around 36.6%[109], indicating deep problems with gender equality. At the same time, according to official data, the rate of occupational injuries in Uzbekistan is the lowest among the three countries – 0.078 cases per 1,000 employees[110], although this still indicates problems, and high informality may affect the completeness of accident reporting. Overall, the analysis points to a set of labour problems in the region: high unemployment and dominant informality in Uzbekistan, a critical situation with occupational safety and gender pay inequality in Kazakhstan, and significant informality and occupational safety problems in Kyrgyzstan. These factors create an environment of increased vulnerability of workers to violations of their labour rights.

105 Agency for Strategic Planning and Reforms, *op. cit.*
106 United Nations Economic Commission for Europe, *op. cit.*
107 United Nations Economic Commission for Europe, *op. cit.*
108 International Labour Organization, *Gender-sensitive diagnostics*, *op. cit.*
109 International Labour Organization, *Gender-sensitive diagnostics*, *op. cit.*
110 United Nations Economic Commission for Europe, *op. cit.*

Figure 1 has been developed to provide a visual representation of unemployment statistics in Central Asia.



Source: compiled by the authors based on National Statistical Committee of the Kyrgyz Republic[111], United Nations Economic Commission for Europe[112], Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan.[113]

To improve the labour rights situation in Central Asia, comprehensive measures are needed. First, work should continue to harmonise labour legislation with international standards, eliminating gaps and ambiguities, in particular in terms of protecting migrants' rights, regulating non-standard forms of employment and ensuring labour safety. In Kyrgyzstan, legislation on the protection of migrants' rights needs to be improved to ensure equal access to social protection and healthcare. In Kazakhstan, measures should be taken to ensure gender equality in the workplace, including through information campaigns and the implementation of programmes to support women. In Uzbekistan, it is necessary to ensure full respect for trade union rights, including the right to freedom of association and collective bargaining.

Second, it is important to strengthen law enforcement by ensuring effective monitoring of labour law compliance, access to justice for workers, and legal awareness. It is necessary to increase the number of labour inspectors, improve their qualifications and ensure their independence. It is necessary to simplify the procedures for resolving labour disputes in courts, reduce court costs and ensure that employees are protected from harassment by employers. Information campaigns should be conducted to raise legal awareness among employees. Thirdly, it

[111] National Statistical Committee, *op. cit.*
[112] United Nations Economic Commission for Europe, *op. cit.*
[113] Bureau of National Statistics, *op. cit.*

is necessary to create favourable conditions for the development of social dialogue between the government, trade unions and employers in order to reconcile the interests of all parties to labour relations. Fourth, it is important to develop and implement effective measures to reduce the level of informal employment, in particular by creating favourable conditions for the development of small and medium-sized businesses, stimulating the formalisation of labour relations and making formal employment more attractive. Fifth, it is necessary to ensure protection of labour migrants' rights against discrimination and exploitation, in particular through ratification and implementation of relevant international conventions, improvement of migration legislation and strengthening of control over the observance of migrants' rights.

The analysis of statistical data and case studies has led to the following conclusions. A comprehensive approach to solving problems is needed. Statistics show that there are systemic problems in the field of labour rights in Central Asian countries. To address them, a comprehensive approach is needed, including measures to improve legislation, strengthen law enforcement, develop social dialogue, combat informal employment and protect the rights of migrants. International cooperation also remains important. Central Asian countries need the support of international organisations such as the ILO, IOM and ITUC to improve their labour rights situation. International cooperation can facilitate the exchange of experience, provide technical assistance, and strengthen monitoring of compliance with international standards.

Civil society engagement is also important. The active involvement of trade unions, human rights organisations and other civil society actors is essential for the protection of labour rights.[114] Civil society can play an important role in monitoring the situation, providing legal assistance to workers and conducting advocacy campaigns. The study provided a comprehensive picture of the state of implementation of international labour standards in Central Asian countries. Both positive trends and problematic aspects were identified. Positive trends include the ratification of key ILO conventions, the adoption of laws aimed at protecting workers' rights, and the growth of awareness of labour rights. However, there are still problematic aspects that require further attention, including the protection of migrants' rights, gender equality, regulation of non-standard forms of employment and improvement of working conditions.

[114] B. Miethlich, L. Slahor, *Employment of persons with disabilities as a corporate social responsibility initiative: Necessity and variants of implementation, CBU International Conference Proceedings 2018: Innovations in Science and Education*, 2018, 6, pp. 350–355.

Further progress in labour rights protection requires comprehensive measures aimed at improving legislation, strengthening law enforcement, developing social dialogue, combating informal employment and protecting migrants' rights. International organisations and civil society should play an important role in this process.

4. Discussion

This study has provided important results regarding the implementation of international labour standards in Central Asia. The analysis of the legislation of Kyrgyzstan, Kazakhstan and Uzbekistan revealed both positive trends and problematic aspects that require further study and resolution. On the one hand, all three countries have ratified key ILO conventions, which indicates their commitment to international labour standards. This fact is consistent with the study by Nurmanov[115], which emphasised the importance of international labour regulation and points to a general trend towards harmonisation of national legislation with international labour standards. On the other hand, the study identified problems with the effective application of legislation, protection of the rights of certain categories of workers, combating informal employment and ensuring decent working conditions for labour migrants.

The findings of the study are consistent with the work of other scholars who also point to the existence of certain problems in the field of labour rights in Central Asia. For example, Tulegenov et al.[116] examined the problems of internal migration in Kyrgyzstan and emphasised the need for legal regulation and management of migration flows. The study complemented this thesis by pointing to specific problems in Kyrgyzstan's legislation that hinder the effective protection of internal migrants' rights. In particular, this concerns limited access to social protection, insufficient opportunities for trade unionisation and cases of discrimination on regional grounds.

Focusing on the analysis of legislation, it is important to note that the study revealed certain discrepancies between the national legislation of Central Asian countries and international labour standards. For example, in some countries, there are restrictions on freedom of association and

[115] K.R. Nurmanov, *International standards on labor activity of foreign citizens*, in *International Conference on Advance Research in Humanities, Applied Sciences and Education*, Zien Journals Publishing, New York, 2022, pp. 528–532.

[116] T. Tulegenov, T.K. Ismanov, G.T. Kulalieva, *Organizational and legal regulation of labor migration in the Kyrgyz Republic*, *E3S Web of Conferences*, 2024, 535, 02007.

trade union activity, which contradicts ILO Freedom of Association and Protection of the Right to Organise Convention.[117] There have also been problems with gender equality at work, despite the ratification of ILO Equal Remuneration Convention.[118] These discrepancies point to the need to further improve legislation and bring it into full compliance with international standards. An important aspect of the study is the analysis of statistical data that make it possible to assess the scale of labour rights problems and the effectiveness of state policy in this area. For example, the high level of informal employment in Kyrgyzstan and Uzbekistan indicates the need to take measures to encourage the formalisation of labour relations and provide social protection for informal workers.

The significant gender pay gap in Kazakhstan indicates the existence of discrimination against women in the workplace and the need to introduce effective mechanisms to ensure equal pay for equal work.[119] The analysis of the case studies allowed illustrate specific problems in the field of labour rights protection and show how these problems are solved in practice. For example, the court cases reviewed in the study demonstrate the importance of an independent judiciary in protecting employees' rights and ensuring compliance with labour laws. At the same time, these cases also point to gaps in the legislation and the need to improve it.

These results are consistent and correlate with the main points made in authoritative studies on international labour law, in particular in Servais.[120] The author emphasised that although international labour standards, developed mainly within the framework of the ILO, are a necessary basis for balanced social and economic development, such development has not occurred at the global level to a large extent because many states have failed to ensure effective implementation of these standards at the national level, despite their formal recognition. The study provided concrete empirical evidence of this thesis on the example of three Central Asian countries.

The identified problems with the implementation of freedom of association in Kazakhstan, where systematic suppression of independent trade unions is recorded despite the ratification of Conventions 87 and 98, directly illustrate what the author called the "failure to honour" by states of international standards in the field of industrial relations and trade

[117] International Labour Organization, *Freedom of Association Convention*, *op. cit.*

[118] International Labour Organization, *Equal Remuneration Convention*, *op. cit.*

[119] Z. Khamzina, Y. Buribayev, Y. Yermukanov, A. Alshurazova, *Is it possible to achieve gender equality in Kazakhstan: Focus on employment and social protection, International Journal of Discrimination and the Law*, 2020, 20(1), pp. 5–20.

[120] J.M. Servais, *International labour law*, Kluwer Law International, The Hague, 2024.

union protection. Similarly, the persistent and significant gender pay gaps in all three countries, despite the ratification of Convention No. 100 and national anti-discrimination norms, confirm the researcher's findings of difficulties in achieving real equality of opportunity and treatment in practice.

The issues identified in the study on the protection of migrant workers' rights, regulation of non-standard forms of employment and occupational safety and health are also key areas regulated by international labour law, but require proper implementation at the national level. The conclusion about the complex impact of political (authoritarian tendencies), economic (level of development, informality) and institutional (weakness of law enforcement) factors on the implementation of labour standards resonates with Servais' analysis of the "barriers to its full effectiveness" of international labour law. Thus, focusing on the specific region of Central Asia and using an analysis of legislation, international reports and case studies, the study empirically confirmed and elaborated on the general, global findings of the researcher[121] regarding the gap between the formal existence of international labour standards and their actual operation at the national level. The study showed how this global phenomenon manifests itself in the specific conditions of Kyrgyzstan, Kazakhstan and Uzbekistan.

Considerable attention was paid to the issue of protecting the rights of labour migrants, which is relevant for all three Central Asian countries. The study's findings confirm the conclusions of Nurmanov[122] about the need for international regulation of migrant workers' labour relations based on conventions and international agreements. At the same time, the study pointed to gaps in the national legislation of Central Asian countries in terms of protecting migrants' rights, which is consistent with the findings of Tulegenov et al.[123] on the problems of irregular labour migration in Kyrgyzstan. In particular, it is necessary to ensure more effective access to social protection, healthcare and education for migrants, as well as to strengthen measures to combat discrimination and exploitation of migrants in the workplace. A study by Zhuang and Yu[124] analysing the impact of the new labour law on nurses' working hours in Taiwan demonstrated the importance of taking into account the specifics

[121] Servais, *op. cit.*
[122] Nurmanov, *op. cit.*
[123] Tulegenov et al., *op. cit.*
[124] Z.Y. Zhuang, V.F. Yu, *Analyzing the effects of the new labor law on outpatient nurse scheduling with law-fitting modeling and case studies*, *Expert Systems with Applications*, 2021, 180, 115103.

of different professions when developing and implementing labour legislation. The authors pointed out that the new laws may pose challenges to working time planning in certain industries, and that trade-offs need to be made between protecting workers' rights and ensuring organisational efficiency. Further research on this issue is needed and effective measures to ensure working time planning in the labour sector should be developed, such as awareness campaigns, women's support programmes and increased enforcement of labour law.

In summary, the implementation of international labour standards is an important factor in the sustainable development of Central Asian countries. This study has identified both positive trends and problematic aspects in this area. The findings can be used to develop an effective state labour policy aimed at protecting workers' rights and ensuring social stability. It is important to continue research in this area, focusing on the problems of certain categories of workers, the impact of technological change on the labour sphere and the strengthening of the role of social dialogue.

5. Conclusions

This study has allowed for a comprehensive analysis of the state of implementation of international labour standards in the labour law of Kyrgyzstan, Kazakhstan and Uzbekistan. It is established that all three countries have ratified the key ILO Conventions and enshrined fundamental labour rights and freedoms in national legislation, demonstrating their commitment to comply with international labour standards. This indicates positive dynamics in the development of labour legislation in Central Asia and their integration into the global legal space.

At the same time, a number of problems have been identified that prevent the effective application of international standards in practice. These include the inefficiency of enforcement mechanisms, the high level of informal employment, violations of the rights of labour migrants, gender inequality in remuneration, and others. These problems need to be addressed in a comprehensive manner, taking into account the specifics of each country and involving all stakeholders – government, trade unions, employers and civil society.

The analysis showed that the formal existence of legal guarantees does not ensure their full implementation. While the rights to freedom of association, equality and the prohibition of forced labour are enshrined in the constitutions and codes of the three countries, in practice they are often hampered by administrative obstacles, the lack of independent

judicial oversight or an authoritarian political context. In Uzbekistan and Kazakhstan, there are restrictions on freedom of trade union activity, in particular with regard to the registration and operation of independent associations.

Informal employment also remains an important challenge, reaching critical proportions – from 20% in Kazakhstan to 60% in Uzbekistan. Working conditions in the informal sector are often precarious, not regulated by contracts, and workers lack access to basic social services and legal protection.

The study also found that the legal regulation of non-standard forms of employment, such as temporary or remote work, is not always accompanied by an adequate level of social protection for workers. This creates new challenges in the context of changes in the labour market and the development of the digital economy.

Occupational health and safety issues remain, especially in high-risk sectors (mining, construction, agriculture). Despite the existence of legislative norms, the level of occupational injuries in Kyrgyzstan and Kazakhstan remains high, indicating a need to strengthen the inspection function and the culture of occupational safety.

Insufficient legal awareness among the population, difficulty in accessing justice, lack of resources for regulatory authorities and the risk of harassment by employers further reduce the effectiveness of enforcement. Although individual court cases in the three countries demonstrate the ability of national courts to protect labour rights, such cases are not systematic.

Overall, the effective implementation of international labour standards requires not only legal reforms, but also political will, strengthening of institutions, development of social dialogue and broad engagement of civil society. International cooperation with the ILO, IOM, ITUC and other organisations that can provide technical support, independent monitoring and exchange of best practices is of particular relevance.

A limitation of the study is the lack of available statistical data and empirical research on the implementation of international labour standards in Central Asian countries. Prospects for further research in this area are related to the study of the impact of technological changes on the labour sphere, analysis of the effectiveness of state employment policy and development of recommendations for improving working conditions and protecting workers' rights. It is also important to continue researching the problems of certain categories of workers, such as women, migrants, people with disabilities and informal sector workers, ensuring gender

equality in the labour market, combating discrimination and creating equal opportunities for all workers.

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ILO Prescription on Triangular Employment Relationship and the Nigerian Court of Appeal Response: A Comparative Exegesis with Selected Jurisdictions

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Abstract. Triangular Employment Relationship (TER) is a situation where an employer hire persons for the use of another. TER, is a global phenomenon as acknowledged by the International Labour Organisation (ILO). In Nigeria, its predominance is in the banking, oil and gas sectors. The main challenge with this employment practice, aside the issue of when does it exist, has always been: between the Agent and End-User employer, who is the actual employer of the employee (s) for the purposes of liability. Recently, the Court of Appeal (CA) adjudicated over this subject in Luck Guard Ltd. v. Adariku & Ors. This paper adopts comparative method juxtaposing the CA perspective to TER *vis-à-vis* the stance of the National Industrial Court of Nigeria (NICN) against the backdrop of ILO prescription to ascertain compliance level. It discusses the impact of the decision on labour and employment relations in Nigeria. On comparative basis, it examined the practice and legal framework on TER in Nigeria with South Africa, Namibia, and Ghana aimed at drawing lessons for Nigeria as well as interrogates the stance of the ILO towards TER. It found that the CA's decision in the Adariku's Case was reached per incuriam unlike that taken by the NICN, the position taken by the CA in the Adariku's Case is otiose to the ILO's prescription on TER as well

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as the practice in South Africa, Namibia and Ghana. It recommends that the CA should jettison the position in subsequent cases and an urgent review of Nigerian law to conform to international minimum best standards on regulation of TER prescribed by the ILO and practiced by progressive jurisdictions.

Keywords: *Non-standard employment, Triangular employment relationship, ILO, Ghana, South Africa, Nigeria.*

1. Introduction

Traditionally, employment contract is between two parties, the employer and its employee (s) bestowing rights and obligations *qua* parties. In fact, the definition of contract of employment under section 91 of the Labour Act[1] admits of this traditional model of employment contract.[2] However, owing to several changes precipitated by legal and socio-economic exigencies in the world of works, new forms of employment relationships have evolved and are displacing the traditional notion of employment contract globally.[3] Non-standard forms of employment are employment relationships that detract from the traditional two-party employment relationship with vagaries that make them distinct from standard employment.[4] These non-standard employment could be in the form of

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[1] Labour Act Cap. L1 Laws of the Federation of Nigeria (LFN) 2004.
[2] T Adeshina and O Aiyepola "Re-Evaluating the Triangular Employment Model: The Potential Exposures and Mitigating Strategies" https://jee.africa/re-evaluating-the-triangular-employment-model-the-potential-exposures-and-mitigating-strategies/ accessed 1 March 2023.
[3] AL Kalleberg, "Nonstandard Employment Relations: Part-Time, Temporary and Contract Work" (2000) 26 *Annual Review of Sociology* 340-342.
[4] RA Danesi, "Non-Standard Work Arrangements and the Right to Freedom of Association in Nigeria" (2010) 4(4) *Labour Law Review* 1-41.

outsourcing, contract staffing, casualisation or triangular employment which is the focus of this article.[5]

It has become commonplace for an employer to employ persons and have them work for another employer with concomitant roles and obligations.[6] Thus, under this arrangement, the Private Employment Agency (PEA), upon recruitment, deploys the employee (s) to another employer known as End-User (EU) to perform work or render services. This type of employment relationship is known as triangular employment relationship or ambiguously disguised triangular employment relationship.[7] In TER, there are three as opposed to the traditional two parties to the contract. It is a global phenomenon as the International Labour Organisation has recognised its global existence and disruption of traditional employment practice. In Nigeria, TER is predominant in the construction, security, banking and oil and gas sector which is the most notorious.

Interestingly, the novelty of TER makes it explicably unregulated by the Nigerian labour regulatory framework. Hence, the Federal Ministry of Labour and Employment (FMLE) under the control of the Minister of Labour and Employment (MLE), pursuant to the powers conferred on the Minister under the Labour Act, issued guidelines on contract staffing and outsourcing in the oil and gas sector which is tacitly applicable to all forms of non-standard employment practices mentioned above. Given it notoriety, the main issue associated with TER practice is, with regards to liability, who, between the Primary Employer (Agent-Employer) (PE) and End-User Employer (EE), is the employer of the employee and therefore liable to him and third parties for his/her act/omissions? This issue is front burner because the nature of TER is such that apparently seeks to veil the employer therefore requiring the piercing and uncovering of the triangular veil of disguise. The NICN by virtue of its exclusive original civil jurisdiction over labour and employment has adjudicated over the subject of TER being a labour/employment issue therefore coming within its exclusive original civil jurisdiction.

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[5] CS Ibekwe, "Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison" (2016) 7(2) *NAUJILJ* 82.

[6] H Eghwubare, "A Critical Analysis of Triangular Employment" https://www.aaachambers.com/articles/a-critical-analysis-of-triangular-employment/ accessed 24 March 2025.

[7] OM Atoyebi "An Appraisal of Triangular Employment Relationship under the Nigerian Law" https://omaplex.com.ng/an-appraisal-of-triangular-employment-relationship-under-the-nigerian-law/ Accessed 3 February, 2026.

Recently, the CA in *Luck Guard Ltd. v. Mr. Felix Adariku*[8] entertained an appeal from the NICN pertaining to TER and incidental matters. The CA, in upholding the appeal, held that the relationship between the appellant, the respondents and the third party lacked the colouration of TER despite the contrary oral evidence tendered by the respondents at the lower court. The court also held that a written employment contract is the only means of proving the existence of an employment contract and its absence means non-existence of such a relationship. As far as civil appeals from the NICN are concerned, the decision of the CA on them are final.[9] Hence, the CA is a policy making court on such matters and its decisions, aside being final, have far reaching effect and impact. Thus, what is the potential impact (s) of the CA holdings on the means of proving/establishing contract of employment and attitude towards TER in Nigeria? Does its stance accord with international best practices in labour relationships laid down by the ILO? How does its stance impact decent work and security of employment in Nigeria? Are there jurisdictions from which Nigeria can glean some lessons from the practice of TER? This paper seeks to answer these questions in reviewing this decision.

This is done by adopting doctrinal and comparative methods while placing reliance on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, Labour Act, 2004, National Industrial Court Act, 2006, Caselaw and secondary data such as articles in learned journals, textbooks, online materials, ILO Conventions and Recommendations. These data were subjected to rigorous jurisprudential and content analysis revolving on the issue under discourse from where findings were made, conclusion drawn and recommendations in response to the objectives and answers to the research questions are proffered.

Regarding structure, the paper is divided into four sections. Section one contains the introduction. Section two focuses on the facts and holdings of the CA in the decision under review. Section three is an exegesis on matters arising from the decisions. Section four is a survey of the stance of ILO on TER and its practice in selected jurisdictions. Section five contains the conclusion and recommendations.

[8] Unreported Suit No: CA/B/1061/2020 Judgment delivered 15th December 2022.

[9] *Skye Bank Plc. v. Iwu* [2017] 7 SC (Part 1) 1.

2. *Luck Guard Ltd. v. Mr. Felix Adariku* - Examined

The brief facts of the case are as follows: the first respondent i.e. (Mr. Felix Adariku) and 257 other co-workers (i.e. the Employees) as claimant instituted an action before the NICN against the appellant whom Shell E&P (End User) had outsourced some of its non-core operations to together with six of the companies as defendants (Private Employment Agency). He and the co-workers sourced by the six PEA sought for sundry declarative reliefs especially that the 1st respondent (i.e. the End User, shell E&P) was their employer, that the failure of the 1st respondent to issue him and other employees written statement after three months of being employed required by the Labour Act, 2004 evincing the terms and conditions of the employment was unlawful and an unfair labour practice and as well that the act of the 1st respondent interviewing them, employing them and thereafter contract and interpose intermediaries in the person of 2nd to 6th respondents as their employer is unlawful and an unfair labour practice that is contrary to international best labour practices and standards. They also sought damages. The 1st and 6th respondent (The PEA used by the End-User, Shell E&P) vide their statement of defence, denied any liability while the 3rd, 4th and 5th respondent did not file any defence. The case went unto trial and after trial, the trial court delivered a well-considered judgment on the 26th day of October, 2018 wherein it granted some of the reliefs sought by the Claimants.

Being aggrieved by the decision of the trial court, Shell E&P (End User) appealed the decision with Appeal No: CA/ABJ/CV/563/2020 while one of the PEA (i.e. Luck Guard Ltd.) filed a parallel appeal marked Appeal No: CA/A/1061/2020: Luck Guard Limited v. Felix Adariku & 5 Ors. to the Court of Appeal (CA). Since the issues raised in both appeal were substantially the same, the determination of one, effectively settles the other. Our analysis here is based on the decision in the Appeal No: CA/A/1061/2020: Luck Guard Limited v. Felix Adariku & 5 Ors. Although the appellant submitted four issues for the determination of the court, our discussion here is limited to only two i.e. whether the respondents/claimant placed enough oral and documentary evidence to prove that there existed a triangular employment relationship. At the CA, the respondent raised a preliminary objection to the competence of the appeal and urged the court to dismiss same for being incompetent. We shall now proceed to interrogate the issues submitted for and determined by the Court of Appeal as well as the matters arising from their determination by the Court of Appeal

3. Matters Arising from the Decision of *Luck Guard Ltd. v. Mr. Felix Adariku*

This section of the paper identifies and discusses matters arising from the decision of the court. However, it is apposite to state at this juncture that although several issues have arisen from the decision; the focus shall be limited to only two issues which are regarded as germane and fundamental. These issues are: whether a contract of employment must be in writing for it to be valid and whether from the oral evidence of the Respondents before the court, they had established the existence of triangular employment relationship.[10]

At page 21 of the judgment, the CA held that "in labour law, it is very significant to know that the contract of employment binding the employer and the employee is normally outlined in a letter of employment/appointment. In the instant case, there is no letter of employment indicating that the 2nd respondent recruited or gave employment to the 1st respondent, issues of contract of employment are definite things. They are not what one can under any guise consign to circumstantial prediction. If there is a contract of employment, there must be clear evidence of such a contract laying out clearly the terms and conditions of the contract." This finding was made in response to the Respondents/Claimants claim that they are employees of the 1st Appellant/Defendant although they tendered no written contract of employment evidencing this. The above position of the court is premised on the position taken by the Supreme Court in *Organ & Ors. v. Nigerai Liquefied and Natural Gas Ltd. & Anor*[11] wherein the apex court held that the employment letter is the substratum on which the appellants can lay claim to being employees of the respondent hence, failure to produce the letter, was fatal to their claim as existence of an employment contract, cannot be inferred. The court's tenacious insistence on the production of a written contract of employment as the only means of proving the existence of a contract of employment between the parties, made the court to hold that "the 1st respondent did not produce any documentary

[10] F Kuti and E Abraye "The Concept of Triangular Employment Suffers a Blow: A Critique of the Recent Decision of the Court of Appeal in Appeal No: CA/A/1061/2020: Luck Guard Limited v. Felix Adariku & 5 Ors in Appeal No: CA/ABJ/CV/563/2020: Total E&P Nigeria Limited v. Felix Adariku & 5 Ors." https://thenigerialawyer.com/the-concept-of-triangular-employment-suffers-a-blow-a-critique-of-the-recent-decisions-of-the-court-of-appeal-in-appeal-no-ca-a-1061-2020-luck-guard-limited-v-felix-adariku-5-ors-appeal-no-ca/ Accessed 3 February, 2026.

[11] (2013) LPELR-20942 (SC).

evidence showing that they were employees of the 2nd respondents at any time whatsoever. The 1st respondent has a duty to support their averments that they are employees of the 2nd respondent with evidence. The evidence required here is the LETTER OF EMPLOYMENT or CONTRACT OF SERVICE between the 1st respondent and the 2nd respondent. It is this document that shows the relationship between the parties and the terms governing the relationship."[12]

The above is suggestive of the fact that the only means of proving the existence of contract of employment is through the production of a written contract of employment spelling out the terms and conditions of the employment. Nothing can be farther from the truth than this. It is elementary law that a simple contract (including contract of employment), in the absence of express requirement, need not be in writing.[13] A valid contract could either be in writing, oral, or by conduct.[14] The only advantage of a written contract over others, is the fact that its terms and conditions, having been expressly spelt out, leaves no room for inferences or legal permutations by the parties/court.[15] The terms and conditions are not only clear but specific and ascertained, hence, construction becomes easy while for the others, the court may need to have recourse to circumstantial or inferential evidence to determine the terms and conditions thereof.[16] The court subsequently although, unconnectedly at page 25, Paragraph 2, admitted the fact that a contract of employment need not be in writing for it to be valid or evidence its existence when it referred to section 91 of the Labour Act, 2004 to the definition of contract of employment to mean any agreement, whether oral or in writing, express or implied whereby one person agrees to serve the employer as a worker. The operational words in this definition are oral/written, written or implied. This clearly admits that a valid contract of employment can be either in writing, oral, express or implied.[17] In fact, what the law requires is that irrespective of the form the contract takes, its validity or otherwise is determined by the presence or absence of the

[12] Unreported Suit No: CA/B/1061/2020 Judgment delivered 15th December 2022 at 23.
[13] *F.G.N. v. Zebra Energy Ltd.* [2002] 18 NWLR (Pt. 798) 211.
[14] *Ikpeazu v. A.C.B Ltd.* (1965) NMLR 374.
[15] *Saka v. Ijuh* [2010] 4 NWLR (Pt. 1184) 16.
[16] *King (Nig.) Ltd. v. B.H. Nig. Ltd.* [2011] 5 NWLR (1239) 95.
[17] O Nkanu, "Proving Oral Contracts under Nigerian Law" <https://www.mondaq.com/nigeria/contracts-and-commercial-law/899476/proving-oral-contracts-under-nigerian-law> accessed 20 February 2025.

prerequisite of a valid contract. These prerequisites are: offer, acceptance, consideration, *consensus ad idem,* and capacity to contract.[18]

It is somewhat surprising that despite the respondents uncontroverted averment as contained at pages 19 to 20 of the judgment that, after being employed by the 2nd respondent, they were not given written statement of employment in accordance with section 7 of the Labour Act, 2004 wherein they urged the court to declare the failure as an unfair labour practice which is contrary to international labour best practices, and the court's finding at page 21 that "right from the pleadings of the 1st respondent/claimant at the trial court there is no doubt as to the fact that there was no letter of appointment/employment from the 1st defendant now 2nd respondent on appeal issued to 1st respondent in this appeal," the court insisted that, to prove their case, the respondents produced written contract of employment.[19] The court unjustified insistence and requirement of the respondents to produce written contract of employment/appointment runs afoul to the established principle that the law will not require the doing of the impossible.[20] On the contrary, the court should have come to the aid of the respondents by evaluating its oral evidence on the existence of an employment contract and where it is direct, uncontroverted and cogent enough, hold that the burden of proving such had been discharged.

The CA insistence on a written contract of employment/appointment lay bare the fact that the court seems unconversant with the reality of unfair bargaining power in the process of creating a master-servant employment relationship. In Nigeria, there is an unprecedented high level of unemployment and increasing undermeployment. Thus, the doctrines of equality and voluntariness in consummation of employment contract are myths as argued by Eyongndi and Ajayi.[21] The process of "bargaining" towards fixing the terms and conditions of the employment is actually a matter of the employer unilaterally dictating to (or commandeering) the intending employee whose only option is to either accept or reject the dictated terms. Thus, where an employee, who of course is the weaker party to the "bargain" complains, his/her complaint should be attended to by the court to whom he runs for dire refuge considering their

[18] *Noah Bem Saka v. Daniel Ijuh* [2010] 4 NWLR (Pt. 1184) 16.

[19] Unreported Suit No: CA/B/1061/2020 Judgment delivered 15th December 2022 at pages 21, 23-24.

[20] *A.S.H.D.C. v. Emekwe* [1996] 1 NWLR (Pt. 426) 505.

[21] DT Eyongndi, and MO Ajayi, "The Principles of Voluntariness and Equality under Nigerian Labour Law: Myth or Reality?" (2015-2016) 9 *University of Ibadan Journal Private and Business Law,* 189-222.

vulnerability and disadvantaged position. In fact, the complaint that the respondents were not given the statement of employment contrary to section 7 of the Labour Act, 2004 should have been frowned at and the Appellant seriously deprecated in the strongest of terms by the court as a party should not be allowed or tacitly encouraged to violate the provision of any law whether sanctions are stipulated or not. The position taken by the court tantamount to permitting a person to benefit from his/her wrong doing which is not just against the law and human decency but equity and good conscience as well. This complained failure of the Respondent against the Appellant's failure to abide by the provision of section 7 of the Labour Act, 2004 and the Court of Appeal's response is an unfortunate encouragement to undermine the laws of Nigeria within a terrain that is tilted against the vulnerable which should not be left unchecked in the interest of justice and protecting the integrity and sanctity of Nigeria's laws.

It is apposite to note that based on the Supreme Court of Nigeria (SCN) decision in *Skye Bank Plc. v Iwu*[22] the CA is the final court on civil appeals from the NICN hence, it is a policy making court. The decision of the CA on civil appeals from the NICN is not only final but the law as the litigants have no chance to seek redress from the SCN. This situation should make the CA extremely cautious, meticulous and alert in making any pronouncement so as not to render a decision that would adversely affect the polity which could have been avoided. Of course, as noted by the SCN in *Adegoke Motors Ltd. v. Adesanya*[23] that they are supreme not because they are infallible but they are infallible because they are supreme. The foregoing profound position of the SCN is true of the CA with regards to appeals from the NICN. Thus, in determining such appeals, the CA must be conscious of its finality and the prospective effect of such determinations on labour and employment law in Nigeria. A negative or wrong decision handed down by a final and therefore, a policy making court can occasion gargantuan irreparable hardship and unjustifiably stiffen the polity.

Furthermore, on the issue of whether or not the trial court was right in its finding that there existed a TER between the parties; the CA held that there was none based on the doctrine of privity of contract.[24] The invocation of the doctrine of privity of contract to jettison the existence

[22] *Skye Bank Plc. v. Iwu* [2017] 7 SC (Part 1) 1.
[23] [1989] 13 NWLR (Pt.109) 250.
[24] Unreported Suit No: CA/B/1061/2020 Judgment delivered 15th December 2022 at 26-27.

of a triangular employment relationship between the parties, with the greatest respect, suggest a lack of appreciation of the phenomenon of TER by the Court of Appeal. In fact, the nature of triangular employment or the underlining philosophy precipitating employer's resort to it, is to create a smoke scream through which they can veil themselves from the scrutiny of judicial eyes aimed at abdicating from the inherent obligation(s) owed an employee by the employer. It would appear that the CA unwittingly worked into the ambush of the appellant when it invoked the doctrine of privity of contract to hold that the appellant could neither derive benefits nor incur liability from the contract. When employers create triangular employment contract, they do so being aware of the tricky problem which Davidov[25] has rightly stated thus: as to be between the agency and the end user, who should be held accountable for the responsibilities of the employer? The answer to this important question, whether it be the agent or end-user in the final analysis, there are serious implications for the employee whose interest needs protection.

Thus, a court that is called upon to adjudicate over this "novel" type of employment contract must raise the alarm: why or how come the parties especially the "employers" decided to have a radical departure from the traditional two-party contracting system universally known? This alarm, will aid the judge not to approach the issue mechanically but with judicial curiosity and eagerness being alert of possible landmines and smoke screens meant to divert judicial attention and obscure judicial sight light. A stern inquiry into the rationale for the departure, will make obvious the intendment of the parties (especially the employer) which is usually to make obscure if not, abdicate from accruing obligation to the employee who is at the centre of the disingenuous smoke screen of TER. The court must be wary and ensure that it does not fall into the landmine planted by the Agent and End-User aimed at placing the employee in a position of neither head nor tail can remedy be gotten. What the Agent and End-User often aim to achieve is to send the employee on an endless and orchestrated would-be fruitless search of who is the employer and therefore responsible. This voyage is not only strenuous but frustrating and ultimately disappointing without the intervention of the court to protect the employee.

Employers execute this somewhat mystifying type of employment contract with the cynical intention of abdicating from responsibility particularly to the employee and third parties who might suffer injury or

[25] *G Davidov, "Joint Employers Status in Triangular Employment Relationships" (2004) 42(2) BJIR 729.*

incur liability due to the employee's act/omission. Like the corporate veil which the court would have to pierce to unveil the identity of the perpetrators of fraud in a corporate transaction, the court must be diligent, resilient, thorough and alert to review the whole relationship with a view to unmasking the employer otherwise, the employee and third party, may be left to wallow in agony due to the concealment of who the employer is. It would seem that the effectuation of triangular employment abrogates the fundamental rights of an employee. The dignity of the human person of the employee is put on the line by the act of masking who is his/her actual employer as the relationship is such that sends him/her on a wild ghost chase to discover his employer. Aside this, by practice, the Agent-employer, is usually entitled to a fraction of the salary paid by the End-user employer to the employee as a reward for 'connecting' them. It is even worrisome that in most instances, this payment is not a one off thing paid as commission but it is periodically paid for as long as the relationship subsists. The shylock Agent-employer, keeps getting paid from the salary meant for the vulnerable employee who works for the End-User. No human being should be subjected to such treatment which is inhumane and degrading. Thus, a court dealing with a case of triangular employment, must be mindful that the fundamental human/labour rights of the employee are in issue and must be guarded jealousy. Thus, the conclusion reached by the CA in the instant case based on the doctrine of privity of contract only emboldens resort to TER by employers while it fails to recognise the intricacies associated with the relationship. In fact, the CA, walked right into the trap of the employer which is that the court will invoke the doctrine of privity of contract which will enable it to remain anonymous and thereby exposing the employee to hardship culminating to an ultimate abdication from responsibility. Thus, if the CA is poised to engrained dignity, fairplay, and promote decent work/employment in Nigeria, the protecting shield of privity of contract must not be extended to TER as to do so, would mean giving vent to the sublime but dangerous expectations of the Agent and End-User in TER.

