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An Employee's Illness, its Effects on Earning Capacity and the Role of the Employer in the Policy of Employee's Inclusion. Comments against the Background of the Polish Legal Regulation

Anna Napiórkowska *

Abstract. The article refers to sick pay provided by the employer and to social insurance benefits payable in the event of a specific impact of an illness on earning capacity. It also refers to the Polish solutions adopted under the Rehabilitation Act, among other things, to the issue of reasonable accommodation. Attention has been also paid to the important issue of termination of an employment contract. The article points out that the unclear boundary between an illness and disability, as well as a broad interpretation of disability, may cause certain doubts in the field of labour law. It seems that currently too much risk is being shifted onto the employer. There is also no consistent approach to the issue of an illness and disability. On the one hand, efforts are being made to keep people with disabilities in the workplace and to activate them, while on the other hand, as a rule, working while receiving sickness insurance benefits is banned. This may involve the same person (with a disability) – anti-discrimination policy regulations will point to the need for reasonable accommodation to keep this person in employment. In this area, the employer is 'punished' for failing to provide reasonable accommodation and dismissing the employee. However, the situation is different from the point of view of sickness insurance benefits: the same person will often be

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forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be described as a person 'unable to work'.

Keywords: I*llness; Disability; Reasonable accommodation; Discrimination; Sick pay; Sickness benefit; Disability benefit; Partial sick leave; Activation.*

Introduction

Firstly, it should be noted that an employee's illness is, in a sense, a natural cycle of the body. People get sick – more or less frequently, sooner or later. There is an element of risk here. The natural area in which protection against an illness/its effects is sought is social insurance law or social security law. An employee's illness – both short-term and long-term – also has a strong impact on labour law, causing difficulties or obstacles in the performance of the employee's reciprocal obligation. Employers are involved in the policy of dealing with an employee's illness for certain purposes or reasons. This is justified, among other things, by the fact that the employer benefits from the employee's work and should, therefore, also share in certain burdens; moreover, the illness itself and its specific effects may also be related to work. This also fits into the complex relationship between labour law and social security law. The issue of persons with disabilities also arises in this area. The relationship between an illness and disability, with a broad interpretation of both, requires a certain balance, and the boundaries may sometimes not be clear enough, which can lead to a number of doubts.
In the Polish system, the solvency of social insurance benefits is guaranteed by the state[1]. The state must, therefore, be interested in maintaining a situation that ensures such solvency and bears the associated risk. Naturally, a certain doubt arises in the area under analysis. To what extent should employers be involved in policies for dealing with an employee's illness, so as not to lose sight of the essence of social insurance, not to block small and medium-sized employers, and not to discourage the employment of sickly people or during periods of social sensitivity when longer absences can be expected? This is also important from the perspective of protecting people with disabilities. In this area, it should be noted at the outset that there are sometimes comments indicating that the definitions in social insurance law are not appropriate to the issue of disability, as they refer to a different area, namely benefits, where a slightly narrower definition is needed. In my opinion, these comments do not necessarily lead to a consistent view of a sick person or a person with a

[1] Article 2(3) of the Act of 13 October 1998 on the social insurance system, Journal of Laws 2026.199, consolidated text, as amended.

disability, and also seem to deepen the rift between anti-discrimination law and 'strict' social insurance law. Meanwhile, just as approach towards disability is changing, similarly, a number of social insurance regulations should be reconsidered, and the issue of an illness and disability should be viewed holistically. It should be noted that, on the one hand, efforts are being made to keep people with disabilities in the workplace and to activate them, while on the other hand, as a rule, working while receiving sickness insurance benefits is banned. This may involve the same person (with a disability) – anti-discrimination policy regulations will point to the need for reasonable accommodation to keep this person in employment. In this area, the employer is 'punished' for failing to provide reasonable accommodation and dismissing the employee. However, the situation is different from the point of view of sickness insurance benefits: the same person will often be forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be described as a person 'unable to work'. This shows a certain inconsistency in the approach to an illness and disability, but also a problem with the traditional use of the term 'incapacity for work'.

Even a preliminary analysis of the legal structures being adopted reveals a measure that is not entirely clear – 'narrow' definitions are being introduced within social insurance law (where the community of insured persons, and ultimately the state, plays an important role), while 'broad' definitions are introduced in the context of anti-discrimination regulations, where a high level of responsibility is placed on the employer, i.e. the individual. The latter is protected, for example, by the fact that the employer should not be subject to a disproportionate burden, indicating that the burden is not disproportionate if it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned - but this is in fact an assessment. This does not change the fundamental issue - a lot is expected from the employer and they are very much involved in something that is essentially the responsibility of the state.

Nevertheless, it should be noted that the challenges associated with an ageing population, but also with increasingly common chronic and major illnesses accompanying people with longer life expectancy[2], show how important early and complex measures aimed at integrating people with disabilities or with limited working capacity into the work environment are. The aim here would be, among other things, to prevent the risk of labour market exit[3] or the

[2] https://news.liverpool.ac.uk/2023/07/25/2-5-million-more-people-in-england-projected-to-be-living-with-major-illness-by-2040/ (access: 12.11.2025).

[3] S. Markussen, A. Mykletun, K. Røed, *The case for presenteeism – Evidence from Norway's sickness insurance program*, in *Journal of Public Economics*, 2012, vol. 96, 961.

dangerous phenomenon of dependence on social security benefits. In this area, it is necessary to ensure consistent interaction between social security law, labour law and anti-discrimination legislation.

1. An employee's illness, sick pay, and cash benefits from social insurance

In the Polish social insurance system, protection covers not so much the illness as its specific effects on earning capacity[4]. Healthcare benefits, on the other hand, are provided under health insurance, which is covered by different legal regulations under social security law. According to Article 67(1) of the Constitution of the Republic of Poland[5], every citizen has the right to social security in the event of incapacity for work due to an illness or disability and after reaching the retirement age. As regards the scope and forms of social security, the Constitution of the Republic of Poland refers in this respect to ordinary laws, which specify the subjective scope of the right to benefits, the objective scope, the conditions for acquiring the right to benefits, their amount, etc.

Social insurance law only covers certain effects of an illness, those that are conventionally considered to require protection. As regards the effects of an illness covered by social insurance law in Poland, protection covers temporary incapacity for work, reduced work capacity and the permanent/specified time incapacity for work. In the event of the above-mentioned effects of an illness on earning capacity, the Polish legislator provides specific benefits.

Starting with temporary incapacity for work, it should be noted that, as in many other European countries, employers in Poland also provide sick pay (Article 92 of the Labour Code[6]). Importantly, although this benefit is very similar to a sickness benefit, it is a typical benefit arising from an employment relationship. It is paid in full by the employer, there are no settlements, e.g. in contributions, so it is not just a technical payment. It is paid for the period of the employee's incapacity for work lasting up to 33 days in a calendar year, and in the case of an employee over 50 years of age, up to 14 days in a calendar year. This applies to incapacity for work due to an illness or isolation due to a contagious disease, an accident on the way to or from work, or an illness during pregnancy, undergoing the necessary medical examinations for

[4] I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Wolters Kluwer Polska SA, Warszawa, 2018, 128.

[5] The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997.78.483, as amended, hereinafter referred to as the Constitution of the Republic of Poland.

[6] Act of 26 June 1974 Labour Code, Journal of Laws 2025.277, consolidated text, as amended, hereinafter referred to as the Labour Code.

candidates for donors of cells, tissues and organs, or a procedure of cell, tissue or organ collection. However, this does not apply to accidents at work, as in such situations, depending on the injury, specific benefits are immediately payable from accident insurance.

After exhausting their entitlement to sick pay, employees are entitled to sickness benefit. This benefit is payable for no longer than 182 days, and if the incapacity for work is caused by tuberculosis or occurs during pregnancy, for no longer than 270 days[7]. However, this period may begin more than once. There are specific rules for calculating the benefit period, which take into account any breaks in the incapacity for work. Pursuant to Article 9(2) of the Benefit Act, periods of the previous incapacity for work are included in the benefit period if the interval between the end of the previous incapacity and the onset of the new incapacity does not exceed 60 days[8]. Therefore, if the break exceeds 60 days, the benefit period starts again.

If the insured person exhausts their entitlement to sickness benefit (the benefit period of 182 or 270 days proves to be too short for them) and is still unable to work, but further treatment or medical rehabilitation is likely to restore their ability to work, they will be entitled to a rehabilitation benefit. This benefit can be received for a maximum of 12 months (the first 3 months of receiving the rehabilitation benefit are combined with protection of the permanence of the employment relationship under labour law[9]). The above-mentioned benefits – sick pay, sickness benefit and rehabilitation benefit – are payable in the event of the temporary incapacity for work.

As regards the right to compensatory allowance, this benefit is payable in the event of reduced work capacity. Compensatory allowance is payable only to employees who perform work in a company or inter-company vocational rehabilitation centre or at the employer's premises in a separate workstation adapted to the needs of adaptation or training for a specific job, if the monthly remuneration earned during rehabilitation is lower than the average monthly remuneration determined in accordance with the rules for determining the basis for calculating the employee's benefit. The compensatory allowance is the difference between the average monthly remuneration specified in accordance with these rules and the monthly remuneration earned for work in vocational rehabilitation conditions. The idea behind this benefit is, therefore, very good, as it encourages the insured to become active (combining performing work

[7] Article 8(1) of the Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity, Journal of Laws 2026.854, consolidated text, as amended, hereinafter referred to as the Benefit Act.

[8] This does not apply to situations where, after a break, incapacity for work occurs during pregnancy.

[9] Article 53 § 1(1)(b) of the Labour Code.

with insurance benefits and 'equalising' the remuneration earned for work in vocational rehabilitation conditions), but this benefit is not often used in practice.

In the event of the permanent/specified time incapacity for work, Polish law provides a disability pension (permanent/specified time, respectively[10]). The conditions for acquiring the right to a disability pension are autonomous – it is not necessary to have previously used sickness benefit and rehabilitation benefit (although this will often be the case in practice). A disability pension is generally granted to an insured person who meets all of the following conditions: is incapable of work; has completed the required contributory and non-contributory period; the incapacity for work arises during the periods referred to in the Act on Old-Age and Disability Pensions from the Social Insurance Fund or no later than within 18 months of the end of those periods; they do not have the established right to an old-age pension from the Social Insurance Fund or do not meet the conditions for obtaining it (Article 57(1) of the Act on Old-Age and Disability Pensions from the Social Insurance Fund[11]). It is also worth noting that a person who has lost the ability to perform any work (importantly, this refers to work in typical conditions[12]) is considered completely unable to work, while a person who has significantly lost the ability to perform work in line with their qualifications is considered partially unable to work. Pursuant to Article 13(4) of the Act on Old-Age and Disability Pensions, maintaining the ability to work under the conditions specified in the provisions on vocational and social rehabilitation and employment of persons with disabilities[13] does not constitute an obstacle to a statement of total incapacity for work (it may, therefore, be the case that a person is totally incapable of work in the area of disability insurance, i.e. totally incapable of work in typical conditions, but at the same time that same person works in conditions adapted to their disability). It is worth noting that, pursuant to Article 4(5-6) of the Rehabilitation Act, classification as having a severe or moderate degree of disability does not preclude the possibility of employing

[10] The permanent/specified time disability pension may be granted in connection with total or partial incapacity for work.

[11] Act of 17 December 1998 on Old-Age and Disability Pensions from the Social Insurance Fund, Journal of Laws 2025.1749, consolidated text, as amended, hereinafter referred to as the Act on Old-Age and Disability Pensions.

[12] See, for example, M. Bartnicki, B. Suchacki, in *Komentarz do ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*, in K. Antonów (ed.), *Emerytury i renty z FUS. Emerytury pomostowe. Okresowe emerytury kapitałowe. Komentarz do trzech ustaw emerytalnych*, LEX/el. 2019, Art. 12; Supreme Court judgment of 8 December 2000, II UKN 134/00, LEX No. 46842.

[13] See the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, Journal of Laws 2026.884, consolidated text, hereinafter referred to as the Rehabilitation Act.

that person by an employer who does not provide sheltered working conditions in cases where the employer adapts the workplace to the needs of the person with a disability (which is subject to inspection by the State Labour Inspection) or where the person works remotely.

It is also important to bear in mind the one-way mechanism resulting from Article 5 of the Rehabilitation Act: a statement by a Zakład Ubezpieczeń Społecznych[14] certifying doctor on total incapacity for work and inability to exist independently is treated as an equivalent to a statement on a severe degree of disability; a statement on inability to exist independently is treated as an equivalent to a statement on a severe degree of disability; a statement on total incapacity for work is treated as an equivalent to a statement on a moderate degree of disability; a statement on partial incapacity for work and the advisability of retraining is treated as an equivalent to a statement on a mild degree of disability. As can be seen, a statement issued for disability pension purposes translates into the appropriate degree of disability under the Rehabilitation Act, so any person who is entitled to a disability pension is, therefore, a person with a disability. In the opposite direction – due to the fact that case law on disability has always been more liberal than case law on incapacity for work for disability pension purposes – this mechanism does not work. Therefore, if a person has, for example, a moderate degree of disability, this does not translate into incapacity for work in disability pension insurance. However, in the case law of the Supreme Court, it is pointed out that when assessing incapacity for work, the degree of disability of the insured person determined on the basis of the Rehabilitation Act cannot be ignored[15].

The benefit intended to promote professional activation and ultimately, relieve the disability pension fund is the training pension[16]. It is not a separate benefit from the disability pension[17]. A training pension is granted to a person who meets the conditions for acquiring the right to a disability pension, in relation to whom the advisability of vocational retraining due to inability to work in the

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[14] Social Insurance Institution in Poland, hereinafter referred to as ZUS.

[15] See the Supreme Court judgment of 11 February 2005, I UK 177/04, LEX No. 155201. See also the Supreme Court judgment of 28 January 2004, II UK 222/03, LEX No. 122196; Supreme Court judgment of 16 February 2005, I UK 179/04, LEX No. 375620; Supreme Court ruling of 16 December 2005, II UK 77/05, LEX No. 211773; Supreme Court judgment of 17 February 2009, I UK 233/08, LEX No. 736713; Supreme Court judgment of 14 June 2012, I UK 17/12, LEX No. 1229807. See A. Napiórkowska, *Niezdolność do pracy w ubezpieczeniu społecznym a niepełnosprawność*, in A. Giedrewicz-Niewińska, M. Szabłowska-Juckiewicz (ed.), *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, Difin SA, Warszawa, 2014, 63.

[16] M. Bartnicki, B. Suchacki, *op. cit.*, Art. 60.

[17] Ibidem. See also the judgment of the Court of Appeal in Katowice of 23 October 2012, III AUa 1922/11, LEX No. 1236493; judgment of the Court of Appeal in Katowice of 23 March 2007, III AUa 83/06, LEX No. 446749.

current profession has been determined. The advisability of vocational retraining is determined if the person has permanently lost the ability to work in their current profession and may regain the ability to work after retraining[18]. If vocational retraining is deemed appropriate, the pension authority issues a decision granting a training pension for a period of 6 months and refers the person to the district employment office for vocational retraining[19]. Like the compensatory allowance, the training pension is not a benefit that has lived up to expectations. Both of these benefits play a minor role in disability pension prevention[20]. Among the various problems, it can be pointed out that issues related to retraining may be the result of too many entities being involved in that process, including those whose activities are not strictly related to the issue of certification. When adjudicating, a ZUS certifying doctor is bound to follow the district administrator's findings regarding the impossibility of professional retraining[21]. Much also depends on the possibilities offered by the labour market[22].

If temporary incapacity for work is caused by an accident at work, a so-called accident equivalent to an accident at work or an occupational disease, sickness benefit and then, if applicable, rehabilitation benefit (after exhausting the right to sickness benefit) are paid from accident insurance. Accident insurance is also applicable to the payment of compensatory allowance to an employee whose remuneration has been reduced as a result of permanent or long-term damage to health caused by an accident at work, a so-called accident equivalent to an accident at work, or an occupational disease. If the incapacity for work is caused by the above-mentioned events, a disability pension is payable from accident insurance. This insurance may also provide, for example, a lump-sum compensation if the insured person has suffered permanent or long-term damage to their health as a result of an accident at work or an occupational disease.

[18] See regulation of the Minister of Social Policy of 14 December 2004 on determining incapacity for work, Journal of Laws 2004.273.2711, as amended, §6(3).

[19] Article 119(2) of the Act on Old-Age and Disability Pensions.

[20] Por. M. Zieleniecki, *Rola zasiłku wyrównawczego i renty szkoleniowej w rehabilitacji zawodowej*, in *Ryzyko niezdolności do pracy w zabezpieczeniu społecznym*, Zakład Ubezpieczeń Społecznych, Polskie Stowarzyszenie Ubezpieczenia Społecznego, Gdańsk, 2006, 49.

[21] See regulation of the Minister of Social Policy of 14 December 2004 on determining incapacity for work, §5 pt 2.

[22] See M. Zieleniecki, *op. cit.*, 47.

2. An illness versus disability – doubts in the light of the case law of the Court of Justice

'A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC[23] (…)'. As it has been indicated, the concepts of 'disability' and 'illness' cannot be treated as synonymous[24].
However, in response to this position, it should be noted that the characteristic of long-term nature[25] (emphasised in the case of disability) may sometimes be an insufficiently clear factor. Many diseases are long-term in nature[26], and the period of protection in the event of temporary incapacity for work due to an illness is not that short (in Poland, 182/270 days of sickness benefit and 12 months of rehabilitation benefit). An illness is often associated with specific and complex limitations that can affect a person's functioning in various ways, including in the professional sphere. This is, therefore, an area where the boundaries can become blurred[27].

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[23] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Dz.U.UE.L.2000.303.16, hereinafter referred to as Directive 2000/78.

[24] See judgment of 11 July 2006, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, ECLI:EU:C:2006:456, paragraphs 44, 47, 52.

[25] See Sonia Chacón Navas v Eurest Colectividades SA, paragraph 45. See Opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, ECLI:EU:C:2006:184, pt 79, 85(1).

[26] See Opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, pt 63. See also L. Waddington, A. Lawson, *Disability and non-discrimination law in the European Union. An analysis of disability discrimination law within and beyond the employment field*, European Network of Legal Experts in the non-discrimination field, Luxembourg, 2009, 17.

[27] See Opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, pt 80 and 85(1), who points out: 'A dismissal because of sickness can thus constitute discrimination on the grounds of disability, which is prohibited by Directive 2000/78, only if the person concerned is able to make a reasonable case that it is not the sickness itself but the resulting long-term or permanent limitations which are the real reason for the dismissal'. See also Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), ECLI:EU:C:2012:775, pt 37, who points out: 'Precisely in the case of chronic illnesses, the transition from a (treatable) illness to what is likely to be a permanent limitation, which only then has the character of a disability, may actually be an evolving process. Not until there is a prognosis of permanent limitation can there be any question of a disability'.