The NICN in *Petroleum and Natural Gas Senior Staff Association of Nigeria v. Mobil Producing Nig. Unlimited*[26] while acknowledging the existence of various forms of non-standard employment relationships in Nigeria including triangular employment, caution that its practice must be with decency. In *Stephen Ayaogo & Ors. v. Mobil Producing Nig. Unltd. & Anor,*[27]

[26][2013] 32 N.L.L.R. (Pt. 92) 10.
[27] [2013] 30 N.L.L.R. (Pt. 85) 95.

the 1st Defendant had hired the claimant through the 2nd defendant who was described as an independent contractor. Due to restructuring, the employment of the claimant and others was terminated and they were paid redundancy benefits. However, the claimant was of the view that he was entitled to more. He sued the defendants. The 1st defendant objected to being made a party to the suit and sought to be struck out contending that he was not a party to the agreement between the 2nd defendant and him, besides, the 2nd defendant was an independent contractor and not its agent. The claimant argued that they had been working for the 1st defendant before the agreement between them (i.e. the defendants). Wherein the 2nd defendant was described as an independent contractor was made thus, same is a hoax meant to blindfold the court as to who the employer was. The court (i.e. the NICN) adopted the doctrine of primacy of fact after a holistic review and appraisal of the evidence tendered by the parties, and to have and found that the 1st defendant's application for its name to be struck out, was unmeritorious because it had a case to answer. Thus, the NICN has evolved the doctrine of primacy of fact which is that the court will carefully and clinically scrutinise the totality of the evidence presented by the parties to determine the role and stakes of the parties in the relationship.

Based on this ingenuous doctrine, the court came to the conclusion that the 1st and 2nd Defendants are co-employers of the claimants and were jointly and severally liable to them. In *Oyewumi Oyetayo v. Zenith Bank Plc. Anor*[28] where triangular employment was alleged and proved between the claimant and the defendants, the NICN held the defendants to be jointly and severally liable to the claimants as co-employers. The decision of the court was influenced by the Supreme Court of Nigeria reasoning in *Union Beverages Ltd. v. Pepsi Cola International Ltd*[29] where the court held that if it is proven that the companies are the same, then their cooperate veil can be pierced wherein they will be liable jointly and severally as the agent company or subsidiary, the main and the subsidiary or agent company, will be made to be responsible for the acts/omission of each other. The same reasoning was adopted and applied by the NICN in *Inimgba v. I.C.S. Ltd. & Anor*[30] where A employed the claimant but handed him to B to work as a teller officer. Notwithstanding the execution of a formal employment contract between the end-user and the employee, the NICN held that A and B are co-employers of the employee hence, were jointly

[28] (2012) 29 NLLR (Pt. 84) 370.
[29] (1994) JELR 44691 (SC).
[30] (2015) 57 NLLR (Pt. 195) 268.

and severally liable to him and third parties who suffer injury from his/her acts/omissions. This is because the 1st Defendant's offer letter specifically stated that the Claimant "will be employed as a transaction officer and seconded to Oceanic International Bank Plc." the same principle was adopted and applied by the NICN in *Agum v. Unicem Ltd. & Anor.*[31]

From the above, the NICN has evolved the principle of primacy of facts to hold the existence of the status of co-employer in triangular employer thereby preventing none of the employers (i.e. the Agent and End-User) to abdicate from responsibility that have legitimately accrued. Thus, the principle of being responsible jointly and severally in cases of more than one Defendants in civil cases, has been extended to triangular employment relationship by the NICN.[32] If the NICN had followed the traditional common law position without piercing the veil which the employers usually uses to cover themselves, the employee would be left chasing the wind or sent on a fruitless and endless voyage of seeking to discover who is his/her actual employer which is what the employer intends *ab initio* which unfortunately although avoidable, the Court of Appeal walked straight into in the *Adariku's Case*.

In fact, it is urgent and important for the Nigerian court (i.e. the NICN and Court of Appeal) to appreciate the complexities associated with triangular employment relationship in the way and manner it is being practiced in Nigeria. The reality is that, the justification of employers for resorting to TER which is often that they want to concentrate on core aspect of their work is only a sham. Judging from the way and manner TER is exploited by employers, it is clear that its motivations are purely financial; aimed at accessing cheap labour while maximising profit. The disguised or ambiguous nature of the relationship couple with the general reluctance by the End-User and Private Employment Agencies to accept responsibility towards the employee only shows that their aim is to exploit the employee and nothing more. In a TER, the situation of the employee is exacerbated by the prevailing unprecedented high level of unemployment and obsolete cum inadequate regulatory legal and institutional frameworks. At all material time, the practice of TER in Nigeria, is prejudicial to the employee capable of raising an army of working but economically impoverished workforce. This situation has negative multiplied effect on the economy and the nation at large.

[31] Unreported Suit No: NICN/CA/71/2013 delivered in on March 3, 2017 by Kanyip J.
[32] OM Atoyebi, "An Appraisal of Triangular Employment Relationship under Nigerian Law"
https://thenigerialawyer.com/an-appraisal-of-triangular-employment-relationship-under-nigerian-law/ accessed 4 May 2025.

Universally, work is regarded as a means through which man meets his/her needs. Even the Holy Writ prescribes that "let him/her that will not work not eat" hence, it is said; truly and rightly so that there is dignity in labour and no food for a lazy man/woman is an aphorism that resonates with the Nigerian spirit. Regrettably, in Nigeria, TER is causing many employees to be incapable of meeting their basic needs despite working. This situation must not be allowed to persist.

It is gratifying to note that since the statutory enhancement of its status and stature by the Constitution (Third Alteration) Act, 2010, the NICN has engaged in the development of a new labour and employment jurisprudence geared towards counter-balancing the unequal power dynamics between employer sand employees which was propagated and sustained by common law doctrines and their hitherto slavish adherence by the courts. The NICN's evolving jurisprudence of 'employee protectionism' which explicates itself through adoption of ILO labour standards and best practices in labour and employment law aided by the egalitarian provisions of the Constitution (Third Alteration) Act, 2010 to mitigate harsh common law principles prejudicial to employees while creating equilibrium between capital and labour is a welcome development that must be sustained.[33]

In fact, one area of labour and employment relations which the NICN must painstakingly and unrelentingly adopt and apply employee protectionism, is in TER. The reason is simple: the potentials of TER exposing vulnerable Nigerian employees to labour abuses, marginalization, promote indecent labour and unfair labour practice is obvious and probable. The Court of Appeal must realised that from 2010 when the Constitution (Third Alteration) Act, 2010 was enacted and the Supreme Court of Nigeria delivered judgment in *Skye Bank Plc v Victor Anaemem Iwu*[34] it has become a policy court with regards to labour and employment matters hence, its pronouncements must take into cognizance labour realities, contending interest and the need to align Nigeria's labour and

[33] *Aloysius v. Diamond Bank Plc.* [2015] 58 NLLR (Pt. 199) 92 at P. 134, Paras. A-F, G-B.; *Petroleum and Natural Gas Staff Association of Nigeria v. Schumberger Anadrill Nigeria Ltd.* [2008] 11 NLLR (Pt. 29) 164; *Nasco Foods Nigeria Ltd. v Food, Beverage & Tobacco Senior Staff Association.* Unreported Suit No. NIC/6/2003 Judgment delivered on 16/7/2009; DT Eyongndi, and BI Oyagiri, "Paradigm Shift on Remedies for Wrongful Termination of Master Servant Employment in Nigeria" (2019) 1(3) *International Review of Law and Jurisprudence, Afe Babalola University* 37-42.; Eyongndi, D.T. & Imosemi, A. (2023) "Aloysius v. Diamond Bank Plc: Opening a New Vista on Security of Employment through the Application of International Labour Organisation Conventions" 31(1) *African Journal of International and Comparative Law* 356-376.

[34] *Skye Bank Plc. v. Victor Anaemem Iwu* [2017] 7 SC (Part 1) 1.

employment law with international best practice/standards. It is no longer the case of business as usual promoted and sustained by moribund and now redundant common law employment doctrines/principles.

It is apposite to note that the growing acceptance and practice of TER in Nigeria is contingent on several factors. The unprecedented high and increasing level of unemployment and underemployment in Nigeria has given impetus to the growth of TER in Nigeria as well as other forms of non-standard work arrangements being practiced in a precarious manner to the greatest chagrin of Nigeria's working population. The situation in Nigeria regarding employment is that of 'since the desirable is absent, the available becomes desirable' because it is better to be employed doing something rather than doing nothing and risk hunger and want. Thus, most Nigerians are constrained to engage in TER due to the lack of decent employment just to ensure survival and avoid acute starvation and want. Also, the existing obsolete and inadequate labour legal framework which lacks ample regulatory provisions addressing TER and other forms of non-standard works arrangements has embolden employers to aggressively and exploitatively resort to TER. Thus, TER practice in Nigeria is purely contractual with the employer always having the unfair advantage to dictate it terms and conditions which is usually at the disadvantage of the vulnerable employee. Moreso, it would seem and most likely, correctly so that the employer's inordinate desire to maximise profit and the innate desire to abdicate from responsibility is another prime factor precipitating TER in Nigeria. While the idea of TER may not be outrightly malevolent, most Nigerian employers especially the non-Nigerian ones have lashed unto TER principally to disguised their character (as employer) aimed at abdicating from the natural responsibilities that attached to the employer in an employment relationship. Of course, the concomitancy of this is 'saving' of the funds which would have been expended if the character of employer is undisguisedly worn. Also, the global move towards liberalisation and concentration on core business operation is another factor promoting and sustaining TER in Nigeria as employers would want to have the labour world believe that concentrating on non-core business such as hiring is a distraction hence, outsourcing or contracting-out becomes an imminent alternative. While this reason seems logical, beneath is the desire to maximise profit by abdicating from the traditionally imposed obligations an employer performs towards the employee. From the Nigerian experience, based on the authors' professional experiences, the employer's desire and benefit associated from 'cheap labour' remains the main attraction of TER which is strengthened by other factors already

highlighted. Unfortunately, the government, as regulator, has remained largely unconcerned and docile while Nigeria's teeming working population is exposed to sustained, brazen and acrimonious exploitation through TER by employers. In fact, TER in Nigeria, is a form of modern employment/labour slavery without physical shackles on arms and limbs of employees but placed on their dignity, remuneration, independence and career progression.

4. TER under ILO Regulation and Practise in Selected Jurisdictions

It has been pointed out that TER is a global phenomenon practised in several jurisdictions although, its regulation differs. This section of the paper, examines the law and practice on TER within the prism of the ILO and in selected jurisdictions like Ghana, United Kingdom (UK), South Africa, and Namibia with a view to drawing lessons for Nigeria.

4.1 The Position of the ILO on TER

The International Labour Organisation (ILO) is a standard setting international organisation which has a unique operational characteristic of being a tripartite organisation. By it tripartite nature, its process of making its recommendations or convention involves dialogue amongst the employer, employees and the government representatives. Thus, its convention or recommendation is a product of rigorous discussion between all three stakeholders in labour which means that none of the parties could easily renege or is even expected to renege from abiding by them once reached since they are instrumental to their creation. The ILO seems to be the only international organisation with such a unique feature and the rationale is not farfetched considering the fact that the ILO is poised toward decommodification of labour, entrenchment of decent work, protection of employers' legitimate expectations and engendering government responsiveness towards balancing the rights and interests of employers and employees aimed at the attainment of harmonious labour relations.

While Nigeria and other member States may operate the dualist model regarding the application of international treaties, aside the fact that section 254C(2) of the CFRN, 1999 has given the NICN the power to apply ratified ILO conventions and recommendations without domestication as required by section 12 of the CFRN, 1999, the fact that all members of the ILO are actively involved in the making of ILO conventions and recommendations, from each member, there is a

legitimate minimal international obligation to abide by these legal instruments.

Interestingly, regarding the practice of TER, the ILO, which Nigeria is a member has adopted many legal instruments that lay down guidelines for regulating multi-party contract of employment (triangular employment inclusive). Thus, Article 3 of the Private Employment Agencies Convention (No. 181) of 1997 allows a ratifying member state to determine how private employment practices will be regulated through its domestic legislation. Article 12 of Convention 181 empowers a ratifying member state, in accordance with domestic laws, to determine and allocate the responsibilities of both the private employment agencies and end-users enterprises in relations to several matters including but not limited to protection in the field of occupational safety and health, access to training, protection from occupational disease/accident and compensation, statutory social security benefits, collective bargaining, etc. The Private Employment Agencies Recommendation (No. 188) of 1997 which compliments Convention 181, its clause 4 obligates ratifying member states to adopt measures (such as imposition of penalties) in domestic legislation aimed at preventing and eliminating unethical practices in TER by private employment agencies which exposes employees to unfair labour practices and breach of labour rights. Clause 5 of Recommendation 181 provides that workers employed by private employment agencies as much as practicable, should have written employment contracts clearly specifying the terms and conditions of the employment. Clause 15 of the Recommendation prohibits private employment agencies from discouraging or penalising their employees from accepting employment from End-User employers. The Employment Relationship Recommendation (No. 198) of 2006 enjoins member states to ensure that in the adoption and formulation of policies, measures should be put in place that combats disguised employment relationship or adoption of any form of contractual relationship which is aimed at hiding the true legal status of the employer.

Protection of the earnings of employees in TER is clearly guaranteed by Article 7 of Convention 181 which provide that Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. By this prescription, members' states are obligated to adopt domestic mechanisms, possibly, legislation or any other regulatory policy/programme to ensure security of the earning of this vulnerable class of employees. The implication of Article 7 above is that, where the PEA source and supply workers to the End User, the commission for offering such a service, shall not be gained through deduction made from

the earning of the workers paid by the End-User. The same is applicable where the PEA retains the hire workers and second them to work for the End-User. Thus, at all-time material, the remuneration of the workers (subject to permissible deductions based on domestic laws), must not be deducted for the purpose of paying commission to the PEA who has supplied the workers to the End-User. Thus, the End-User must pay the PEA without deducting from the remuneration of the workers for the service rendered. Unfortunately, In Nigeria, the practice has been that the End-User either pays the employees directly less a deducted commission which is remitted to the PEA or pays the money to the PEA, which makes commission deduction then pays the left-over to the employees. In fact, in Nigeria, the remuneration system is best captured in this colloquial metaphorical logic of "monkey dey work, Bamboo dey chop." The expression means 'someone else is doing all the hard work, but someone else is reaping the benefits.' In this case, the employees are the Bamboo (as they are the ones doing the hard work) and the PEA is the Monkey that reaps the benefits despite not working. Regrettably, there are no robust domestic laws checkmating this quagmire to the chagrin of the vulnerable helpless and hapless employees who are largely victims of unprecedented high level of unemployment and dearth of labour regulatory framework exacerbated by continuous government docility.

Despite the glooming situation, the utilitarian value of Article 7 of Convention 181 against the backdrop of section 254C (2) of the CFRN, 1999 is far reaching. It is now settled that the NICN can and has been applying ILO conventions, recommendations and international labour best practices in the adjudication of labour and employment disputes in Nigeria as noted by Eyongndi and Imosemi.[35] In fact, the impact of this novel and profound constitution respites contained in section 254C (2) of the CFRN, 1999 which is a sledgehammer against precarious and unfair labour practices in Nigeria if creatively and purposively deployed by the NICN has been exemplified through the enforceability of collective agreement in Nigeria. Using section 254C (2) of the CFRN, 1999, the NICN in *Mr. Valentine Ikechukwu Chiazor v. Union Bank of Nigeria Plc.,*[36] pursuant to ILO Collective Bargaining Convention No. 154 of 1981, and Right to Organise and Collective Bargaining Convention No. 98 of 1949,[37]

[35] DT Eyongndi, and Imosemi, A. "Aloysius v. Diamond Bank Plc: Opening a New Vista on Security of Employment through the Application of International Labour Organisation Conventions" (2023) 31(1) *African Journal of International and Comparative Law* 356-376.

[36] Unreported Suit No. NICN/LA/122/2014 judgment delivered on July 12, 2016.

[37] ILO Conventions 87 and 98 was ratified by Nigeria on the 17th of October, 1960.

and Article 3 of the Collective Agreement Recommendation No. 91 of 1951, has held that the international standard and best practice is that once reached and signed, a collective agreement is binding and enforceable forthwith between the signatories and their lawful privies/assigns. Thus, in operating TER in Nigeria, the government has the obligation to ensure that End-User and Agent-employers do not expose employees to labour exploitation, the employment is decent and devoid of unfair terms which the current situation is contrary to. In fact, Nigeria as a member state of the ILO is obligated to put in place a robust legal framework to regulate TER, and in particulate, clearly specify the rights and obligations of the parties to the contract. Awkwardly, at the moment, there is no purpose specific legislation on TER hence, its regulation is completely within the realm of law of contract with the employers always having an undue advantage against the employees.

Thus, while the NICN as a specialised court and vanguard for the protection of labour rights and balancing of contending interests has recognised the prevalence of TER in Nigeria, there is an insignificant statutory regulation of the subject making Nigeria not to measure up to the expected minimum international expectation as far as regulation of TER is concerned. In fact, the Labour Act, 2004 has no explicit provisions on TER hence, it is absolutely left as a matter of contractual bargain between the parties with the employee being perpetually at disadvantage due to the inherent unfair advantage of the employer. It is expected that Nigeria will forthwith take necessary legislative steps to perform its obligation as an ILO member regarding the regulation of TER thereby conforming Nigeria in terms of law and practice to international best practices. Eyongndi Abangwu, Chigbo, Kolade-Faseyi, Nwambam, and Bada[38] have interrogated the super-fluidity of section 254C(2) of the Constitution (Third Alteration) Act, 2010 which empowers the NICN to have recourse to ratified international legal instruments on labour and employment in the determination of disputes adjudicated by it. They assert that the section is a goldmine at the disposal of the NICN to internationalised labour and employment law and practice in Nigeria by ensuring that global best practices and standards are judicially mainstreamed into Nigeria labour jurisprudence.

[38] DT Eyongndi, NE Abangwu, CC Chigbo, I Kolade-Faseyi, EN Nwambam, and O Bada "International Labor Organization Prescription and Enforceability of Collective Agreement in Nigeria: Is there now Light at the End of the Tunnel" (2025) 14(3) *E-Journal of International and Comparative Labour Studies,* 107-141.

Interestingly, the NICN, pursuant to this Constitutional leeway, have struck down several moribund common law employment doctrines that have shackled labour and employment rights in Nigeria for decades particularly the legal status and enforceability of collective agreement in Nigeria and common employment. It is expected that whenever the opportunity presents itself, to adjudicate this malevolent practice of PEA colluding with End-Users to make deductions from employees' remuneration as commission, the NICN, pursuant to section 254C (2) of the Constitution (Third Alteration) Act, 2010, will call in aid Article 7 of the ILO Convention 181 to declare that practice as an unfair labour practice thereby effectuating section 254C (1) (f) of the Constitution (Third Alteration) Act, 2010. For too long, the Nigerian employees have suffered sustained systemic egregious employment exploitation, depravation amidst surging needs with deafening silence from the government to assuage their suffering through legislative proactivity. The main anchorage of this sustained exploitation is the common law and its exploitative principles/doctrines which the Nigerian courts hitherto held onto and applied.

4.2 South Africa

The concept of triangular employment was recognised in South Africa (SA) in 1983 when the Labour Relations Act was amended and Temporary Employment Services (TES) commonly referred to as labour brokerage system was introduced. Labour brokers were "deemed" to be the employers of individuals they placed with their clients provided they were responsible for paying them their remuneration.[39] However, it should be noted that the answer to the question: who is the employer of the employee?' does not have a straightforward answer. Section 198(1) of the Labour Relations Act No. 75 of 1997 (LRA, 1997) makes the labour broker the employer of the person hired.[40] This is so despite the fact that the employee usually renders services to the End-User under whose control and supervision, he works and as well, is provided tools and implement.[41] The foregoing does not exculpate the End-User (who is the

[39] M Brassey and H Cheadle, "Labour Relations Amendment Act 2 of 1983" (1983) 4 *ILJ* 37.
[40] N Mohale, "Understanding Temporary Employment Services (TES) in South Africa and the Registration Process" https://www.humancap.co.za/understanding-temporary-employment-services-tes-in-south-africa-and-the-registration-process/ Accessed 3 February, 2026.
[41] S 200A of the LRA; *Smit v Workmen's Compensation Commissioner* 1979 1 SA 51 (A).

deem employer) from the responsibilities emanating from the relationship. The LRA, 1997 creates a jointly and severally liability situation between the Agent and the End-User in some instances such as contravention of terms of a collective agreement, statutory obligations and arbitral awards that regulates the terms and conditions of the employment.[42] Where a broker commits an offence against the employee (such as employment discrimination) at the instance of the End-User, both of them will be jointly and severally liable under the Employment Equity Act.[43] Employees under this work arrangement are entitled to equal treatment especially equal remuneration for equal work done in accordance with section 23 of the South African Constitution 1996.[44]

4.3 Namibia

In Namibia, triangular employment is referred to as labour hire. Section 128 of Namibia Labour Act No. 11 of 2007 prohibits triangular employment by forbidding the hiring of anyone with the aim of passing unto another person to work. Any person that contravenes this prohibition, upon conviction, is liable to a fine not exceeding N$80,000.00 or to imprisonment for a period not exceeding 5 years or to both. When the potential of abuse and the impact of the same on employees and on the long run, the society in general is regarded, the likely justification for the prohibition becomes apparent. The prohibition was to take effect on the 1st of March, 2009 but on the 29th of February, 2009, the Namibian High Court (NHC), suspended its implementation in *Africa Personnel Services v Government of the Republic of Namibia.*[45] Here, the applicant had hired a large number of persons as a labour broker to be hired to User organisations. Thus, they applied to the Court that section 128 of the Labour Act was an infringement of their constitutional guaranteed right to engage in any profession, or carry on any occupation, trade or business under Article 21(1)(j). The Court considered the Roman origin of contract of employment and found that it is basically between two parties (i.e. the employer and employee) and there was no basis for interposing a third party, i.e. the labour broker.

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[42] See Section S 198(4) LRA.
[43] Section 57 (2) Employment Equity Act 55 of 1988.
[44] MW Finkin, & MJ Sanford, "An Introduction to the Regulation of Leasing and Employment Agencies" (2001) 23(1) *CLLPJ* 3-4.
[45] *Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia* (2011) 1 BLLR 15 (NmS) 2(1).

Aside this accepted two party hiring system, the court also found that another form of hiring which is now illegal was slavery which triangular employment/contract hiring is akin to.[46] Thus, the court held that the prohibition in section 128 stands thus, the broker could not claim a right to conduct such business under the fundamental freedom of occupation, profession, trade or business. Despite this, the court granted an interim order suspending the implementation of section 128 until the Supreme Court of Namibia had pronounced on the matter. On appeal, the Supreme Court upheld the appeal and struck down section 128 that it runs contrary to the constitution of Namibia. The court noted that despite the historical antecedent of labour hiring; evolving employment practice requires a forward looking approach within the ambits of the law.

This prohibition is not unconnected to the general disposition that triangular employment, aside being a detraction from the traditional common law two-party model of employment relationship, has a semblance of slavery wherein a party hires another for the use of another.[47] In Namibia, the outcry against labour hire is traceable to the contract labour era of the 1900s which was characterised by unfair labour treatment.[48] The era of contract labour in Namibia represents a time when racism and discrimination, determined a person's position in the society.[49] Despite this aforementioned position, the Supreme Court of Namibia's decision above, has accommodated TER in Namibia as it accords with modern labour realities.[50] Thus, it is important to ensure that a robust regulatory framework is put in place to forestall abuse of the system especially against vulnerable Namibian employees.

4.4 Ghana

Ghana is a commonwealth jurisdiction just like Nigeria and both are members of the regional body known as Economic Commission of West African States (ECOWAS). Triangular or disguised employment relationship is a phenomenon known to Ghana's labour relations. Ghana

[46] VE Stefan, "Temporary Employment Services (Labour Brokers) in South Africa and Namibia" (2010) 13(2) *PELJ* 107-204.
[47] C Vigneau, "Temporary agency work in France" (2001) 23(1) *CLLPJ* 2–3.
[48] B Anri, "The History of Labour Hire in Namibia: A Lesson for South Africa" (2014) 11(4) *PELJ* 509.
[49] F Raday, "The insider–outsider politics of labour-only contracting" (1999) 20(4) *CLLPJ* 1-2.
[50] J Theron, "The shift to services and triangular employment: Implications for labour market reform" (2008) 29 *ILJ* 16-17.

in 2003, amended and harmonised its several laws on labour and employment relations culminating in the enactment of the Labour Act No. 651 of 2003. This Act is a comprehensive labour legislation that deals with various labour and employment matters including but not limited to triangular employment. Taking cognisance of the fact that triangular employment could be surreptitiously resorted by employers to with a view to exploiting the employee especially with regards to the knotty question of who, between the Agent and End-User is the legal employer for the purposes of liability either to the worker or third parties who might suffer injury; the Act has made minimal provisions to curtail abuse. It is not unusual for persons to operate privately owned businesses where they operate as labour merchants for companies and other labour consumers. However, this practice is predisposed to several abuses. This unregistered and unregulated businesses, aside the obnoxious practice of continuously collecting huge commissions from the remuneration of those they "connect or link" with labour consumers (End-Users), are not incapable of absconding with the entitlements of those they fixed into work places.

To checkmate this ugly trend in Ghana and the possibility of its festerng, section 7(1) of Ghana's Labour Act, 2003 prohibits the establishment or operation of an unincorporated and unlicensed private employment agency. Thus, where such an agency is incorporated, a licence granted containing terms and conditions for its operation, shall be valid for a period of twelve months and may be renewed upon its expiration and application made to the Minister of Labour, for another period of twelve months.[51] The renewal of the operation licence shall be pursuant to the payment of the fees stipulated by an instrument under the hand of the Minister. A private employment agency is permitted to recruit workers in Ghana and any other country which has an agreement with Ghana on such matter for placement with persons/organisation (s) that needs labour. To ensure that workers sourced and recruited by private employment agencies are not exploited, the Act requires the agencies to submit to the Minister, not later than fourteen days after the end of every three months, returns in respect of workers recruited for employment, whether from Ghana or outside Ghana during that period.[52] An agency that fails and or ignores to file this return, shall have its licence revoked by the Minister.[53] Where a prospective employee pays a fee to an agency to secure suitable employment but the agency fails to do so, the agency is

[51] Section 7(2) (3) Ghana Labour Act 651 of 2003.
[52] *Ibid.* 7(6).
[53] *Ibid.* 7(8).

duty bound to refund 50% of the fee paid after the expiration of three months.[54] While the obligation of the agency to refund where there is failure to secure employment after the expiration of three months is commendable, the refundable amount ought to be the full sum paid or at least, 85% thereof to discourage clandestine business practices of making profit by deception. It is easy to understand that the 15% of the fee has been expended on administrative procedure and not a whopping 50%. By virtue of Section 10(a) thereof, an employee in a triangular employment relationship is entitled to equal pay for equal work done where he/she works with other classes of employees and to work under satisfactory, safe and healthy conditions.[55] Where the employment is to last for a period of six months or more, or for a number of working days equivalent to six months or more within a year, it shall be evidenced by the effectuation of a written contract of employment spelling out its terms and conditions.

While the Ghana Labour Act has copious provisions on the TER, and given its common law background, one can safely assume that its approach to the question: who is the employer in a TER would be similar if not the same as the position of the NICN or even the case-by-case basis of Britain based mainly on level of control or primacy of facts.

4.5 TER Practice in the United Kingdom

As already stated above, TER is a global phenomenon. The UK court have generally found a co-employer status between the End-User and the PEA in a TER. In *Dacas v. Brook Street Bureau (UK) Ltd*[56] Mrs. Patricia Dacas entered into a "temporary worker agreement" with Brook Street Bureau (BSB), which is an employment agency. BSB had a contract with Wandsworth Borough Council as its client, under which it provided the Council with staff. Mrs. Dacas was assigned by BSB to work as a cleaner at a hostel run by the Council. The Council paid BSB for her services, whilst BSB in turn paid Mrs. Dacas. The agreement between BSB and Mrs. Dacas made it clear that its provisions did not give rise to a contract of employment with either BSB or the Council. Mrs. Dacas worked only for the Council for a period of 4years until she was dismissed for alleged rudeness to a visitor to the hostel where she was assigned by the Council to work. Aggrieved by her dismissal, as Claimant, she brought proceedings

[54] *Ibid.* 7(7).
[55] *Ibid.* 10(a).
[56] [2004] IRLR 358.

against both BSB and the Council at the Employment Tribunal (ET) for unfair dismissal. The ET in its decision held that she was neither an employee of BSB nor the Council and had no contract with either of them hence, her claim was dismissed. Being dissatisfied with the ET decision, she appealed to the Employment Appeal Tribunal (EAT). The EAT reversed the ET decision by coming to the conclusion that the Claimant was worked under a contract of service with BSB.

On further appeal to the Supreme Court of Judicature, Court of Appeal Division ("the SC"), the SC, set aside the decision of the EAT and held that Mrs. Dacas had no contract of service with BSB because BSB had no obligation to provide Mrs. Dacas with work, and Mrs. Dacas had no obligation to accept work from BSB.[57] It further held that the fact that BSB had paid the Claimant did not make it her employer but based on the primacy of facts, there is a possibility that there exist an implied employment contract between Mrs Dacas and the Council since she works for them and under their control and they in-turn, remunerated her through BSB. In *Cable & Wireless Plc v. Muscat*[58] the issue was whether an employee in a TER qualified as an employee of the En-User or the Agency which affects entitlement to unfair dismissal claim under section 94(1) of Employment Rights Act, 1996 (ERA, 1996). In this case, the Appellant, company A, sought to overturn decisions of ET and EAT that held the Respondent, Claimant, was an employee of company A. The dispute arose after Claimant's original employer company B, reclassified him as a contractor, engaging him through a Limited Liability company. Subsequently, company B was taken over by company A, and the Claimant continued working under company A's management. Following cases like *Ready Mixed Concrete (South East) Ltd. v. Ministry of Pensions and National Insurance*[59] and *Nethermere (St Neots) Ltd. v. Gardiner*[60] held that the key statutory requirement under the ERA, 1996 is the existence of a contract of employment which entails mutuality of control and obligation between the parties. Based on the prevailing facts, the court implied a contract of employment between the Claimant and company A since there was evidence that it exercised control, assigned an employee number, provided equipments, provided work and remunerated the

[57] *E Bassey, O Abiodun, O Alex, and N Ayantoye "A Review of the Concept of Triangular Employment in Nigeria"* https://spaajibade.com/a-review-of-the-concept-of-triangular-employment-in-nigeria/ Accessed 3 February, 2026.
[58] [2006] IRLR 354.
[59] [1968] 2 QB 497.
[60] [1984] ICR 612.

claimant. The court therefore dismissed the appeal and affirmed the decision of the ET and EAT that the claimant was an employee of company A based on primacy of facts.

In fact, in the United States of America (US) the Iowa court in *Huck v. Wyeth, Inc.*[61] had, recognised but refused to apply the deep pocket jurisprudence (which requires the more buoyant party to bear responsibility towards the claimant then seek refund/set-off later from the less buoyant party) in a vicarious liability claim. However, approving the applicability of deep pocket jurisprudence in TER disputes especially in Nigeria, will further and better protect vulnerable employees. The deep pocket principle is a concept that very often refers to the idea that the liability for an injury/damage suffered should be borne by a person who is relatively in a good 'financial position' to bear same. This is achieved by imposing liability on a person/corporation who is usually relatively neutral in the transaction that led to the damage/injury.[62] The adoption and application of this jurisprudence in Nigeria will ensure that whichever party is financially buoyant, bears the liability rather than the employee scampering for relief. This jurisprudence guarantees a reverse effect of the aphorism that where two elephants (in this case, the Agent and End-User employer) fights, the outcome is that the grass (in this case, employee) suffers rather, the two elephants engaged in the fight, suffers.

5 Conclusion and Recommendations

Extrapolating from the above analysis, it is obvious that standard employment is being displaced by non-standard forms of employment including TER which is a global phenomenon. TER in Nigeria is fraught by several challenges exposing the employee to multilayer labour exploitation including refusal to issue the mandatory contract of employment evincing its terms and conditions. The Court of Appeal of Nigeria insistence of a contract of employment as the only means of proving the existence of a valid and therefore enforceable contract of employment despite the respondent's complaint in the *Adariku's Case* that it demanded one but was not given amounts to requiring the doing of the impossible and antithetical to the subsisting position of the law in Nigeria. Section 91 of Nigeria's Labour Act, 2004 and the general Nigeria's labour legal framework is inadequate and obsolete in terms of regulation of nonstandard employment particularly triangular employment hence,

[61] (850 N.W.2d 353, 380.
[62] Eghwubare (Note 6).

parties have resorted to draconic common law principles to the chagrin of the employees who are often exploited. Jurisdictions like Ghana, South Africa, and the United Kingdom have reviewed their laws to make adequate regulation of TER while their courts have adopted progressive stance at adjudicating matters relating to or arising from TER aimed at safeguarding employment rights of vulnerable employees in TER. In summation, the decision of the Court of Appeal in the *Adariku's Case* apart from being reached *per incuriam,* fails to appreciate the complexities of TER, does not take into cognisance prevailing labour and employment realities and does not align with ILO prescriptions and as well as global best practices/standards.

Based on the foregoing, it is recommended that the Court of Appeal, where the opportunity presents itself subsequently, should jettison the position it took in *Luck Guard Ltd. v. Mr. Felix Adariku* as it does not aid the development of Nigeria's labour jurisprudence because, it is not in consonance with global best practice on the subject of triangular employment.

Also, the Court of Appeal should adopt the doctrine of primacy of facts evolved and applied by the NICN and applied by the South African courts in determining the question of who is the employer in a triangular employment situation while applying the doctrine of jointly and severally liable in terms of apportionment of liability between the Agent Employer and End-User Employer.

Moreso, there is an urgent need for the legislature to review and amend Nigeria's labour and employment laws like Ghana, South Africa has done with a view to making adequate provisions regulating the practice of triangular employment in Nigeria. This will ensure that it is not resorted to by unscrupulous Agent and End-Users employers to exploit employees who are constrained to enter such employment relationship due to the unprecedented high rate of unemployment in Nigeria.

Giving the importance of labour and employment to the economy of Nigeria and the ever increasing volume of cases litigated at the NICN with concomitant appeals to the Court of Appeal, it has become imperative for judges of the NICN to be elevated to the Court of Appeal since they have specialised knowledge on such matters. It is curious that since 2010 that the jurisdiction and status of the NICN was enhanced by the 1999 CFRN (Third Alteration) Act, 2010 till date (i.e. 2023), not a single judge of the NICN has been elevated to the Court of Appeal despite their eligibility. Alternatively, section 237(2) (b) of the 1999 Constitution should be amended to reflect that the composition of the Court of Appeal justices shall consist not less than six justices who are

experts in labour and employment matters of which at least three shall be from the NICN. This is to ensure that appeals from NICN are heard by justices with vase knowledge of labour and employment matters just as it is contemplated for Islamic and customary law.

Furthermore, owing to the fact that aside obsolete and inadequate regulatory framework, the employer's desire to maximise profit, unprecedented high level of unemployment and increasing underemployment is a precipitant for resort to TER hence, the government should as a matter of utmost urgency, create gainful employment opportunities and as well as provide a clement weather that promotes private sector participation in the economy which can culminate in creation of gainful employment opportunities. The reoccurent cosmetic and white-washed politically motivated employment creation drive of successive regimes, apart from its non-sustainability, it is incapable of engineering the desired outcome.

Ecological Collective Action at Work as a Powerful Catalyst to Prevent the Violation of Labour Rights

Selen Uncular [*]

Abstract. Intertwined with other collective labour rights, workers' collective action has the utmost importance for genuine transformative solutions when labour rights are constantly violated and legal regulations do not function properly. Since collective action at work serves as a protective shield for labour rights, its relationship with ecological sustainability deserves more research and awareness in labour law. Adopting a holistic, supranational and critical approach, this article aims to analyse the role of ecological collective action in enhancing the protection and enforcement of labour rights. In the era of climate emergency accompanied by multiple crises, ecological collective action at work is the irreplaceable component of social justice, democracy, dignity, planetary wellbeing and decent work. All workers, regardless of their employment status, must have the right to take collective action to demand climate jobs, nature-friendly production, efficient energy use, sustainable mobility plans, ecological training and skills, occupational health and safety and other fair working conditions. With the support of trade unions, state, NGOs and court decisions, ecological collective action at work has the capacity to be a powerful catalyst against the violation of labour rights by reuniting labour and nature.