It is worth noting here the judgment in Joined Cases C-335/11 and C-337/11[28]. In summary, Case C-335/11 concerned Ms Ring, who suffered from, among other things, constant lumbar pain that could not be treated. It was also impossible to predict whether she would be able to return to work full-time. As the Advocate General pointed out in her Opinion, no measures were taken to alleviate Ms Ring's discomfort at work (e.g. purchasing an adjustable-height desk or offering her part-time work), even though part-time positions were generally available. Immediately after Ms Ring's dismissal, a part-time job advertisement with a similar scope of duties was posted[29]. Ms Werge (Case C-337/11), on the other hand, was the victim of a road accident and suffered whiplash injuries. The doctor was unable to determine the duration of her continued incapacity. The procedure for determining disability and loss of working capacity to a certain degree took place after the termination of the employment. In Joined Cases C-335/11 and C-337/11, the Court ruled that 'if a curable or incurable illness entails a limitation which results in particular from 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, and the limitation is a long-term one, such an illness can be covered by the concept of "disability" within the meaning of Directive 2000/78'[30]. It was also indicated, that 'directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, (…), where those absences are the consequence of the employer's failure to take the appropriate measures in accordance with the obligation to provide reasonable accommodation laid down in Article 5 of that directive'[31]. Importantly, it was also noted that, compared to an employee who

[28] See judgment of 11 April 2013, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), ECLI:EU:C:2013:222.

[29] See Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 13, 14.

[30] See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), paragraph 41.

[31] See ibidem. See also Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 78, who points out:

is not disabled, a disabled employee bears an additional risk of developing an illness related to their disability. They are, therefore, exposed to an increased risk of accumulating days of absence due to an illness. As a result, certain provisions relating to absenteeism (for example, reaching certain absenteeism limits that allow the employer to terminate the employment relationship; concerning the selection criterion relating to the high rate of absenteeism) are 'liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78'[32]. 'Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, (…), where those absences are the consequence of his disability, unless that legislation, as well as pursuing a legitimate aim, does not go beyond what is necessary to achieve that aim, that being for the referring court to assess'[33]. Similarly, when it comes to the the selection criteria for effecting a dismissal, such as having productivity below a given rate or a low level of multi-skilling in the undertaking's posts, due to the fact that a disabled employee generally has less chance of achieving a good result than an employee without a disability, such criteria, therefore, also may give rise to a difference of treatment resulting indirectly from a disability, within the meaning of Article 2(2)(b) of Directive 2000/78[34].
The issue of distinguishing between an illness and disability was also highlighted in Case C-395/15[35]. This case concerned M. Daouidi, who slipped

'If the employer fails to take these appropriate measures which he can be expected to take, in other words, if he fails to comply with his obligation under Article 5 of the directive, he must not gain any legal advantage thereby. The obligation under Article 5 would become meaningless if the failure to take proportionate measures could justify placing a disabled worker at a disadvantage'.

[32] See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), paragraph 76 and Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 67. Similarly, in the judgment of 18 January 2018, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal, ECLI:EU:C:2018:17, paragraph 39 and, in the judgment of 11 September 2019, Case C-397/18, DW v Nobel Plastiques Ibérica SA, ECLI:EU:C:2019:703, paragraph 59.

[33] See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11).

[34] See DW v Nobel Plastiques Ibérica SA, paragraph 60.

[35] See judgment of 1 December 2016, Case C-395/15, Mohamed Daouidi v Bootes Plus SL,

on the kitchen floor of the restaurant where he worked and dislocated his left elbow, which was then put in plaster. During the period of temporary incapacity for work, the employer terminated the employment relationship. Approximately six months after the accident at work, Mr Daouidi's elbow was still in plaster. It was pointed out that the fact that a person is covered by the legal regime of temporary incapacity for work does not preclude the classification of the limitation of capacity as long-term within the meaning of Directive 2000/78, considered in the light of the UN Convention. It was also pointed out that it is for the referring court to determine whether or not the limitation of the person's capacity is long-term. 'The evidence which makes it possible to find that such a limitation is "long-term" includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered'[36].
The issue of termination of employment relationship was also raised in Case C-270/16[37]. C.E. Ruiz Conejero was employed as a cleaning agent in a hospital. The degree of his incapacity was set at 37%, of which 32% was attributed to physical disability, characterised by disease of the endocrine-metabolic system (obesity) and functional limitation of the spine, with the remaining 5% resulting from additional social factors. He was on sick leave due to acute pain requiring hospitalisation, dizziness/nausea and lumbago. According to the diagnosis of the public health authority, these problems were caused by degenerative joint disease and polyarthrosis, aggravated by obesity. Importantly, the referring court stated that C.E. Ruiz Conejero refused the periodic medical examinations carried out by the insurance fund to which his employer belonged, and, therefore, the employer did not know that C.E. Ruiz Conejero was disabled at the time he was dismissed. In Case C-270/16, the Court recalled that 'the Member States have broad discretion not only in choosing to pursue a particular aim in the field of social and employment policy but also in defining measures to implement it', as regards combating absenteeism at work, this may be considered as a legitimate aim within the meaning of Article 2(2)(b)(i) of Directive 2000/78, since it concerns an employment policy measure[38]. It was, therefore, pointed out that

Fondo de Garantía Salarial, Ministerio Fiscal, ECLI:EU:C:2016:917.
[36] See ibidem, paragraphs 52, 55, 56, 57, 59. See also Opinion of Advocate General Y. Bot, Case C-395/15, Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal, ECLI:EU:C:2016:371, pt 47.
[37] Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal.
[38] See ibidem, paragraphs 43 and 44. Similarly, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone

Article 2(2)(b)(i) of Directive 2000/78 'must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess'[39].

In the context of Article 2(2)(b)(ii) of Directive 2000/78, it should be noted that it 'must be interpreted as meaning that dismissal for "objective reasons" of a disabled worker on the ground that he or she meets the selection criteria taken into account by the employer to determine the persons to be dismissed, namely having productivity below a given rate, a low level of multi-skilling in the undertaking's posts and a high rate of absenteeism, constitutes indirect discrimination on grounds of disability within the meaning of that provision, unless the employer has beforehand provided that worker with reasonable accommodation, within the meaning of Article 5 of that directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to determine'[40].

It is also worth noting Case C-485/20, where it was argued that Article 5 of Directive 2000/78 'must be interpreted as meaning that the concept of "reasonable accommodation" for disabled persons, within the meaning of that article requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer'[41]. In this case, following the Opinion of the Advocate General[42], it was also clarified that the possibility of assigning a disabled person to another job arises only if there is at least one vacant position that the employee in question is capable of filling[43]. Similarly, in

Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), paragraphs 81 and 82.

[39] Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal.

[40] DW v Nobel Plastiques Ibérica SA.

[41] Judgment of 10 February 2022, Case C-485/20, XXXX v HR Rail SA, ECLI:EU:C:2022:85.

[42] Opinion of Advocate General A. Rantos, Case C-485/20, XXXX v HR Rail SA, ECLI:EU:C:2021:916, pt 77.

[43] XXXX v HR Rail SA, paragraph 48. Similarly, in the judgment of 18 January 2024, Case C-631/22, J.M.A.R v Ca Na Negreta SA., ECLI:EU:C:2024:53, paragraph 45 and, in the judgment of 11 September 2025, Case C-38/24, G.L. v AB SpA, ECLI:EU:C:2025:690, paragraph 78.

Case C-795/19, it was held that Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 'must be interpreted as precluding national legislation which imposes an absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures for the purposes of Article 5 of that directive'[44].

Moving on to the doubts that arise in this matter, it should be pointed out that the boundary between an illness and disability does not seem clear enough. An illness can be associated with disability, an illness and disability can overlap, disability can lead to more frequent illnesses, but an illness can also be the cause of disability. From the point of view of labour law, however, a certain clarity of the adopted legal solutions is necessary. So where do the employer's obligations begin, e.g., in relation to reasonable accommodation in the event of disability?

As a general rule, when it comes to the employer's obligation to provide reasonable accommodation, the view that 'where the employer knows, or ought reasonably to be aware, that a person whom he proposes to recruit or who is already his employee suffers or may have a disability, that obligation represents the first step in the process leading to the avoidance of discriminatory treatment. A failure to recruit or, as the case may be, a dismissal resulting from a failure to respect such an obligation will amount to unlawful discrimination for the purposes of Directive 2000/78'[45], should be considered convincing. As one may think, in most situations this approach would be appropriate. However, if this view is accepted in its entirety, situations in which an employee does not wish to be perceived as a person with a disability and does not want any accommodation could pose a problem. This is because an employee has the right to both accommodation and the absence of accommodation[46]. One may imagine certain situations where the matter would

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[44] Judgment of 15 July 2021, Case C-795/19, XX v Tartu Vangla, ECLI:EU:C:2021:606.

[45] See Opinion of Advocate General E. Sharpston, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal, ECLI:EU:C:2017:788, pt 41. See also pt 45.

[46] As regards Poland, in its judgment of 15 September 2015, III KRS 49/15, LEX No. 2288956, the Supreme Court stated that the employer's obligation to provide reasonable accommodation, which is linked to the prohibition of discrimination against persons with disabilities gives the employee the right to shape their working conditions in such a way as to enable them to continue performing their duties and prevent their exclusion from the labour market. However, this right is not accompanied by an obligation on the part of the employee to perform their duties in conditions specially created for them, i.e. a provision established in the interest of a person with a disability cannot become a source of obligations for them.

be so delicate (e.g. a suspected mental illness manifested in strange or only somewhat specific behaviour on the part of the employee) that providing accommodation could be perceived in the opposite, or even hostile, way. Many people, e.g. those with various mental health issues, want to be perceived as no different from others, and they also have the right not to talk about their difficulties. In my opinion, this would argue in favour of the option that, ultimately - for the purposes of labour law – any expression of intent that someone wishes to avail themselves of the protection, presentation of circumstances justifying protection (i.e. a preliminary signal from an employee who considers themselves to be disabled and wants to derive certain rights from this, at this stage this does not have to be proof of disability in the sense of having a certificate) is the most clear-cut situation if a person wants to exercise certain rights; in this case, the greater or lesser 'obviousness'[47] of the situation can sometimes be problematic.