Keywords: *Collective action, Climate, Labour law, Strike, Decent work.*

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1. Introduction

Entwined with the concepts of freedom of association, conflict, solidarity and social justice, collective action at work has the utmost importance for profound impacts when labour rights are constantly violated, worker participation is minimised or blocked and regulations do not function properly. Due to their economic and personal dependence on employer, employment contracts allow little scope for workers to influence working conditions individually as well. Providing "an effective check to the extreme imbalances of power between labour and capital"[1], collective action is the most effective force of workers for defending their rights, needs and demands in a hierarchical relationship with lack of democracy and equality.

Although it is essential for strong communities and social progress, there are increasing violations and impediments regarding the fair exercise and protection of collective action at work all around the world. It is urgent than ever to defend and connect it with ecology in the era of climate crisis to ensure decent work for all workers. As such, this article firstly focuses on workers' collective action and its interactions with main principles, recent developments and other collective labour rights. Then it analyses ecological dimensions of collective action at work by evaluating the fundamental concepts such as collective interest and solidarity in the light of the protection of nature besides examining the relationship between right to collective action (and strike) and ecology under conflicts with public authorities and employer. Finally, it aims to offer comprehensive and innovative solutions by presenting the best practices related to ecological collective action at work in Australia, United Kingdom, Germany and USA.

2. Collective Action at Work as an Irreplaceable Component in the Employment Relationship

Being a fundamental collective labour right and a human right, collective action at work has significant implications for employers, workers, states and society at large. Even though strike is the most common and useful means of labour struggle, workers' collective action also contains go-slow, work-to-rule, boycott, occupation, picketing, blacking and other types of protest. In this respect, strike, in general terms, can be regarded as the

[1] J. Vogt, R. Subasinghe, *Turning Up the Heat: The Right to Strike and the Climate Crisis*, in *Comparative Labor Law & Policy Journal*, 2025, vol. 45, n. 2, 444.

deliberate stoppage of work on the decision of workers or a trade union with the purpose of putting pressure for the enhancement or conservation of social, economic and working conditions. It can take several forms like solidarity/sympathy strike, political strike, general strike, wildcat strike, sit-down strike and warning strike[2]. With a broad and dynamic scope, collective action at work has a unique place and power in the employment relationship.

While collective action centres on collective interests by going beyond individual ones, it relies on both conflictual and cooperative elements. It encompasses various kinds of joint conduct which reflect conflict and have a process based on deliberation, negotiation and resolution. Within this scope, the changing context affects forms of collective action significantly. Due to the new realities like gig economy, increasing incentives to self-employment, climate crisis and artificial intelligence, the need for innovative forms of action is urgent. Also, the judicialisation of labour relations has grown during the last decade at both national and supranational levels. As a result of government strategies against social rights, repression of strikes and protests along with increasing invisibility of conflicts, trade unions and organs of worker representation use the judicialisation of conflict to reinforce labour rights. They support "judicial activism as a mode of conflict that permits them to channel their protest in often effective ways that ultimately generate new types of regulation"[3]. On the other hand, worst case scenarios and unacceptable scandals like collective worker suicides (as in France Telecom (now Orange) and Foxconn Technology Group (in China)) can also happen when conflict cannot be channelled in a positive direction due to its suppression and ignorance.

Built on conflict of interests, collective action has undeniable impacts on providing a voice for workers, changing the power relations and empowering dignity. As Lopez, Chacartegui and Canton point out, "conflict is a dynamic process which, born in divergence, continues with the emergence of discontent and can then be resolved by different means", whereas its expression and visibility are healthy for societies to

[2] For more information, see T. Novitz, *International and European Protection of the Right to Strike*, Oxford University Press, Oxford, 2003, 6-7.

[3] J. Lopez Lopez, *Modes of Collective Action: Judicialisation as a Form of Protest*, in J. Lopez Lopez (ed.), *Collective Bargaining and Collective Action- Labour Agency and Governance in the 21st Century?*, Hart Publishing, Oxford, 2019, 42.

create transformative solutions and solidarities[4]. Although conflict is generally seen as destructive and disruptive in all areas of life, workers' collective action in fact plays a fundamental role in externalising divergences and discontent in an effective and equitable manner. Yet, most approaches to labour law accept conflict as a drawback instead of a catalyst for progressive changes regarding labour rights and the future of work. "Due to a predominant culture which views bargaining and arbitration as the principal basis of industrial relations, current debates generally fail to incorporate the right to strike in their construction of the essence of labour law"[5]. Collective action at work does not only have integrative and transformative functions (which ensure a certain level of control of social conflict between workers and employers) and change power relations by reshaping regulations, it also invites politics into labour law. It is necessary to analyse collective action as a crucial element of equilibrium for both the stability of legal systems and democracy itself. As Cornell and Dukes highlight, organised labour has a vital role in building and fighting for democracy inside and outside of the workplace[6]. Otherwise, the undervaluation or denial of non-consensual means of transformation (including strikes and protests) reflects an exclusively economic perspective rather than a holistic approach besides forcing workers to find tragic and violent ways for expressing collective conflict. The more societies refuse to face conflict, the more they encourage the invisibility of divergences and solutions which partially damages the transformative capacity of conflict.

Within this context, conflict is mostly invisible in media as well as international and national instruments of regulation. While the (dependent) media has the tendency to limit information about strikes and protests in general, its coverage is heavily focused on their economic impact. As for international legal instruments, the right to strike is directly stated solely under European Social Charter (ESC) and Revised ESC (Art. 6), International Covenant on Economic, Social and Cultural Rights (Art 8/1(d)) and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Art. 8/1(b)). At the national level, regulation and visibility

[4] J. Lopez, C. Chacartegui, C. G. Canton, *From Conflict to Regulation: The Transformative Function of Labour Law*, in G. Davidov, B. Langille (eds.), *The Idea of Labour Law*, Oxford University Press, Oxford, 2011, 345.

[5] J. Lopez, C. Chacartegui, C. G. Canton, *From Conflict to Regulation*, cit., 345.

[6] For detailed information with several examples, see A. B. Cornell, R. Dukes, *Strikes and the Struggle for Democracy*, in *Comparative Labor Law & Policy Journal*, 2025, vol. 45, n. 2, 288-312.

of collective action at work differs from one country to another depending on their traditions and social policies. On the other hand, there are many countries which impose serious restrictions, penalties and bans on the right to strike such as Egypt, Russia, Bangladesh, Afghanistan and Saudi Arabia, whereas political strikes are illegal in the most EU and other countries. Since corporate culture promotes arbitration and mediation systems to solve divergences with a static approach and fear towards conflict, the invisibility of workers' collective action and denial of conflict are evident in codes of conduct of the majority of companies.

Despite these realities, conflicts do and will continue to exist in many circumstances especially under capitalist socio-economic order based on contradictions and struggles. Since conflictual activism plays a huge rule in changing social relations of power, expressing discontent and criticism holds the ability to reshape labour rights and working conditions. The more collective action at work embraces political protest, the broader outcomes can be defended related to labour law and social policies. There are plenty of cases confirming these facts as seen in France about the contract for first employment in 2006, in Spain against the reduction of rights for the unemployed in 2002 and in China about a wage increase against Honda and Toyota in 2010[7]. Hence, conflict has a significant potential for changing societies, creating a dynamic interaction between different social actors and proliferating active political participation. Labour law should embrace conflict and collective action by being open to new forms of activism and creation of solidarities.

In this respect, as a universal value and principle, solidarity can be considered as a collective and dynamic concept based on mutual support with empathy and responsibility. Despite lacking a single definition and clear characteristics, it is generally linked to justice[8], equality and non-discrimination[9] together with new approaches including sustainability[10]

[7] For more information, see J. Lopez, C. Chacartegui, C. G. Canton, *From Conflict to Regulation*, cit., 359-360.

[8] See R. Zimmer, *Solidarity as a Central Aim of Collective Labour Law?*, in J. Lopez Lopez (ed.), *Inscribing Solidarity- Debates in Labor Law and Beyond*, Cambridge University Press, Cambridge, 2022, 46.

[9] J. Lopez Lopez, *Inscribing Solidarity in Labor Law- Promise and Limitations*, in J. Lopez Lopez (ed.), *Inscribing Solidarity- Debates in Labor Law and Beyond*, Cambridge University Press, Cambridge, 2022, 2-3.

[10] T. Novitz, *Sustainability as Solidarity Unbound- Labour Rights and Collective Voice in the United Nations Sustainable Development Goals and the European Union*, in J. Lopez Lopez (ed.), *Inscribing Solidarity- Debates in Labor Law and Beyond*, Cambridge University Press, Cambridge, 2022, 24-25.

and social contract[11]. Solidarity can be described as inclusive, when there is a common concern with heterogenous interests and people (as in international solidarity), or exclusive, when it occurs for the benefit of a particular group with homogenous interests at the expense of others. As Novitz offers, solidarity should be "unbound" related to geography and temporality based on an inclusive approach covering empathy instead of only shared identity[12]. Solidarity has the capacity to help the most vulnerable people obtain rights and agency too. In addition, the state should have positive and negative obligations regarding the solidarity as an instrument of public policy. In terms of its positive role, state should promote solidarity by supporting and ensuring it through autonomous actors (like trade unions) and processes (such as collective action, social dialogue and collective bargaining) and by introducing its own measures and policies. As for its negative duty, state should avoid all regulations or actions that would damage the principle of solidarity.

Due to the individualisation of labour regulation and weakening of unions and worker representation structures, challenges may occur in the practice or defence of solidarity. Nevertheless, collective labour rights have "permitted social actors to achieve some spaces of social progress, countervailing the most untamed forms of capitalism" and "constructed a foundation for solidarity in various forms to reinforce the collective interests of workers"[13]. Within this scope, worker solidarity during the collective bargaining process and through collective action at work is crucial against destructive competition, growing individualism and injustices. Contributing to the proper functioning of regulatory institutions, collective action manifests workers' individual and collective agency by being deeply connected to both freedom of association and solidarity. As Bogg and Freedland argue, collective action and strong exercise of the freedom of association are important tools to respond the rise of authoritarianism, populism and the violation of social rights[14].

Within this context, it is essential to emphasise that collective action at work is an integral element of the freedom of association. As the Committee on Freedom of Association (CFA) of the International Labour

[11] K. D. Ewing, *Solidarity, COVID-19 and a New Social Contract*, in J. Lopez Lopez (ed.), *Inscribing Solidarity- Debates in Labor Law and Beyond*, Cambridge University Press, Cambridge, 2022, 82-85.

[12] T. Novitz, *Sustainability as Solidarity Unbound*, cit., 24.

[13] J. Lopez Lopez, *Inscribing Solidarity in Labor Law*, cit., 8.

[14] A. Bogg, M. Freedland, *Labour Law in the Age of Populism: Towards Sustainable Democratic Engagement*, in J. Lopez Lopez (ed.), *Collective Bargaining and Collective Action- Labour Agency and Governance in the 21st Century?*, Hart Publishing, Oxford, 2019, 23.

Organisation (ILO) frequently underlines, being a fundamental right of workers and their organisations for defending their social and economic interests, the right to strike is an inextricable part of the activities, rules and constitutions of trade unions for achieving their objectives. It also helps unions to strengthen their organisational capacities and membership. Without collective action at work, the right to organise and freedom of association would mean solidarity without any power and impact because workers or unions would not have any pressure against employers in case of breaches and they would not be able to compensate their lack of bargaining power in the employment relationship. Similarly, collective action at work cannot be separated from the right to collective bargaining. Without workers' collective action, collective bargaining would merely become 'collective begging' since workers and unions cannot bargain with no power, equality and pressure. Hence, collective action at work is at the heart of labour struggle and its substantial recognition and protection is indispensable for the existence and functioning of an effective freedom of association and right to collective bargaining. Since collective labour rights are indivisible and interconnected, when one of them is violated, others suffer and cannot serve their purposes.

Furthermore, workers' collective action contains the freedom of expression and freedom from forced labour as a collective labour right against employer domination and abuse. It is also capable of ensuring democracy at work, worker dignity and participation, fair production besides decent work and working conditions. By channelling and reducing conflict and transforming societies in ways that lead to equality, justice and solidarity, workers' collective action has a vital place in labour law. Therefore, all workers must have the right to collective action in order to defend their interests without being solely restricted to industrial disputes and collective labour agreements. In addition, legal procedures for declaring collective action at work must not lead to a prohibition in practice. According to Hyman, the simple assumption that the causes of a specific strike or collective action must be either economic or non-economic creates a false dichotomy since most strikes include multiple issues rather than a single cause[15]. Also, economic and other interests are often interrelated. Several forms of conflict and their regulation reflect both economic concerns and political dynamics. Within this scope, collective rights should be considered as a puzzle that without collective action as the centerpiece, only domination, injustice and cruelty left behind.

[15] R. Hyman, *Strikes*, Fontana-Collins, Glasgow, 1984, 74.

Yet, the right to collective action and the right to strike are increasingly the most violated and ignored human rights in this continuing period of multiple crises across the world. As ITUC Global Rights Index 2025 confirms, the right to strike was violated in 87% of the countries without any change from the previous year[16]. While workers were denied the freedom of association and right to organise in 3 out of every 4 countries, "the right to collective bargaining was restricted in 80% of the countries (up from 79% in 2024)"[17]. In this regard, many employers insist on ignoring the right to strike under national and international regulations as seen in the major crisis broke out at the International Labour Conference in 2012[18]. Since ILO instruments and principles have been transforming into hard law under international law day by day, Employers Group started a total rejection not solely of the existence of the right to strike, but also of the entire ILO supervisory system. Upon the constant violations and limitations contrary to the CFA decisions and interpretation rules of the Vienna Convention on the Law of Treaties, Workers Group and 36 governments requested the urgent referral of the dispute on the interpretation of the ILO Convention No.87 to the International Court of Justice (ICJ) for decision. In November 2023, the Governing Body of ILO decided to request an Advisory Opinion on whether ILO Convention No.87 protects the right to strike.

At the time of the writing of this article, the opinion of ICJ was being expected upon the completion of the public hearings on this case in October 2025. In their written and oral statements, most governments (including Spain, Australia, Vanuatu, Brazil, Somalia, Uruguay, Germany and Norway) supported the right to strike as a fundamental shield for equality and democracy. Also, as an island state highly vulnerable to the climate crisis, Vanuatu emphasised that the protection of right to strike is essential to ensure a just transition towards a low-carbon future by connecting it with climate justice. If ICJ confirms that the right to strike is protected under ILO Convention No.87, the right to strike will enjoy the protection of international law with stronger union activism and supervision of national regulations. Since it is crucial to create and implement a robust protection and enforcement for collective action at work, teleological interpretation is required in accordance with its status of customary international law. In any case, ICJ's opinion will deeply

[16] For more information, see ITUC, *Global Rights Index 2025*, https://www.ituc-csi.org/global-rights-index (accessed February 23, 2026).

[17] ITUC, *Global Rights Index 2025*, cit.

[18] For a deep analysis regarding this crisis and afterwards, see J. Vogt et al., *The Right to Strike in International Law*, Bloomsbury Publishing, Oxford, 2020.

influence national and international labour law and shape the future of labour struggle along with our planet.
In this regard, companies and governments tend to repress and ignore the capacity of workers to organise and take collective action tenaciously. Although international instruments are very important means for the efficient recognition and protection of the right to collective action, they are usually restricted by national laws with limited or no direct applicability, unjust regulations and toothless sanctions. Also, domestic and international courts can have an essential role in the subordination of the right to collective action to economic interests that "there is no point creating rights if [a court] is not prepared to defend them, and if it is to allow permitted exceptions to swallow the substance"[19]. When courts avoid judicial activism and prevent the judicialisation as a protest without an independent and equitable perspective towards political pressures and threats, they contribute to the breach of the right to collective action at all levels by providing the source and motivation against its effective protection and enforcement. Thus, among several interdependent and deep-rooted obstacles, "the supremacy of economic interests, along with exceptionalist and sovereignty concerns, create the essential impediments to the right to collective action" around the world[20]. Still, there should always be hope for finding the strength to overcome these obstacles and to insist on a progressive protection and enforcement of labour rights including collective action at work.

3. Ecological Aspects of Workers' Collective Action

Even though workers' collective action is vital for the present and future of labour rights, its relationship with ecological sustainability is generally neglected in labour law and other fields. It is hard to find a court decision about the ecological dimensions of collective action at work as well. However, the urgent adaptation of workers' collective action to the new realities, changes and demands is very necessary. As widely accepted, we are facing a significant transformation period based on two crucial dimensions: ecology and technology. While both fundamentally shape the future of the world in every possible way, their direct and indirect impacts on workers and workplaces are at the highest level. The more ecological

[19] A. Bogg, K. D. Ewing, *The Implications of the RMT Case*, in *Industrial Law Journal*, 2014, vol. 43, n. 3, 223.
[20] S. Uncular, *The Right to Collective Action under European Law and Turkish Law: What Kind of Present and Future?,* in *European Labour Law Journal*, 2018, vol. 9, no. 2, 169.

destruction gets worse, the more workers are affected negatively and their rights are violated all around the world. Since labour has always been inextricably connected to nature, climate crisis deeply affects jobs, occupational health and safety, working conditions and labour rights[21]. Therefore, reuniting labour and nature under employment relationship ensures a robust protection and enforcement of labour rights.

Within this scope, evaluation of the fundamental concepts such as collective interest and solidarity is essential in the light of the protection of nature. Moreover, it is crucial to examine the relationship between right to collective action (and strike) and ecology under conflicts with public authorities and employer. Accordingly, interactions of all types of collective action at work and each collective labour right with planetary wellbeing are indispensable issues to determine against the climate crisis. As Escribano Gutierrez underlines, collective action at work is "not only an instrument for achieving labour improvements, but also a legitimate means for workers to oppose the consequences of capitalism"[22] which covers the exploitation of both ecosystems and workers.

In addition, countries including Spain, France, Bolivia, Turkey, Italy, Ecuador and Zimbabwe have direct regulations about environmental protection in their constitutions[23]. Having a substantial constitutional basis with binding effects on labour regulation is highly important for enhancing ecological organising and collective action at work. As for international legal sources, International Covenant on Economic, Social and Cultural Rights (Article 12), Resolution 76/300 of the UN General Assembly on the human right to a clean, healthy and sustainable environment (2022), Aarhus Convention (Article 6), European Court of Human Rights' landmark case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024), Advisory Opinion OC-32-2025 of the Inter-American Court of Human Rights (July 2025) and African Charter on Human and Peoples' Rights (Article 24) has the capacity to pave the way for the recognition and protection of ecological collective action at work too. Nevertheless, there is no national legislation which directly regulate

[21] For a detailed and pioneering analysis in various topics and countries, see C. Chacartegui Javega (ed.), *Labour Law and Ecology*, Thomson Reuters Aranzadi, Pamplona, 2022.

[22] J. Escribano Gutierrez, *The Strike as an Instrument for Environment Protection*, in C. Chacartegui Javega (ed.), *Labour Law and Ecology*, Thomson Reuters Aranzadi, Pamplona, 2022, 142-143.

[23] Whereas there are other Latin American countries with constitutional regulations related to ecology such as Chile and Uruguay, constitutions of Ecuador and Bolivia cover the rights of nature as well.

ecological collective action at work around the world. Many forms of workers' collective action already are not recognised or protected under national laws unfortunately. International instruments generally lack a profound focus on ecological collective action as well. Similarly, it is not easy to encounter with explicit provisions in collective labour agreements or social dialogue documents. So, legal bases are still mostly insufficient for the recognition, protection and/or implementation of ecological collective action at work. Also, low unionisation rates and collective bargaining coverage together with anti-union practices are crucial drawbacks. Against all odds, we keep on witnessing many promising real-life examples which lead to a remarkable nature and labour synergy under workers' collective action.

In terms of the concepts embedded in workers' collective action, it is possible to find and create strong bonds between environmental protection and collective action at work. To begin with, the definition and scope of collective interest come to the fore. As a concept with no concrete definition apart from transcending purely individual interest, it has been often identified with general and indivisible interest of a group of workers. Originating from the employment relationship, collective interest has different dimensions that shape collective action at work. According to Hyman, trade union strategies of collective action root in a triangle formed between class (opposing the system), market (regulating the labour relationship and market) and society (pursuing social dialogue)[24]. Hence, unions choose to act as mobilisers of class struggle, bargaining agents and/or social partners. In this respect, it is crucial to determine whether and how ecology interacts with collective interest of workers when its social, economic and political dimensions are involved. If the concept of collective interest is understood restrictively by focusing on its one aspect and ignoring the climate crisis, workers' collective action will only cover employment contract, wages or working environment. Nonetheless, in most cases, the protection or destruction of nature is directly (and inevitably) connected with the improvement or worsening of working conditions and the quality of work. As such, ecological aspects of workers' collective interests are of great importance and embracing them under legal regulations and organising practices leads to more effective collective action at work with wider scope, collaboration and impact.

Although there have been traditional dualities between working environment and natural environment, social and environmental conflicts

[24] For more information, see R. Hyman, *Understanding European Trade Unionism: Between Market, Class and Society*, Sage Publications Ltd, London, 2001.

besides economic and ecological interests, ecology cannot be separated from social and economic realities. In fact, most environmental conflicts end up having effects on some labour issue, whereas any unjust environmental policy will generate direct consequences for the wellbeing and safety of workers. Therefore, collective interest under the employment relationship has to be redefined with a broader scope in accordance with ecological sustainability. Workers' collective interests should cover ecological and also political interests since occupational interests and labour rights are generally intertwined with ecological and political changes and impacts. Similar to the policies and human rights, employment relationship has a multidimensional character containing ecological and political sides.

Since workers' collective interests cannot be isolated from the planetary wellbeing, their socio-economic circumstances and working conditions must consist of the protection of nature too. When workers have fair socio-economic circumstances and working conditions under decent work, climate justice and ecological sustainability increases. In linking collective interest with climate action, unions also play a growing part. Having different orientations within the class-market-society triangle, organisational capacities and leadership structures, Hampton stresses that climate discourses represent a strategic choice for trade unions and their collective action[25]. While trade unionists who accept the climate crisis as a market issue tend to share similar concerns with employers by prioritising market-based instruments like emissions trading, trade unionists who embrace social integration by targeting win-wins for social partners follow the state for climate policies and focus on social justice. On the contrary, trade unionists with an explicit class-oriented perspective support radical alternative social relations and structures through alliances with community and other organisations based on more militant strategies regarding transformative solidarity. It is evident that restrictive and narrow definition of workers' interests damages both labour rights and nature as well as reducing the power and potential of workers and unions in the employment relationship. So, environmental protection must be recognised as an irreplaceable requirement for ensuring or improving workers' socio-economic circumstances, working conditions and labour policies. The more ecological destruction decreases or ends, the stronger rights and protection workers will achieve.

[25] See P. Hampton, *Workers and Trade Unions for Climate Solidarity- Tackling Climate Change in a Neoliberal World*, Routledge, Oxon, 2015, 45-46.

On the other hand, so many workers around the world cannot exercise strike or other forms of protest by being outside of the scope of labour law. Whilst the right to strike under the standard employment relationship is constantly violated, atypical and new kinds of workers cannot even imagine organising a collective action. Moreover, there are many countries which regulate strike as merely a freedom or based on the decision of a trade union. In this regard, many workers are not permitted to use this fundamental right directly as workers affected from the conflict. In addition, unemployed people, pensioners, trainees and unpaid workers cannot have any access to the right to collective action. When labour and nature reconcile under the right to collective action, such kind of problematic aspects can reduce and all workers will be able to exercise ecological collective action with broader interests.

As regards solidarity, Novitz underlines "connections between solidarity and sustainability, observing that realisation of the latter entails cross-border intra- and inter-generational commitments as well as activity by civil society, including trade unions"[26]. Accordingly, she rejects a bounded or exclusive solidarity by adopting a holistic understanding of sustainability. Each dimension of sustainability is intertwined and co-dependent, as workers' relational attachments to social community, ecology and labour market are. Since policies based on sustainability aim to benefit both present and future generations, sustainability contains collective action across temporal and spatial borders. "Present generations are to be protected through application of agreed precepts of intra-generational redistributive justice, while inter-generational justice for future generations is to be achieved through durable environmental, economic and social policies that preserve the planet and all the sustenance of life that it can provide"[27]. Furthermore, collective action becomes essential in the dynamic structure of sustainability to improve collaboration across national borders and worker voice. Linking solidarity with ecology paves the way for broader cooperation, more effective labour rights and stronger justice. Ecological collective action can also strengthen transnational, inclusive and intergenerational solidarity even at workplaces without union organisation. Thus, climate crisis can be regarded as a driving force for alternative forms of organising which welcomes an ecological foundation in particular.

In this respect, it is essential to analyse the relationship between the right to collective action (and strike) and environmental protection under

[26] T. Novitz, *Sustainability as Solidarity Unbound*, cit., 24.
[27] T. Novitz, *Sustainability as Solidarity Unbound*, cit., 27.

conflicts with public authorities and employer. Firstly, workers or trade unions can declare strike (or other collective actions) in response to the ecological activities and policies of public authorities. Collective actions aiming to; (a) influence a country's position in a world summit, (b) obtain the ratification of a state for an international agreement, (c) achieve compliance with international goals or regulations and (d) enact/withdraw certain national legislation or policies are some of the examples for this situation. Such kind of ecological collective action can easily be qualified as political since they involve government policies and political objectives[28]. However, political strikes are mostly considered as illegal around the world and especially purely political strikes, which have no occupational interest, are left without any labour law protection. So, it is necessary to determine how an ecological collective action against public authorities can affect occupational interests.

As in other dichotomies stated before, it is usually superficial and unrealistic to qualify a collective action as "purely" political and divide a strike into political and non-political strike. In practice, political and occupational aspects of a strike are often interconnected because a regulation or policy adopted by a government will have immediate impacts on workers or employers. Employment relationships and labour rights have deep interactions with politics. Only workers' collective action aimed at dividing a country, protesting foreign policies of some countries or creating chaos in the society may be regarded as purely political without a direct link to working conditions. Otherwise, collective action at work based on the demands against economic, social and ecological policies of public authorities and legislation deserve to be legal, usual and widespread. As Escribano Gutierrez emphasises, "it is hard to qualify as purely political those strikes that make an environmental demand"[29] since workers' collective action against the ecologically destructive public policies and activities cannot be isolated from occupational interests and labour rights.

Work life has many interrelated dimensions which include social, economic, political and ecological interests altogether. Therefore, collective action at work can perfectly have political and occupational elements with ecological objectives. For instance, a strike against legislation which excessively restrict ecological whistleblowing at work or

[28] In countries such as Spain, Netherlands, Norway and Italy, ecological strikes against public policies are deemed political and legal (See J. Vogt, R. Subasinghe, *Turning Up the Heat*, cit., 435).

[29] J. Escribano Gutierrez, *The Strike as an Instrument*, cit., 142.

workers' right to disconnect proves this reality in a simple manner. Within this context, categorisation of different strikes or other collective action at work should be made carefully without being an excuse to complicate their exercise and ecological organising. It is important to highlight that ecological collective action at work must be legally recognised and protected for conflicts with public authorities as well. On top of it, when there are provisions about environmental protection under the constitution, international instruments and/or environmental legislation, public authorities and state are obliged to protect nature and prevent environmental pollution without violating them and court decisions. So, their policies and activities must always be in compliance with ecological obligations and should not damage nature and climate.

Secondly, workers or trade unions can declare strike (or other collective actions) against the ecologically harmful activities and policies of employers. Within this scope, these kind of activities and policies of employers can contain production, distribution, procurement, energy use, waste, workplace policies and conditions, business strategies and decisions, and all other ecological matters and consequences. In this regard, workers can demand the minimisation, termination or reduction of ecologically destructive activities and policies at work and/or adoption or enhancement of eco-friendly practices and policies during or outside of collective bargaining. For example, workers can exercise their right to collective action for demanding climate jobs, income protection and green pay, nature-friendly production, waste minimisation, efficient energy use, sustainable mobility plans, ecological training and skills, working time reduction, occupational health and safety and other decent working conditions. On the other hand, imposition of sanctions and/or closure of the company due to ecological damage or non-compliance with ecological regulations may have direct and immediate impacts on workers. In this case, ecological collective action at work will provide effective protection for workers regarding just transition, job security and material and moral compensation. Therefore, workers must be able to exercise as many types of ecological collective action as possible against employer because they are vital means for the robust protection and enforcement of labour rights as long as being exercised in a peaceful and proportionate manner.

Nevertheless, economic freedoms including the freedom of establishment and the freedom to provide services can be used as challenging obstacles against the right to collective action by employers, national and international courts as well as states. When the right to strike is mainly accepted as a restriction of economic freedoms and as an exception, it becomes so narrow and useless with many requirements that employers'

interests prevail unjustly. In this regard, economic freedoms and business interests need to be in compliance with human rights which include the rights to collective action and strike. Especially in an era of multiple crises, ecological collective action is required for the future of labour and nature. Also, ecological collective action at work should not be recognised solely in disputes deriving from collective agreement or bargaining since it is the most powerful response against any injustices and violations of labour rights around the world. Although collective action at work has a limited scope in many countries, employers may have constitutional or legal obligations to protect nature and prevent environmental damage as being citizens at the same time. Thus, they cannot infringe their ecological duties deriving from the constitution, international instruments and/or environmental legislation and cannot commit environmental crimes outside of the collective bargaining process either. On the other hand, if collective action at work damages the nature, employers may have the competence to impose restrictions on its exercise for risk prevention and occupational health and safety[30]. Still, such circumstances should not be used as an excuse to restrict the rights to collective action and strike excessively. Employers' interferences with human rights must be minimal and cover the necessary proportionality with the ecological risks to be avoided. If environmental protection requires, the right to collective action may be restricted to the least extent possible in an exceptional and equitable manner.

Moreover, as in other situations, when workers have to sacrifice or minimise their right to collective action, employers should sacrifice or minimise their managerial prerogatives and economic freedoms too, since they are the parties of the same production and employment. If workers face unjust limitations or blanket bans related to their collective action, employers should not be allowed to exercise their managerial prerogatives arbitrarily. Instead of minimising or banning labour rights, employers must ensure decent working conditions in order not to compel workers to take collective action. Employers must not infringe the law, principle of good faith and their obligations. Rather they should prioritise to avoid harming the nature and human rights even if sometimes their economic freedoms and interests are restricted. Otherwise, workers become deprived of their labour rights, whilst employers continue to exploit workers and nature, ignore their responsibilities and create unfair working conditions. Neither employers, nor workers can abuse their rights and act

[30] For an example in France, see J. Escribano Gutierrez, *The Strike as an Instrument*, cit., 147.

illegally. When the right to collective action is excessively restricted, postponed or banned (even in essential services, because it is mostly possible to make adequate arrangements), it becomes more problematic to establish a fair balance in the employment relationship. The more work life becomes climate-friendly, democratic, decent and equitable, the less there will be violations, domination and exploitation.

4. Solution Offers Supported by Best Practices for Ensuring Ecological Collective Action at Work

In the time of climate breakdown accompanied by several crises based on the individualisation of labour, growing digitalisation, dominance of multinational enterprises, rise of far-right politics and ongoing wars, conflicts and injustices are becoming more intense and complex. So, connecting ecology with collective action at work is indispensable for democracy, equality, planetary wellbeing and dignity by establishing not only a transnational but also an intergenerational solidarity. Since collective action at work essentially provides the proper functioning of regulation and enforcement, ecological collective action will serve as a protective shield for labour rights.

As the first step of my solution offers on ensuring ecological collective action at work, all workers regardless of their employment status must have the right to take all kinds of collective actions in issues regarding the protection of nature at the workplace and other relevant levels. Within this context, employers must have the obligation to ensure the genuine and effective exercise of workers' collective action without any blanket ban, postponement and unjust restriction too. As other obligations of employers, this obligation has to be recognised explicitly and fairly by being subject to dissuasive sanctions in case of breach under legislation, collective agreements and international instruments. In this respect, employers must not hinder trade unions and workers to take collective action in ecological matters and to involve in ecological organising. It should be always underlined without any compromise that employers cannot violate human rights, circumvent the law and supress collective action at work. Without denying ILO core labour standards and instruments and trying to ignore labour rights, employers should also accept the decisions of CFA and other supervisory institutions.

Due to the intertwined character of collective labour rights, freedom of association, collective bargaining and collective agreements are closely related with the protection of nature as well. Whereas trade unions should be considered as ecological actors, collective agreements can and should

regulate ecological matters related to the employment relationship. The more collective bargaining is climate-friendly, the better collective agreements ensure the protection and enforcement of labour rights. Also, worker participation and representation are essential for ecological decision-making at work. Besides combining all participation rights of workers with ecology, significant examples like climate representatives, environmental committees and green union representatives pave the way for nature-friendly work organisation. Similar to the right to collective action (and strike), these rights are highly capable of enhancing worker and planetary wellbeing simultaneously with the aim of achieving socio-ecological sustainability[31].

Although there is not an ILO Convention or CFA decision focusing on the alliance of labour and nature yet, it is possible to interpret them broadly since climate emergency has immediate, serious and direct effects on the world of work like no other. As CFA has already approved strikes and protests related to diverse issues including pensions, trade agreements, tax policy, social protection and labour law reform before, it will likely (and should) protect ecological collective action at work too[32]. Also, ILO has already acknowledged the realities of climate crisis in its Centenary Declaration for the Future of Work, Just Transition Policy Briefs, guidelines and training programmes with increasing research on it. While other international instruments which recognise the right to strike or collective action should embrace their ecological aspects at work, court decisions, state policies and labour inspection must contribute to the effective protection and enforcement of ecological collective action.

As regards national regulations, exercising all kinds of collective action needs substantial recognition and protection as a fundamental right by being interpreted and implemented broadly in favour of climate justice. It must not be limited solely to disputes arising during the conclusion of a collective agreement in order not to lose its purpose and power. Also, definitions of strike, collective action, lawful and unlawful strikes must be

[31] Defining these types of rights as workers' environmental rights, Blaise and Ibrahim analyse the literature and legislation in Canada, while Arabadjieva and Tomassetti focus on their classification under EU labour law and environmental law. For more information, see K. Blaise, N. Ibrahim, *Workers' Environmental Rights in Canada*, 2019, https://cela.ca/wp-content/uploads/2021/07/Workers-Environmental-Rights-in-Canada_Full-Report.pdf (accessed February 23, 2026); K. Arabadjieva, P. Tomassetti, *Towards Workers' Environmental Rights- An Analysis of EU Labour and Environmental Law*, ETUI Working Paper, 2024, https://www.etui.org/sites/default/files/2024-01/Towards%20workers'%20environmental%20rights-an%20analysis%20of%20EU%20labour%20and%20environmental%20law_2024.pdf (accessed February 23, 2026).

[32] In a similar approach, see J. Vogt, R. Subasinghe, *Turning Up the Heat*, cit., 435.

equitable, comprehensive and eco-friendly. Scope of lawful strikes (and collective action) has to be determined fairly without emptying the essence of the right. Similarly, requirements and scope of ecological collective action at work should not prevent its effective exercise. It is evident that without ecological collective action, labour rights and decent working conditions cannot be secured.

In terms of the guarantees of the rights to strike and collective action, it is significant to emphasise that;

- provisions regarding the waiver or restriction of ecological collective action in employment contracts or collective agreements must be invalid,
- an employment contract must not be terminated for participating in the decision to take ecological collective action and/or participating or encouraging others to participate in it,
- the exercise of ecological collective action must not lead to any retaliation or penalty by itself,
- during ecological collective action, employer must not hire or employ other workers, permanently or temporarily, in place of those whose employment contracts are suspended due to the collective action,
- employer must be obliged to pay the wages and supplements of the workers involved in ecological collective action until its start date (on the regular payment day),
- workers taking ecological collective action should be free to publicise it in a peaceful manner and collect funds without any coercion,
- the right to work of those workers who do not prefer to join ecological collective action should be respected, and
- settlement of collective labour disputes (like arbitration and mediation) should not prevent ecological collective action at work and not be regulated in a manner that violates it.