Without denying the understandable need to seek protection for people with disabilities (who may indeed be more susceptible to illnesses related to their disability), it seems that unclear assessment criteria may cause uncertainty as to existing rights or obligations. It is not clear, for example, whether what appears to be only an illness may already be a disability, may turn out to be a disability after termination of an employment relationship, or may not be a disability at all and is only an illness. From an employer's perspective, it is also difficult to say whether all this is mitigated by the fact that it must be examined whether such a difference in treatment is objectively justified by a legitimate aim, and whether the means of achieving that aim are appropriate and do not go beyond what is necessary to achieve that aim (Article 2(2)(b)(i) of Directive 2000/78). This happens post factum, at the stage of proceedings. So there is an element of risk here.

From the perspective of an employer who is entitled to the agreed work, it does not seem convincing that there is no need to disclose a disability in any way, even by informing the employer, when someone wants to exercise their related rights. It is pointed out that: 'the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. It should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might

[47] See, however, the Opinion of Advocate General E. Sharpston, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal, pt 38.

require accommodations to address barriers to exercising rights'[48]. In my opinion, this may in fact impose a disproportionate burden on the employer, thus, I believe that the content of the recital 21 of Directive 2000/78 may set the direction for the employer's defense (phrases: 'account should be taken in particular' and 'other costs entailed').

It should be noted that a broad interpretation of disability (justified on many different levels related to removing barriers and ensuring effective equality) requires a fresh look at the relationship between labour law and social security law. As has been rightly pointed out, 'the provision strives to place disabled members of the workforce on an equal footing with able-bodied colleagues, not to afford them greater rights'[49]. However, it is not only about the requiring protection rights of sick/disabled employees, but also about the right of employers to obtain work, the right to select staff, or to conduct effective business. Employers must maintain their businesses in difficult conditions of mutual competition. All this requires careful consideration of each actual situation and the mutual interests of the parties of the employment relationship. In this context, it is worth noting that small employers dominate in Poland, and their situation (if, for example, they employ only one or two people) may sometimes not differ much from that of an employee, and they themselves may also be affected by a specific disability.

It also seems important not to build protection for persons with disabilities by shifting the risk from inefficient states to employers. The latter provides jobs. The role of the employer is not to relieve the burden on an inefficient state. One could also look at it from the perspective that at various earlier stages, e.g. school education, proper medical care, access to specialist examinations, there was not enough 'care' and reasonable accommodation from the state, and now, at the stage of employment, the needs are greater. Why should the employer secure them in a situation where the increased needs are the result of the state's failure to provide earlier reasonable accommodation? Such an increased burden on employers (with a broad interpretation of disability and an unclear boundary between an illness and disability) could cause them to want to shift the burden by paying a contribution (against the risk of disability in labour law).

On the other hand, the process of activating persons with disabilities and an open and broad scope of reasonable accommodation also raises questions about the extent to which certain accepted regulations in social insurance law

[48] Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, pt 24b.

[49] See Opinion of Advocate General E. Sharpston, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroser Servicios Auxiliares SA and Ministerio Fiscal, pt 42.

are sustainable and whether they are not more a reflection of certain rigid patterns adopted earlier, which do not necessarily correspond to current challenges. This applies, for example, to combining insurance benefits with work already at the pre-disability pension stage.

In Poland, pursuant to Article 17(1) of the Benefit Act (in the version effective until April 12, 2026; as of April 13, 2026, this is Article 17(1)(1) of the Benefit Act), an insured person who performs gainful employment during a period of certified incapacity for work loses the right to sickness benefit for the entire period of sick leave. Article 17 of the Benefit Act shall apply accordingly to the rehabilitation benefit (Article 22 of the Benefit Act). In situations where an employee is not entitled to sickness benefit, they are also not entitled to sick pay from their employer (Article 92 § 3(2) of the Labour Code). For a long time in Poland, the legislator, under penalty of losing the right to benefits, has prohibited combining work with receiving sick pay, sickness benefit, and rehabilitation benefit. The aforementioned regulation has been 0:1 in nature, i.e. the insured person has been treated as completely unable to work, and the legislator has not taken into account any intermediate states[50]. The content of Article 17(1) of the Benefit Act has raised numerous doubts[51]. This has been because an illness usually only reduces the ability to work[52]. In many situations, a person would be able to perform certain activities while on sick leave. Unfortunately, Article 17(1) of the Benefit Act has hindered activation. The various doubts surrounding Article 17(1) of the Benefit Act have also resulted in a specific line of Supreme Court case law, according to which a distinction has been made between 'performing gainful employment' and other formal legal activities undertaken sporadically, forced by circumstances, and of an incidental nature[53]. Starting April 13, 2026, there are some changes in this area. Taking into account existing case law, paragraph 1a, added to Article 17 of the Benefit Act, states that: 'The gainful employment referred to in paragraph 1(1) means any activity of a gainful nature, regardless of the legal relationship

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[50] A. Napiórkowska, *Koncepcja częściowych zwolnień lekarskich i aktywizowania ubezpieczonych na przykładzie wybranych krajów europejskich a polski system ubezpieczenia chorobowego*, in *Praca i Zabezpieczenie Społeczne*, 2023, n. 9, 57.

[51] I. Jędrasik-Jankowska, *op. cit.*, 315; A. Napiórkowska, *Wykonywanie pracy zarobkowej w okresie czasowej niezdolności do pracy z powodu choroby – nowe możliwe rozwiązania w związku z COVID-19?*, in *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, 2021, vol. 28, 209-211.

[52] S. Markussen, A. Mykletun, K. Røed, *op. cit.*, 960.

[53] See the Supreme Court judgment of 7 October 2003, II UK 76/03, LEX No. 109913; Supreme Court judgment of 4 April 2012, II UK 186/11, LEX No. 1216851; Supreme Court judgment of 9 October 2006, II UK 44/06, LEX No. 309449; Supreme Court judgment of 6 May 2009, II UK 359/08, LEX No. 687081. See A. Napiórkowska, *Koncepcja częściowych zwolnień lekarskich i aktywizowania ubezpieczonych na przykładzie wybranych krajów europejskich a polski system ubezpieczenia chorobowego*, *op. cit.*, 57.

underlying its performance, with the exception of incidental activities that must be undertaken during a period of leave from work due to relevant circumstances. An order from the employer shall not constitute a relevant circumstance'. Pursuant to the newly added paragraph 1c of Article 17 of the Benefit Act: 'If an individual is subject to social insurance under at least two different social insurance titles, incapacity for work due to an illness applies to each of those titles, for which a separate sick leave certificate is issued'. These rules apply appropriately to a person entitled to sickness benefit for the period following the termination of sickness insurance title. However, more significant changes are coming on January 1, 2027. Pursuant to paragraphs 1d and 1e of Article 17 of the Benefit Act, which are added as of that date - 'However, if paid work under a specific title can be performed due to the type of work, a leave of absence for that title may not be granted at the insured person's request' (paragraph 1d) - and - 'In the case referred to in paragraph 1d, the insured person is required to inform the contribution payer referred to in Article 61(1)(1) of the period for which a sick leave certificate has been issued to him or her under a different title' (paragraph 1e). Starting from January 1, 2027, the legislator, therefore, permits paid work during sick leave, but - importantly: 1) only if the work can be performed due to the type of work (which should be understood as work of a different type) and under a different insurance title, 2) at the insured person's request. This represents a certain openness to some changes, but these are not the changes that, in my view, would have been expected. It is still not possible to combine work with sickness benefit under the same social insurance title (rather than a different one). Therefore, under the same social insurance title, it is not possible to be partially unable to work (e.g., 60%) and partially able to work (40%), thereby combining in the appropriate proportions, sickness benefit with remuneration or other income.

All of these considerations lead to certain questions: if the aim in the case of disability is to ensure that persons with disabilities have access to employment and can work, why, in the case of an illness and the associated temporary incapacity for work, is the insured person generally discouraged from working? Why is the concept of partial sick leave/graded sick leave/part time sick leave[54]

[54] More broadly: S. Markussen, A. Mykletun, K. Røed, *op.cit.*, 959-972; T. Leoni, *Sick but at work: Graded sick leave in a comparative perspective*, in *Social Policy & Administration*, 2021, vol. 55, 65-81; T. Leoni, *Graded Work, the Activation of Sick-Listed Workers and Employer Participation in Continental Europe*, in *Social Policy and Society*, 2022, vol. 21 (3), 385-404; J. Kausto, H. Miranda, K.-P. Martimo, E. Viikari-Juntura, *Partial sick leave-review of its use, effects and feasibility in the Nordic countries*, in *Scandinavian Journal of Work, Environment & Health*, 2008, vol. 34 (4), 239-249; L. Kools, P. Koning, *Graded return-to-work as a stepping stone to full work resumption*, in *Journal of Health Economics*, 2019, vol. 65, 189-209.

something exceptional rather than the rule? From the point of view of regulations relating to disability, the person in question will be activated, various reasonable accommodation will be sought, and the employer may be 'punished' for failing to provide reasonable accommodation and dismissing the employee. However, from the point of view of sickness insurance benefits, the same person will often be forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be labeled 'unfit for work'. This shows a certain inconsistency in the approach to the illness-disability spectrum, but also a problem with the traditionally used term 'incapacity for work'. For various reasons, the term 'reduced/limited ability to work' would, therefore, seem to be a much better choice. One of the added values of using this term would be an attempt to reconcile these complex aspects, but also greater openness to policies of inclusion and activation.