Furthermore, women workers are active and indispensable actors against ecological degradation since resistance against oppression, violation and exploitation is vital for both women and nature. Destruction of nature contributes to the breach of women rights mostly due to the imposed gender roles and gendered responsibilities at the household and community. Climate crisis is not gender neutral. It affects men and women differently because women still have less economic, political and legal influence to cope with the negative impacts of ecological problems. Disparities in economic opportunities and access to productive resources

also make women more vulnerable to the climate crisis since they often receive less education, are poorer and are not involved in household, community and political decision-making processes[33]. In addition, women are generally the first victims of climate crisis due to their overwhelming responsibility for household management along with water and food sourcing for their families. Even though the pandemic proved once again that women's leadership is pivotal in turbulent times, women and girls are underrepresented in collective actions and decision-making mechanisms against ecological issues[34]. Therefore, it is crucial to adopt a gender-sensitive mentality and bring inclusive, creative and feminist perspectives for shaping low-carbon strategies[35]. The more participation and leadership of women workers in ecological collective action increase, the more effective protection and enforcement of labour rights will be accomplished. Moreover, transformative changes in production, participation and working conditions will contribute deeply to women rights. Within this scope, women workers should be on the front lines in ecological collective action and gender equality needs to be incorporated in collective action at work too. It is vital to guarantee collective action for women workers at all levels. When collective action at work embraces the solidarity between labour and nature, women will become winners together with the whole society and our planet.

As for the best practices regarding ecological collective action at work, green bans are a pioneering and historical example with huge impacts. Green bans were initiated in Australia during 1971-1975 by the workers known as builders labourers who were employed to construct skyscrapers, shopping areas and luxury apartments due to the post-war construction boom. Supported by a grand coalition, green bans consisted of three main kinds: "to defend open spaces from various kinds of development, to protect existing housing stock from demolition to make way for freeways or high-rise development, and to preserve older-style buildings from

[33] For more information, see S. Habtezion, *Overview of Linkages Between Gender and Climate Change*, 2016, https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP%20Linkages%20Gender%20and%20CC%20Policy%20Brief%201-WEB.pdf (accessed February 23, 2026).

[34] For more information, see Y. Aki-Sawyerr, *Climate Leadership Needs More Women*, in *Social Europe*, 2022, https://www.socialeurope.eu/climate-leadership-needs-more-women (accessed February 23, 2026).

[35] In a similar vein, see S. Fredman, *The World of Work: A Green and Feminist Future?*, in C. Albertyn et al. (eds.), *Feminist Frontiers in Climate Justice*, Edward Elgar Publishing, Glos, 2023, 131-136.

replacement by office-blocks or shopping precincts"[36]. Although they were imposed in many parts of Australia, green bans mostly took place in Sydney and regional centres in New South Wales where the construction boom and the most committed branch of Australian Builders Labourers' Federation (BLF)[37] were centred. This branch, namely New South Wales Builders Labourers' Federation (NSWBLF), developed a new concept of unionism based on the principle of social responsibility of labour in May 1970 under the leadership of Jack Mundey, Joe Owens and Bob Pringle. Accordingly, "workers had a right to insist their labour not be used in harmful ways"[38] and "they should also use their power at the point of production to do good"[39]. It supported the idea that organised labour should not ignore social and political issues and contest oppression and exploitation both in the workplace and society. In this regard, "these builders labourers presented themselves as protecting the many from the few and the planet from the profiteers"[40].

In June 1971, the movement started in Sydney when a resident action group from the Hunters Hill sought the NSWBLF's help in order to save Kelly's Bush on the harbour foreshore against the construction of luxury houses by A.V. Jennings. This resident action group composed of 13 middle-class women, who called themselves the Battlers for Kelly's Bush, had already lobbied the mayor, local council and the Premier without any success. Hence, the union asked these women to organise a local meeting to estimate the level of local support for a ban. More than 600 people attended the meeting and requested the NSWBLF formally to ban the destruction of Kelly's Bush. When the union agreed, Jennings declared to use non-union workers. Nonetheless, "building workers on a Jennings project in North Sydney sent this message to Jennings: 'If you attempt to build on Kelly's Bush, even if there is the loss of one tree, this half-completed building will remain so forever, as a monument to Kelly's Bush'"[41]. Jennings had to abandon its plans and Kelly's Bush still remains as a natural bushland open to public. Even though it was an unlikely alliance between the union and residents of Hunters Hill, which was a

[36] V. Burgmann, *The Green Bans Movement: Workers' Power and Ecological Radicalism in Australia in the 1970s*, in *Journal for the Study of Radicalism*, 2008, vol. 2, no.1, 65.
[37] In the early 1970s, this federation had around 30,000 members nationwide and covered all unskilled labourers besides certain categories of skilled labourers employed on building sites.
[38] V. Burgmann, *The Green Bans Movement*, cit., 65.
[39] V. Burgmann, *The Green Bans Movement*, cit., 74.
[40] V. Burgmann, *The Green Bans Movement*, cit., 66.
[41] V. Burgmann, *The Green Bans Movement*, cit., 66.

wealthy suburb little to do with the workers' movement, militant and proudly working-class NSWBLF could find a common cause with the Battlers for Kelly's Bush.

Upon this first success, many resident action groups rushed to request NSWBLF to impose similar bans. But green bans were never initiated unilaterally by the union, it was always selective in applying them. Community groups, which seek a green ban, must have been strong enough to make a meaningful alliance with the union. "In a few cases, the union refused to support a ban because the affected community was not sufficiently well organised"[42]. Also, all requests for union support had to be ratified in the meetings of union branch which was open to all members.

Among 54 green bans in total (more than 40 in New South Wales), another urban area rescued from the building boom was The Rocks. As the site of the first European settlement on Sydney Harbour in 1788, green ban from November 1971 until 1975 saved this suburb and historic area in the city centre of Sydney from demolition along with its low-income residents like sailors, cleaners and pensioners. It halted the re-development project which would destroy the character of this historic area and ignore its residents. So, the Rocks Resident Action Group mobilised in order to support the ban and prepared a People's Plan for the acceptable renovation in the area. NSWBLF stated clearly that it would not lift the ban until the residents were content with the actions of Sydney Cove Re-development Authority. When the new plans were proposed by the Authority in accordance with the People's Plan, green ban was lifted. In addition, Woolloomooloo, a working-class area home to fishermen and maritime workers, was saved in 1973 thanks to a green ban. As such, "65% of the area was retained by the Housing Commission for low-income earners under a plan that entailed a genuine socio-economic mix of residents living in medium-density buildings with many trees and landscaped surroundings"[43].

While ancient trees in Royal Botanic Gardens of Sydney were protected against turning into a car park for the Opera House in 1972, Moore Park and Centennial Park were rescued from becoming a "massive, $76 million sports centre with an 80,000-seat stadium"[44] accompanied by a swimming

[42] K. Iveson, *The Sydney 'Green Bans' Show How We Can Transform Our Cities*, in *Jacobin*, 2021, https://jacobin.com/2021/07/australia-sydney-urbanism-construction-builders-labourers-federation-nsw-green-labor-militancy (accessed February 23, 2026).

[43] V. Burgmann, *The Green Bans Movement*, cit., 67.

[44] I. Maher, *Moore Park*, in *Green Bans 1971-Now*, https://www.greenbans.net.au/component/content/article?id=26&Itemid=101 (accessed February 23, 2026).

pool complex during the same year. Similarly, green ban protected the nature reserve of Riley's Island in the north of Sydney from being sacrificed to 300 luxury home sites in 1973 which would have destroyed most of its bird and fish life. Many graceful old theatres, cinemas, churches and other historical buildings around Australia owe their lives today to the green bans movement. As Burgmann underlines, "by 1975 bans had stalled $5,000 million in development (at mid-1970s prices), saving New South Wales from much of the cultural and environmental destruction it would otherwise have suffered"[45].

Being a form of strike sometimes accompanied by boycotts, such a significant and powerful collective action did not have its own name until February 1973. But a new phrase was necessary since the traditional terminology of black ban was not appropriate. Black ban is imposed to improve wages and working conditions, whereas these bans cover both social and ecological elements: they reflected the unions' commitment to save open spaces or valued buildings and to ensure that every citizen had a voice in the matters that affected their lives. More than 18 months after the movement had started, Jack Mundey coined the term 'green ban' and this movement led to the integration of the word 'green' into politics.

It is important to underline that green bans were deeply entwined with women rights besides gender-based constructions of urban areas. Whereas women were so prominent in the resident action groups whose requests for assistance constituted the basis for most green bans, women union members were very active and leading several campaigns and rallies against ecological destruction. Within this scope, a green ban was imposed on the University of Sydney in 1973. Two philosophy graduate students from the University of Sydney proposed to conduct a course centred on feminist philosophy and political structures of sexual oppression. Yet "a male-dominated professorial board declared the women unfit to teach the course, despite initial approval from both the Philosophy Department and the Faculty of Arts"[46]. After a month-long strike, which resulted from this decision, the NSWBLF was ready to help as several buildings of the university were in urgent need of completion. A green ban was imposed and negotiations between the university and the union began. The ban was officially lifted when those two graduate students had the approval to run the course in the following year. Similarly, the NSWBLF won equal

[45] V. Burgmann, *The Green Bans Movement*, cit., 68.

[46] I. Maher, *Sydney University Women's Course*, in *Green Bans 1971-Now*, https://www.greenbans.net.au/component/content/article?id=28&Itemid=101 (accessed February 23, 2026).

pay for women in the mid-1960s and forced employers to accept additional women workers.
Also, green bans contested against the prerogatives of private ownership in addition to the production under capitalism. The NSWBLF challenged employers' legal benefits and successfully showed that these prerogatives can be harmful to others and detrimental to nature. In 1972, Mundey articulated the principles of NSWBLF:

> Yes, we want to build. However, we prefer to build urgently required hospitals, schools, other public utilities, high-quality flats, units and houses, provided they are designed with adequate concern for the environment, than to build ugly unimaginative architecturally-bankrupt blocks of concrete and glass offices… Though we want all our members employed, we will not just become robots directed by developer-builders who value the dollar at the expense of the environment. More and more, we are going to determine which buildings we will build…[47].

Whilst denying and opposing employers' longstanding right to employ others to do/build whatever and wherever the profit dictated, the NSWBLF and its thousands of active members and supporters formed an alternative public space where subordinated social groups created and shared counter discourses to redefine their identities, needs and interests. This arena attracted the devoted loyalty of different groups including union activists, progressive academics, housewives, pensioners, intellectuals and writers. With its popular slogan of 'People Before Profits', green bans movement provided remarkable evidence regarding the power of social movement unionism to mobilise different social groups. Moreover, the importance of urban environmental protection was repeatedly underlined because urban environmental campaigns were particularly meaningful to working class who were more vulnerable to ecologically damaging urban planning.
Green bans did not merely highlight the particular interests of working class in ecological matters, but at the same time demonstrated the workers' power to act for their interests and ability to take a leading role. "The greens bans movement reveals the capacity of those with power at the point of production to achieve far-reaching goals through the strategy of withdrawing labour"[48]. Within this context, green bans confirm the huge potential of the collaboration between workers, unions and many

[47] V. Burgmann, *The Green Bans Movement*, cit., 65-66.
[48] V. Burgmann, *The Green Bans Movement*, cit., 80.

other groups against employers, bureaucracy and greed for profit. They show once again that ecological organising and union power are fundamental for the transition towards a climate-friendly future.

Nonetheless, NSWBLF did not consider green bans as a permanent solution for planetary wellbeing. Apart from the significant immediate impacts of bans in rescuing individual buildings, localities or spaces, the union hoped and aimed that the longer-term and more comprehensive effects of the green bans would be "to provoke the state into responding to the assertion of industrial muscle and indications of public support"[49]. Due to the wide extent of the destruction, despite the successful outcomes of green bans, many were destroyed without any law to stop demolition. However, power of these builders labourers and the popularity of the green bans forced governments at both state and federal levels to respond and initiate or improve legislation, regulation and consultation for more socially and ecologically responsible planning and development. In this regard, green bans led to important pieces of environmental legislation in Australia[50]. "The environment was on the political agenda, and public involvement and people power were taken seriously, due to a great extent to the moral and economic force of green bans"[51]. Yet, the same force and impact brought the end of green bans due to the rising tensions within and outside of the labour movement.

Although green bans were conducted for less than five years in Australia, they have a meaningful legacy as one of the most inspirational and visionary practices in labour history. The success of green bans movement is essential for political ecology: it provides evidence and offers hope that coalitions between trade unions and community groups can achieve extraordinarily effective results. Also, green bans "showed us that courage, leadership and a will to take a risk can take on powerful interests and unfair laws"[52]. Green bans significantly influenced the local planning structures of New South Wales as well as initiated democratic national and state planning systems in which heritage and ecologically important sites became a part of development processes. Before green bans, petitions, community protests and attempts to speak to officials were constantly being ignored. Even legislatures did not have the power to prevent a

[49] V. Burgmann, *The Green Bans Movement*, cit., 82.

[50] For instance; the Heritage Act of 1977 and the Environmental Planning and Assessment Act of 1979.

[51] V. Burgmann, *The Green Bans Movement*, cit., 82.

[52] T. Ginty, *Sydney's Green Bans: The Workers Boycotts That Saved the City*, in *Lives & Times*, 2019, https://livesandtimesblog.com/2019/05/12/sydneys-green-bans-the-worker-boycotts-that-saved-the-city/ (accessed February 23, 2026).

demolition. But the green bans movement proved that a militant, democratic and innovative union, which accomplishes big improvements for workers, can influence local, national and international politics in a powerful way. As such, green bans became known across the world rapidly.

When all else fails and both labour and nature are facing exploitation, violation and oppression, green bans can protect the commons of public space and services together with labour rights. Therefore, the revolutionary example of green bans including the skilled leadership, effective strategies, organisational model, principles and alliance building should serve as a guide for radical activism in ecological sustainability. Fighting for labour rights requires the demand for higher standards of working conditions, sustainability and responsibility as well as ecological organising and collective action. As the strongest and largest practice which unites nature and labour, green bans must be a huge inspiration, hope and lesson for today. They are as urgent as in the 1970s against socio-ecological crises and the proof that ecological collective action at work has an enormous power to create change.

In terms of the next best practice, occupation and sit-in of workers in the wind turbine factory of Vestas Wind Systems in 2009 deserve an analysis. In April 2009, Danish firm announced that its wind turbine factory in Newport, Isle of Wight (UK) employing 525 workers and another factory in Southampton (UK) employing 100 workers would close at the end of July due to a lack of demand in northern Europe. The news of closure and job losses came when Vestas, which is the world's largest manufacturer of wind turbines, "reported a quarterly sales rise of 59% to 1,11 billion euros"[53]. Despite its rising profits and being the only large manufacturing company for wind turbines in the UK besides one of the largest employers of skilled labour in Newport, Vestas blamed the British government's lack of commitment to renewable energy and weak currencies while offering workers a redundancy package of less than £1,000.

Within this scope, 25 workers entered the administration block of the Vestas factory in Newport on 20th July and refused to leave until the government was willing to negotiate their proposal to prevent its closure by nationalising the plant. Also, 11 of them carried out a sit-in protest at the company's offices. Whereas workers occupying the Vestas factory were threatened with arrest and a court injunction, on 11th July, "50

53 https://libcom.org/article/wind-turbine-manufacturing-workers-occupy-company-offices (accessed February 23, 2026).

protesters gathered in St. James' Square in the town of Newport in support of the threatened workers"[54]. As the opposition to the closure of the factory was increasing, rallies continued in support of the Vestas occupiers too. RMT union pledged full support to these workers and its general secretary (Bob Crow) made a solidarity visit to the occupation.

Since the occupation began, the Vestas workers received wide support and solidarity from the British left including political parties and environmental groups like Greenpeace, Campaign Against Climate Change, Workers' Climate Action and Climate Camp. As a spokesman for the Alliance for Workers' Liberty said: the struggle of Vestas workers is crucial on at least three aspects- "it is central to the struggle for jobs, it is central to the struggle for the environment, and it is central to the struggle for rebuilding the labour movement"[55]. In a similar vein, a spokesman for the Campaign Against Climate Change said: "We give the workers our full support. The government should take over the plant and restart production and if there currently is not enough demand for wind turbines, then it should build more wind farms itself"[56].

During the peaceful collective action, occupation was carried out at one floor of the plant and managers continued working on the rest. Police officers attended the protests as well, whilst private security guards cut the factory's communication lines and blocked all deliveries of food and water. On the other hand, "the use of mobile telephones in the Vestas occupation gave the press remarkable access to the occupiers and provided an effective platform for relaying their demands and feelings to the media"[57]. However, at least 5 occupiers were arrested at the plant and 11 workers participating in the occupation were dismissed. While workers complained about the double standards in the approach of UK government towards low-carbon industries and green jobs, they underlined that "it would be a tiny step financially to keep this factory open, but it would be a huge statement about the government's commitment to the green economy. Just as they could not afford to let

[54] R. Stevens, *Britain: Vestas Workers Occupy Wind Turbine Plant to Stop Closure*, in *World Socialist Web Site*, 2009, https://www.wsws.org/en/articles/2009/07/vest-j23.html (accessed February 23, 2026).

[55] https://libcom.org/article/vestas-occupiers-sacked (accessed February 23, 2026).

[56] M. Weaver, S. Morris, *Staff Occupy Isle of Wight Wind Turbine Plant in Protest Against Closure*, in *The Guardian*, 2009, https://www.theguardian.com/environment/2009/jul/21/wind-turbine-factory-occupation (accessed February 23, 2026).

[57] https://libcom.org/article/vestas-occupiers-sacked

the banks fail, they can't afford to let this fail. It's about the history of humanity"[58].

After a bit more than two weeks of factory occupation and protests, Vestas workers were evicted by bailiffs upon the court order implemented by the company management on 7th August. Then they were made redundant on 12th August. Due to the closure on 31st July, more than 600 jobs were lost in Newport and 1,900 workers became redundant in northern Europe. As seen in the campaign poster and leaflet of Vestas workers and supporters, they kept fighting for the reinstatement of all workers, demanded the re-opening of the factory "under worker control, through nationalisation if necessary, buyout by a consortium if not" and supported "a decent energy strategy from both national government and Isle of Wight council"[59]. Also, the leader of Green Party (Caroline Lucas) had put forward a proposal which aimed at turning the factory into a workers' cooperative under the Sustainable Communities Act of 2007. These workers wanted green jobs and just transition besides believing in the need "to shift to sustainable and socially useful production"[60]. They aimed to save jobs, planet and Vestas at the same time, while calling on the government to intervene and save the industry. Though they could not become successful in achieving their demands and goals, Vestas workers gained an important victory in practicing ecological collective action at work and providing such an influential and prominent example for workers around the world.

As the third experience, occupation and protests of workers at Harland and Wolff in 2019 can be examined. Harland and Wolff is one of the best-known companies of Northern Ireland which was founded in 1861 and built the Titanic between 1909 and 1911. When its Norwegian parent company restructured and decided to sell Harland and Wolff, 130 ship builders, steel workers, riveters and welders occupied the shipyard on 30 July 2019 and started to protest outside the yard's gates in a call for the company to be re-nationalised. Workers locked themselves inside the gates and insisted on not leaving until there was a resolution for the 158-year-old yard to remain open. In addition, trade unions representing workers on the site (GMB and Unite) and workers demanded from British Prime Minister to create new jobs in renewable energy there. Since workers at Harland and Wolff had built parts for wind turbines before, they argued that "renewable energy jobs would serve not only as a

[58] M. Weaver, S. Morris, *Staff Occupy Isle of Wight Wind Turbine Plant*, cit.
[59] https://savevestas.wordpress.com (accessed February 23, 2026).
[60] https://savevestas.wordpress.com.

sustainable solution, but also a practical one because of their skill set"[61]. They saw a huge potential in wind turbines and tidal energy, so they aimed at creating thousands of jobs as part of a green new deal and supported the need for a just transition to renewable energy.

Yet, Harland and Wolff went into administration on 6th August with the potential loss of at least 120 jobs, after its parent company had failed to find a buyer. Workers received support from local community and many countries, whereas a rally was held at the shipyard on 23rd August by union leaders from across the country. The strength of support attracted multiple serious bids from potential buyers who wanted to purchase the shipyard. In the meantime, the unions negotiated for the preservation of workers' contracts and terms of employment until the yard re-opened. Workers insisted that "it would be criminal, in the face of the climate emergency, to waste skills and productive capacity which could, at minimum cost and through government procurement, be put to use immediately to reduce at least the UK's carbon emissions"[62]. Furthermore, workers at the shipyard developed an alternative plan, drawing on both a detailed audit of the yard's production capacity and their own experiences and skills, to produce equipment and create new jobs for the renewable sector.

Two months later Harland and Wolff was bought by an energy firm (InfraStrata) and 79 workers maintained to be employed. After 2020, this firm was rebranded as Harland and Wolff Group Holdings and continued to own Harland and Wolff as a subsidiary. In January 2025, acquisition of Harland and Wolff's some facilities by another firm called Navantia UK was completed. Eventually Harland and Wolff was saved from closure many times, but there were still job losses and most importantly workers' occupation and protests for five weeks in defence of climate jobs and renewable energy could not achieve such a meaningful and visionary goal. They definitely showed far more commitment to the shipyard than the government by demanding public ownership and state-led reconstruction, just transition and green jobs. Despite the different outcome than they desired, workers of Harland and Wolff and unions successfully practiced a

[61] L. K. Gurley, *Workers Seize the Shipyard That Built the Titanic, Plan to Make Renewable Energy There*, in *Vice*, 2019, https://www.vice.com/en/article/8xwanz/workers-seize-the-shipyard-that-built-the-titanic-to-make-renewable-energy (accessed February 23, 2026).

[62] H. Wainwright, *The Harland and Wolff Workers Want to Make Renewable Energy. A Labour Government Would Help Them*, in *Independent*, 2019, https://www.independent.co.uk/voices/harland-and-wolff-belfast-occupation-nationalisation-labour-john-mcdonnell-a9071536.html (accessed February 23, 2026).

fundamental example of ecological collective action at work and proved that another way is possible.

Moreover, workers from different sectors and countries started to join and contribute to the Global Climate Strikes since 2019. According to ITUC, unions in many countries took part in the climate strikes by mobilising their members[63]. In this regard, trade unions such as CFDT in France[64], CCOO and UGT in Spain, DİSK in Turkey, CGIL in Italy and TUC in the UK called for every member to participate in the climate strikes. A broad range of unions and other labour organisations in the USA participated in these strikes too. As a remarkable example, arts and culture workers, employed at the institutions including Tate Modern, Southbank Centre, National Theatre and Tate Britain, joined thousands of protesters in central London in the Global Climate Strikes on 20 September 2019. These workers left work and walked out of their workplaces to join a group of outsourced maintenance workers and members of the Public and Commercial Services Union (PCS) which had organised the protest. Then they marched together to join other protesters in the Global Climate Strike.

According to a press release, workers were protesting the cultural organisations which produce huge amounts of carbon dioxide through heating, lighting, plastic use and flights[65]. The strike also aimed at putting pressure on the institutions to drop their oil sponsorships from the biggest fossil fuel polluters on the planet. While workers from the National Theatre drafted a petition which called on the management to acknowledge a climate emergency and join them in the strike, press release of the PCS underlined that "art and culture workers have a vital role to play in the radical changes needed to avert climate disaster" because the workers of art and cultural organisations "are in a unique position to engage citizens in the urgency, values and opportunities of a transition away from fossil fuels"[66].

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[63] ITUC, *Students Strike Now for the Jobs of Tomorrow*, 2019, https://www.ituc-csi.org/Fridays4Future-Worldwide-15March (accessed February 23, 2026).

[64] As another union from France, CGT called a strike in 2014, which lasted 3 months, in order to reverse the emissions of the Sénerval company (operating in waste valorisation) due to their harmful effects on the people in Strasbourg (See J. Escribano Gutierrez, *The Strike as an Instrument*, cit., 151).

[65] See https://www.frieze.com/article/arts-workers-join-thousands-protesters-climate-strike (accessed February 23, 2026).

[66] N. Polonsky, *Hundreds of Art Workers Join Global Climate Strike in London*, in *Hyperallergic*, 2019, https://hyperallergic.com/518846/global-climate-strike-london/ (accessed February 23, 2026).

Following major protests led by Extinction Rebellion in London in 2019, several cultural institutions in the UK, such as Tate, the Old Vic and the Royal Court, had already declared a climate emergency. Those workers protesting on 20th September also "called on all cultural institutions to escalate their efforts to tackle climate change by committing to becoming carbon neutral by 2030, refusing fossil fuel sponsorship, running green forums, and promoting the role of Green Reps in the workplace"[67]. On the other hand, Culture Declares Emergency (a group of arts organisations in the UK) called on all participants to attend the general strike on 27 September 2019 as well, whilst an alliance of more than 30 creative agencies called Create and Strike was another participant in the Global Climate Strike took place in London.

In terms of tech workers, climate strikes and open letters to companies like Amazon, Google and Microsoft constitute valuable examples about the protection of labour and nature. Accordingly, more than 8,000 workers of Amazon requested the adoption of "climate plan shareholder resolution" and the release of "a company-wide climate plan" from its CEO and board of directors in an open letter of April 2019 that demonstrates the principles of;

- "public goals and timelines consistent with science and the IPCC report",
- "a complete transition away from fossil fuels",
- "prioritisation of climate impact when making business decisions",
- "reduction of harm to the most vulnerable communities first",
- "advocacy for local, federal, and international policies that reduce overall carbon emissions", and
- "fair treatment of all employees during climate disruptions and extreme weather events"[68].

Since "customer obsession requires climate obsession"[69], Amazon workers demanded concrete action, plans and strategies against the climate crisis by signing a letter with their names open to public. Similarly, more than 2,000 Google workers called on their employer in an open letter of November 2019 "to commit to and release a company-wide climate plan" which incorporates;

- "zero emissions by 2030",

[67] N. Polonsky, *Hundreds of Art Workers*, cit.
[68] Amazon Employees for Climate Justice, *Open Letter to Jeff Bezos and the Amazon Board of Directors*, 2019, https://amazonemployees4climatejustice.medium.com/public-letter-to-jeff-bezos-and-the-amazon-board-of-directors-82a8405f5e38 (accessed February 23, 2026).
[69] Amazon Employees for Climate Justice, *Open Letter*, cit.

- "zero contracts to enable or accelerate the extraction of fossil fuels",
- "zero funding for climate-denying or -delaying think tanks, lobbyists and politicians", and
- "zero collaboration with entities enabling the incarceration, surveillance, displacement, or oppression of refugees or frontline communities"[70].

In addition to these open letters, more than 1,700 Amazon workers and more than 1,000 Google workers participated in the Global Climate Strike on 20 September 2019 together with hundreds of workers from Tech Workers Coalition including Ecosia, Atlassian and Microsoft. As "a coalition of workers in and around the tech industry, labour organisers and community organisers", Tech Workers Coalition is a worker-led, democratically structured and all-volunteer organisation working "in solidarity with existing movements towards social justice, workers' rights and economic inclusion"[71]. Similar to the demands of Amazon, Google and Microsoft workers in their climate strike announcements about 20th September[72], Tech Workers Coalition also demanded from their employers to "act with boldness and urgency, and commit to: zero carbon emissions by 2030, zero contracts with fossil fuel companies, zero funding of climate denial lobbying or other efforts and zero harm to climate refugees and frontline communities"[73]. It was aware of tech industry's hidden carbon footprint, collaboration with Big Oil, "dirty role in climate change" and "repression of climate refugees and frontline communities" so that it undertook the responsibility to be a part of the solution and to hold their employers accountable[74]. Under the initiatives called "Google workers for action on climate", "Microsoft workers for climate justice"

[70] Google Workers for Action on Climate, *Open Letter on Climate Action at Google*, 2019, https://medium.com/@googworkersac/ruth-porat-497bbb841b52 (accessed February 23, 2026).
[71] https://techworkerscoalition.org (accessed February 23, 2026).
[72] Google Workers for Action on Climate, *Google Workers are Striking for Climate on Sept 20*, 2019, https://medium.com/@googworkersac/google-workers-are-striking-for-climate-sept-20-7eba2100b621 (accessed February 23, 2026); Amazon Employees for Climate Justice, *Amazon Employees are Joining the Global Climate Walkout*, 9/20, 2019, https://amazonemployees4climatejustice.medium.com/amazon-employees-are-joining-the-global-climate-walkout-9-20-9bfa4cbb1ce3 (accessed February 23, 2026); https://github.com/MSWorkers/for.ClimateAction (accessed February 23, 2026).
[73] https://techworkerscoalition.org/climate-strike/ (accessed February 23, 2026).
[74] https://techworkerscoalition.org/climate-strike/.

and "Amazon employees for climate justice", these workers committed to their demands and principles for many years.
In May 2023, thousands of Amazon workers walked off the job again with demands about a flexible remote work policy and renewed commitments to decrease carbon emissions to zero[75]. As workers emphasised with the slogan of 'Enough is enough', Amazon was quitting its own Climate Pledge which aimed to be net carbon-zero by 2040 and was a win for its workers after their participation in the Global Climate Strike in 2019. Since Amazon was getting worse related to its climate commitments, its workers organised a walk out one more time to push the company to move in the right direction. Within this scope, Global Climate Strikes are one of the most powerful examples related to ecological collective action at work since workers get together with people of all ages (and especially with new generations) and collaborate in unity for the future of labour and nature[76].
Being the first union-authorised climate strike in the USA, Minneapolis cleaning workers is another crucial example with successful consequences. On 27 February 2020, over 4,000 unionised cleaning workers employed at high-rise towers in Minneapolis walked off their jobs and led a tremendous march demanding that their employers take action on climate crisis. Alongside these workers and janitors who were mostly immigrants and people of colour, there were environmental organisations (like Sierra Club, MN 350, Environment Minnesota and Minnesota Environmental Justice Table) and high school students. As members of Service Employees International Union (SEIU) Local 26, workers were employed by over a dozen different subcontractors including U.S. Bank, Wells Fargo, United Health Group and Ameriprise. Since the strikers were a colourful coalition from all over the world with different religions and races, SEIU Local 26 provided simultaneous interpretation in Somali, Vietnamese, Spanish, Nepalese and Amharic. The purpose of this 24-hour climate strike was pushing for demands such as the creation of a Community Green Bargaining Table, adoption of a Green Cleaning Training Program with more eco-friendly cleaning products and closure

[75] See C. O'Donovan, *Amazon Workers Walkout Amid Layoffs Citing Concerns for Climate*, in *The Washington Post*, 2023, https://www.washingtonpost.com/technology/2023/05/31/amazon-walkout-climate-strike/ (accessed February 23, 2026).
[76] For a toolkit for workers to support young people in the climate strikes, see Labor Network for Sustainability, *A Climate Strike Toolkit for Workers*, 2019, https://www.labor4sustainability.org/wp-content/uploads/2019/07/ClimateStrike.pdf (accessed February 23, 2026).

of the HERC incinerator which was a powerful source of greenhouse gases and pollution harming nearby communities.

A week after the climate strike, Minneapolis cleaning workers won a new contract which covers "funding for a green cleaning initiative to reduce waste and water and energy consumption, while transitioning away from toxic chemicals, with the goal of significantly lowering carbon emissions from buildings"[77], wage increase, reduced cost of health insurance and incorporation of sexual harassment policies. Although SEIU Local 26 has had a concern with ecological issues since 2009 and climate has been a popular topic among its members, it took hard work to build a coalition with joint green demands for four months. Also, focusing on bargaining for the common good might not be useful, unless the union was eager to make sacrifices and ultimately strike. As an innovative method for bringing trade unions and allies together which "goes beyond the limits to traditional collective bargaining and jointly shape bargaining campaigns that advance the mutual interests of workers and communities alike"[78], bargaining for common good was surpassed by Minneapolis cleaning workers based on "striking for common good"[79] which implies ecological sustainability against the carbon emissions of corporate office towers. Visionary mentality of workers, successful results, efforts and collaborations of the union, and organising an ecological collective action in the USA are outstanding elements of this best practice. As a pioneering movement in Minneapolis, it will influence many workers and unions in Minnesota, USA and around the world by serving as a compass.

Last but not least, public transport workers' strike in Germany is an inspiring example that connects labour with nature. German trade union Verdi, which represents around 90,000 public transport workers from more than 130 municipal companies, called an almost nationwide public transport strike for the second time in February 2024. Accordingly, the strike took place from 26th February to 2nd March, whereas the main strike day was planned for 1st March (Friday) coinciding with the day of climate protests organised by the Fridays For Future. Under the banner 'We Drive Together', Verdi joined forces with the climate movement for better working conditions (including shorter working time without wage

[77] I. Altamirano et al., *Lessons From the First Union Climate Strike in the U.S.*, in *Labornotes*, 2020, https://labornotes.org/2020/04/lessons-first-union-climate-strike-us (accessed February 23, 2026).

[78] J. Brecher, *First U.S. Union-Authorized Climate Strike?*, in *Labor Network for Sustainability*, https://www.labor4sustainability.org/strike/first-u-s-union-authorized-climate-strike/ (accessed February 23, 2026).

[79] J. Brecher, *First U.S. Union-Authorized Climate Strike*, cit.

loss, longer rest periods between shifts and more holiday with higher holiday pay), high additional investment in the underfunded public transport sector in Germany by 2030 and "socially just transport sector transition"[80]. According to the Association of German Transport Companies (VDV), 110,000 new workers have to be hired across Germany by 2030 to achieve climate targets in the transport sector[81].
As regards the motivation behind this unusual alliance between local transport workers and climate activists, which also covers the students who have been leading massive school strikes, it is sharing common goals based on the cooperation of labour and nature. Whilst prioritising public transport with reliable services and decent jobs over private cars remains a significant part of decarbonising the transport sector, climate-friendly working conditions for public transport sector workers are vital for their health and safety, participation and rest. In addition, Fridays For Future's collaboration with Verdi is crucial "for mutually reinforcing acceptance of common goals and exerting pressure on public sector employers for higher wages"[82]. Whereas both parties started to trust and understand each other, mutual support and effort provided stronger voice, new sense of purpose, creative strategies along with wider experience and networks. Although this alliance has been developing since 2019, acting together could not be postponed any longer. In March 2025, Verdi called for a warning strike again due to the inadequate financial offer of Berlin's public transport company (BVG) and ongoing inflation. Nevertheless, this remarkable ecological collective action is still a big victory as it links labour struggle with climate.

5. In Lieu of Conclusion

Workers' collective action has always been and continues to be a powerful and irreplaceable tool for societal transformations and social justice. As its necessary reflection in the era of socio-ecological crises, ecological collective action at work is the key to ensure decent working conditions and extensive labour rights. Instead of being ignored as an "old way" practice, it must be regulated under legislation and collective agreements fairly and its exercise must become easier. Since ecological collective

[80] F. Quecke, *Climate Protesters in Germany Join Forces with Public Transport Workers to Push for Change*, in *Clean Energy Wire*, 2024, https://www.cleanenergywire.org/news/climate-protesters-germany-join-forces-public-transport-workers-push-change (accessed February 23, 2026).
[81] See F. Quecke, *Climate Protesters in Germany*, cit.
[82] F. Quecke, *Climate Protesters in Germany*, cit.

action at work is crucial for the future of workers and our planet, it should not be regarded automatically and eagerly as illegal, abusive or exception. Of course, it has limits and workers should not abuse their right to collective action. But employers should not deny this human right either and should face dissuasive sanctions, restrictions and more responsibility with their economic activities otherwise.

As an ecological actor, strong and independent unions are indispensable for the effective exercise of the ecological collective action at work. Thus, there must be an increase in trade union density and collective bargaining coverage similar to the fair functioning of unions such as active participation of members, union democracy, abundance of resources and innovativeness, and high quality of decision-making and procedural mechanisms. Ecological organising is an important opportunity for trade unions to introduce a fresh, powerful and inclusive purpose to renew themselves in methods of activity and solidarity, whilst for workers to embrace a pro-union mentality. Also, raising awareness of ecological collective action at work and its best practices should be prioritised together with actively taking part in all political processes regarding its legalisation, enforcement and protection in cooperation with unions and organisations including ETUC and ITUC. Since women are affected disproportionately by socio-ecological crises, ecological collective action has to adopt gender equality with more participation and leadership of women workers as well. Being a unique element of nature-friendly worker organising, ecological collective action at work has the capacity to be a robust antidote to the violations of labour rights. Accompanied by ecological labour legislation, fair court decisions and labour inspection as well as a mentality far away from greed for profit and human-centrism, ecological collective action at work can achieve a magnificent success for reuniting labour and nature in a changing world.