3. Comments on Polish legal regulations – the Rehabilitation Act

Pursuant to Article 23a(1)-(3) of the Rehabilitation Act, an employer is obliged to provide necessary reasonable accommodation[55] for a person with a disability[56] who is employed by them, participating in the recruitment process, or undergoing training, an internship, vocational preparation, or professional or graduate internships. Reasonable accommodation consists of making the necessary changes or adjustments in a specific situation to meet the particular needs of a person with a disability that have been reported to the employer, provided that such changes or adjustments do not impose a disproportionate burden on the employer. These burdens are not disproportionate if they are sufficiently compensated for by public funds. Failure to provide reasonable accommodation is considered a violation of the principle of equal treatment in employment within the meaning of Article 18^{3a} § 2-5 of the Labour Code. Article 23a was added on January 1, 2011. The obligation arising from this provision was, therefore, introduced not into the Labour Code, but into the Rehabilitation Act.

In the context of the comments made in the previous subsection, it is worth noting that in Poland, the obligation to provide reasonable accommodation for persons with disabilities refers to 'needs resulting from a person's disability reported to the employer', which is not mentioned in Directive 2000/78 nor in

[55] Polish legislation uses the term 'necessary reasonable improvements' rather than 'reasonable accommodation', which is the term used in Article 5 of Directive 2000/78, however, the meaning would be the same. For consistency, the term 'reasonable accommodation' is used throughout this study.

[56] Although Polish regulations use the term 'a disabled person', this article uses the term 'a person with a disability'.

the Convention on the Rights of Persons with Disabilities[57]. Article 1 of the Rehabilitation Act stipulates that this Act applies to persons whose disability has been confirmed by a statement: 1) classifying them as having one of the three degrees of disability specified in Article 3 of this Act, or 2) declaring them totally or partially incapable of work on the basis of separate regulations, or 3) of disability, issued before the age of 16. The requirement for formal confirmation of disability – when compared with the established standards - deviates from the adopted model of protection[58]. It is, therefore, pointed out that Polish regulations should be interpreted more broadly. This would mean, among other things, that the obligation to provide reasonable accommodation for a person with a disability, as specified in Article 23a of the Rehabilitation Act, would have to apply not only to the person referred to in Article 1 of the Rehabilitation Act, but also to persons with disabilities within the meaning of Directive 2000/78 (in the terms of the Convention) whose disability has not been formally confirmed[59]. Unfortunately, employers in Poland may have little awareness in this area, and it seems that they are not sufficiently sensitized to these situations. The situation becomes even more complicated when one considers that the requirement for formal confirmation of disability in Poland is linked to the possibility of financial support for the employer[60].

As regards the requirement to notify the employer of the needs arising from the person's disability[61], it can be assumed that it serves to balance the interests of the employer and the employee, as well as to ensure legal certainty. Of course, when examining a given legal system, it would not be irrelevant whether the procedure for confirming disability is simple or complicated in

[57] See M. Paluszkiewicz, *Pojęcie niezbędnych racjonalnych usprawnień*, in T. Bińczycka-Majewska, M. Włodarczyk (ed.), *Współczesne problemy prawa emerytalnego*, Warszawa, 2015, LEX.

[58] The literature on the subject, therefore, indicates that in Polish practice, it should be ensured that protection against discrimination does not depend on having a certificate of incapacity for work or a disability certificate. In this way, A. Bodnar, A. Śledzińska-Simon, *O potrzebie ratyfikacji Konwencji ONZ o Prawach Osób z Niepełnosprawnością*, in *Europejski Przegląd Sądowy*, 2012, n. 5, LEX.

[59] See M. Paluszkiewicz, in E. Bielak-Jomaa, E. Staszewska, M. Włodarczyk, T. Wrocławska, M. Paluszkiewicz, *Rehabilitacja zawodowa i społeczna oraz zatrudnianie osób z niepełnosprawnościami. Komentarz*, Warszawa, 2023, LEX, Art. 1.

[60] https://www.pfron.org.pl/pracodawcy/dofinansowanie-wynagrodzen/warunki-ubiegania-sie-o-dofinansowanie-do-wynagrodzen-pracownikow-niepelnosprawnych/ (access: 31.10.2025).

[61] The literature on the subject indicates that the employer is obliged to fulfill their obligation towards a person with a disability even in a situation where they themselves become aware of the need to introduce changes or adjustments. See M. Wujczyk, *Obowiązek pracodawcy zapewnienia niezbędnych racjonalnych usprawnień dla pracownika niepełnosprawnego*, in M. Borski (ed.), *Bariery w otoczeniu osób z niepełnosprawnościami. Zagadnienia wybrane*, Oficyna Wydawnicza „Humanitas", Sosnowiec, 2017, 22.

that system. However, from the point of view of balancing employee protection and employer interests, I believe that the optimal model is one in which the employee initially indicates the circumstances justifying disability protection, presents specific needs in any manner, thereby expressing their willingness to take advantage of such protection. Ultimately, however, a procedure for confirming disability should also be initiated within a reasonable time.

Returning to the main considerations, it should be noted that, pursuant to Article 14(1) of the Rehabilitation Act, an employer is obliged to allocate or organize an appropriate work station with basic social facilities for an employee who, as a result of an accident at work or occupational disease, has lost the ability to work in their current position, no later than within three months from the date of notification by that person of their readiness to commence work. The notification of readiness to commence work should take place within one month from the date of recognition as a person with a disability[62]. Literally, the provision refers only to the loss of ability to work in the previous position as a result of an accident at work or occupational disease. Therefore, it would not apply, for example, to an illness that would not be classified as an occupational disease. If the employer fails to allocate or organize such a work station within the prescribed period, they are obliged to make a payment to the State Fund for Rehabilitation of Disabled People on the date of termination of employment with that person, in the amount of fifteen times the average remuneration for an employee (Article 23 of the Rehabilitation Act). This, therefore, constitutes an element of punishment for the employer. It is worth noting that the analyzed Article 14(1) of the Rehabilitation Act does not contain any reservation regarding possible disproportionate burden on the employer[63]. Due to the very strong connection with the work process (loss of ability to work in the current position as a result of an accident at work or occupational disease), this provision fully implements the idea of keeping a person with a disability in employment, which does not mean that no problems arise in this area. The latter would concern, for example, the relationship

[62] The above provision shall not apply if the sole cause of the accident at work was a violation of occupational health and safety regulations by the employee through his own fault or his state of alcohol intoxication, as proven by the employer (Article 14(2) of the Rehabilitation Act).

[63] M. Latos-Miłkowska, *Ochrona trwałości stosunku pracy pracowników niepełnosprawnych i opiekunów osób niepełnosprawnych*, in A. Giedrewicz-Niewińska, M. Szabłowska-Juckiewicz (ed.), *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, Difin SA, Warszawa, 2014, 261.

between Article 14(1) of the Rehabilitation Act and Article 231 of the Labour Code[64].

The Rehabilitation Act also includes specific incentives for employers. For example, pursuant to Article 26(1)-(3) of the Rehabilitation Act, an employer who employs persons with disabilities for a period of at least 36 months (i.e., unemployed or seeking employment and not currently employed or employed by the employer applying for this reimbursement, except in cases where the cause of the disability during the period of employment with that employer was due to a culpable violation of regulations, including labour law, by the employer or employee) may, upon request, receive reimbursement from the State Fund for Rehabilitation of Disabled People for the costs of, among other things, adapting the workplace premises to the needs of persons with disabilities, in particular those incurred in connection with the adaptation of existing or newly created work stations for these persons, in accordance with the needs resulting from their disability; adaptation or purchase of equipment facilitating the performance of work or functioning in the work establishment by a person with a disability. The reimbursement applies only to additional costs incurred by the employer as a result of employing persons with disabilities, and may not exceed twenty times the average salary for each adapted work station of a person with a disability[65]. One of the elements aimed at encouraging the employment of persons with disabilities is, among other things, a monthly subsidy to the salary of an employee with a disability.

It is also worth noting the legal regulation concerning employees who assist employees with disabilities at work. Pursuant to Article 26d(1) and (3) of the Rehabilitation Act, an employer who employs an employee with a disability may receive reimbursement from the Fund for the monthly costs of employing employees who assist the employee with a disability at work and for the costs of training these employees - in activities that facilitate communication with their surroundings, as well as activities that are impossible or difficult for an employee with a disability to perform independently at their work station. The number of hours devoted exclusively to assisting an employee with a disability may not exceed 20% of the employee's monthly working hours. In the context of attempts to keep employees with disabilities in employment (and to reduce

[64] Pursuant to Article 231 of the Labour Code, on the basis of a medical certificate, an employer shall transfer to appropriate work an employee who has become unable to perform their current work as a result of an accident at work or occupational disease and has not been declared incapable of work within the meaning of the provisions of the Act on Old-Age and Disability Pensions. If such a transfer results in a reduction in remuneration, the employee is entitled to a compensatory pay for a period not exceeding 6 months.

[65] However, it seems that detailed regulations concerning the reimbursement may deter some employers and pose a challenge for them, especially small employers.

the risk of termination of employment relationship), this regulation – if properly designed – could play a greater role in practice. However, the limit seems small and may also objectively make it difficult to find people who would be willing to provide such assistance at all.