Journalism and Job Insecurity: The Psychophysical State of Freelance Journalists in Italy

Giacomo Buoncompagni *

Abstract. From a cultural, technological and economic perspective, the field of journalism is in a constant state of change. Journalists frequently work under precarious conditions that involve risk, violence and aggression, all of which can negatively affect their health and quality of life. The appeal of journalism as a career is declining due to falling revenues, emerging technologies, redundancies and decreasing circulation, among other factors. Those currently employed in the news industry are increasingly expected to do more with fewer resources, while long-standing pressures such as tight deadlines, excessive workloads and intense competition continue to exacerbate physical, legal and ethical challenges. This study aims to examine the overall state of journalism and the wellbeing of its practitioners, with a particular focus on the Italian media landscape. In particular, it highlights the precarious working conditions that affect a specific category of professionals within journalism: freelancers.

Keywords: *Freelance; Journalism; Health; Risk; Precariousness.*

Introduction

The issue of quality journalism has long been the subject of debate. It is increasingly demanded by public opinion in an era characterised by professional hybridisation, transparency, accelerated information flows and digital content overload. However, quality journalism also entails risks for those responsible for selecting, prioritising and disseminating news, whether in conflict zones or during sensitive investigations. At the same time, journalists often lack adequate protection and support, while facing diminishing rewards.

Contrary to public perception, salaries in the journalism sector have declined at an unsustainable rate. Many freelancers are leaving the

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profession or taking on additional employment, leaving them exposed to risks such as frivolous lawsuits. This precarious situation particularly affects one category of journalist: the freelancer.

1. Outside Newsrooms

Freelance journalism refers to the work of self-employed writers who undertake regular or occasional assignments for news organisations. Depending on their agreement with the organisation, freelance journalists may be paid by the hour, by the word, or per assignment. Freelancers operate across all areas of journalism, including sports, current affairs and entertainment[1].

Like all other forms of reporting, freelance journalism is subject to the same professional standards, and those working in the field are required to undergo the same checks as their counterparts in mainstream media. While journalistic tools can be useful, it is equally important to understand the demands of the role. A freelance reporter is a self-employed journalist who provides stories to news organisations that do not employ them on a permanent basis.

In this context, freelancers are often required to pitch story ideas to commissioning editors. Once a proposal is accepted, a fee is agreed upon and the journalist proceeds to complete the assignment[2]. This mode of working allows individuals to choose who they write for, what they write about, and how frequently they work. As long as they can identify stories that are both engaging and of interest to news organisations, freelancers can operate from virtually anywhere.

However, this flexibility comes with significant drawbacks. Permanent employees benefit from greater employment rights than freelancers, whose income is directly tied to their output and the willingness of editors to commission their work. If a story proposal is rejected, no payment is received. In addition, freelancers may incur substantial out-of-pocket expenses, as news organisations are often reluctant to cover the costs associated with producing a story.

For these reasons, freelance journalists are particularly vulnerable to work-related stress and burnout. This condition affects many media professionals worldwide, including in Italy. A study published in 2021 in

[1] SPJ, *On Your Own: A Guide to Freelance Journalism*, 2018, https://www.spj.org/freelance-guide.asp (accessed August 8, 2025).

[2] NCTJ, *Freelance Journalism*, 2016, https://www.nctj.com/life-as-a-journalist/freelance/ (accessed August 8, 2025.

the *International Journal of Environmental Research and Public Health* highlights this issue: a survey of 292 journalists found a direct correlation between emotional exhaustion and two other dimensions of burnout, namely depersonalisation and reduced personal fulfilment. An inverse relationship was also observed with factors such as workload, control, rewards, community, fairness and values.

A study conducted in Bangladesh identified inadequate support from superiors as a primary source of professional stress, alongside unclear objectives, precarious working conditions, excessive workloads, long working hours and exposure to threats[3].

Stress levels increased further with the onset of COVID-19. A survey entitled *The Journalism and Pandemic*, conducted by the International Center for Journalists in 2021 and involving 2,000 journalists across 145 countries, found that 82% of respondents reported at least one negative emotional or psychological reaction linked to the pandemic. Furthermore, 70% indicated that dealing with the impact of the virus was the most challenging aspect of their work during this period, while 30% stated that their organisations did not provide protective equipment during the first wave.

A survey conducted by the National Union of Journalists (NUJ) between late 2020 and early 2021 found that six in ten UK journalists experienced a reduction in income due to the pandemic. Among these, 13% reported losing all their income, while 35% lost more than half. Seventy-two per cent reported redundancies within their organisations, and 85% anticipated further cuts if the crisis continued. These developments had a significant impact on mental health. Research conducted by Middlesex University London found that journalists experienced negative emotions such as anxiety and frustration during the pandemic, alongside a sense of professional pride. However, the lack of interpersonal interaction and social spaces made emotional management more difficult and contributed to a strong sense of isolation[4].

Turning to the Italian context, data collected by the Observatory on Journalism of Agcom (the Authority for Communications Guarantees), based on approximately 2,000 questionnaire responses gathered between

[3] Huda K., Azad A., *Professional Stress in Journalism: A Study on Electronic Media Journalists of Bangladesh*, in *Advances in Journalism and Communication*, 2015, vol. 3, pp. 79–88.

[4] Šimunjak M., *Pride and Anxiety: British Journalists' Emotional Labour in the Covid-19 Pandemic*, in *Journalism Studies*, 2021, vol. 23, n. 3, pp. 320–337.

2018 and 2020, indicate that there are currently around 35,000 active journalists in Italy, of whom 39% are freelancers[5].

Over the past two decades, there has been a steady decline in the proportion of journalists under the age of 40, falling from 53% in 2000 to 30% in 2018. During the same period, income levels have also decreased, disproportionately affecting freelancers. On average, 75% of freelance journalists earn less than €5,000 per year. The report describes "an insider–outsider labour market in which employees (the insiders) enjoy greater protection, while other categories of journalists (the outsiders) are compelled to work under precarious and poorly paid conditions".

Younger journalists are particularly disadvantaged: only 28% of those under 35 earn more than €20,000 annually, compared to 57% of those over 55. For this reason, discussions of journalism increasingly invoke the concept of "job insecurity".

Job insecurity encompasses both objective conditions—such as unstable or non-existent contracts—and the subjective perception of the risk of job loss, along with the associated emotional responses. It is a widespread issue across many occupational sectors and has significant implications for mental health. Prolonged exposure to job insecurity can lead to anxiety, sleep disturbances, low self-esteem and depression[6].

Economic insecurity is also closely linked to the phenomenon of frivolous complaints, which are often filed with the sole aim of intimidating and silencing journalists who lack financial resources and legal support.

In 2022, the Ossigeno per l'Informazione Observatory recorded an increase in frivolous complaints and intimidatory defamation lawsuits. The misuse of legal systems to restrict press freedom is not limited to Italy, which led to the formation of the Coalition Against SLAPPs in Europe (CASE). The acronym SLAPP stands for "strategic lawsuit against public participation".

Having identified 820 SLAPP cases in Europe between 2010 and 2022, CASE issued an appeal to European institutions in 2023, calling for a robust anti-SLAPP directive and emphasising "the importance and urgency of strong legislative measures capable of providing effective protection at both national and international levels".

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[5] Agcom, *Documento generico*, 2020, https://www.agcom.it/documents/10179/20594011/Documento+generico+23-11-2020/41f9490a-44bd-4c61-9812-bf721b5c7cfe?version=1.0 (accessed August 8, 2025).

[6] Buoncompagni G., *The Crisis of Journalism and the Health of Journalists*, in *Studies in Media and Communication*, 2024, vol. 2, n. 2, pp. 140–148.

2. Methodology

The research employed a qualitative and creative social research methodology, incorporating techniques such as focus groups and art therapy. This approach involved unstructured interviews alongside expressive practices using artistic materials, including painting and drawing.

Creative methods are process-based approaches that involve the production of artefacts, including digital artefacts, and are particularly useful for integrating everyday and performative practices into research projects. These methods acknowledge and validate the knowledge and experiences of individuals outside traditional academic contexts, fostering collaborative and dialogical processes in data production[7].

Art therapy, in this context, draws on a psychological instrument known as the individualised "projective test", through which participants express emotions, personality traits, relationships, communication styles and internal conflicts by projecting themselves through two channels: verbal and graphic. This enables participants to articulate experiences and emotions in multiple ways within a professional research setting.

As part of the study, the drawings produced by interviewees and focus group participants were analysed using an approach derived from art therapy, specifically through qualitative interpretation techniques based on symbolic and narrative analysis of images[8]. Interpretation was conducted from an exploratory and communicative perspective rather than a diagnostic one, focusing on understanding the meanings attributed by the authors to their drawings. Participants were invited to comment on and explain their visual outputs, allowing the visual data to be triangulated with the verbal data generated during interviews and group discussions.

This approach enabled the drawings to be treated as forms of symbolic narration, capable of expressing emotions, perceptions and experiences that may be difficult to articulate verbally. In this way, visual analysis complemented and enriched the data collected through traditional qualitative research methods.

The participating journalists took turns responding to questions and engaging in open discussion, drawing on insights that emerged through interaction with colleagues and the researcher. However, only some

[7] Giorgi A., Pizzolati M., Vacchelli E., *Metodi creativi per la ricerca sociale*, il Mulino, Bologna, 2021.

[8] Guillemin M. *Understanding illness: using drawings as a research method*, in *Qual Health Res.* 2004 Feb;14(2):272-89

participants agreed to produce drawings representing their emotional state at the time and their perception of being a journalist today.
Four online focus groups were conducted via Google Meet, each consisting of five participants, between April and June 2024. Efforts were made to maintain gender balance within each group. The discussions focused on two main dimensions: socio-economic conditions and professional insecurity. Journalists were recruited through an online registration form distributed via email, through which they provided contact details and biographical information. The form also outlined the aims and procedures of the research and guaranteed participant anonymity in the dissemination phase. Participation was entirely voluntary.
Participants were pre-selected online and contacted via their websites, social media profiles or affiliated newspapers. Preliminary socio-demographic data indicated that all interviewees were Italian, aged between 29 and 38, and held degrees in humanities-related disciplines, including economics, science policy, communication, and foreign languages and literature.
Two key dimensions emerged from the focus group discussions and are central to the present analysis: (1) the socio-economic dimension, relating to precarious employment conditions and their psycho-emotional impact; and (2) the dimension of occupational risk and insecurity, along with the associated psychophysical consequences.
In the discussion of the results, selected drawings submitted by participants via the online form will be included in order to complement the interview data with visual material reflecting the themes that emerged.

3. Discussion of the Results

According to recent Italian research conducted by Irpimedia, the following data illustrate the psychosocial and professional conditions of freelance journalists. Overall, 87% of respondents reported experiencing stress, 73% anxiety, and 68% feelings of inadequacy[9].
More than half reported suffering from insomnia. One in two participants felt misunderstood and experienced intense loneliness. Furthermore, 42% reported symptoms of burnout, including unprovoked outbursts of anger and forms of dependency on the internet and social media. One in three respondents explicitly referred to depression.

[9] Irpimedia, *"Come ti senti"*, 2023, https://irpimedia.irpi.eu/cometisenti/ (accessed June 10, 2025).

In addition, 28% reported a loss of appetite or disordered eating patterns, 27% experienced panic attacks, and 26% reported difficulties in forming and maintaining relationships. Fifteen per cent stated that they had suffered from post-traumatic stress disorder. Notably, only 2% indicated that they had never experienced any of these conditions.

It is also significant to consider the responses provided in the "other" category, where several participants reported issues related to alcohol, tobacco or drug use.

Taking this national context into account, and in light of the categories outlined above, six online focus groups were organised. At the end of each session, participants were invited to submit a drawing representing their emotional state and their perception of journalism at that particular moment.

This approach strengthened the methodological framework of the study, allowing for a deeper understanding of the relationship between the economic conditions, risks and insecurities associated with journalism, and the emotional wellbeing of professionals.

3.1 The Socio-economic Dimension

S. and N. are just two examples of the many freelance journalists living on the edge of economic and professional instability:

"Newspaper articles are paid less and less, and collaborations rarely offer the continuity needed to provide any certainty about the future (…) I felt overwhelmed by pressures coming from multiple directions: from the editor-in-chief waiting for the article, and from the need to pay rent and bills. During this period, I abused drugs and coffee; I could not sleep and suffered from tachycardia and gastritis" (S.).

"For years I worked without being paid. I started as an intern at a local newspaper, covering petty crime and court cases. Everything seemed to happen in that city (…) I found myself in dangerous situations several times and was threatened" (N.).

Another interviewee explained that, at the onset of the pandemic, he could no longer sustain his living costs and was forced to return to his parents' home. This situation led to the breakdown of his relationship and made it increasingly difficult to meet professional deadlines:

"Personal problems affected my clarity at work (…) During COVID-19, I found myself working continuously for two days and then having an entire week without any assignments. I was constantly waiting for emails

from editors-in-chief or for payments, which were rarely made on time" (A.).

The sense of insecurity is further exacerbated by the lack of responses from editors to emails containing proposals for collaborations or ideas for articles, photo assignments or video content (see Figs. 1–2). As highlighted in the theoretical framework, uncertainty surrounding remuneration remains a central issue. In many countries, newspapers clearly outline submission guidelines, editorial contacts and payment rates on their websites. In Italy, however, financial transparency in this regard remains limited[10].

The *Freelance Peephole* project represents the first initiative in Italy to create a public database aimed at increasing transparency regarding freelance pay rates, based on reports from journalists themselves. Since May 2022, more than 180 contributions have been collected. Data from the platform indicate that an online article for *Corriere della Sera* is paid €15 gross, €5 for *Giornale di Sicilia*, €14 for *Gazzetta dello Sport*, and as little as €1.50 for a five-line agency introduction for *Italpress*.

As confirmed by participants in this study, payments are often delayed by several months, and in some cases are never made at all.

"Being a journalist today is an elite profession. It is not simply a question of ethics, technology or multidisciplinary skills. It is a profession tied to inequality and economic access: if you have financial support, you can build a career in journalism. Otherwise, it is impossible to work with stability and peace of mind" (E.).

For journalists working in crime or political reporting, the pace is relentless, leaving little or no time for rest. Availability is often expected around the clock, including weekends, making it extremely difficult to maintain a balance between professional and private life. According to the *Precariometro* survey conducted by the National Federation of the Italian Press (FNSI) between 2021 and 2022, 15% of the 266 precarious journalists surveyed reported working more than 50 hours per week.

As a result, freelancers are often forced either to adapt to these conditions or to find alternative strategies for survival, such as taking on additional jobs or sacrificing their personal time. These dynamics have significant consequences for professional identity and self-perception.

"Of course, I am not only a journalist to make ends meet—and I am not ashamed to say it. I also work in the social sector and help high school

[10] Buoncompagni G., *The Crisis of Journalism and the Health of Journalists*, in *Studies in Media and Communication*, 2024, vol. 2, n. 2, pp. 140–148.

students with their homework privately. However, in journalism, those who remain fully within the news sector and maintain a certain professional level are valued more than those who also work in press offices or communication roles, even temporarily. Freelancers are outcasts compared to newsroom staff; they are second-class journalists" (C.).

Low pay is increasingly driving the hybridisation of journalism with other professions. Many journalists take on roles in press offices or communication departments within public and private institutions, where there is greater access to middle- and high-income brackets and less professional and personal instability[11].

However, this hybridisation may also expose journalists to forms of pressure or conflict of interest, with potential implications for the functioning and stability of democratic systems. For this reason, the Italian Permanent Centre for Journalism has recently established a working group that will produce a report on the condition of freelance journalists in Italy in the coming months.

Despite the economic crisis affecting the publishing sector, the external image of journalism remains largely unchanged. The profession continues to be perceived as prestigious and associated with an elite status and certain privileges. Journalists are often expected to perform this image publicly—on television programmes, at festivals and during public events—where projecting success remains important.

Maintaining this façade, however, becomes increasingly difficult in the face of growing precarity and declining remuneration.

[11] Splendore S., *Sociologia del giornalismo*, Laterza, Roma-Bari, 2023.

Figure 1. Overwork, contracts note

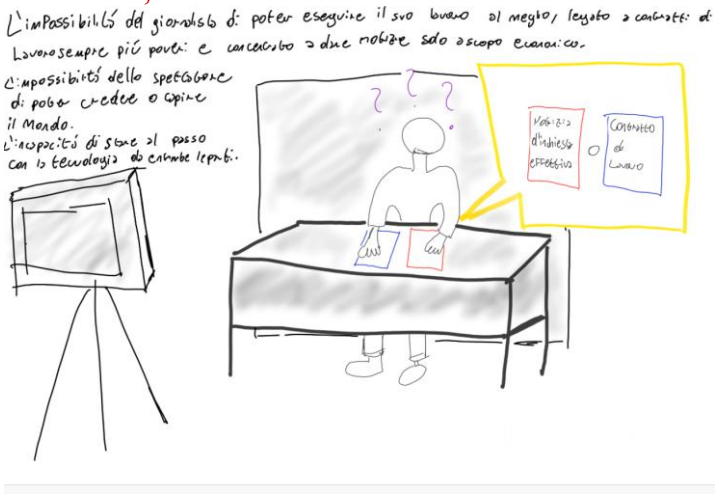

Figure 2. Psycho-emotional disturbances

3.2 Dimension of Insecurity and Professional Risk

Economic conditions are not the only factor contributing to the difficulties freelance journalists face in practising their profession consistently and effectively. Those who report on sensitive issues such as organised crime, terrorism, corruption and illegal trafficking are exposed to heightened professional risks and insecurity. While covering such topics

may lead to higher remuneration and public recognition, it also entails significant personal danger.

Interviewees acknowledged the particular difficulty of reporting on crime and micro-violence within their own local contexts. In such cases, the risk of retaliation is considerable, and there appears to be little or no protection from employers. Some participants reported receiving intimidating messages, anonymous late-night phone calls requesting information about their sources, and threats against their property.

"Some friends and colleagues who work in newsrooms did not believe me. After I had interviewed members of a local gang, my phone was bombarded with anonymous calls, and the walls of my garage were covered with graffiti" (B.).

"I am very passionate about crime and legal reporting. If you do a good job, you gain recognition. However, if something goes wrong, or if you are filmed on a mobile phone or targeted by rumours online, you are exposed to serious risks. It then becomes extremely difficult to obtain physical, financial or legal protection in the event of harm to oneself or one's property" (S.).

The rise of the internet and social media has further intensified these risks. Journalists who engage in public debate are increasingly exposed to hate speech, online harassment and cyberstalking[12]. A recent survey conducted by IrpiMedia, based on an anonymous questionnaire administered to 558 journalists, provides empirical support for these concerns.

Overall, 28% of respondents stated that threats significantly affected their mental health, while 19% reported that the dangers associated with fieldwork had a comparable impact. These figures are notably higher among video-makers and photojournalists: 43% reported being affected by the risks of fieldwork, and 40% by threats. Online abuse was also identified as a major issue, with 33% of respondents considering it a threat to their psychological wellbeing. This percentage rises to 44% among contracted staff (such as editors and publishers) and to 39% among female journalists.

Several testimonies collected during the research further illustrate these risks:

"I was attacked by taxi drivers during a demonstration outside Palazzo Chigi."

"I risked being assaulted by a group of far-right activists at a funeral."

"I was nearly attacked simply for asking legitimate questions about a news

[12] Ziccardi G., *Online Political Hate Speech in Europe: The Rise of New Extremisms*, EE Publishing, Northampton, 2020.

story."
"I was verbally and physically abused by a politician."
These accounts highlight that journalism—particularly field reporting—can be a dangerous profession. Operating in unsafe environments, constantly assessing potential threats and questioning whether certain lines of inquiry may provoke retaliation can have a significant impact on mental health[13].
The final document of the first phase of the public consultation *Information System*, published by Agcom in 2018, explicitly identifies the issue of intimidation against journalists, ranging from traditional threats to new forms of online harassment. Obstacles to the free flow of information also include frivolous lawsuits, which are particularly serious as they may undermine freedom of expression, especially in relation to issues of public interest, such as organised crime. Freelance journalists, who are generally less well paid and less protected by insurance, appear to be particularly vulnerable (see Figs. 3 and 4).
Journalists who receive threats and are considered to be at risk may be granted police protection; however, such measures are often temporary and not always sufficient:
"When I reported on officials involved in human trafficking in Libya, it was undoubtedly one of the most difficult moments of my career. I had lived in Libya for four years—it was my home. That investigation felt like starting from zero" (N.).
During the pandemic, this journalist participated in the six-month *Journalists in Residence Milano* programme, organised by Q Code in partnership with OBCT (OBC Transeuropa) and funded by the European Centre for Press and Media Freedom. The initiative was designed to provide threatened journalists with a safe environment in which to rest and recover, while continuing their investigative work under safer conditions.
Working in crisis areas, conflict zones or in contact with criminal actors can have significant economic implications and may also adversely affect both physical and mental health[14]. Experiences such as physical assault, coercion or deprivation can trigger traumatic responses. Humans typically respond to danger through "fight or flight" mechanisms; however, when

[13] Irpimedia, *"Come ti senti"*, 2023, https://irpimedia.irpi.eu/cometisenti/ (accessed August 8, 2025).
[14] Newman E., Madrigal I., Hight J., *The Inconsistency of Trauma-Related Journalism Education Goals and Instruction*, in *Journalism & Mass Communication Educator*, 2023, vol. 78, n. 2, pp. 165–182.

neither response is possible, the mind may resort to a more primitive defensive state: shutdown[15].

This response has been described in neuroscientific theory as the activation of the "reptilian brain", a concept introduced by Paul MacLean. In such cases, the body may freeze and the individual may experience dissociation, as though detached from the situation. From an evolutionary perspective, this response may function as a survival mechanism, as predators may abandon prey perceived as lifeless.

This helps explain why traumatic experiences often result in memory fragmentation or gaps, as the mind distances itself from emotionally overwhelming events. Such responses are characteristic of post-traumatic stress disorder (PTSD), a condition that develops following exposure to traumatic experiences. First systematically studied in the United States in relation to veterans of the Vietnam War, PTSD can affect individuals of all ages, including not only direct victims but also witnesses and those indirectly exposed to trauma[16].

In addition to the psychological burden of reporting on distressing events, freelance journalists often receive limited institutional support. Editors may fail to monitor remote work adequately or provide guarantees of publication, further exacerbating professional insecurity:

"As a freelance correspondent, I was in Afghanistan in spring 2021, before the Taliban's return and the withdrawal of US forces (…) At a certain point, the publisher withdrew from publishing several articles and photographs that had already been agreed upon, citing dissatisfaction and increased costs, including insurance, food, accommodation and the later involvement of a colleague" (M.).

[15] Feinstein A., Owen J., Blair N., *A Hazardous Profession: War, Journalists, and Psychopathology*, in *American Journal of Psychiatry*, 2015, vol. 172, n. 1, pp. 85–90.

[16] Newman E., Madrigal I., Hight J., *The Inconsistency of Trauma-Related Journalism Education Goals and Instruction*, in *Journalism & Mass Communication Educator*, 2023, vol. 78, n. 2, pp. 165–182.

Figure 3. Full

Figure 4. Risks to truth

4. Conclusion

Today's journalists operate under considerable pressure. The relentless news cycle exposes reporters and editors to repeated forms of trauma, while the future of the news industry—particularly at the local level—remains uncertain. Online harassment, especially targeting women and journalists from minority backgrounds, represents a significant and growing concern.

Journalism, and freelance journalism in particular, plays a crucial social and institutional role in narrating reality, interpreting events and acting as a bridge between political institutions and citizens. However, this function

can obscure two major forms of trauma that affect information professionals and compromise their ability to practise journalism effectively: economic and security-related trauma, both of which impact the mind and body.

In this paper, the term "economic trauma" refers to the chronic psychological stress generated by job insecurity, contractual instability and the perception of financial uncertainty. This is not trauma in the clinical sense, but rather a persistent condition that may produce anxiety, stress and a sense of vulnerability, as highlighted in the work of Standing and Vosko on labour precarity.

By contrast, "security trauma" refers to acute, potentially destabilising events, understood in a clinical sense. These may arise from direct exposure to dangerous, violent or threatening situations encountered in the course of journalistic work. Unlike economic trauma, this form involves a rupture in everyday professional activity and may trigger acute stress reactions associated with post-traumatic disorders.

Distinguishing between these two forms of trauma allows for a better understanding of both the cumulative, structural impact of economic insecurity on psychological wellbeing and the immediate, potentially clinical effects of threats to personal safety.

The term "trauma" derives from the Greek *trauma*, meaning "wound". In medical terms, it refers to a bodily injury caused by a sudden and violent agent, while in psychological terms it denotes a disturbance resulting from a significant emotional event. Potentially traumatic experiences include war, physical or sexual violence, imprisonment, kidnapping and natural disasters.

Importantly, trauma may also arise through indirect exposure. Journalists who are not directly involved in traumatic events may still be affected through the processing of distressing material—such as videos, photographs or testimonies of victims and survivors. This phenomenon is known as "vicarious trauma". In such cases, individuals do not experience the event firsthand but are nonetheless emotionally affected through empathetic engagement and identification with the traumatic situation.

According to the Dart Center for Journalism and Trauma, between 80% and 100% of journalists have experienced a work-related traumatic event, with approximately 92% reporting multiple exposures. This is particularly relevant for freelance journalists, who often work in isolation and have limited opportunities for peer interaction or institutional support.

Although this study is based on a local context and a specific sample within a defined timeframe, it highlights a broader crisis affecting freelance journalism. Within the group analysed, this crisis has a

pronounced impact on physical, psychological and professional wellbeing. These challenges are often under-recognised and insufficiently discussed, both privately and publicly.

Such conditions may also affect journalistic practice itself, potentially influencing the objectivity of information gathering and the management of sources, as well as weakening the relationship between journalists and an audience that is already increasingly disengaged from contemporary media.

As suggested by Tyson and Abdalla, several measures could be implemented to support journalists' mental health, including access to free or subsidised psychotherapy, peer support groups, stress management workshops, trauma processing training and services for victims of violence and harassment. However, such resources remain largely unavailable in Italy[17].

Opportunities for professional exchange and dialogue are limited, and news organisations rarely provide psychological support to their staff or freelance collaborators. As a result, journalists may find it difficult to acknowledge and address experiences of distress or vulnerability.

In Italy, the National Order of Journalists offers certain forms of support, such as legal assistance, but does not currently provide structured mental health services. In response to an enquiry by IrpiMedia, the national leadership clarified that direct healthcare provision does not fall within the statutory responsibilities of the Order. Nevertheless, the institution remains attentive to the challenges facing the profession, particularly those affecting freelancers and self-employed journalists.

The Order also engages in dialogue with other professional bodies, such as Casagit, which provides healthcare services, including some forms of psychological support. However, only certain Casagit Salute plans cover psychotherapy costs—typically up to an annual limit—and these are generally available only to journalists with formal employment contracts. Freelancers, by contrast, are excluded from these benefits.

While freelance professionals may subscribe to "open" health plans available to a broader range of workers, none of these schemes currently include coverage for psychological consultations.

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[17] Tyson G., Wild J., *Post-Traumatic Stress Disorder Symptoms among Journalists Repeatedly Covering COVID-19 News*, in *International Journal of Environmental Research and Public Health*, 2021, vol. 18, art. 8536.

Abdalla S.M., Cohen G.H., Tamrakar S., Koya S.F., Galea S., *Media Exposure and the Risk of Post-traumatic Stress Disorder Following a Mass Traumatic Event: An In-silico Experiment*, in *Frontiers in Psychiatry*, 2021, vol. 12, art. 674263

The Nexus between Education and Tourism Employment: A Literature Perspective

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Abstract. This paper explores the critical nexus between education and tourism employment, examining the theoretical perspectives and the outcomes of empirical research as well. It analyzes related literature to identify key challenges and opportunities, focusing on the disconnect between academic curricula and industry requirements, the prevalence of low-skilled, precarious jobs in the sector, and the need for stronger collaboration between educational institutions, the tourism industry, and policymakers. The paper proposes a multi-faceted approach to enhance alignment between education and employment, recommending that educational institutions modernize curricula with practical and industry-relevant approaches, the tourism industry actively participate in shaping tourism education, and policymakers implement policies that incentivize stronger partnerships and resource allocation for program modernization. By addressing these challenges and implementing the recommendations, stakeholders can collaboratively bridge the gap between education and tourism employment, ensuring a skilled and adaptable workforce that contributes to the long-term competitiveness and sustainability of the tourism sector.

Keywords: *Education, Tourism employment, Empirical Literature Review, Research Gaps, Policy recommendations.*

1. Introduction

The tourism industry, a dynamic and multifaceted sector, plays a significant role in employment creation and economic growth[1]. Its

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intricate nature encompassing diverse sub-sectors from hospitality and transportation to entertainment and cultural heritage necessitates a skilled workforce capable of adapting to evolving market demands and technological advancements. As industry continues to grow and transform, the relationship between tourism education and employment has become increasingly critical.

Effective education and training programs can enhance the employability and career prospects of individuals seeking employment in the tourism sector[2]. By equipping graduates with relevant knowledge, skills, and industry-recognized certifications, education can improve their chances of securing desirable positions and contribute to a more skilled and competitive workforce[3]. Furthermore, specialized training programs can address specific skill gaps within the industry, leading to improved service quality, enhanced visitor experiences, and increased overall economic benefits[4]. However, the extent to which education translates into improved employment outcomes depends on various factors, including the quality and relevance of educational programs, the alignment of curricula with industry needs, and the broader economic and labor market conditions[5].

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[1] C. Elgin, A. Y. Elveren, *Unpacking the economic impact of tourism: A multidimensional approach to sustainable development*, in *Journal of Cleaner Production*, 2024, 478, 143947. https://doi.org/10.1016/j.jclepro.2024.143947; J. Stacey, *Supporting quality jobs in tourism*, in *OECD tourism papers*, OECD Publishing, Paris. https://doi.org/10.1787/5js4rv0g7szr-en.

[2] D. Airey, *Education for tourism: a perspective article*, in *Tourism Review*, 2020, vol. 75(1), 260-262. https://doi.org/10.1016/j.tmp.2018.04.005; K. R. Johnson, K. R. Bartlett, *The role of tourism in national human resource development: a Jamaican perspective*, in *Human Resource Development International*, vol. 16(2), 205-219, https://doi.org/10.1080/13678868.2013.771867; P. R. Fidgeon, *Tourism education and curriculum design: A time for consolidation and review?*, in *Tourism Management*, 2010, vol. 31(6), 699-723. https://doi.org/10.1016/j.tourman.2010.05.019.

[3] I. Booyens, *Education and skills in tourism: Implications for youth employment in South Africa*, in *Development Southern Africa*, 2020, Vol. 37(5), 825–839. https://doi.org/10.1080/0376835X.2020.1725447; X. Y. Mei, *Gaps in tourism education and workforce needs: attracting and educating the right people*, in *Current Issues in Tourism*, 2018, Vol. 22(12), 1400-1404. https://doi.org/10.1080/13683500.2017.1402870; J. Stacey, *Supporting quality jobs in tourism*, op. cit.

[4] D. J. L. Choy, C. Y. Gee, *Employment opportunities in tourism: The implications of change in the visitor industry*, in *Cornell Hotel and Restaurant Administration Quarterly*, Vol. 19(3), 57-64. https://doi.org/10.1177/001088047801900316; E. DeGoias, L. Cruz, E. Freilich, *Meeting the need: The hospitality training program of the Palm beaches*, in *Journal of Vocational Rehabilitation*, Vol. 50(3), 347-351. https://doi.org/10.3233/JVR-191017; X. Y. Mei, *Gaps in tourism education*, op. cit.

[5] G. Psacharopoulos, H. A. Patrinos, *Returns to investment in education: a decennial review of the global literature*, in *Education Economics*, 2018, Vol. 26(5), 445-458.

There is also the issue of transformation of tourism education, since digital technologies have penetrated into the tourism and hospitality industry. The recent covid pandemic disrupted traditional education models, accelerating the shift to digital learning[6]. Remote internships, virtual tourism labs, and hybrid education models emerged as alternatives[7]. Within this framework, a well-prepared workforce, equipped with the necessary knowledge and skills, is essential for the industry's sustained success[8]. Yet, the effectiveness of tourism education programs in preparing graduates for the demands of the industry has been a subject of ongoing debate and research[9].

This paper examines the nexus between tourism education and employment by synthesizing theoretical perspectives and empirical evidence to identify key challenges and opportunities in this relationship.

It contributes to the literature by offering an integrated analysis of existing research and by highlighting the conditions under which education can more effectively support labour market outcomes in the tourism sector.

The layout of the paper is as follows. First it presents the theoretical perspectives on education and employment in the tourism industry and then explores the conceptual framework of the relationship between them. Thereafter it shows the results of empirical studies on this issue and discusses the key themes that are generated. Building upon the literature, it refers to the challenges in aligning education with tourism employment followed by the research gap analysis and the policy recommendations to draw meaningful implications for both academic institutions and industry

https://doi.org/10.1080/09645292.2018.1484426; L. Woessmann, *The economic case for education*, in *Education Economics*, 2015, Vol. 24(1), 3-32.

[6] H. Wang, T. Zhang, X. Wang, J. Zheng, *Does the digital economy enhance tourism employment? An empirical study of tourism industry in China*, in *Cogent Business & Management*, 2024, Vol. 11(1). https://doi.org/10.1080/23311975.2024.2396526.

[7] S. Gössling, D. Scott, C. M. Hall, *Pandemics, tourism and global change: a rapid assessment of COVID-19*, in *Journal of Sustainable Tourism*, 2020, Vol. 29(1), 1-20. https://doi.org/10.1080/09669582.2020.1758708.

[8] P. J. Cárdenas-García, J. I. Pulido-Fernández, *Tourism as an economic development tool. Key factors*, in *Current Issues in Tourism*, 2017, Vol. 22(17), 2082–2108. https://doi.org/10.1080/13683500.2017.1420042.

[9] C. Cooper, R. Shepherd, *The relationship between tourism education and the tourism industry: Implications for tourism education*, in *Tourism Recreation Research*, 1997, Vol. 22(1), 34-47. https://doi.org/10.1080/02508281.1997.11014784; M. Marais, E. du Plessis, M. Saayman, *A review on critical success factors in tourism*, in *Journal of Hospitality and Tourism Management,* Vol. 31, 1-12. https://doi.org/10.1016/j.jhtm.2016.09.002; X. Y. Mei, *Gaps in tourism education*, op. cit.; W. Wattanacharoensil, *Tourism curriculum in a global perspective: Past, present, and future*, in *International Education Studies*, 2013, Vol. 7(1), 9-20.

stakeholders. In the end, the paper concludes by presenting the key findings and implications of the study.

2. Theoretical Perspectives on Education and Tourism Employment

The existing literature has explored the relationship between education and employment in tourism and hospitality sectors through various theoretical lenses, each offering valuable insights into the complexities of this dynamic interplay[10]. Understanding these theoretical underpinnings is crucial for developing effective strategies to align education with industry needs and enhance the employability of tourism graduates.

First, there is the Vocational Education Theory. This perspective emphasizes the practical relevance of education to the industry, advocating for a balance between theoretical knowledge and hands-on training[11]. Tourism education, like other vocationally oriented fields, should promote individual development, advance knowledge and skills, and ensure practical relevance to the industry[12]. This approach aims to produce graduates who are immediately employable and equipped to meet the demands of the workplace[13].

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[10] D. Airey, *Education for tourism*, op. cit.; J. Qian, R. Law, X. Li, *Education research in tourism: A longitudinal study of 77 articles between 2008 and 2017*, in *Journal of Hospitality, Leisure, Sport & Tourism Education*, 2019, Vol. 24, 120-129. https://doi.org/10.1016/j.jhlste.2019.02.003; C.H.C. Hsu, H. Xiao, N. Chen, *Hospitality and tourism education research from 2005 to 2014: "Is the past a prologue to the future?"*, in *International Journal of Contemporary Hospitality Management*, 2017, Vol. 29(1), 141-160. https://doi.org/10.1108/IJCHM-09-2015-0450.

[11] L. Chen, *Practice teaching reform of tourism management major in higher vocational education under the background of new industry form*, in *Journal of Physics Conference Series*, 2020, Vol. 1549(4), 42100.; E. Üngüren, Y. Y. Kaçmaz, A. Kahveci, *Accommodation business management's attitudes towards employees received vocational tourism education*, in *Procedia - Social and Behavioral Sciences*, 2015, Vol. 174, 2767-2776. https://doi.org/10.1016/j.sbspro.2015.01.966; F. Zagonari, *Balancing tourism education and training*, in *International Journal of Hospitality Management*, 2009, Vol. 28(1), 2-9. https://doi.org/10.1016/j.ijhm.2008.03.006; J. Churchward, M. Riley, *Tourism occupations and education: an exploration study*, in *International Journal of Tourism Research*, 2002, Vol. 4, 77-86. https://doi.org/10.1002/jtr.361; G. Busby, *Vocationalism in higher level tourism courses: The British perspective,* in *Journal of Further and Higher Education*, 2001, Vol. 25(1), 29-43. https://doi.org/10.1080/03098770020030489.

[12] B. Kırlar-Can, M. Ertaş, M. Kozak, *Understanding the philosophy of tourism education: A perspective study in Turkey*, in *International Journal of Tourism Research*, 2021, Vol. 23(6), 1112–1125. https://doi.org/10.1002/jtr.2472.

[13] C. Cooper, *Curriculum planning for tourism education: From theory to practice*, in *Journal of Teaching in Travel & Tourism*, 2002, Vol. 2(1), 19-39. https://doi.org/10.1300/J172v02n01_02.

Second is the Human Capital Theory, which posits that investments in education enhance individuals' productivity and employability[14]. In the context of tourism, education improves employees' technical expertise, interpersonal skills, and cultural competence, enabling them to deliver high-quality services[15]. However, human capital theory has been criticized for its narrow focus on economic outcomes and its potential to exacerbate inequalities[16].

Third, the Stakeholder Theory highlights the importance of collaboration between various stakeholders, including academic institutions, industry partners, and government agencies, to align tourism education with industry needs[17]. This theory underscores the need for tourism programs to consider wider stakeholder requirements, including employer support and industry relevance[18]. It also recognizes the diverse interests and perspectives of different actors and emphasizes the importance of communication, coordination, and mutual understanding in shaping curriculum and learning outcomes[19].

Fourth, the Experience Economy approach suggests that the rise of the experience economy has significantly influenced tourism education, reflecting the industry's shift towards providing immersive and personalized experiences for tourists[20]. This perspective acknowledges the impact of the "experience economy" on the demand for skilled personnel

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[14] R. Blundell, L. Dearden, C. Meghir, B. Sianesi, *Human capital investment: The returns from education and training to the individual, the firm and the economy,* in *Fiscal Studies*, 1999, Vol. 20, 1-23. https://doi.org/10.1111/j.1475-5890.1999.tb00001.x; E. Tan, *Human capital theory: A holistic criticism*, in *Review of Educational Research*, 2014, Vol. 84(3), 411-445. https://doi.org/10.3102/0034654314532696.

[15] G. S. Becker, *Human capital: A theoretical and empirical analysis, with special reference to education*, 3rd Edition, University of Chicago press, 1993.

[16] S. Marginson, *Limitations of human capital theory**, in *Studies in Higher Education*, 2017, Vol. 44(2), 287-301. https://doi.org/10.1080/03075079.2017.1359823.

[17] R. E. Freeman, S. D. Dmytriyev, R. A. Phillips, *Stakeholder theory and the resource-based view of the firm*, in *Journal of Management*, 2021, Vol. 47(7), 1757-1770. https://doi.org/10.1177/0149206321993576.

[18] I. Slivar, *Stakeholders in a tourist destination - Matrix of possible relationships towards sustainability*, in *Open Journal for Research in Economics*, 2018, Vol. 1(1), 1-10.

[19] R. E. Freeman, J. S. Harrison, A. C. Wicks, B. L. Parmar, S. de Colle, *Stakeholder Theory: The State of the Art*, 2010, Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9780511815768; I. Erina, I. Ozolina-Ozola, E. Gaile-Sarkane, *The importance of stakeholders in human resource training projects*, in *Procedia - Social and Behavioral Sciences*, 2015, Vol. 213, 794-800. https://doi.org/10.1016/j.sbspro.2015.11.477.

[20] B. J. Pine, J. H. Gilmore, *The experience economy: past, present and future*. Chapters, in J. Sundbo, F. Sørensen (ed.), *Handbook on the Experience Economy*, chapter 2, 2002, Edward Elgar Publishing., pages 21-44.

capable of delivering high-quality tourist experiences[21]. This paradigm shift has led to a greater emphasis on developing soft skills, such as communication, problem-solving, and creativity, alongside technical competencies in the tourism curriculum and should be provided in a timely manner, constructive, and aimed at reinforcing students' learning towards soft skill acquisition[22].

There are also some other theoretical frameworks, such as a) signaling theory[23], which suggests that educational credentials signal an individual's ability and potential to employers, and b) competency-based approaches, which focus on developing specific skills and knowledge required for job performance, which explore the employable skills perceived as important by hotel supervisors, highlighting the need for competency-based education[24].

These theoretical perspectives provide a rich foundation for understanding the relationship between education-employment nexus in tourism and the various factors that influence its effectiveness. By integrating these perspectives, we can develop a more comprehensive understanding of the challenges and opportunities in aligning education with industry needs and preparing future tourism professionals for success.

2.1. Theoretical Contribution and Advancement

Building on the reviewed literature, this study advances the existing body of research in three key ways. First, it integrates human capital theory, stakeholder theory, and the experience economy into a unified analytical framework, highlighting how education influences tourism employment

[21] L. Mossberg, *A marketing approach to the tourist experience*, in *Scandinavian Journal of Hospitality and Tourism*, 2007, Vol. 7(1), 59-74. https://doi.org/10.1080/15022250701231915; N. Scott, E. Laws, P. Boksberger (Eds.), *Marketing of Tourism Experiences* (1st ed.), Routledge, 2010.

[22] D. Alt, L. Naamati-Schneider, D. J. N. Weishut, *Competency-based learning and formative assessment feedback as precursors of college students' soft skills acquisition*, in *Studies in Higher Education*, 2023, Vol. 48(12), 1901-1917. https://doi.org/10.1080/03075079.2023.2217203.

[23] M. Spence, *Signaling in retrospect and the informational structure of markets*, in *American Economic Review*, 2002, Vol. 92(3), 434-459; M. Spence, *Job market signaling*, in *The Quarterly Journal of Economics,* 1973, Vol. 87(3), 355-374. https://doi.org/10.2307/1882010.

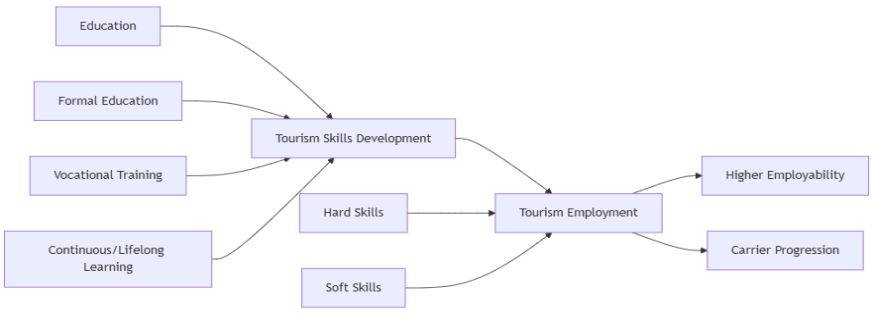
[24] J. Brownell, B. G. Chung, *The management development program: A competency-based model for preparing hospitality leaders*, in *Journal of Management Education*, 2001, Vol. 25(2), 124-145. https://doi.org/10.1177/105256290102500203; B. Škrinjarić, *Competence-based approaches in organizational and individual context*, in *Humanities and Social Sciences Communications*, 2022, Vol. 9(28). https://doi.org/10.1057/s41599-022-01047-1.

not only through skill accumulation but also through institutional coordination and evolving service expectations.
Second, the paper moves beyond a static view of education–employment relationships by conceptualizing skill development as a mediating mechanism shaped by both supply-side (education systems) and demand-side (industry transformation, digitalization) dynamics.
Third, it introduces a structured research gap matrix that links theoretical limitations with empirical and policy-oriented research agendas, thereby offering a more systematic foundation for future research.
In this sense, the paper contributes not only as a literature synthesis but also as a step towards a more integrated and multi-dimensional understanding of the education–employment nexus in tourism.

3. Conceptual Framework

The above-mentioned theoretical perspectives provide a rich foundation for understanding the complex relationship between education and tourism employment, and the various factors that influence the effectiveness of this relationship. To synthesize these theoretical insights, a conceptual framework is proposed in this section to illustrate the key elements and their interrelationships (see Figure 1).

Figure 1. The Nexus Between Education and Employment in Tourism.



The conceptual framework visually represents how education influences tourism employment through an interconnected process. Initially, education works as a starting point, since it serves as the foundation for preparing individuals for tourism-related jobs. It includes formal education (e.g., university degrees in tourism and hospitality), vocational training, and continuous or lifelong learning. The second dimension is the skill development which operates as a mediating factor. More specifically,

education enhances various hard skills (e.g., customer service, management, digital literacy) and soft skills (e.g., communication, cultural competence).

Within this framework, well-structured curricula and training programs ensure that graduates meet industry demands. Thereafter, the development of specialized tourism skills, such as sustainable tourism practices, multilingual communication, and crisis management, makes individuals more employable[25]. With respect to the third dimension, tourism employment is the outcome, as skill development directly leads to better employment opportunities in the tourism sector. Well-educated individuals have higher employability in various tourism-related fields, including hospitality, event management, travel agencies, and sustainable tourism initiatives[26]. Moreover, higher education and vocational training improve career progression, lead to better wages, job security, and leadership roles[27].

This conceptual framework demonstrates that education is the driving force behind skill development, which in turn enhances employment prospects in tourism. The arrows indicate the causal link between education, skill development, and employment. Without proper education, there may be skill mismatches, leading to lower employability and workforce inefficiencies in the tourism industry. This implies that policymakers should invest in tourism education and align curricula with industry needs, and from the perspective of employers, they should

[25] I. Booyens, *Education and skills in tourism*, op. cit.; L. Varra, M. Scioni, L. Grassini, A. Giusti, *Job requirements in the hospitality industry: Technical or general skills? The dilemma for academic education*, in *European Journal of Tourism Research*, 2021, Vol. 29, 2915. https://doi.org/10.54055/ejtr.v29i.2442; J. C. Kimeto, *Tertiary tourism graduate employees and tourism employers' perceptions on tourism skills and competencies relevant for providing quality tourism services in Kenya*, in *Tourism Critiques*, 2021, Vol. 2(1), 20-37. https://doi.org/10.1108/TRC-07-2020-0013; X. Y. Mei, *Gaps in tourism education*, op. cit..

[26] S. Adeyinka-Ojo, *A strategic framework for analysing employability skills deficits in rural hospitality and tourism destinations*, in *Tourism Management Perspectives*, 2018, Vol. 27, 47-54; J. C. Kimeto, *Tertiary tourism graduate employees*, op. cit.; S. Singh, *Developing human resources for the tourism industry with reference to India*, in *Tourism Management*, 1997, Vol. 18(5), 299-306. https://doi.org/10.1016/S0261-5177(97)00018-6.

[27] Z. Korsı, D. Z. Hasani, A. Korsi, *Employee skills, a very important factor in tourism grouth*, in *Academic Journal of Interdisciplinary Studies*, 2014, Vol 3(2), 397; R. M. Thetsane, M. C. Mokhethi, M. J. Malunga, T. Makatjane, *Lesotho students career perceptions in tourism and hospitality industry*, in *Journal of Tourism and Hospitality Management*, 2020, Vol. 8(1), 10.15640.

collaborate with educational institutions to create internships, apprenticeships, and training programs[28].

To further investigate the empirical evidence supporting this framework and explore the specific factors influencing the education-employment nexus in tourism, the following section presents a detailed methodology and analysis of relevant research findings

3.1. Empirical Research on the Education and Tourism Employment Relationship

To investigate the relationship between education and tourism employment, a systematic literature review (SLR) was conducted aiming to synthesize the empirical evidence on this issue. This study follows a five-step process that has been used in reviewing tourism and hospitality research, in accordance with recent SLRs in the literature[29]. These steps include (1) defining the research questions and objectives for a review; (2) determining keywords, database, and inclusion and exclusion selection criteria; (3) searching database and screening initial results; (4) extracting and evaluating the quality of studies; and (5) synthesizing, interpreting, and presenting findings.

The papers which constitute the sample of empirical studies were searched from RePEc. Although RePEc was selected as the primary database due to its strong coverage of economics, labour, and tourism-related research, it is acknowledged that relying on a single database may limit the comprehensiveness of the review. The searching was applied during 1-15 January 2025 and included all studies that had been published until 2024. The searches included the words in "Whole record" field, "education AND tourism" which generated 2629 studies. By reading the abstract of these studies, it was found that only 304 studies investigated the issue of the impact of educational measures on employment in

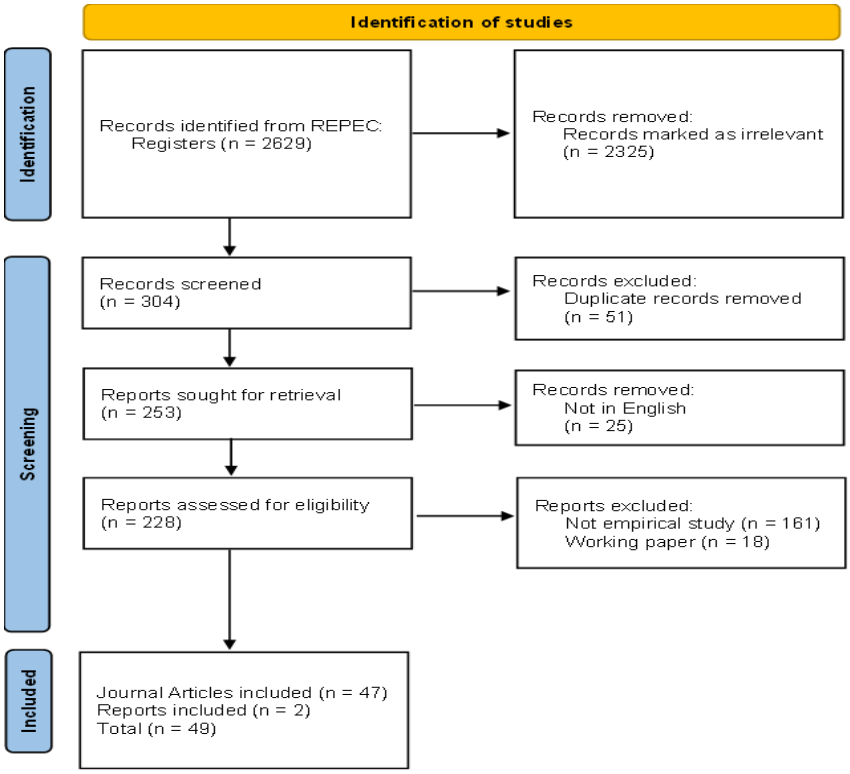
[28] J. Wang, H. Ayres, J. Huyton, *Job ready graduates: A tourism industry perspective*, in *Journal of Hospitality and Tourism Management*, 2009, Vol. 16(1), 62-72. https://doi.org/10.1375/jhtm.16.1.62.

[29] G. Hoang, M. Yang, T. T. Luu, *Ethical leadership in tourism and hospitality management: A systematic literature review and research agenda*, in *International Journal of Hospitality Management*, 2023, Vol. 114, 103563. https://doi.org/10.1016/j.ijhm.2023.103563; G. Hoang, E.Wilson-Evered, L. Lockstone-Binney, T.T. Luu, *Empowering leadership in hospitality and tourism management: A systematic literature review*, in *International Journal of Contemporary Hospitality Management*, 2021, Vol. 33(12), 4182-4214. https://doi.org/10.1108/IJCHM-03-2021-0323; T.H. Le, C. Arcodia, M.A. Novais, A. Kralj, *What we know and do not know about authenticity in dining experiences: A systematic literature review*, in *Tourism Management*, 2019, Vol. 74, 258-275. https://doi.org/10.1016/j.tourman.2019.02.012.

tourism industry. After removing duplicates, there were 253 papers remaining. By downloading the full-text articles and reviewing them to evaluate eligibility, it was found that 25 of them were written in Spanish, French, German or Russian and were excluded from the sample. Based on the additional criteria that should be an empirical and not a theoretical study on the effect of education on employment aspects, the final sample of the analysis was constituted of 67 studies.

The inclusion criteria were as follows: (i) empirical studies examining the relationship between education and employment in tourism or hospitality; (ii) studies published in peer-reviewed journals or reports by international organizations; (iii) studies providing measurable employment-related outcomes (e.g., employability, job quality, labour mobility). The exclusion criteria included: (i) purely theoretical papers; (ii) studies not directly addressing tourism employment; (iii) non-English publications; (iv) duplicate records. These were journal articles, working papers and reports. To use a more reliable sample, only journal articles and two reports conducted by OECD and UNWTO & ILO were included to provide more accurate findings. In the end, the final sample included 49 studies, which applied a quantitative or qualitative method to generate empirical results on the relationship (See Figure 2). To enhance transparency and replicability, the search strategy, keywords, screening process, and final sample selection are explicitly documented and illustrated in Figure 2.

Figure 2. Identification of Empirical Studies on the Education and Tourism Employment Relationship



A limitation of the study is the reliance on a single primary database, which may have excluded relevant studies indexed elsewhere (e.g., Scopus or Web of Science). Future research could extend the database coverage to improve robustness.

Then, I used the content analysis approach recommended by Gardner *et al.* [30] (2011) to analyze the empirical findings from 49 studies in our sample. To do this, I first coded the article's basic information, i.e. the author(s) and the year of publication, the publication, and the study contexts (data, sample or group related). Next, I coded the methodology applied, the educational variable, the employment variable, the underlying framework and the findings of each study. Table 1 provides a table summarizing the results of the coding process.

[30] W.L. Gardner, C.C. Cogliser, K.M. Davis, M.P. Dickens, *Authentic leadership: A review of the literature and research agenda*, in *Leadership Quarterly*, 2011, Vol. 22(6), 1120-1145. https://doi.org/10.1016/j.leaqua.2011.09.007.

Table 1. Empirical Studies on the Relationship between Education and Employment in Tourism and Hospitality Sectors (Alphabetical order)

Authors (Year)	Country/ Context	Data/ Sample	Method	Education Variable	Employment Outcome	Key Finding
Al Saba *et al.* (2023)	84 countries	1,848 observations (2000-2021)	Regression	Training	Tourism employment	Positive relationship
Arcodia & Dickson (2009)	7 countries	79 students	Survey	Experiential learning	Employability	Moderate effect
Barron & Anastasiadou (2009)	Scotland	150 students	Survey	Study-related education	Student employment	High participation
Booyens (2020)	South Africa	Mixed stakeholders	Mixed methods	Skills training	Job quality	Precarious jobs persist
Bordean & Sonea (2018)	Romania	114 students	Regression	Higher education	Career intentions	Positive attitudes
Bouchon *et al.* (2016)	Malaysia	60 students + stakeholders	Interview	Education expectations	Employability	Need for integration
Budría & Telhado-Pereira (2009)	Portugal	2,057 individuals	Regression	Training	Employment status	Positive effect
Bunet a *et al.* (2016)	Croatia	National data	Trend analysis	Education quality	Employment structure	Skills shortage
Chi & Gursoy (2009)	USA	102 recruiters	Survey	Education factors	Career success	Internships critical
Choden & Pholphirul (2024)	Bhutan	1,320 employees	Logit	Education level	Employment stability	Negative shocks
Del Chiappa & Abbate (2016)	Italy	1,500 residents	Survey	Education level	Job opportunities	Positive effect
Duyen & Anh (2022)	Vietnam	193 workers	Regression	Education & training	Work decisions	No significant effect
Eminov & Aliyeva (2017)	Azerbaijan	Employees & students	Survey	Education–industry link	Employability	Collaboration improves outcomes
European Commission (2016)	EU	Labour Force data	Statistics	Education level	Employment structure	Workforce less educated
Grobelna & Skrzeszewska (2019)	Poland	171 students	Survey	Seasonality perception	Career aspirations	Mixed perceptions
Grobelna & Wyszkowska-Wróbel (2021)	Poland	110 students	SEM	Cultural engagement	Career aspirations	Positive effect
Horng *et al.* (2021)	Taiwan	122 students	Experiment	Educational intervention	Entrepreneurship	Improves skills
Jensen (2004)	Denmark	National data	Statistics	Education levels	Employment distribution	General education dominant
Kesar *et al.* (2021)	Croatia	104 teachers	Survey	Vocational education	Employment practices	Regulation needed
Lazzeretti & Capone (2009)	Italy	Census data	Regression	Higher education	Employment growth	Positive relationship
Lejsek (2011)	Czech Republic	National data	Statistics	Education levels	Sector employment	Variation across sectors
Marchante *et al.* (2007)	Spain	3,314 employees	Logit	Education mismatch	Labour mobility	No effect
Masadeh *et al.* (2019)	Jordan	24 workers	Interviews	University education	Gender employment	Supports female inclusion
Mazzola *et al.* (2022)	Europe	Panel data	Regression	Higher education	Employment levels	Positive effect
Mei (2017)	Norway	Stakeholders	Qualitative	Industry	Workforce	Stronger

				collaboration	development	links needed
Melián-González & Bulchand-Gidumal (2024)	Europe	Survey data	Regression	Education level	Job quality	Positive relationship
Mkini *et al.* (2024)	Tanzania	120 firms	SEM	Parental education	Entrepreneurship	Positive effect
Montañés-Del-Río & Medina-Garrido (2020)	Global	699 entrepreneurs	Logit	Education level	Innovation	Positive relationship
Mungai *et al.* (2021)	Kenya	Students & faculty	SEM	Education choice	Employment prospects	Employment drives choice
Obadić & Pehar (2016)	Mediterranean	Secondary data	Statistics	Education level	Employment levels	Tourism drives jobs
Papadopoulos & Papanikos (2005)	Greece	Survey	Probit	Education years	Labour participation	No effect
Papathanassis (2021)	Germany	167 students	SEM	Study satisfaction	Career choice	Strong effect
Pérez-Morote *et al.* (2024)	Spain	Survey	Factor analysis	Education level	Policy views	Gender differences
Raybould & Wilkins (2005)	Australia	Managers & students	Survey	Skills expectations	Employability	Soft skills critical
Ribeiro *et al.* (2017)	Brazil	Labour data	Spatial	Higher education	Employment growth	Positive relationship
Rotar (2023)	Europe	Panel data	Regression	Tertiary education	Employment levels	Strong positive
Simantiraki & Dimou (2016)	Greece	32 managers	Survey	Education level	Workforce skills	Soft skills lacking
Škrabić *et al.* (2021)	EU	Panel data	Regression	Education level	Employment levels	Positive effect
Sorm & Terrell (2000)	Czech Republic	Labour data	Logit	Education level	Employment stability	Higher stability
Stacey (2015)	OECD	OECD data	Statistics	Education levels	Employment structure	Low tertiary share
Szivas & Riley (1999)	Hungary	Survey data	Factor analysis	Education level	Labour mobility	Secondary dominant
Togaymurodov *et al.* (2023)	Uzbekistan	110 farmers	Logit	Education level	Agritourism entry	Positive effect
Tsai *et al.* (2024)	Taiwan	588 students	SEM	Student traits	Employability	Positive effect
Vaduva *et al.* (2020)	Romania	170 managers	Regression	University education	Hiring decisions	Degree valued
Varra *et al.* (2021)	Italy	University data	Regression	Degree characteristics	Job placement	Curriculum alignment needed
Wang *et al.* (2024)	China	993 firms	Regression	Education structure	Firm employment	Favors highly educated
UNWTO & ILO (2014)	Spain & UK	Labour surveys	Statistics	Education levels	Employment structure	Mixed distribution
Zhong *et al.* (2022)	China	840 students	PLS	Learning outcomes	Employment	Positive effect
Zhou *et al.* (2022)	China	369 interns	SEM	Internship experience	Career intention	Support matters

Beyond the descriptive overview presented in Table 1, several important analytical patterns emerge from the empirical literature. First, a generally positive association between education and tourism employment is identified across most studies; however, this relationship is often conditional on the type, quality, and relevance of education. In particular, vocational training and work-integrated learning appear to have stronger

and more immediate effects on employability compared to purely academic education.

Second, a clear distinction emerges between employment quantity and employment quality. While higher levels of education are frequently associated with increased employment opportunities, several studies highlight that tourism jobs remain characterized by precarious conditions, low wages, and limited career progression, suggesting that education alone is not sufficient to guarantee improved job quality.

Third, the literature consistently identifies a structural skills mismatch between educational outcomes and industry requirements, particularly in relation to soft skills, practical experience, and digital competencies. This mismatch reflects both supply-side limitations of education systems and demand-side dynamics within the tourism industry.

Finally, a smaller but significant group of studies indicates that the impact of education on employment outcomes is mediated by broader institutional and economic factors, including labour market structures, firm behaviour, and regional characteristics. These findings suggest that the education–employment nexus in tourism is multidimensional and cannot be understood in isolation from wider structural conditions.

4. Key Themes in Empirical Literature

Several key themes emerge from the empirical studies of Table 1 on the nexus between education and tourism employment, which are presented below.

In addition to academic studies, grey literature from international institutions provides valuable insights into the education–employment nexus in tourism. The European Commission[31] highlights structural imbalances in tourism labour markets, including a high concentration of low-skilled employment and significant differences across subsectors. Similarly, the OECD[32] ~~(2021)~~ emphasizes the impact of digitalisation on tourism jobs, stressing the need for continuous upskilling and workforce adaptation. More recent evidence from the OECD[33] further underlines

[31] European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and Centre for Strategy and Evaluation Services, *Mapping and performance check of the supply side of tourism education and training – Final report*, Publications Office, 2016, https://data.europa.eu/doi/10.2873/129991.

[32] OECD, *Preparing the tourism workforce for the digital future*, OECD Tourism Papers, No. 2021/02, OECD Publishing, Paris, https://doi.org/10.1787/9258d999-en.

[33] OECD, *OECD Tourism Trends and Policies 2024*, OECD Publishing, Paris, 2024, https://doi.org/10.1787/80885d8b-en.

persistent skills shortages and the importance of coordinated policy responses to improve workforce resilience in tourism. In parallel, CEDEFOP[34] documents skills mismatches across European labour markets and highlights the growing importance of vocational education and lifelong learning systems.

Taken together, these institutional studies reinforce and extend the findings of the academic literature, particularly regarding skills gaps, the need for stronger alignment between education systems and labour market demands, and the importance of adapting to ongoing digital and structural transformations in the tourism sector.

Skills Gap and Mismatch: Several studies have identified a significant skills gap and mismatch between the skills acquired through tourism education and the skills demanded by the industry[35]. Tourism employers often find that graduates lack the necessary practical skills, industry knowledge, and soft skills required for effective performance in the workplace[36].

Experiential and Contextual Learning: The literature emphasizes the importance of incorporating more experiential and contextual learning approaches in tourism education, such as internships, apprenticeships, and industry-based projects[37]. These types of learning experiences help

[34] Cedefop, *Skills developments and trends in the tourism sector. Skills intelligence,* 2020.

[35] I. Booyens, *Education and skills in tourism*, op. cit.; O. Bordean, A. Sonea, *Student satisfaction and perceived skills: any link to employability?*, in *Journal of Entrepreneurship and Sustainability Issues*, 2018, Vol. 6(1), 356-370; D. P. Stergiou, D. Airey, *Chapter 1 Tourism education and industry expectations in Greece: (re)minding the gap*, in *Handbook of Teaching and Learning in Tourism*. Cheltenham, UK: Edward Elgar Publishing, 2017, https://doi.org/10.4337/9781784714802.00008; X. Y. Mei, *Gaps in tourism education*, op. cit.; European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs and Centre for Strategy and Evaluation Services, *Mapping and performance*, op. cit.; A. J. Marchante, B. Ortega, R. Pagán, *An analysis of educational mismatch and labor mobility in the hospitality industry*, in *Journal of Hospitality & Tourism Research*, 2007, Vol. 31(3), 299-320. https://doi.org/10.1177/1096348007299920.

[36] L. Varra, M. Scioni, L. Grassini, A. Giusti, *Job requirements*, op. cit.; C. Kimeto, *Tertiary tourism graduate employees*, op. cit.; J. Wang, H. Ayres, J. Huyton, *Job ready graduates*, op. cit.; C. Cooper, R. Shepherd, *The relationship between tourism education*, op. cit.

[37] L. Zhong, X. Li, S. Sun, R. Law, X. Qi, Y. Dong, *Influencing factors of students' learning gains in tourism education: An empirical study on 28 tourism colleges in China*, in *Sustainability*, 2022, Vol. 14(24), 16601. https://doi.org/10.3390/su142416601; A. Batra, *Bridging the gap between tourism education, tourism industry and graduate employability: Intricacies and emerging issues in Thailand,* in *ABAC Journal*, 2016, Vol. 36, 78-89; C. Arcodia, C. Dickson, *ITHAS: An experiential education case study in tourism education*, in *Journal of Hospitality & Tourism Education*, 2009, Vol. 21(1), 37-43. https://doi.org/10.1080/10963758.2009.10696935;

students develop the necessary technical and soft skills for the tourism industry[38].

Collaboration between Academia and Industry: Researchers highlight the need for stronger collaboration between educational institutions and tourism industry stakeholders to ensure that curriculum design, course content, and teaching methodologies are aligned with the evolving needs of the sector[39]. Such collaboration can take the form of advisory boards, joint research projects, and co-designed training programs[40].

Lifelong Learning and Continuous Professional Development: The dynamic nature of the tourism industry requires professionals to engage in lifelong learning and continuous professional development to stay relevant and competitive[41]. Tourism education should, therefore, instill a culture of lifelong learning and provide opportunities for upskilling and reskilling.

Entrepreneurship and Innovation: Tourism education should foster entrepreneurial mindsets and skills to enable graduates to create new tourism products, services, and business models that cater to changing consumer demands and market trends[42].

The preceding analysis of key themes in empirical literature reveals a complex interplay between education and tourism employment, highlighting both opportunities and challenges. While education plays a crucial role in equipping individuals with the necessary skills for the

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[38] A. Papathanassis, *Cruise tourism 'brain drain': exploring the role of personality traits, educational experience and career choice attributes*, in *Current Issues in Tourism*, 2021, Vol. 24(14), 2028-2043. https://doi.org/10.1080/13683500.2020.1816930; L. Pranić, S. Pivčević, D. G. Praničević, *Top 30 soft skills in tourism and hospitality graduates: A systematic literature review*, in *ToSEE – Tourism in Southern and Eastern Europe*, 2021, Vol. 6, 637-656.

[39] A. Eminov, I. Aliyeva, *Assessment of education and employment cooperation* in *Azerbaijan tourism industry. Yearbook of D. A. Tsenov Academy of Economics*, D. A. Tsenov Academy of Economics, 2017, Vol. 1(1 Year 20), 121-142; A. Batra, *Bridging the gap*, op. cit.; E. Simantiraki, I. Dimou, *Undergraduate tourism education in Greece: Graduates' employment in the hospitality industry*. in *Tourismos: An International Multidisciplinary Journal of Tourism*, 2016, Vol. 11(3), 113-132. https://doi.org/10.26215/tourismos.v11i3.484; C. Cooper, R. Shepherd, *The relationship between tourism education*, op. cit.

[40] X. Y. Mei, *Gaps in tourism education*, op. cit.

[41] V. V. Cuffy, J. Tribe, D. Airey, *Lifelong learning for tourism*, in *Annals of Tourism Research*, 2012, Vol. 39(3), 1402-1424. https://doi.org/10.1016/j.annals.2012.02.007; J. Stacey, *Supporting quality jobs in tourism*, op. cit.

[42] J.-S. Horng, H.-L. Hsiao, C.-H. Liu, S.-F. Chou, Y.-C. Chung, *Learning innovative entrepreneurship: Developing an influential curriculum for undergraduate hospitality students*, in *Journal of Hospitality, Leisure, Sport & Tourism Education*, 2021, Vol. 29, 100289. https://doi.org/10.1016/j.jhlste.2020.100289; L. Ivanova, *Tourism education - An important investment for the staff development*, in *Entrepreneurship*, 2018, Vol. 6(2), 326-337; S. Mileva, *Skills and competences as main concern for innovation capabilities between universities and tourism industry*, in *Tourism Dimensions*, 2015, Vol. 2(2), 36-43.

tourism industry, several obstacles hinder the seamless alignment of educational programs with industry needs. The following section delves into these challenges, exploring the factors that contribute to skills gaps, mismatches, and other issues affecting the education-employment nexus in tourism.

5. Challenges in Aligning Education with Tourism Employment

The existing literature identifies several key challenges that impede the effective alignment of education with the evolving needs of the tourism industry. These challenges include lack of industry engagement, insufficient work-integrated learning, misalignment of curricula and industry needs, rapid technological change, shifting consumer preferences, institutional rigidity, resistance to change, and a lack of industry-relevant pedagogical approaches. These challenges in aligning education with employment in tourism and hospitality sectors are discussed as follows:

Lack of Industry Engagement: There is often a disconnect between educational institutions and the tourism industry, with limited collaboration and communication channels[43]. This often leads to a misalignment between acquired competencies and the specific requirements of tourism employers[44]. Stronger partnerships and engagement between academia and the tourism industry are needed to ensure that educational programs are aligned with the industry's needs and expectations.

Insufficient Work-Integrated Learning: Many tourism education programs lack sufficient hands-on, work-integrated learning opportunities, such as internships, apprenticeships, and industry projects. Students may not develop the necessary practical skills and industry exposure to transition smoothly into tourism employment, hindering their career readiness[45]. Increasing the integration of practical, work-based learning experiences into tourism education programs can better prepare students for the realities of the industry.

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[43] L. Kwok, *Labor shortage: a critical reflection and a call for industry-academia collaboration*, in *International Journal of Contemporary Hospitality Management*, 2022, Vol. 34(11), 3929-3943. https://doi.org/10.1108/IJCHM-01-2022-0103; X. Y. Mei, *Gaps in tourism education*, op. cit.

[44] I. Booyens, *Education and skills in tourism*, op. cit.

[45] P. Moira, D. Mylonopoulos, A. Kikilia, *Tourism education and training system in Greece. The transition from 20th to 21st century*, in *International Journal of Hospitality and Tourism Studies*, 2021, Vol. 2(1), 66-77. https://doi.org/10.31559/IJHTS2021.2.1.7; I. Booyens, *Education and skills in tourism*, op. cit.; X. Y. Mei, *Gaps in tourism education*, op. cit.; A. Batra, *Bridging the gap*, op. cit.

Misalignment of Curricula and Industry Needs: Tourism education curricula may not always adequately reflect the specific skills and competencies required by the industry. There is often a divergence between academic content and the practical demands of the tourism workplace[46]. Ongoing dialogue and collaboration between educational institutions and industry stakeholders are essential to ensure that curricula remain relevant and responsive to the evolving needs of the tourism sector.

Rapid Technological Change: The tourism industry is undergoing rapid technological transformation, with the emergence of digital platforms, automation, and data-driven decision-making[47]. These changes require tourism professionals to possess a diverse set of digital and technological skills, which can be challenging for educational institutions to keep up with and incorporate into their curricula in a timely manner[48]. Within this framework, educational institutions often struggle to quickly update their programs to keep pace with the industry's technological advancements.

Changing Consumer Preferences: The tourism industry is also experiencing significant shifts in consumer preferences, with tourists seeking more personalized, immersive, and sustainable experiences. Educational institutions may struggle to anticipate and rapidly adapt their curricula to these evolving market demands, making it difficult to prepare students for the changing needs of the tourism sector[49].