Assessing the activation process, it must unfortunately be noted that, according to data presented by the Supreme Audit Office, the importance of vocational development centers in the vocational rehabilitation system for people with disabilities in Poland is insignificant. Not only is their low effectiveness pointed out, but also, among other things, the fact that their activities are not adapted to the needs of the labour market. As indicated, at the end of 2021, out of almost 2 million people over the age of 16 with a certified severe or moderate degree of disability, only 0.3% worked in vocational development centers. Among the group of people with disabilities working in vocational development centers throughout Poland, only about 2% took up employment on the open labour market during the period examined by the Supreme Audit Office, while in the case of the establishments audited, about 17% of people who left their jobs there[66].

4. An illness and disability versus termination of an employment contract

In light of the above considerations, the regulation provided for in Article 40 in conjunction with Article 39 of the Labour Code is problematic. Pursuant to Article 39 of the Labour Code, an employer may not give notice of termination of a contract of employment to an employee who is no more than 4 years away from reaching retirement age, if the period of employment entitles them to a retirement pension upon reaching that age. However, pursuant to Article 40 of the Labour Code, the aforementioned Article 39 of the Labour Code does not apply if an employee becomes entitled to a disability pension due to total incapacity for work. The differentiating factor here is precisely the right to a disability pension for total incapacity for work, i.e. the right to one of the social insurance benefits associated with the status of a person with a disability. The point is that if such a person acquired the right to a disability pension for total incapacity for work, the employer could give notice of termination the employment contract even if the employee was less than 4 years away from reaching retirement age. It seems that this could result in a situation where, in

[66] https://www.nik.gov.pl/aktualnosci/sprawy-spoleczne/rehabilitacja-zawodowa-i-spoleczna-osob-z-niepelnosprawnosciami.html (access: 23.08.2025); *Zadania z zakresu rehabilitacji zawodowej i społecznej realizowane przez samorządy województw. Informacja o wynikach kontroli*, Najwyższa Izba Kontroli, no. 148/2022/P/22/032/KPS, 9.

comparable circumstances, persons who would be considered disabled under Directive 2000/78 would be treated less favourably than employees who do not have this characteristic. On the other hand, it should also be noted that this solution is optional. This concerns persons who are entitled to a disability pension on the grounds of total incapacity for work, i.e. those who have lost the ability to perform any work under typical conditions. It should also be mentioned that these are persons who are already entitled to a disability pension until they reach retirement age. In Poland, if a person entitled to a disability pension for a period of at least the last 5 years preceding the date of the medical examination is less than 5 years away from reaching retirement age, in the event of a further finding of incapacity for work, incapacity for work is determined for a period until the date of reaching that age (Article 13(3a) of the Act on Old-Age and Disability Pensions). Subsequently, the disability pension will be converted into a retirement pension (Article 24a of the Act on Old-Age and Disability Pensions). It is, therefore, clear that these persons are not left without anything. In the literature on the subject – in the context of Articles 39 and 40 of the Labour Code – it is rightly pointed out that the employer's obligation to provide reasonable accommodation in order to keep the employee in employment is not excluded here[67]. When assessing these solutions, it is also pointed out, among other things, that the purpose of this provision may be the need to ensure the proper functioning of the workplace without imposing unreasonable burden on the employer and on the public funds, as this could lead to an accumulation of public funds, relatively high disability pensions and additional costs of the employer[68].

With regard to the issue of notice of termination of an employment contract, it should be noted that, pursuant to Article 41 of the Labour Code, an employer may not give notice of termination of an employment contract during an employee's leave or during any other justified absence from work (e.g. due to an illness) if the period entitling the employer to terminate the employment contract without notice has not yet expired. This provision correlates with Article 53 of the Labour Code, which specifies the periods of protection against termination of employment.

Pursuant to Article 53 § 1(1)(a) and (b) of the Labour Code, an employer may terminate an employment contract without notice (i.e. this is optional) if the employee's incapacity for work due to an illness lasts: a) longer than 3 months - if the employee has been employed by the employer for less than 6 months, b) longer than the total period of receiving sick pay, sickness benefit and

[67] D. Dzienisiuk, *Prawo pracy a prawo ubezpieczeń społecznych*, Difin SA, Warszawa, 2016, 286-287.
[68] Ibidem, 287.

rehabilitation benefit for the first 3 months[69] - if the employee has been employed by the employer for at least 6 months or if the inability to work was caused by an accident at work or an occupational disease[70]. Given that the benefit period is generally 182 days, in the event of continuous temporary incapacity for work, the protection period before termination of employment could, therefore, be as long as 272 days[71]. Of course, this will not always be the case, as there are specific rules for calculating the benefit period, as mentioned earlier[72]. The indicated protection period is, therefore, not short, and the employee may still be entitled to rehabilitation benefit (as it is payable for up to 12 months). What is more, a contract of employment cannot be terminated without notice after the employee has returned to work when the reason for his absence has ceased to exist (Article 53 § 3 of the Labour Code). Therefore, if the protection period expired and the employee reported to work in connection with the cessation of the reason for absence, it would no longer be possible to terminate the employment relationship in this manner, and the employee would then have to be referred for return-to-work health examinations.

In the context of this issue, it is also worth noting that in Poland, the view has been expressed that the practice of terminating the employment relationship after the expiry of the protection period applicable during incapacity for work should be significantly reduced in favour of the professional rehabilitation of the employee and their employment in another position appropriate to their state of health and ability to work[73]. In this spirit, it has been also pointed out that it is not permissible to terminate an employment relationship due to long-term incapacity for work if the employee regains partial capacity for work enabling them to perform other suitable work which the employer is able to provide (Article 53 § 3 of the Labour Code)[74]. The views that have been

[69] The position expressed in the Supreme Court judgment of 6 April 2007, II PK 263/06, LEX No. 469990, according to which the protection of the employment relationship of an employee unable to work due to an illness covers the first three months of receiving rehabilitation benefit, even if the employee was unable to prove to the employer that they were receiving this benefit immediately after the period of receiving sickness benefit should be considered convincing.

[70] In the event of an employee's isolation due to a contagious disease, termination of the employment contract without notice may not take place during the period of receiving sick pay and sickness benefit on this account.

[71] Sick pay paid by the employer (33/14 days) is included in the benefit period in accordance with the general rules set out in the Benefit Act.

[72] See subsection 'An employee's illness, sick pay, and cash benefits from social insurance'.

[73] W. Piotrowski, *Obowiązek przesunięcia pracownika do innej odpowiedniej pracy jako środek rehabilitacji zawodowej*, in *Studia Prawnicze*, 1976, n. 3, 166.

[74] Ibidem, 182.

expressed here strongly emphasise the desire to retain a person in a specific work environment, based on the assumption that in many cases the process of vocational rehabilitation or adaptation to other work is most successful when the employee remains in their current work environment[75].

Another important regulation from the point of view of employee activation is the solution adopted in Article 53 § 5 of the Labour Code and, accordingly, in Article 20 of the Benefit Act. The employer should, as far as possible, re-employ an employee who, within 6 months of the termination of their employment contract under this procedure, reports their return to work immediately after the cessation of these reasons or reports their return immediately after exhausting their right to rehabilitation benefit, even if this occurs after 6 months from the termination of the employment relationship. There is a clear objective here to reintegrate the former employee into the workplace. According to the Supreme Court resolution of 10 September 1976, an employer has an obligation to re-employ a former employee if they have vacant positions and the employee has the qualifications necessary to take up the vacant position[76]. In the Supreme Court judgment of 12 January 1998, it has been indicated that when assessing the possibility of re-employing an employee, both the circumstances relating to the employer and the employee should be taken into account[77]. Therefore, the possibility of re-employment should be assessed on the basis of all the circumstances, concerning both the employee (such as professional qualifications and health predispositions), and the employer, in particular taking into account whether the employer employs, after the employee has notified their return to work, other persons whose work could be performed by the employee notifying their return[78].

Continuing the analysis, it should be noted that the case law of the Supreme Court in Poland emphasises that Article 5 of Directive 2000/78 does not establish specific protection for persons with disabilities against termination of the employment relationship[79]. It is, therefore, emphasised that it is permissible

[75] Ibidem, 165.

[76] See the resolution of the Supreme Court of 10 September 1976, I PZP 48/76, LEX No. 12431; similarly, the reasons for the judgment of the Supreme Court of 23 April 2014, I PK 255/13, LEX No. 1511377. In this case, the claim for the conclusion of an employment contract is relative in nature. See J. Piątkowski, *Aksjologiczne i normatywne podstawy prawa stosunku pracy*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń, 2013, 540.

[77] See Supreme Court judgment of 12 January 1998, I PKN 459/97, LEX No. 34188.

[78] See the reasons for the Supreme Court judgment of 6 August 2015, III PK 125/14, LEX No. 1770327.