Institutional Rigidity and Resistance to Change: The slow pace of institutional change can impede the ability of tourism education to keep up with the dynamic nature of the industry, contributing to the widening of the structural misalignment between education and employment. Overcoming institutional inertia and fostering a culture of agility and responsiveness

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[46] D. P. Stergiou, D. Airey, *Chapter 1 Tourism education*, op. cit.; F. Bouchon, P. Daya, N. A. Ragavan, *Hospitality higher education talent management programme, STEP: A stepping- stone to develop future hospitality leaders*, in *TEAM Journal of Hospitality and Tourism*, 2016, Vol. 13, 41-53.

[47] S. Adeyinka-Ojo, S. Lee, S. K. Abdullah, J. Teo, *Hospitality and tourism education in an emerging digital economy*, in *Worldwide Hospitality and Tourism Themes*, 2020, Vol. 12(2), 123-125. https://doi.org/10.1108/WHATT-12-2019-0075; OECD, *Analysing megatrends to better shape the future of tourism*, OECD Tourism Papers, No. 2018/02, OECD Publishing, Paris; J. Stacey, *Supporting quality jobs in tourism*, op. cit.

[48] J. Qian, P. M.C. Lin, R. Law, X. Li, *Lack of IT and digital marketing professionals in hospitality: is it education's fault?*, in *Heliyon*, 2022, Vol. 8(12), e12002. https://doi.org/10.1016/j.heliyon.2022.e12002; E. Bilotta, F. Bertacchini, L. Gabriele, S. Giglio, P. S. Pantano, T. Romita, *Industry 4.0 technologies in tourism education: Nurturing students to think with technology*, in *Journal of Hospitality, Leisure, Sport & Tourism Education*, 2021, Vol. 29. 100275. https://doi.org/10.1016/j.jhlste.2020.100275.

[49] I. Booyens, *Education and skills in tourism*, op. cit.; J. Stacey, *Supporting quality jobs in tourism*, op. cit.

within tourism education providers is crucial to bridging the gap between academic training and industry requirements[50].

Lack of Industry-Relevant Pedagogical Approaches: Traditional lecture-based pedagogical approaches in tourism education may not adequately prepare students for the practical, problem-solving, and decision-making skills required in the tourism industry. There is a need for more industry-aligned teaching methodologies, such as case studies, simulations, and experiential learning, to enhance the relevance and applicability of tourism education[51].

The challenges outlined above highlight the complexities involved in aligning tourism education with the need for a more dynamic and collaborative approach to aligning tourism education with the evolving employment landscape. Universities, policymakers, and the tourism industry must work together to address these obstacles and ensure that tourism education programs are adequately preparing students for successful careers in the sector.

6. Research Gaps

Although the literature establishes a clear connection between education and tourism employment, the review reveals several persistent blind spots that limit theoretical depth, external validity, and policy relevance. These gaps are:

1. Fragmented evidence on how education improves employment quality (not just quantity). Most studies document associations between education and employment or job access, but fewer unpack pathways from specific educational inputs (e.g., work-integrated learning, micro-credentials, digital skills modules) to job quality (wages, stability, career ladders, occupational health). The synthesis applied notes the prevalence of precarious and low-wage work despite education, signaling an untheorized mechanism gap.
2. Overreliance on cross-sectional or perception data; weak causal identification

[50] S. Vaduva, S. Echevarria-Cruz, J. Takács, *The economic and social impact of a university education upon the development of the Romanian tourism industry*, in *Journal of Hospitality Leisure Sport & Tourism Education*, 2020, Vol. 27, 100270. https://doi.org/10.1016/j.jhlste.2020.100270.; D. P. Stergiou, D. Airey, *Chapter 1 Tourism education*, op. cit.; A. Batra, *Bridging the gap*, op. cit..

[51] L. Chen, *Practice teaching reform of tourism*, op. cit.; W. Wattanacharoensil, *Tourism curriculum in a global perspective*, op. cit.; H. L. Theunis, A. Rasheed, *Alternative approaches to tertiary tourism education with special reference to developing countries*, in *Tourism Management*, 1983, Vol. 4(1), 42-51. https://doi.org/10.1016/0261-5177(83)90049-3.

Much of the evidence uses cross-sectional surveys of students, graduates, or managers; rigorous quasi-experimental or longitudinal designs remain rare, constraining claims about causal effects of curricula, internships, or training reforms on employment outcomes.

3. Limited integration of demand-side dynamics (firm behavior & job design). Studies often center on graduate skills and curricula; fewer analyze how employers' technology adoption, staffing models, or seasonality shape the returns to education, despite the review highlighting rapid technological change and shifting consumer preferences on the demand side.

4. Skills mismatch is described, not measured consistently. The "gap/mismatch" theme is strong, yet operationalizations vary (manager perceptions, self-assessments, or coarse ISCED levels), impeding comparison across countries and time. A harmonized mismatch metric or competency framework linked to observable tasks is missing.

5. Underexplored heterogeneity (gender, socio-economic background, region, subsector). The evidence notes different experiences across groups (e.g., barriers for women; diverging subsectors like accommodation vs. travel agencies), but few studies estimate heterogeneous treatment effects of education by gender, region (urban/rural, island/mainland), or firm size (SMEs vs. chains).

6. Weak coverage of informal work and seasonal/temporary contracts. Given tourism's large informal/seasonal segments, formal datasets miss a sizeable share of jobs. This biases conclusions about education's returns and employability pathways, which the review flags via seasonality and precariousness themes.

7. Incomplete treatment of digital and green transitions. While technological change is frequently cited, few studies evaluate structured digital (data analytics, platform operations, AI tools) or sustainability (ESG, circularity) curricula and their distinct employment effects, despite industry transformation pressures.

8. Patchy evaluation of work-integrated learning (WIL) at scale. Internships, apprenticeships, and live projects are recommended widely, but robust evaluations of design features (duration, assessment, co-supervision models) and scalability/equity impacts remain scarce.

9. Limited triangulation across stakeholder perspectives. Student, faculty, and employer views are often studied separately. Few designs triangulate all three (plus policymakers) within the same setting to test alignment/misalignment and co-produce curricular adjustments.

Table 2. Research Gap Matrix

No.	Thematic area	What we know (from the review)	What's missing / gap	Why it matters	Illustrative research questions	Suggested methods & data
1	Job quality outcomes	Education links to employment access; precarious/low-wage patterns persist.	Causal evidence on effects of specific educational inputs on wages, stability, promotions.	Aligns curricula with decent work agenda & retention.	Which curriculum components (e.g., service design studio, micro-credentials) raise wages and reduce turnover within 24 months?	Difference-in-differences using institutional rollouts; linked graduate tracer + payroll/admin data.
2	Causal identification	Predominantly cross-sectional/perception studies.	Quasi-experimental or longitudinal designs are rare.	Informs policy investment with credible effects.	Do mandatory internships causally improve post-graduation employment stability?	Instrumental variables (policy timing), regression discontinuity (admissions cutoffs), panel graduate surveys.
3	Demand-side firm behavior	Tech change & consumer shifts highlighted conceptually.	Few link firm adoption (digital, automation) to returns to education.	Clarifies which skills stay complementary to technology.	How does hotel PMS/CRM sophistication moderate returns to digital literacy training?	Employer surveys merged with HR outcomes; multilevel modeling.
4	Skills mismatch metrics	Mismatch widely reported; measures vary.	No harmonized, competency-based, task-linked metric.	Enables cross-study comparability & benchmarking.	Can a standardized tourism competency index predict placement and first-year performance?	Develop/validate rubric; Rasch modeling; predictive validity with supervisor ratings.
5	Equity & heterogeneity	Gender barriers, subsector differences noted.	Limited HTEs by gender/region/firm size.	Prevents one-size-fits-all designs; targets	Do women benefit more from blended WIL + mentorship vs. WIL	Stratified RCTs of mentoring add-ons; subgroup

				support.	alone?	analysis.
6	Informal & seasonal work	Seasonality/precarity discussed.	Informal jobs largely missing from datasets.	Avoids biased ROI estimates for education.	What are education's returns in informal/seasonal roles vs. formal contracts?	Mixed methods; time-use diaries; respondent-driven sampling; off-season follow-ups.
7	Digital & green skills	Need to keep pace with tech & sustainability.	Few evaluated curricula for digital/ESG skills and their labor effects.	Future-proofing workforce; competitiveness.	Do sustainability certifications in curricula improve placement in higher-value niches?	Program evaluation; employer choice experiments (discrete choice).
8	WIL design & scale	Internships/apprenticeships recommended.	Little on optimal dosage, supervision, assessment, equity.	Improves WIL ROI and access.	What WIL duration and assessment mix maximizes early-career performance?	Multisite pragmatic trials; process evaluation + cost-effectiveness.
9	Multi-stakeholder alignment	Collaboration urged (academia–industry–policy).	Few triangulated studies across all stakeholders.	Reduces curriculum–industry misalignment.	How does a formal co-design board change competency attainment and hiring yield?	Comparative case studies; synthetic control when boards are phased in.

7. Policy Recommendations

The relationship between education and tourism employment is a complex and multifaceted issue, with numerous challenges that hinder the effective alignment of educational programs with the industry's evolving needs. To address these challenges, a collaborative and comprehensive approach involving educational institutions, the tourism industry, and policymakers is required.

Educational institutions should establish strong partnerships and ongoing dialogue with the tourism industry to better understand their skill requirements and rapidly adapt curricula accordingly. In addition, they should integrate more hands-on, work-integrated learning opportunities, such as internships, apprenticeships, and industry projects, to provide

students with practical experience and industry exposure. Active engagement with the tourism industry is essential so as to better understand its current and future skill requirements and regularly update their curricula to reflect these needs. Educational institutions should also foster a culture of agility and responsiveness within their institutions to enable timely and effective implementation of necessary changes to their tourism education programs. Another dimension regards the issue of ensuring relevant pedagogical approaches that go beyond traditional lecture-based methods and focus on industry-aligned teaching methodologies, such as case studies, simulations, and experiential learning. Furthermore, investing in the professional development of faculty members, ensuring that they maintain up-to-date industry knowledge and practical expertise, is of great importance. On any occasion it is important that the educational institutions streamline their curriculum development and review processes to enhance the responsiveness of tourism education programs to industry changes to generate a skilled and efficient workforce in the tourism and hospitality sectors.

On the other hand, the tourism industry should actively collaborate with educational institutions to provide insights into the evolving skill demands, industry trends, and emerging competencies required for successful careers in the sector. It should offer more opportunities for student internships, apprenticeships, and work-integrated learning experiences to enhance the practical skills and industry exposure of tourism graduates. Industry associations and professional bodies can play a crucial role in facilitating this collaboration and ensuring that the curriculum and program offerings at educational institutions are aligned with industry needs to bridge the gap between theory and practice. They should also work closely with policymakers to advocate for policies and funding mechanisms that support the development of industry-relevant tourism education programs and engage more actively in the design and delivery of tourism education programs, providing input on curriculum content, teaching methods, and assessment approaches to ensure industry relevance. This collaboration is essential to ensure that tourism education programs are responsive to the evolving needs of industry and produce graduates who are well-equipped to succeed in the dynamic tourism sector. By actively participating in the development and implementation of tourism education curricula, the industry can share its expertise, insights, and expectations, thereby shaping the next generation of tourism professionals and bridging the gap between academic training and industry requirements.

Thirdly, policymakers should participate in this above-mentioned process and assist in developing and implementing policies that incentivize and facilitate stronger partnerships between educational institutions and the tourism industry, encouraging the co-creation of responsive and industry-aligned tourism education programs. They could also provide funding and resources to support the development of work-integrated learning opportunities, industry-academia collaborative projects, and the modernization of tourism education curricula. Another recommendation is the establishment of national frameworks or guidelines that outline the core competencies and skills required for various tourism occupations, which can then inform the development of tourism education programs across institutions. In this way, they can ensure that national tourism strategies and policies recognize the critical role of education in developing a skilled and adaptable tourism workforce and allocate appropriate resources to strengthen the linkages between tourism labour market outcomes. Policy makers and governments should also provide faculty members with opportunities to update their industry knowledge and practical expertise through industry placements, training programs, and collaboration with industry professionals.

From the analysis of the literature on education and tourism employment, it stems out that several critical issues emerge. By addressing the challenges and implementing the recommendations outlined in this paper, stakeholders can work collaboratively to bridge the gap between education–labour market relationship, ensuring that the tourism workforce is equipped with the necessary skills and competencies to thrive in the rapidly evolving industry. Within this framework, the nexus between tourism education and employment can be strengthened, leading to an adaptable and industry-ready workforce, that can contribute to the long-term competitiveness and sustainability of the tourism sector.

8. Conclusions

This paper examined the relationship between education and tourism employment through a synthesis of theoretical and empirical literature. The findings indicate that, although education plays a central role in enhancing employability, significant challenges remain in ensuring that educational outcomes align with the evolving needs of the tourism sector.

The key findings from the empirical literature include the following: Tourism education programs often fail to adequately prepare graduates with the industry-relevant skills and competencies required by employers. This disconnect between academic curricula and industry requirements

can result in challenges for graduates seeking employment, as well as a perception that tourism education programs are insufficient in preparing students for the industry's needs. These challenges are primarily associated with limited industry engagement, insufficient practical training opportunities, and the rapid evolution of skill requirements within the tourism sector. In addition, it is found that employment in tourism is often characterized by low-skilled, precarious, and low-wage jobs, which can make the industry unattractive to potential students and contribute to a shortage of skilled labour.

To address these challenges, the paper has proposed a multifaceted approach involving key stakeholders - educational institutions, the tourism industry, and policymakers - to enhance the alignment between tourism education and employment. First, educational institutions should strive to modernize their tourism education curricula, incorporating more practical, experiential, and industry-relevant learning approaches. Second, the tourism industry should take a more active role in shaping tourism education, sharing insights into evolving skill demands, industry trends, and emerging competencies required for successful careers. Third, policymakers should develop and implement policies that incentivize and facilitate stronger partnerships between educational institutions and the tourism industry, while also providing resources and support for the modernization of tourism education programs. Implementing these recommendations can strengthen the alignment between education systems and labour market needs, contributing to the development of a more skilled, adaptable, and resilient tourism workforce.

Annex

Below, in the order in which they appear in Table 1, are the list and the full references of the analysed papers that were not explicitly referred to in the footnotes: F. Al Saba, C. Mertzanis, I. Kampouris, *Employee empowerment and tourism sector employment around the world*, in *Journal of Tourism, Heritage & Services Marketing*, 2023, Vol. 9(2), 28-40; P. Barron, C. Anastasiadou, *Student part-time employment: Implications, challenges and opportunities for higher education*, in *International Journal of Contemporary Hospitality Management*, 2009, Vol. 21(2), 140-153. https://doi.org/10.1108/09596110910935642; S. Budría, P. Telhado-Pereira, *The contribution of vocational training to employment, job-related skills and productivity: evidence from Madeira*, in *International Journal of Training and Development*, 2009, Vol. 13, 53-72. https://doi.org/10.1111/j.1468-2419.2008.00315.x; A. Buneta, D. Ćosić, D. Tomašević, *Human resources - One of the key challenges of tourism development in the Republic of Croatia*, in *Acta Economica Et Turistica*, 2016, Vol. 2(2), 177-193. https://doi.org/10.1515/aet-2016-0016; C.G. Chi, D. Gursoy, *How to help your*

graduates secure better jobs? An industry perspective, in *International Journal of Contemporary Hospitality Management*, 2009, Vol. 21(3), 308-322. https://doi.org/10.1108/09596110910948314; R. Choden, P. Pholphirul, *Employment adjustment during the initial outbreak of COVID-19: Empirical evidence from tourism workers in Bhutan*, in *South Asia Economic Journal*, 2024, Vol. 25(1), 74-95. https://doi.org/10.1177/13915614231221648; G. Del Chiappa, T. Abbate, *Island cruise tourism development: a resident's perspective in the context of Italy*, in *Current Issues in Tourism*, 2023, Vol. 19(13), 1372-1385. https://doi.org/10.1080/13683500.2013.854751; D. T. T. Duyen, T. T. V. Anh, *Factors affecting employment decisions in tourism sectors: A case study of the southern Red River sub-region, Vietnam*, in *The Journal of Asian Finance, Economics and Business*, 2022, Vol. 9(5), 389-396. https://doi.org/10.13106/jafeb.2022.vol9.no5.0389; A. Grobelna, K. Skrzeszewska, *Seasonality: Is it a problem or challenge facing future tourism employment? Implications for management*, in *Journal of Entrepreneurship, Management and Innovation*, 2019, Vol. 15(1), 205-230; A. Grobelna, E. M. Wyszkowska-Wrobel, *Understanding employment aspirations of future tourism and hospitality workforce: The critical role of cultural participation and study engagement*, in *European Research Studies Journal*, 2021, Vol. 24, Special Issue 1, Part 1, 1312-1332; S. Jensen, *Regional tourism, the labour market and education*, in *Estudios Turísticos*, 2004, Vol. (161-162), 147-156; O. Kesar, D. Hodak, E. Roginić, *Bridging the gap between tourism vocational tourism educational education and employment practice in practice in Croatia: A vocational teachers' perspective*, in *ToSEE – Tourism in Southern and Eastern Europe*, 2021, Vol. 6, 405-423. https://www.cabidigitallibrary.org/doi/pdf/10.5555/20220365073; L. Lazzeretti, F. Capone, *Spatial spillovers and employment dynamics in local tourist systems in Italy (1991-2001)*, in *European Planning Studies*, 2009, Vol. 17(11), 1665-1683. https://doi.org/10.1080/09654310903230616; Z. Lejsek, *Tourism Employment Module (TEM): Case of the Czech Republic*, in *Statistika*, 2011, Vol. 48(3), 46-59; M. Masadeh, M. Al-Ababneh, S. Al-Sabi, Dr. Habiballah, *Perspectives on gender imbalance in hotel education: Reasons and remedies*, in *International Journal of Business and Social Science*, 2019, Vol. 10(3), 37-49. https://doi.org/10.30845/IJBSS.V10N3P4; F. Mazzola, P. Pizzuto, G. Ruggieri, *Tourism and territorial growth determinants in insular regions: A comparison with mainland regions for some European countries (2008-2019)*, in *Papers in Regional Science*, 2022, Vol. 101(6), 1331-1382. https://doi.org/10.1111/pirs.12701; S. Melián-González, J. Bulchand Gidumal, *Is tourism development associated with employment of low quality?*, in *Tourism Review*, 2024, 1-14. https://doi.org/10.1108/TR-07-2023-0494; I. Mkini Lugalla, J. P. A. M Jacobs, W. Westerman, *What drives women entrepreneurs in tourism in Tanzania?*, in *Journal of African Business*, 2023, Vol. 25(2), 205-223. https://doi.org/10.1080/15228916.2023.2168970; M. Á. Montañés-Del-Río, J. A. Medina-Garrido, *Determinants of the propensity for innovation among entrepreneurs in the tourism industry*, in *Sustainability*, 2020, Vol. 12(12), 5003. https://doi.org/10.3390/su12125003; M. Mungai, D. Kieti, I. Mapelu, *Tourism education enrolment among Kenyan public universities: Socioeconomic aspects*, in *International Journal of Research in Business and Social Science*, 2021, Vol. 10(6), 340-348. https://doi.org/10.20525/ijrbs.v10i6.1367; A. Obadić, L. Pehar, *Employment,*

capital and seasonality in selected Mediterranean countries, in *Zagreb International Review of Economics & Business*, 2016, Vol. 19, Special Conference Issue, 43-58. https://doi.org/10.1515/zireb-2016-0012.; A.P. Papadopoulos, G. T. Papanikos, *The determinants of vinegrowers employment and policy implications: the case of a Greek island*, in *Agricultural Economics*, 2005, Vol. 32, 61-72. https://doi.org/10.1111/j.0169-5150.2005.00005.x; R. Pérez-Morote, C. Pontones-Rosa, I. Alonso-Carrillo, D. Garcìa Pérez de Lema, *Men's and women's visions of employment policies to combat depopulation in rural Spain*, in *Humanities and Social Sciences Communications*, 2024, Vol. 11, 1417. https://doi.org/10.1057/s41599-024-03918-1; M. Raybould, H. Wilkins, *Over qualified and under experienced: Turning graduates into hospitality managers*, in *International Journal of Contemporary Hospitality Management*, 2005, Vol. 17(3), 203-216. https://doi.org/10.1108/09596110510591891; L. C. de Santana Ribeiro, T. H. Carnero Rios Lopes, R. L. Gonçalves Montenegro, J. R. de Lima Andrade, *Employment dynamics in the Brazilian tourism sector (2006-2015)*, in *Tourism Economics*, 2018, Vol. 24(4), 418-433. https://doi.org/10.1177/1354816617736409; L. J. Rotar, *Carbon tax and tourism employment: Is there an interplay?,* in *Journal of Risk and Financial Management*, 2023, Vol. 16(3), 193. https://doi.org/10.3390/jrfm16030193; B. Škrabić Perić, B. Šimundić, V. Muštra, M. Vugdelija, *The role of UNESCO cultural heritage and cultural sector in tourism development: The case of EU countries*, in *Sustainability*, 2021, Vol. 13(10), 5473. https://doi.org/10.3390/su13105473; V. Sorm, K. Terrell, *Sectoral restructuring and labor mobility: A comparative look at the Czech Republic*, in *Journal of Comparative Economics*, 2000, Vol. 28(3), 431-455. https://doi.org/10.1006/jcec.2000.1664; E. Szivas, M. Riley, *Tourism employment during economic transition*, in *Annals of Tourism Research*, 1999, Vol. 26(4), 747-771. https://doi.org/10.1016/S0160-7383(99)00035-3; E. Togaymurodov, M. Roman, P. Prus, *Opportunities and directions of development of agritourism: Evidence from Samarkand region*, in *Sustainability*, 2023, Vol. 15(2), 981. https://doi.org/10.3390/su15020981, C.-F. Tsai, C.-P. Chang, T.-L. Chen, M.-L. Hsu, *Exploring the influence of personality traits, self-efficacy, and creativity on employability for hospitality and tourism college student*s, in *Sustainability*, 2024, Vol. 16(4), 1490. https://doi.org/10.3390/su16041490; World Tourism Organization & International Labour Organization, *Measuring employment in the tourism industries - Guide with best practices*, UNWTO, Madrid, 2024; X. Zhou, Y. Hu, Y. Li, B. Wen, *Why do hotel interns stay in the hospitality and tourism industry? An interactionist perspective of organizational socialization*, in *International Journal of Contemporary Hospitality Management,* 2021, Vol. 34(3), 1225-1245. https://doi.org/10.1108/IJCHM-01-2021-0109.

Migration and Labor Market Dynamics in the Visegrad Countries: A Pilot Study

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Abstract. This paper focuses on the impact of migration on macroeconomic indicators in the Visegrad Four (V4) countries. The selection of the V4 countries is based on regionalism: these Central European countries are linked by cultural proximity, similar historical experiences, and characteristic features of their labor markets. Despite their strategic position in the European Union, the economic impacts of migration in this region remain insufficiently researched. Based on data from Eurostat and national statistical offices, two hypotheses were examined and tested using Pearson's correlation coefficient. The results highlighted significant differences between the individual V4 countries. In the Czech Republic, Slovakia, and Poland, migration supported labor markets and positively impacted unemployment, while in Hungary, similar effects were not observed, which is related to restrictive policies and a weaker integration framework. The study confirms that the economic impacts of migration are complex, context-dependent, and strongly shaped by integration policies.

Keywords: *Migration; Labor market; Visegrad Four; Unemployment; GDP.*

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1. Introduction

Few topics have the power to appear in the headlines of news websites and on the front pages of scientific journals. As the last decade has shown, migration and demography have managed to gain this prominent position, as they have fundamentally changed the conditions on the labor market. While demographic changes in Western civilization have triggered concerns about the sufficient labor supply, the influx of immigrants partially compensates for this unfavorable demographic development. It is characteristic of the American and European continents that demographic development is causing an increasingly noticeable imbalance in the labor market, mainly due to the declining birth rate and aging of the population[1]. Population aging is the subject of intensive research, as the primary demographic trend of the 21st century[2]. There is a consensus that the ageing workforce will increase labor market rigidity, as older workers have less job mobility than younger workers. At the same time, there are warnings that population ageing also significantly impacts individual countries' economic development[3].

Unfortunately, there are desperately few recipes for solving this situation. One is the use of migration, or the arrival of foreign labor.

Especially in the European context, migration has appeared on the horizon as a positive externality that can blunt the widening gap between the economically active and inactive population[4].

However, its occurrence is not geographically uniform. Benček and Schneiderheinze[5]state that in recent decades, migration has increasingly

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[1] E. Grmanová, *Demographic changes and their impact on the labour market,* Centre of Sociological Research, 2021.

[2] M.-G. Oprea, M.-I. Vlădescu, *Review of labor force and active aging studies: Trends, collaborations and perspectives*, in *Economic Insights – Trends and Challenges*, 2024, vol. 13, n. 1, 37–50; A. Grenčíková, J. Habánik, J. Španková, M. Húževka, M. Šrámka, *Current labour market challenges in the light of future economic and demographic developments*, in *European Journal of Interdisciplinary Studies*, 2022, vol. 14, n. 1, 100–112; M. Cristea, G. G. Noja, P. Stefea, A. L. Sala, *The impact of population aging and public health support on EU labor markets*, in *International Journal of Environmental Research and Public Health*, 2020, vol. 17, n. 4, 1439.

[3] J. Barakovic Husic, F. J. Melero, S. Barakovic, P. Lameski, E. Zdravevski, P. Maresova, O. Krejcar, I. Chorbev, N. M. Garcia, V. Trajkovik, *Aging at work: A review of recent trends and future directions*, in *International Journal of Environmental Research and Public Health*, 2020, vol. 17, n. 20, 7659.

[4] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus in V4 countries: Using panel data analysis for the period of 2000–2020*, in *Migration Letters*, 2023, vol. 20, n. 3, 465–476; K. Sargent, *Unpacking migration costs: Heterogeneous effects in EU labor markets*, in *Economic Modelling*, 2024, vol. 139, 106816.

focused on a small number of destination countries. This is confirmed by UN data[6], according to which about half of the 272 million international migrants live in only 10 countries today. In this context, and taking into account the main migration routes, this topic has begun to be emphasized, especially by authors from Central and Eastern Europe[7]and Asia[8]. On the other hand, such studies are less frequent in the West[9].

Since the vast majority of the above studies are based on data collected before the start of the Russian-Ukrainian conflict in 2022, the study of the impact of international migration on the labor market can still be considered incomplete. The Russian aggression in Ukraine caused the emergence of another migration wave, which changed the original cards in this area. Another motivation for the creation of this article was the existence of local factors that may be particularly noticeable on the European continent. Given the different historical experiences of individual European nations (socialist system vs. capitalism, proximity vs. distance from migration routes, etc.), attitudes towards immigrants and the resulting consequences for the labor market may be completely different even among close neighbors. Therefore, the challenge is to find a way to generalize the results for at least part of the European continent. However, this research should not end with summarizing the consequences of migration for the labor market. The development of the

[5] D. Benček, C. Schneiderheinze, *Higher economic growth in poor countries, lower migration flows to the OECD – Revisiting the migration hump with panel data*, in *World Development*, 2024, vol. 182, 106655.

[6] United Nations, *International migrant stock 2019*, Department of Economic and Social Affairs, Population Division, 2019, https://www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation_2019.pdf (accessed March 27, 2026).

[7] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…,op. cit.*; S. Migali, M. Scipioni, *Who's about to leave? A global survey of aspirations and intentions to migrate*, in *International Migration*, 2019, vol. 57, n. 5, 181–200; L. Kilimova, O. Nishnianidze, *Socio-demographic characteristics as indicators of the unemployment rate*, in *Economic Annals-XXI*, 2018, vol. 168, n. 11–12, 82–85; J. Tepperová, J. Zouhar, F. Wilksch, D. Špalková, L. Matějová, *Migration and unemployment: Case of Germany*, in *Proceedings of the 18th International Conference on Current Trends in Public Sector Research*, Masaryk University, Brno, 2014, 16–17.

[8] K. Kondoh, S. Yabuuchi, *Unemployment, environmental policy, and international migration*, in *Journal of International Trade & Economic Development*, 2012, vol. 21, n. 5, 677–690; A. Tomohara, *Does an increase in the number of immigrant workers reduce unemployment rates? An industry sector unit level analysis in Japan*, in *Economic Analysis and Policy*, 2022, vol. 74, 464–476.

[9] R. Baumann, J. Svec, F. Sanzari, *The relationship between net migration and unemployment: The role of expectations*, in *Eastern Economic Journal*, 2016, vol. 41, n. 3, 443–458.

labor force significantly determines the performance potential of the entire economy and is directly or indirectly reflected in a wider group of macroeconomic indicators. In a broader context, this article is therefore focused on the impact of migration on selected macroeconomic indicators of the countries under study. From this perspective, its results should be helpful to the academic community and political representation. Recent developments have shown that political decisions focused on migration are often guided by emotions, without support in data. It is a consistent analysis of the factors that affect different groups of countries that can be helpful to material that will move this entire discussion in a constructive direction.

2. Literature Review

2.1 Migration

Recently, we have witnessed two serious phenomena, namely the COVID-19 pandemic and the war in Ukraine. This caused previously unanticipated consequences – extreme inflation, energy shortages, and social tensions. National economies had to face increased economic and political uncertainty. Serious consequences were not imminent[10]. Slovakia and two other V4 countries (Poland and the Czech Republic) sided with the warring Ukraine and provided all possible assistance. Both military assistance and assistance in receiving immigrants. The Visegrad countries became frontline countries affected by the refugee crisis. The migration and asylum agenda is thus becoming an extremely complex issue within the Visegrad Group region due to the initially intense politicization of the topic by government elites in individual states[11]. In the last decade, there has been a growing interest in migration intentions, their determinants and potential consequences among political and academic communities[12].

[10] E. Selenko, H. Berkers, A. Carter, S. A. Woods, K. Otto, T. Urbach, H. De Witte, *On the dynamics of work identity in atypical employment: Setting out a research agenda*, in *European Journal of Work and Organizational Psychology*, 2018, vol. 27, n. 3, 324–334.

[11] T. Kajánek, *The migration strategies and positions on the EU migration and asylum agenda: Evidence from the Visegrad Group countries*, in *Journal of Liberty and International Affairs*, 2022, vol. 8, n. 3, 202–219.

[12] OECD, *International migration outlook 2024*, OECD Publishing, 2024, https://doi.org/10.1787/50b0353e-en (accessed March 27, 2026); S. Migali, F. Natale, S. McMahon, G. Tintori, M. Perez Fernandez, A. Alessandrini, A. Goujon, D. Ghio, T. Petroliagkis, A. Conte, U. Minora, S. Kalantaryan, *Population exposure and migrations linked to climate change in Africa*, Publications Office of the European Union, 2021.

Migration is the movement of people in a geographical environment. For international migration, nation-states and the subsequent migrant settlement in a country other than the country of origin are necessary conditions. Labor migration is associated with the emergence and development of the world economy from the last third of the 19th century to the present. The motivation for population movement has expanded significantly, especially in the second half of the 20th century[13]. The mutual ratio of emigration and immigration indicates the migration balance of economies, subregions, and regions. A positive value of the migration balance (i.e. net immigration) means that immigration to the country is numerically higher than emigration from the country. A negative value of the migration balance (i.e. net emigration) means that emigration exceeds immigration[14]. Rubinskaya[15] states that migration is caused and influenced by world economic trends, which include transnationalization, integration, and globalization. Migration is therefore a multi-level and multidimensional social phenomenon, where migration can also include the movement of refugees, displaced persons, economic migrants and people moving for other purposes, including family reunification[16]. With increasing geopolitical tensions and worsening climate disasters, it is likely that developed European countries are experiencing and will experience increasingly large migration waves from African and Middle Eastern countries[17].

In 2023, migration to OECD countries reached a record high. Not only did 6.5 million permanent migrants arrive last year, but the number of temporary migrants and asylum seekers also skyrocketed. These high flows raise concerns about the impact of migrants on the economies and societies of receiving countries, but they also point to great opportunities[18].

The article aims to assess the impact of immigration on selected macroeconomic indicators (see the Methodology chapter for more details). Economic growth factors such as gross domestic product (GDP), gross domestic income (GNI), unemployment rate, and inflation positively impact indicators of stability and security of the Visegrad Group countries. Through these factors, countries can develop and improve the

[13] V. Kubišta, *Mezinárodní obchod a migrace*, Aleš Čeněk, Plzeň, 2016.
[14] V. Kubišta, *Mezinárodní obchod a migrace*, *op. cit.*
[15] E. Rubinskaya, *Migration and urbanization: Local solutions for global economic challenges*, IGI Global, 2020.
[16] E. Rubinskaya, *Migration and urbanization: Local solutions for global economic challenges, op. cit.*
[17] S. Migali et al., *Population exposure and migrations linked to climate change…, op. cit.*
[18] OECD, *International migration outlook 2024*, *op. cit.*

standard and quality of life[19]. GDP is considered a key economic indicator because it depicts the economy's performance based on the results of production factors located in the state's territory. The indicator characterizes economic processes and overall performance (what was produced and purchased)[20]. Another indicator assessed is unemployment. Forecasting unemployment is important for economists, forecasters, and policymakers concerning the economic downturn and other factors that influence it[21]. Immigration is one of these factors.

2.2 Migration and the labor market

Emigration and immigration affect not only the size of the population, but also various areas of economic life. What attracts migrants to host countries are "pull factors", such as political stability, high income levels, better economic opportunities, and a higher standard of living. On the contrary, what forces people to emigrate from a country are "push factors", such as political pressures, low levels of welfare, higher unemployment, low incomes, and high levels of corruption[22]. Migration, therefore, has a significant impact on the labor market. They are therefore of particular interest to government politicians and the professional community[23]. According to the theory developed by Lewis[24], "high wages and a shortage of labor in richer countries motivate labor from poor countries with lower wages and limited job opportunities to migrate to rich countries, which brings balance to the international labor market." If there were not such significant wage differences between countries, people would not be willing to migrate so much[25]. However, Piore[26] argues that "wages are not a necessary condition for labor migration, the key role is actually played by the structure of the labor market". The labor

[19] A. Buriachenko, K. Zakhozhay, A. Liezina, V. Lysak, *Sustainability and security of public budget of the Visegrad Group countries*, in *Acta Innovations*, 2022, vol. 42, 71–88.
[20] E. Ivanová, J. Masárová, *Performance evaluation of the Visegrad Group countries*, in *Economic Research-Ekonomska Istraživanja*, 2019, vol. 31, n. 1, 270–289.
[21] C. Jo, D. H. Kim, J. W. Lee, *Forecasting unemployment and employment: A system dynamics approach*, in *Technological Forecasting and Social Change*, 2023, vol. 194, 122715.
[22] D. Ushakov, *Migration determinants in the EU Member States*, in *Pressburg Economic Review*, 2022, vol. 2, n. 1, 31–36
[23] E. Grmanová, *Demographic changes and their impact on the labour market, op. cit.*
[24] W. A. Lewis, *Economic development with unlimited supplies of labour*, in *The Manchester School*, 1954, vol. 22, n. 2, 139–191.
[25] W. A. Lewis, *Economic development with unlimited supplies of labour*, *op. cit.*
[26] M. J. Piore, *The shifting grounds for immigration*, in *The Annals of the American Academy of Political and Social Science*, 1986, vol. 485, n. 1, 23–33.

market has been divided into labor-intensive, lower-skilled, and highly skilled. As long as there is a demand for unskilled labor in the labor market, people will be more willing to migrate for work[27].

The so-called cumulative causation theory explains the relationship between the labor market and migration. This theory emphasizes how migration flows can affect the social framework and structure of the labor market. If a concentration of migrants occurs in specific sectors of the host countries, this work is labeled as immigrant work. This leads to the fact that domestic workers do not prefer this work. This creates a need for a constant influx of migrants, and the relationship between migration and the labor market becomes a permanent phenomenon[28]. Ushakov[29] examined the relationship between unemployment rates and income levels, with migration flows in EU member states. While there is a strong positive relationship between income levels and immigration, the relationship between income levels and emigration is unclear and has a low negative association[30]. Cultural differences and diverse labor market institutions (such as minimum wages, collective bargaining, or unemployment and social benefits) are associated with local labor market mobility and, consequently, with spatially different unemployment rates and labor force participation[31].