[79] See the Supreme Court judgment of 12 May 2011, II PK 276/10, LEX No. 1171189. See also the reasons for the Supreme Court judgment of 7 December 2017, I PK 334/16, LEX No. 2433079.

to dismiss an employee with a disability if, despite the reasonable accommodation measures provided, they are unable to perform the essential duties of their job[80]. This would be consistent with recital 17 of Directive 2000/78, which indicates that the 'Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities'.
It is worth mentioning here the Supreme Court judgment of 12 April 2012 concerning a prosecutor who, as a result of a traffic accident, suffered a fracture of the C4-C5 vertebrae and was confined to a wheelchair[81]. It was established that her condition did not allow her to perform all the duties imposed on a district prosecutor (in particular, activities carried out outside the prosecutor's office, such as inspecting crime scenes, conducting site inspections and trial experiments, participating in autopsies and working irregular hours). This was confirmed by a statement of an occupational health doctor. In this case, referring to the provisions of the Labour Code, the Supreme Court emphasised that: 'The prohibition of discrimination in Polish legislation is not absolute, as the principles of equal treatment in employment are not violated by actions that are proportionate to the achievement of a legitimate objective of differentiating the situation of an employee, consisting in not employing an employee for one or more of the reasons specified in Article 18^{3a} § 1, if the type of work or the conditions of its performance mean that the reason or reasons specified in that provision are a genuine and decisive occupational requirement for the employee (Article 18^{3b} § 2(1) of the Labour Code)'[82]. In this case, reference was made to Article 4(1) of Directive 2000/78. It was also pointed out that it could not be argued that eliminating from the scope of duties of a district prosecutor those duties performed outside the prosecutor's office, involving physical effort, constituted reasonable accommodation enabling the person to hold the position. On the contrary, the need to remove these duties indicated that the person in question was not capable of performing all the most important duties of a prosecutor[83]. Similarly, in the Supreme Court judgment of 7 December 2017, it was argued that reasonable accommodation consists in taking measures to enable an employee with a disability to continue to hold their current position, rather than eliminating the basic duties of the position held by such an employee[84].

[80] M. Wujczyk, *op. cit.*, 30.
[81] See the Supreme Court judgment of 12 April 2012, II PK 218/11, LEX No. 1313656.
[82] Ibidem.
[83] Ibidem.
[84] See the Supreme Court judgment of 7 December 2017, I PK 334/16, LEX No. 2433079.

The Supreme Court also recalled this idea (importantly, using the categorical phrase 'only if') in its judgment of 4 June 2013, emphasising that 'the non-culpable loss of the ability to perform one's current job due to disability of an employee, justifies notice of termination of employment relationship only if the disabled employee objectively loses the ability to perform essential job duties in their position, required for the continuation and rational performance of the employment relationship, despite the introduction or lack of possibility to apply reasonable and proportionate accommodation in the performance of work by a disabled employee, combined with the inability to provide other suitable work to an employee who has become unable to perform their current job due to a disability caused by an accident at work or occupational disease, and that employee has not been recognised as unfit for work within the meaning of the provisions' on Old-Age and Disability Pensions (Article 231 of the Labour Code)[85].

Doubts regarding the termination of employment relationship are related to the fact that the boundary between an illness and disability is not always clear. It is pointed out that the provisions of the Labour Code include the principle of equal treatment of disabled employees and the corresponding prohibition of discrimination on grounds of disability, which, therefore, justifies notice of termination of an employment contract with that employee only 'in isolation from his or her disability', or when it cannot be compensated for by proportionate methods or adjustment measures available to the employer[86].Disability in itself cannot constitute a reason justifying notice of termination of an employment contract[87]. At the same time, however, there is an established case law practice that long-term and/or frequent absences from work due to an illness may constitute a justified reason for notice of termination of an employment contract, as they usually cause disruption to the work process[88].

It is also worth noting the Supreme Court judgment of 16 December 1999, which stated that a medical contraindication to the performance of even one duty belonging to the scope of activities at the occupied position justifies

[85] See the Supreme Court judgment of 4 June 2013, I PK 26/13, LEX No. 1554965.

[86] See the reasons of the Supreme Court judgment of 4 June 2013, I PK 26/13.

[87] M. Latos-Miłkowska, *op. cit.*, 257.

[88] See, for example, the Supreme Court judgment of 11 July 2006, I PK 305/05, LEX No. 395064; Supreme Court judgment of 5 October 2005, I PK 61/05, LEX No. 196489; Supreme Court judgment of 21 October 1999, I PKN 323/99, LEX No. 45510. Although, in general, long-term absences of an employee due to an illness may justify notice of termination of the employment contract, such notice of termination may be considered contrary to the principles of social coexistence if it concerns a long-term employee who has performed their duties impeccably so far. See the Supreme Court judgment of 21 January 2003, I PK 96/02, LEX No. 82395.

notice of termination of an employment contract[89]. Although, in principle, one would have to agree with the position expressed here, that the safety of an employee and the protection of their health and life are goods which, in the hierarchy of legally protected goods, should be given priority over the protection of the workplace[90], it should be noted that the employer's obligation to provide reasonable accommodation for persons with disabilities must play a significant role in this matter. The essence of the system of protection for persons with disabilities is that such persons (with disabilities) should, as far as possible, remain in employment and not be dismissed, which is to be achieved, inter alia, by the reasonable accommodation[91].

When assessing Polish regulations, it seems that the obligation of employers to provide reasonable accommodation for persons with disabilities is not sufficiently emphasised in Polish law. The inclusion of the regulation concerning reasonable accommodation in a law separate from the Labour Code (Article 23a of the Rehabilitation Act) weakens the essence of this regulation. Regulating this in the Labour Code would be of great importance not only in terms of emphasising the significance of the matter in question, but also, most importantly, in terms of increasing awareness of this regulation among employers and employees[92]. It seems that employers are not fully aware of their obligations, and employees are not fully aware of their rights.

In Poland, disability is commonly associated with the requirement for formal confirmation, which then triggers financial support for employers. Since disability is linked to formal confirmation, it may be the case that reasonable accommodation is not provided in the event of an illness and ultimately the employment relationship is terminated (employers are convinced that there is 'only' an illness, the person has no formal confirmation of disability, so they do not assume that reasonable accommodation needs to be provided). Comparing this with the established standard of protection for persons with disabilities, we can see an area where the needs of some persons may not be properly recognised, as not everyone will take legal action. In this context, therefore, it should be agreed that there may be a certain group of employees with disabilities (without formal confirmation of their disability) who may be more vulnerable to indirect discrimination on grounds of disability, e.g. in the context of Article 53 of the Labour Code[93], but also in the context of notice of

[89] Supreme Court judgment of 16 December 1999, I PKN 469/99, LEX No. 39602.
[90] Ibidem.
[91] See Opinion of Advocate General A. Rantos, Case C-485/20, XXXX v HR Rail SA, pt 68.
[92] See M. Paluszkiewicz, *Rozwiązanie umowy o pracę bez wypowiedzenia na podstawie art. 53 k.p. a zakaz dyskryminacji ze względu na niepełnosprawność w świetle najnowszych standardów międzynarodowych*, in *Roczniki Administracji i Prawa*, 2024, n. 4, 338.
[93] Ibidem, 339.

termination of an employment contract due to long and/or frequent illnesses (which may be related to disability and may also be cumulative due to the lack of reasonable accommodation). Due to the fact that the boundary between an illness and disability is not entirely clear, it seems that in the area of temporary incapacity for work due to an illness, there is a greater risk of premature termination of employment relationship (risk of termination of employment relationship). Also, when it comes to transfer to another job, it seems that Polish regulations may give the parties the misleading impression that such a transfer would basically only result from situations specified in the Labour Code[94].

5. Conclusion

Due to the fact that certain solutions adopted in Poland do not meet the set standards, Poland faces the challenge of identifying what legal solutions should be adopted in order to achieve the set goal. From the point of view of the need to balance the situation of the employee and the employer, it is also necessary to verify to what extent the legal tools adopted are appropriate for the area of labour law. In this regard, as it has been pointed out, the unclear boundary between an illness and disability and the broad interpretation of disability seem to cause some doubts in the field of labour law. In particular, the view that the duty to provide reasonable accommodation 'should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights'[95] does not seem convincing. As it has been indicated, this may impose a disproportionate burden on the employer. Therefore, it seems that recital 21 of Directive 2000/78 may set the direction for the employer's defense in this case. In my opinion, from the point of view of balancing employee protection and employer interests, the optimal model is one in which the employee initially indicates the circumstances justifying disability protection, presents specific needs in any manner, thereby expressing their

[94] Apart from the aforementioned Article 231 of the Labour Code, this would essentially concern Article 230 of the Labour Code (if any symptoms of an occupational disease are identified in an employee, the employer shall, on the basis of the relevant medical certificate, transfer that employee to another position that does not involve any exposure to the agent that caused those symptoms, by the date and for the period specified on that medical certificate. If the transfer results in a reduction in remuneration, the employee is entitled to a compensatory pay for a period not exceeding 6 months) or transfers concerning pregnant/breastfeeding female employees, or adolescent employees.
[95] Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, pt 24b.

willingness to take advantage of such protection. Ultimately, however, a procedure for confirming disability should also be initiated within a reasonable time.
It seems that currently too much risk is being shifted onto the employer. This may give rise to concerns about hiring employees. Admittedly, there are circumstances that mitigate this risk of the employer, but in fact they are of an evaluative nature.
In Poland, as it has been indicated, the employer provides sick pay for up to 33/14 days of incapacity for work during a calendar year. This is not merely a technical payment, but the employer's 'own' burden. This is a heavy burden for the employer, considering that small employers dominate in Poland. In the event of long-term incapacity for work due to an illness, for a certain, not at all short period of time, the employer cannot terminate the employment relationship. Only after the protection period has expired may the employer terminate the employment relationship without notice, provided that the employee does not report to work due to the cessation of the reason for their absence. Regardless of this, the employer should, as far as possible, re-employ an employee who, within 6 months of the termination of their employment contract under this procedure, reports their return to work immediately after the cessation of these reasons or reports their return immediately after exhausting their right to rehabilitation benefit, even if this occurs after 6 months from the termination of the employment relationship.
When assessing Polish regulations, it seems that the obligation of employers to provide reasonable accommodation for persons with disabilities is not sufficiently emphasised in Polish law. The inclusion of the regulation concerning reasonable accommodation in a law separate from the Labour Code (Article 23a of the Rehabilitation Act) weakens the essence of this regulation.
Finally, there is the important issue of activation. As it has been pointed out, there is no consistent approach to the problem of an illness and disability. In the former case, as a rule, work is banned. In the latter case, on the other hand, work is sought, involving the employer and penalising them for failing to provide reasonable accommodation and for terminating the employment relationship. The main research problem should be reduced/limited work capacity, where both partial sick leave and reasonable accommodation must play an important role. Their goal is consistent – it is about utilising retained work capacity and maintaining employment wherever possible. Essentially, the role of the employer will also be strongly emphasised here. However, excessive burdens should not be placed on the employer. The employer provides work. They may assist with certain tasks, and are in fact closest to the employee, but their primary role is not to relieve the state.