According to research by Přívara et al.[32], it can be stated that "the relationship between immigration and unemployment is statistically significant and negatively correlated". It also shows that in the Visegrád Four (V4) countries, immigration is not a significant source of unemployment. Unemployment is strongly related to economic growth and inflation. Therefore, these factors should be a priority for the V4 countries and they should include immigrants as a driver of growth for the industry that needs this workforce[33]. In the Czech Republic, migration has a predominantly positive effect despite its negatives (increased crime). Migrants are predominantly of working age or even before working age,

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[27] M. J. Piore, *The shifting grounds for immigration*, *op. cit.*

[28] D. Ushakov, *Migration determinants in the EU Member States*, *op. cit.*; D. S. Massey, J. Durand, K. A. Pren, *Explaining undocumented migration to the U.S.*, in *International Migration Review*, 2014, vol. 48, n. 4, 1028–1061.

[29] D. Ushakov, *Migration determinants in the EU Member States*, *op. cit.*

[30] D. Ushakov, *Migration determinants in the EU Member States*, *op. cit.*

[31] M. Alvarez, V. Royuela, *The effect of labor-market differentials on interregional migration in Spain: A meta-regression analysis*, in *Journal of Regional Science*, 2022, vol. 62, 913–937.

[32] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…*, *op. cit.*

[33] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…*, *op. cit.*

which is a good sign for successful adaptation to the given functioning and behavior of the state[34].

The extent to which immigration affects the labor market and the broader economy in the short, medium, and long term is the subject of ongoing debate. The key to objectively assessing the impact of immigration on the labor market is the choice of relevant indicators. According to a report by the OECD and ILO[35], this group may include, for example, changes in the employment rate, unemployment, vacancies, or wages. As the literature review has shown, authors often prefer the general unemployment rate as an indicator of the condition of the labor market. Moreover, some research also goes in the opposite direction – they examine whether employment affects migration, which, in the case of Baumann et al.[36], did not prove a relationship between these variables. In their study, Jestl & Tverdostup[37] analyse the entry of refugees and immigrants into the labor market in Austria. They detail the factors influencing the duration and stability of employment in Austria. They point to the need for immigrants to have immediate access to training and re-education, which would help improve the quality of their entry jobs and long-term prospects. Espinosa and Díaz-Emparanza[38] state that the greater the immigration, the greater the unemployment. Kondoh and Yabuuchi[39] found, in the specific conditions of the Japanese market, that international immigration can increase the employment rate and the economic well-being of the standard worker. Tomohara[40] further elaborates on these findings and states that the unemployment rate decreases with the increase in the number of immigrants in industries characterized by labor shortages. Some other studies, on the contrary,

[34] P. Adámek, J. Dobrylovský, *Immigration to the Czech Republic, benefits and impacts from the view of labour market functioning*, in *International Days of Statistics and Economics 2019*, 2019, https://doi.org/10.18267/pr.2019.los.186.2 (accessed March 27, 2026).

[35] OECD/ILO, *How Immigrants Contribute to Developing Countries' Economies, OECD Publishing,* 2018*,* https://doi.org/10.1787/9789264288737-en (accessed March 27, 2026)

[36] R. Baumann, J. Svec, F. Sanzari, *The relationship between net migration and unemployment…, op. cit.*

[37] S. Jestl, M. Tverdostup, *The labour market entry and integration of refugees and other migrants in Austria*, in *wiiw Working Paper*, 2023, n. 231, https://www.econstor.eu/handle/10419/283274 (accessed March 28, 2026).

[38] A. M. Espinosa, I. Díaz-Emparanza, *The long-term relationship between international labour migration and unemployment in Spain*, in *Journal of International Migration and Integration*, 2021, vol. 22, n. 1, 145–166.

[39] K. Kondoh, S. Yabuuchi, *Unemployment, environmental policy…, op. cit.*

[40] A. Tomohara, *Does an increase in the number of immigrant workers reduce…, op. cit.*

have yielded rather neutral results. Tepperová et al.[41] concluded in their study of this issue in the German labor market that most of the differences between the unemployment rate of immigrants compared to natives can be explained by different characteristics (e.g. age, gender, education) of immigrants compared to natives. The probability that an immigrant will be unemployed is only a fraction higher than for a comparable domestic resident. The relationship between the share of incoming workers (immigrants) and the employment of native workers is analyzed, among others, by the OECD report[42], and is assessed as negligible for most of the countries studied. However, this analysis reflects many local specificities, such as a higher rate of urbanization and, consequently, a large outflow of workers from selected provinces. In the short term, immigration can increase the demand for goods and services, which results in an increase in production and subsequently the demand for labor, which can lead to an increase in investment over time[43]. When the economy is growing, new immigration creates enough jobs to keep domestic employment unharmed, even in the relatively short term. During a downturn, however, new immigrants have been found to have little negative impact on domestic employment in the short term (but not in the long term)[44]. Edo[45] examines the impact of immigration on the average wage and employment of domestic workers. This study also analyses this issue over time. The influx of immigrants will reduce the wages of competing domestic workers (with skills similar to those of migrants) and increase the wages of complementary workers (with skills that complement those of immigrants). By affecting the skill composition of the workforce, immigration can create winners and losers among domestic workers through changes in the wage structure. Sargent[46] examines the long-term effects of costly labor migration on European Union (EU) unemployment. Understanding the labor market's impact on sending and receiving countries can inform the discussion of the long-term effects of free labor mobility. His study shows that reducing barriers

[41] J. Tepperová et al., *Migration and unemployment…, op. cit.*
[42] OECD/ILO, *How immigrants contribute...*, op. cit.
[43] G. Peri, *The Impact of Immigrants in Recession and Economic Expansion*, Migration Policy Institute, University of California, Davis, 2010, https://www.migrationpolicy.org/sites/default/files/publications/Peri-June2010.pdf (accessed March 28, 2026).
[44] G. Peri, *The Impact of Immigrants in Recession and Economic Expansion, op. cit.*
[45] A. Edo, *The impact of immigration on the labor market*, in *Journal of Economic Surveys*, 2019, vol. 33, n. 3, 922–948.
[46] K. Sargent, *Unpacking migration costs: Heterogeneous effects in EU labor markets…*, *op. cit.*

to movement increases migration rates in the long term while reducing unemployment rates for all workers in both countries. He shows that workers benefit from the ability to move, even if it is very costly, through reduced unemployment rates and increased welfare associated with these moves. Unemployment rates among workers in sending and receiving countries are lower when workers are allowed to migrate than when they are restricted to their country's labor market[47]. A study by Poledna et al.[48] examines the potential economic and labor market impacts. The results suggest a positive impact on GDP due to increased aggregate consumption and investment. The unemployment rate of natives and previous migrants is increasing in the labor market[49]. According to OECD[50], the extent to which Ukrainian refugees have been able to integrate into local labor markets has varied considerably across countries. Ukrainian refugees in some Central and Eastern European countries, such as Poland, Lithuania and Estonia, are doing particularly well in the labor market, with employment rates above 50% at the end of 2023, while fewer than one in four are employed in countries such as Germany, Austria and Belgium. This is also confirmed by the Eurofound report[51], which also identifies the main barriers – language, lack of qualifications, childcare or limited networks – and describes the support policies in place (language courses, rapid recognition of diplomas, etc.).

3. Methodology

As mentioned in the introduction, the authors focused on two internationally frequent topics – demography and migration. Migration is perceived as a phenomenon that can partially compensate for the unfavorable demographic development of the Western population and avert economic stagnation, while having an immediate impact on the condition of the labor market. In the context of these assumptions, this paper aims to assess the impact of migration on a selected group of

[47] K. Sargent, *Unpacking migration costs: Heterogeneous effects in EU labor markets…*, *op. cit.*
[48] S. Poledna, N. Strelkovskii, A. Conte, A. Goujon, J. Linnerooth-Bayer, *Economic and labour market impacts of migration in Austria: An agent-based modelling approach*, in *Comparative Migration Studies*, 2024, vol. 12, n. 18.
[49] S. Poledna, N. Strelkovskii, A. Conte, A. Goujon, J. Linnerooth-Bayer, *Economic and labour market impacts of migration in Austria…*, *opt. cit.*
[50] OECD, *International migration outlook 2024*, *op. cit.*
[51] Eurofound, *Social impact of migration: Addressing the challenges of receiving and integrating Ukrainian refugees*, Publications Office of the European Union, 2024, https://www.eurofound.europa.eu/en/publications/all/social-impact-migration-addressing-challenges-receiving-and-integrating-ukrainian (accessed March 28, 2026).

macroeconomic indicators in selected countries, emphasizing the labor market. An objective assessment of this phenomenon requires statistical analysis, for which Pearson's coefficient was chosen.

4. Research Sample

As literary research shows, the arrival of foreign labor can have very different consequences across continents and countries. The selection of a group of countries for which the results can be generalized was therefore crucial for the potential of this study. The fundamental prerequisite was to find a group of countries with unquestionable global significance and with a hitherto insufficiently explained impact of migration on their macroeconomic situation.

One possible solution for obtaining findings that could be at least partially generalizable is to apply the principles of regionalism. This approach can be loosely explained as the division of a larger entity (e.g., the European Union) into several smaller groups of related countries with similar historical experiences and compatible mentalities. With some caution, we can view this set of countries as a homogeneous whole, united by a typical "regional problem" according to De Castro[52].

A typical example of such a regional grouping is the Visegrad Four, which was established in the Hungarian town of Visegrad in 1991 as a joint project of Poland, Hungary, and Czechoslovakia (which split into Czechia and Slovakia two years later). This group aimed to coordinate their efforts in the EU[53] and to cooperate. These countries are close in terms of cultural, intellectual, and socioeconomic values[54] and overcoming their communist past. A characteristic feature of the Visegrad Group countries is their common interest in European integration, strengthening stability in Central Europe, and mutual support in the economic and cultural spheres. This region has a strategic location in the European Union because it is in the center of Europe[55].

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[52] I. E. De Castro, *Revisiting regionalism as the foundation of the regional issue*, in *Confins-Revue Franco-Bresilienne de Geographie-Revista Franco-Brasileira de Geografia*, 2021, n. 49.

[53] E. Ugurlu, I. Jindřichovská, *Effect of COVID-19 on international trade among the Visegrad countries*, in *Journal of Risk and Financial Management*, 2022, vol. 15, n. 2.

[54] E. Matoušková, *Comparison of economic cycles of the Slovak economy and other Visegrad Four countries*, in *Pénzügyi Szemle = Public Finance Quarterly*, 2022, vol. 67, n. 3, 463–481.

[55] A. Sacio-Szymańska, A. Kononiuk, S. Tommei, O. Valenta, É. Hideg, J. Gáspár, P. Markovič, K. Gubová, B. Boorová, *The future of business in Visegrad region*, in *European Journal of Futures Research*, 2016, vol. 4, n. 26.

The Visegrad Group countries are united not only by their proximity and location in the heart of Europe, but also by a similar historical trajectory. After World War II, they became part of an economic bloc of Eastern Bloc countries called the Council for Mutual Economic Assistance, where they transformed into some of Europe's most industrialized economies. After the fall of the Iron Curtain at the end of the last century, they began to seek a path to the free market, culminating in their accession to the European Union in 2004. To this day, they are united by several local characteristics, the most significant of which is the similar nature of their labor markets. An analysis by the Czech Statistical Office[56] points, for example, to the unemployment rate, which in the V4 countries, except Slovakia, remains below the European Union average. Based on data from 2022, the same trend can be seen in the long-term unemployment rate. When we also consider the above-average share of the workforce employed in the industrial sector in the Visegrad countries (with a lower share of knowledge-intensive services), we have gathered the first group of relevant reasons why these countries are so attractive to migrants who can work[57]. This idea is further supported by thousands of long-term job vacancies in all the countries mentioned, which creates significant opportunities for foreign workers[58]. The relevance of studies focused on the specific environment of Central and Eastern Europe is sometimes dismissed by Western researchers due to the low global significance of these countries. However, this somewhat discriminatory attitude towards post-socialist economies is gradually being questioned by both academics[59] and statisticians. According to an analysis by the Czech Statistical Office[60],

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[56] Czech Statistical Office, *Pohyb obyvatelstva - 1.–3. čtvrtletí 2024*, 2023, https://csu.gov.cz/rychle-informace/pohyb-obyvatelstva-3-ctvrtleti-2024 (accessed March 28, 2026).

[57] Czech Statistical Office, *Pohyb obyvatelstva - 1.–3. čtvrtletí 2024, op. cit.*

[58] Czech Statistical Office, *Statistika volných pracovních míst*, 2024, https://csu.gov.cz/produkty/statistika-volnych-pracovnich-mist; Hungarian Central Statistical Office, *Number of job vacancies and the job vacancies rate by economic branches*, 2024, https://www.ksh.hu/stadat_files/mun/en/mun0159.html; GlobalData, *Slovakia: Technology related job trends in the technology and communications sector (October 2023 – January 2024)*, 2024, https://www.globaldata.com/data-insights/technology--media-and-telecom/slovakia-technology-related-job-trends-in-the-technology-and-communications-sector-2092508; Statistics Poland, *The demand for labour in the fourth quarter of 2023*, 2024, https://stat.gov.pl/en/topics/labour-market/demand-for-labor/the-demand-for-labour-in-the-fourth-quarter-of-2023,2,52.html (accessed March 28, 2026).

[59] S. Uddin, B. Popesko, Š. Papadaki, J. Wagner, *Performance measurement in a transitional economy: Unfolding a case of KPIs*, in *Accounting, Auditing & Accountability Journal*, 2021, vol. 34, n. 2, 370–396.

[60] Czech Statistical Office, *Statistika volných pracovních míst, op. cit.*

the labor force of the Visegrad Four countries comprises 29.4 million workers, representing 14% of the European Union's employment (210 million people).
Another argument for studying this sample is the need to expand theoretical knowledge about labor market developments in previously neglected countries of the former Eastern Bloc. Research focused specifically on the Visegrad Four countries has been on the rise recently[61], but not all the specifics of their development have been mapped out yet. There is also potential in identifying local differences between the Czech Republic, Slovakia, Poland, and Hungary, and analyzing them in greater depth.

5. Hypotheses Development

H1: The gross migration rate is a statistically significant factor influencing unemployment.

In line with the above-presented objective of the study, the authors decided to test the relationship between migration and a selected indicator recognized as an indicator of the condition of the labor market. The unemployment rate is a traditional metric in this regard, whose relevance is demonstrated by its use in several similar studies[62]. It is understood as the proportion of unemployed people registered with the labor office divided by the number of all people aged 15-64 living in a given territory (i.e., including foreigners). Demographic and economic factors such as age and level of education influence migration and subsequent unemployment[63]. The motivation for examining this indicator also includes an assessment of the partial differences between the characteristics of the individual labor markets of the V4 countries. As

[61] J. Belás, R. Machová, J. Oláh, Z. Metzker, *The impact of selected HRM factors on company´s survival of SMEs: Empirical research in V4 countries*, in *Journal of International Studies*, 2024, vol. 17, n. 1, 108–123; B. Gavurová, J. Schonfeld, Y. Bilan, T. Dudáš, *Study of the differences in the perception of the use of the principles of corporate social responsibility in micro, small and medium-sized enterprises in the V4 countries*, in *Journal of Competitiveness*, 2022, vol. 14, n. 2, 23–40.
[62] Jo et al., *op. cit.*; A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…, op. cit.*; D. Dorn, J. Zweimüller, *Migration and labor market integration in Europe*, in *Journal of Economic Perspectives*, 2021, vol. 35, n. 2, 49–76; F. Fasani, J. Llull, C. Tealdi, *The economics of migration: Labour market impacts and migration policies*, in *Labour Economics*, 2020, vol. 67, 101929.
[63] D. Hubelová, P. Ptáček, T. Šlechtová, *Demographic and socio-economic factors influencing health inequalities in the Czech Republic*, in *Geoscape*, 2021, vol. 15, n. 1, 53–65.

Kureková & Zilinciková[64] point out, migration within the EU, especially after the eastern enlargement, significantly impacted the labor market in the V4 countries. As local statistics show, there are significant differences within the V4 group, for example, in the number of job vacancies. The authors therefore believe that while Czechia, as the country with the highest surplus between low unemployment and a high number of job vacancies, will benefit from the arrival of foreign labor, this positive correlation is unlikely to work in Slovakia.

H2: The gross migration rate is a statistically significant factor influencing the gross domestic product.

When examining the potential economic benefits immigrants can bring to a country, relying on a single metric is impossible. While the indicator of the impact of migration on the unemployment rate deals purely with the consequences for the labor market, the second indicator examined is gross domestic product (GDP), which, according to the literature review, is a typical indicator for assessing economic performance. As evidenced by the study by Strzelecki et al.[65], the influx of workers from Ukraine to Poland has contributed significantly to economic growth by increasing the adequate labor supply. Research suggests that this influx of labor has contributed to GDP growth. In Poland and the Baltic states, migration from post-Soviet countries has contributed to economic development and GDP growth. High labor demand in these countries and the influx of labor from Ukraine were key factors in economic growth[66].

6. Data collection and Processing

Macroeconomic data obtained from Eurostat and national statistical offices served as the main input for the hypotheses testing. The input variables are described in more detail below.

The formulation of hypothesis H1 required the collection of data on labor market development. The source of this information was the Labor Force Survey, which took into account annual unemployment rates (in %).

[64] L. M. Kureková, Z. Zilinciková, *Examining labour market hierarchies in Slovakia from the perspective of intra-EU migration and return*, in *Journal of Ethnic and Migration Studies*, 2023, vol. 49, n. 16, 4140–4168.

[65] P. Strzelecki, J. Growiec, R. Wyszynski, *The contribution of immigration from Ukraine to economic growth in Poland*, in *Review of World Economics*, 2022, vol. 158, n. 2, 365–399.

[66] P. Strzelecki et al., *The contribution of immigration from Ukraine...*, *op. cit.*; V. V. Vorotnikov, A. Habarta, *Migration from post-Soviet countries to Poland and the Baltic states: Trends and features*, in *Baltic Region*, 2021, vol. 13, n. 4, 79–94.

Conversely, migration trends (also necessary for H1) are monitored using a coefficient that relates net migration to a given number of inhabitants, most commonly per 1,000 people. While a positive coefficient indicates a population increase per 1,000 inhabitants, a negative coefficient reflects a population decrease per 1,000 inhabitants. For hypothesis H2, the authors chose to examine the impact of migration on economic performance. Eurostat monitors a country's productive activity through household consumption, which, as the most significant component of gross domestic product, is expressed in monetary units.

To verify the hypotheses, the Pearson correlation coefficient was used to express the strength and direction of the relationship between the tested variables. Its values range from –1 to 1, where the extreme values of –1 and 1 indicate a perfect linear relationship. A positive correlation means that as one variable increases, the other tends to increase as well. A correlation close to zero indicates that changes in one variable are not systematically associated with changes in the other. Finally, a negative correlation means that as one variable increases, the other tends to decrease.

Given the shocks that have affected the development of the studied variables over the past decade, it was essential for the objectivity of the results to carefully define the period under investigation. In the first phase, the authors eliminated extreme years, starting with the Covid year 2020, during which all observed countries experienced a decline in economic activity and a temporary restriction of free movement. The reactivation of both economic activity and migration began in the following year, 2021, which was chosen as the starting point of the research. The first time sample further includes the years 2022 and 2023, which were affected by a migration wave resulting from Russia's aggression in Ukraine. Given the geographical proximity of the Visegrad countries to the conflict, these states became significant hosts for Ukrainian refugees. The year 2022 may not have fully demonstrated the impact of their arrival on individual macroeconomic indicators, as adaptation periods are typically required when entering an unfamiliar environment. However, the year 2023 is expected to reflect the real development in this regard.

In an effort to capture the broader context of the research, the authors decided to extend the analyzed period to also include the years 2016 to 2019. Including these years allows for a comparison of how the relationship between the observed variables has changed compared to the period of economic growth at the end of the previous decade, when the

Visegrad countries experienced expansion without significant external geopolitical disruptions.

7. Results

Although the Visegrad Group countries are considered closely connected states shaped by local specificities, the data collection revealed that they exhibit significant differences in the development of the monitored indicators. This is clearly illustrated, for example, by migration balance. The initial conditions were similar across the V4 countries, as all four received refugees in 2022 and 2023 according to local statistics[67]. However, the increase in migrants - except in the case of the Czech Republic - did not compensate for population loss caused by emigration and natural decline. As a result, the V4 countries entered a period of moderate depopulation in the post-Covid era.
These findings are fully in line with a recent analysis by the Czech Statistical Office[68], which shows that Czechia has long recorded the highest population gains, while Hungary and Poland are on the opposite end of the spectrum. Initially, Hungary experienced the greatest population decline, but it was overtaken by Poland in 2019 and again in 2021.

Table No. 1 Migration balance[69]

Year	Czechia	Slovakia	Hungary	Poland
2016	2,4	1,7	-4,1	0,2
2017	2,9	1,4	-2,7	0,1
2018	3,7	1,3	-1,4	-0,1
2019	4,1	1,4	-1,1	-0,4
2021	4,8	-4,6	-4,3	-5
2022	29,1	-1,1	-1,1	-3,7
2023	6,7	-1,6	-1,6	-3,6

From the perspective of macroeconomic indicators, the Czech Republic has long been considered the wealthiest member of the V4 group, as

[67] United Nations High Commissioner for Refugees (UNHCR), *Operational data portal: Ukraine refugee situation*, [n.d.], https://data.unhcr.org/en/situations/ukraine (accessed March 28, 2026)
[68] Czech Statistical Office, *Statistika & my*, 2023, vol. 13, n. 10, 27–44.
[69] Eurostat, *Population on 1 January by age and sex*, 2025, https://ec.europa.eu/eurostat/databrowser/view/TPS00019/default/table?lang=en (accessed March 28, 2026)

reflected in its low unemployment rate and consistently high level of household consumption[70] (as the main component of gross domestic product). The collected data also show that while unemployment rates in the V4 countries converged between 2016 and 2023, differences in per capita consumption have slightly widened.

Table No. 2 Macroeconomic indicators[71]

Yr	Unemployment rate (%)				Consumption/person (EUR)			
	Czechia	Slovakia	Hungary	Poland	Czechia	Slovakia	Hungary	Poland
2016	4	9,6	5	6,3	11 460	11 050	8 300	8 490
2017	2,9	8,1	4	5	12 580	11 650	9 120	9 350
2018	2,2	6,5	3,6	3,9	13 840	12 340	9 600	9 940
2019	2	5,7	3,3	3,3	14 730	13 150	10 390	10 520
2021	2,8	6,8	4,1	4,1	15 970	14 360	10 970	11 320
2022	2,2	6,1	3,6	3,6	18 180	16 460	12 260	13 210
2023	2,6	5,8	4,1	4,1	19 550	17 560	14 240	15 110

After collecting and systematizing the data, both hypotheses were tested. In the case of hypothesis H1, the relationship between migration and the unemployment rate was examined, where the authors expected an inverse relationship. In other words, a higher migration index was expected to contribute to a lower unemployment rate. The results of the testing are shown below.

Table No. 3 Hypothesis H1 testing[72]

Country	Pearson test	
	2016-2019	2021-2023
Czechia	-0,963	-0,966
Slovakia	0,816	-0,975
Poland	0,931	-0,996
Hungary	-0,984	-0,62

[70] Household consumption represents the total spending of households on goods and services and serves as a key indicator of overall economic activity and living standards.

[71] Eurostat, *Comparative price levels of final consumption expenditure*, 2024, https://ec.europa.eu/eurostat/databrowser/view/nama_10_pc/default/table?lang=en (accessed March 28, 2026); Eurostat, *Unemployment rate – annual data (%)*, 2025, https://ec.europa.eu/eurostat/databrowser/view/tipsun20/default/table?lang=en (accessed March 28, 2026)

[72] Processed by the researchers.

In assessing Hypothesis H1, the years 2021 to 2023 play a key role, as they represent a period largely influenced by the migration wave. As the test result for linear dependence gets closer to -1, the inverse link between the variables becomes increasingly evident[73]. This finding applies to the trio of Czechia, Slovakia, and Poland, where an increase in the migration balance likely has an indirect effect of lowering the unemployment rate. Only in the case of Hungary, a significant relationship between the tested variables was not confirmed[74].

For a more comprehensive assessment of migration's impact on labor market conditions, it is useful to compare how the effect of foreign labor has changed relative to the 2016–2019 period. The Czech Republic shows consistent results, with scores differing from the 2021–2023 period by only a few hundredths of a percent. Hungary also achieved comparable results in both periods; however, the initially strong inverse relationship between the two variables appears to be gradually weakening. In the two remaining Visegrad countries, the recent developments have undergone a dramatic shift. Poland's results contrast starkly with the past - what was once a strong direct relationship during 2016–2019 has now turned into an inverse one. Slovakia follows a trajectory similar to that of Poland[75].

The results of hypothesis H1 testing laid clear groundwork for hypothesis H2. If the rise in the migration index led to a reduction in unemployment in Czechia, Slovakia, and Poland, a positive effect on the main component of these countries' gross domestic product could be expected. However, this phenomenon was observed only in Slovakia and Poland between 2021 and 2023, where a direct relationship was identified between the increase in the migration index and growth in consumption per capita. In contrast, the Czech Republic, whose indicators had previously reported an exclusively positive impact of accepting migrants, shows an insignificant relationship between these two variables. A stronger relationship was, unexpectedly, identified even in Hungary.

[73] This relationship is particularly visible in labor-intensive sectors such as construction, manufacturing, and services, where migrant workers often fill positions that are less attractive to the domestic workforce.

[74] The absence of a significant relationship in Hungary may reflect differences in migration policies, labor market regulation, or the structure of the economy.

[75] The shift from a direct to an inverse relationship in Poland and Slovakia indicates a structural change in how migrant labor is integrated into the labor market, possibly accelerated by the post-Covid recovery and the inflow of refugees from Ukraine.

Table No. 4 Hypothesis H2 testing[76]

Country	Pearson test	
	2016-2019	2021-2023
Czechia	0,997	0,204
Slovakia	-0,699	0,963
Poland	-0,951	0,896
Hungary	0,959	0,703

The result of H2 testing is surprising for the Czech Republic, even in the context of earlier data, as a direct relationship between the migration index and consumption per capita was observed during the period 2016 to 2019. However, the development in Czechia is not the only unexpected finding. A look at the shift in results suggests that either the overall approach to migration has changed fundamentally across all the examined countries (with the possible exception of relatively stable Hungary), or a new economic factor has come into play[77]. While Poland and Slovakia showed a relatively strong inverse relationship between the observed variables in the 2016–2019 period, this relationship has now become direct. These dramatic shifts in the relationship between the migration index and per capita consumption are so significant to warrant further attention in the following chapter Discussion.

If we consider a relationship significant when the coefficient of linear dependence reaches a value higher than 0.75 (or lower than -0.75 in the case of an inverse relationship), the results of hypothesis testing in the primary period of interest (2021 to 2023) can be evaluated as follows.

Table No. 5 Summarizing the results of hypothesis testing[78]

Country	Period 2021-2023	
	Hypothesis H1	Hypothesis H2
Czechia	Confirmed	Not confirmed
Slovakia	Confirmed	Confirmed
Poland	Confirmed	Confirmed
Hungary	Not confirmed	Not confirmed

[76] Processed by the researchers.

[77] This may indicate that the Czech labor market has reached a saturation point, where additional migration no longer translates into increased consumption, possibly due to capacity limits or structural characteristics of the economy.

[78] Processed by the researchers.

8. Discussion

Migration has become a widely discussed topic in Central and Eastern Europe over the past decade, as evidenced by the emergence of numerous studies[79]. In this context, the research gap for further investigation might appear to be exhausted. However, the findings of this study and the documented differences in the development of the examined indicators confirm that the impact of migration on macroeconomic variables in the period 2021–2023 differed significantly from that in 2016–2019. This supports the authors' initial assumption that the migration waves that began in 2015 and 2022 share very little in common.

The authors perceive a significant difference primarily in the cultural proximity of Ukrainian refugees, who began arriving in the Visegrad Four countries in 2022 as a result of the Russia–Ukraine conflict. For the labor market, this meant the arrival of a much more flexible workforce compared to the mid-2010s. Consequently, the previously held theory that rising immigration leads to higher unemployment[80] appears to lose validity in the context of the V4 countries. If unemployment is measured as the ratio of individuals registered with employment offices to the total population living in a given territory, a more flexible foreign workforce should result in an inverse relationship between these two variables. This hypothesis was first formulated by Přívara[81] in his study of the V4 countries; however, his research covered data only up to the year 2020. Therefore, the first task of our research team was to confirm or refute his findings using data that reflect the current migration wave. An open question also remained whether the Visegrad countries would be able to translate the positive impact on the labor market into a positive effect on consumption—considered the most significant component of gross domestic product.

Another point of contention concerned the generalization of findings across all V4 countries. On the one hand, Bąk-Pitucha[82] notes that since

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[79] P. Csanyi, R. Kucharčík, *Central European leaders' attitudes towards the migration and the migration crisis*, in *Journal of Comparative Politics*, 2023, vol. 16, n. 2, 20–37; A. Bąk-Pitucha, *Grupa Wyszehradzka (V4) wobec kryzysu migracyjnego w Europie*, in *Studia Politologiczne*, 2023, vol. 68, n. 2, 94–104; L. Kilimova, O. Nishnianidze, *Socio-demographic characteristics as indicators…*, *op. cit.*; J. Tepperová et al., *Migration and unemployment…op. cit.*

[80] A. M. Espinosa, I. Díaz-Emparanza, *The long-term relationship between international labour…, op. cit.*

[81] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…, op. cit.*

[82] A. Bąk-Pitucha, *Grupa Wyszehradzka (V4) wobec kryzysu migracyjnego w Europie, op. cit.*

2015, EU migration policy has become a unifying and mobilizing element for the V4 region. However, during the same period, Sener and Uzun[83] suggested that in some countries, migration is increasingly perceived as a threat to socio-economic security. This underscores the need for a more thorough examination of local differences, the insufficient reflection of which was already highlighted in the Methodology chapter. Recent developments have shown that migration-related political decisions are often driven by emotion rather than grounded in data. A rigorous analysis of the causes of intra-V4 differences could thus serve as a valuable contribution to depoliticizing the debate and steering it in a more constructive direction.

A key finding of the presented empirical research is the confirmation of an inverse relationship between immigration and the unemployment rate in Czechia, Poland, and Slovakia. This result supports the view of Přívara et al.[84], who argue that incoming foreigners can contribute positively to the labor market while also becoming one of the drivers of industrial growth. Hungary, due to its strongly negative stance on immigration, risks being unable to benefit from these advantages. Moreover, this position may result in the country forgoing one of the core characteristics that enabled it - and other V4 countries - to accelerate the process of economic convergence. As shown by findings from the European Commission[85], lower labor costs compared to Western Europe have often led to a significant relocation of industrial production to the V4 region, a trend further supported by the region's logistically strategic location in the heart of the continent[86]. This development has influenced employment structures, the intensity of foreign investment, and pressure for labor migration, from which the Visegrad countries have benefited[87]. Other authors have likewise confirmed that the gross rate of economic migration

[83] B. Sener, S. Uzun, *Securitization of international migration in the context of economic and societal security: An example of the Hungarian Fidesz and Jobbik parties*, in *Khazar Journal of Humanities and Social Sciences*, 2023, vol. 26, n. 4, 34–61.

[84] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…, op. cit.*

[85] European Commission, *Labour market and wage developments in Europe: Annual review 2020*, 2020, https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8319 (accessed March 28, 2026).

[86] A. Přívara, E. Rievajová, B. Gavurová, M. Tupá, *Labour market and immigration nexus…, op. cit.*

[87] B. Galgóczi, *Why Central and Eastern Europe needs a pay rise*, European Trade Union Institute, 2017, https://www.etui.org/Publications2/Working-Papers/Why-central-and-eastern-Europe-needs-a-pay-rise (accessed March 28, 2026).

has had a significant impact on labor markets and economic resilience in the V4 countries[88].

However, it would be overly simplistic to interpret Hungary's negative stance on immigration in general context. The results of testing hypothesis H1 clearly indicate that the relationship between immigration and the unemployment rate in Hungary differs from that observed in the other V4 countries. This opens up a range of questions, for which adequate data are largely lacking - thus presenting a stimulus for further research. First and foremost, it is necessary to examine whether Hungary's position has been shaped by a particularly negative public attitude toward foreign labor entering the country. However, the reluctance of immigrants to enter the Hungarian labor market may also stem from the country's desultory approach to managing incoming workers and from inadequate conditions for their integration.

The results of the second hypothesis may offer a tentative indication that the first explanation - Hungarians' negative experiences with incoming labor - has some merit. The data did not confirm the expected positive relationship between immigration and per capita consumption, which suggests insufficient economic contributions from foreign nationals. A similar finding in the case of the Czech Republic is particularly surprising, as it raises the question of whether the benefits associated with the presence of refugees are substantial enough to offset the related costs. Marois et al.[89] emphasized that relying on immigration as a tool to address economic challenges must necessarily be accompanied by strong and effective measures aimed at ensuring full economic integration of immigrants. And it is precisely here that problems may lie - particularly in the Czech context. This is especially relevant given that previous discussions at forums and conferences[90] have indicated that the integration process in the Czech Republic has not been fully or effectively managed at the procedural level.

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[88] J. Poór, *The managerial implications of the labor market and workplace shortage in Central Eastern Europe*, in *Strategic Management*, 2021, vol. 26, n. 2, 31–48; L. M. Kureková, Z. Zilinciková, *Examining labour market hierarchies...*, *op. cit.*; P. Strzelecki et al., *The contribution of immigration from Ukraine...*, *op. cit.*

[89] G. Marois, P. Sabourin, A. Bélanger, *Implementing dynamics of immigration integration in labor force participation projection in EU28*, in *Population Research and Policy Review*, 2020, vol. 39, n. 2, 339–363.

[90] e.g., J. Dokulil, J. Čížek, *Financing aid to the citizens of Ukraine in the Czech Republic: A pilot survey of the economic burden of regional self-governments*, in *Proceedings of the CrisCon Conference on Crisis Management and Crisis Situation Solutions*, Tomas Bata University in Zlin, 2023, 28–30.

Both hypotheses are grounded in logical economic principles and supported by the results of correlation analysis. Migration reduces structural tensions in the labor market (H1), thereby promoting GDP growth through consumption and investment (H2). The differing results across the V4 countries confirm that the economic impact of migration is not automatic, but rather contingent on the structure of migration, state policies, and the current phase of the economic cycle.

6. Conclusions

The research findings confirmed that the impact of migration on selected macroeconomic indicators in the V4 countries during the period 2021–2023 differed significantly from previous years, and that these differences cannot be explained solely by the volume of incoming individuals. Key factors appear to be cultural proximity, the approach of host states, and the quality of integration policies. In countries such as the Czech Republic, Slovakia, and Poland, migration demonstrably reduced unemployment rates and supported the labor market. In contrast, Hungary did not experience the same positive effects, which may be related to its distinct political stance on migration and an insufficiently developed integration framework. The findings further suggest that the contribution of refugees to consumption is not automatic and requires a well-designed integration strategy.

The results of both hypotheses confirm that the economic impact of migration is complex and highly context-dependent—both over time and across individual countries. These findings open space for further research, particularly in the area of integration quality and its economic evaluation.

However, it is important to acknowledge the limitations of this study. Unemployment trends are influenced by numerous additional factors (e.g., the economic cycle, legislative changes, technological developments) that were not included in this analysis. Similarly, migration itself is shaped by a wide range of internal and external drivers, which were also beyond the scope of this research. Moreover, other indicators - such as the number of job vacancies or the economic activity rate of specific age or occupational groups - could be used to better capture the impact of migration on the labor market.

The results of this pilot study also highlight the limitations of quantitative research based solely on publicly available macro-level data sources. It is therefore recommended that future research combine quantitative approaches with qualitative methods that would enable a deeper

understanding of the motivations, experiences, and barriers to labor market integration—both from the perspective of migrants themselves and of employers.

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