Right to be Unavailable during Non-working Time? Necessity, Basic Concepts and Key Elements of a Regulation

Alexander Stöhr *

Abstract. In the digital age, the boundaries between working time and non-working time are becoming increasingly blurred. In today's working world, more and more employees are being contacted by their employers during leisure time, which can have a significant negative impact on health and safety at work, work-life balance and recovery from work. This raises the question of whether there is or should be a 'right to be unavailable' during non-working time, which may be universally defined as the right of employees not to engage in work-related activities or communications by means of digital tools or other communication tools outside working time. This article first highlights the practical need for statutory regulation. The main aim of the article is to identify key elements of a fair and balanced regulatory framework, which is based on an analysis of the basic forms of a regulation, including specific regulatory examples from other countries. The view taken here is that a ban on the employer contacting the employee, including appropriate exceptions for emergencies, is preferable to the more common employee's right to ignore contact from the employer ('right to disconnect' or 'right to be disconnected' respectively). Important regulatory issues are the scope, including small business exemptions; preventive action and information; the duty to reconnect; the level of regulation; the protection against adverse treatment or consequences; monitoring and enforcement; sanctions and non-regression.

Keywords: *working time, health and safety at work, unavailability, right to disconnect, right to be disconnected*

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A) Introduction

In the past, the distinction between working time and non-working time was simple: employees went to work, and when they clocked in at the company, their working time began, and when they clocked out in the evening and left the company, it ended. However, these times are over. In the digital age in particular, the boundaries between working time and non-working time are becoming increasingly blurred: no matter where you are, emails, text messages and WhatsApp messages will always reach one. This is now also reflected in working life. In the world of work 4.0 and the rise in remote working, the pressure to be constantly available has increased significantly.[1] An empirical survey conducted by Eurofound showed that over 80% of employees who regularly work remotely receive work-related communications outside their contractual working hours during a typical working week, and almost three-quarters are contacted by colleagues out of hours every day or on some day. Contact is made by email (58%), work phone (44%), private phone (33%) or video calling platforms (22%).[2] Conversely, another survey showed that over 80% of employees spend up to five hours per week on leisure activities during working hours.[3] This indicates that, for certain occupational groups, the boundaries between work and leisure time are generally blurring, rather than work simply being shifted into leisure time.[4] Although constant availability might not yet be a problem for the vast majority of employees, the phenomenon must nevertheless be taken seriously from a working time law perspective.

As is often the case in labour law, the interests involved are complex und conflicting. With regard to the employers, many reasons may necessitate contacting employees, for example a change to the originally planned working hours in everyday business practice, such as illness of other employees, short-term absences or malfunctions of production facilities or IT systems, changes in weather conditions and externally induced changes in work requirements. Hence, employers have an interest to communicate with employees during

[1] K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (44); I. Bokor-Szöcs, *The Right to Disconnect,* Journal of Public Administration, Finance and Law, 2023, vol. 2023, 88; C. Mishra, *Should the Right to Disconnect be Legally Enforced?*, International Journal of Trend in Scientific Research and Development, 2022, vol. 6, 2069.

[2] Eurofound, *Right to disconnect: Implementation and impact at company level*, 2023, p. 27.

[3] IZA/XING-Studie „Arbeiten in Deutschland", 2019, https://newsroom.iza.org/de/archive/news/die-grenzen-zwischen-arbeit-und-freizeit-verschwimmen-in-beide-richtungen.

[4] M. Dolobáč, K. Skolodová, *The Right to Disconnect in the Context of Employees' Mental Health*, Adam Mickiewicz University Law Review, 2022, vol. 14, 163 (168).

their leisure time. But some employees also appreciate the blurring of boundaries. It is widely assumed that those born after 1980 ('Generations Y and Z') have a new understanding of leisure and work, as they read work emails after hours, but use social media at the office and sometimes want to leave at four o'clock to continue working in a café. Especially for employees with children who require care it is advantageous if they can take an early break from work in the afternoon and continue working from home late in the evening. On the other hand, flexibility and constant availability, including the invasion of employee privacy, can have a significant negative impact on health and safety at work, work-life balance and recovery from work. Employees subjected to continuous algorithmic monitoring and availability requirements report higher stress levels, sleep disorders, and burnout.[5] Against this background, the European Parliament stresses the importance for both mental and physical health of being able to switch off from time to time.[6]

These developments led to a lively debate and a wealth of literature on the question of how employees can be better protected from the intrusion of work-related tasks into their working lives, in particular whether there is or should be a 'right to be unavailable' during non-working time. This question can be classified under the broader topic of 'working hours'[7] or 'health and safety'[8] respectively, whilst the issue of remuneration is usually regarded as a separate matter.[9] Unavailability is a vague term. In this context it means the temporary interruption of communication between employer and employee. The term 'disconnection', which frequently appears in the discussion ('right to disconnect'), indicating a temporary separation or a split, is largely synonymous with this.[10] In this article, however, the term 'unavailability' is preferred, as the 'right to disconnect' is understood as a subset of a broader 'right to be

[5] M. Dolobáč, K. Skolodová, *The Right to Disconnect in the Context of Employees' Mental Health*, Adam Mickiewicz University Law Review, 2022, vol. 14, 163 (167); K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (45); I. Bokor-Szöcs, *The Right to Disconnect*, Journal of Public Administration, Finance and Law, 2023, vol. 2023, 88 (94).

[6] https://www.europarl.europa.eu/topics/de/article/20210121STO96103/auch-mal-abschalten-konnen-parlament-fordert-recht-auf-nichterreichbarkeit.

[7] D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (128).

[8] I. Senatori, C. Spinelli, *(Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience*, Italian Labour Law e-Journal, 2021, vol. 14, 209 (236 f.).

[9] On the relationship between remuneration and the right to be unavailable T. Jochman, *Effects on Employees' Compensation Under the Right to Disconnect*, Marquette Benefits and Social Welfare Law Review, 2021, vol. 22, 209 (217).

[10] On this term in depth D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (128).

unavailable', which may be universally defined as the right of employees not to engage in work-related activities or communications by means of digital tools (including inter alia smartphones, tablets, laptops and desktop computers) or other communication tools outside working time.[11] Whilst many countries have now established a statutory right to be unavailable (to a greater or lesser extent), indicating a acceptance as a component of modern labour law,[12] there is as yet no explicit provision at European level or in several developed countries like Germany. According to a survey of employees in Vietnam, 75% of the respondents believe that a right to be unavailable should be legally recognised.[13]Among those in favour of such a regulation, there is disagreement as to whether it should constitute a 'new' right with a peculiar content ('extensive approach') or whether it should be content to 'restyle' established rules on working time ('minimalistic approach').[14]

The first aim of this article is to highlight the practical need for statutory regulation. The focus here is on the situation in developed countries, which differs fundamentally from that in developing countries. India, for example, is characterised by intense competition in every field due to overpopulation and by constant fear of being outperformed by other countries.[15] The main aim of the article is to identify the key elements of a fair and balanced regulatory framework, which is based on an analysis of the basic forms of a regulation, including specific regulatory examples from other countries. The view taken here is that a ban on the employer contacting the employee, including appropriate exceptions for emergencies, is preferable to the more common employee's right to ignore contact from the employer ('right to disconnect' or 'right to be disconnected' respectively).

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[11] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, p. 13; K. Dumančić*, Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42; J. Hopkins, *Managing the Right to Disconnect—A Scoping Review*, sustainability, 2024, vol. 16, 4970.

[12] K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (47); see also N.C. Thang, *A Comparative Study of the Right to Disconnect with Policy Recommendations for Vietnam*, Hong Kong Journal of Social Sciences, 2025, vol. 65, 136 (142).

[13] N.C. Thang, *A Comparative Study of the Right to Disconnect with Policy Recommendations for Vietnam*, Hong Kong Journal of Social Sciences, 2025, vol. 65, 136 (144).

[14] I. Purificato, I. Senatori, *Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation*, Diritti Lavori Mercati International, 2024, 285 (289).

[15] Sceptical, therefore, about a right to be unavailable C. Mishra, *Should the Right to Disconnect be Legally Enforced?*, International Journal of Trend in Scientific Research and Development, 2022, vol. 6, 2069 (2071). N.C. Thang, however, advocates for legislation in Vietnam, see *A Comparative Study of the Right to Disconnect with Policy Recommendations for Vietnam*, Hong Kong Journal of Social Sciences, 2025, vol. 65, 136 (143 f.).

B) Necessity for statutory regulation

Several countries do not formally legislate a right to be unavailable. The following section examines whether statutory regulation is necessary or at least desirable at all.

I. Right to be unavailable without statutory regulation? The debate in Germany

A statutory regulation might be dispensable if a right to be unavailable is already implied by general principles. This will be discussed in the light of the debate in Germany, which concerns the fundamental issues of (European) working time law and could therefore be applied to other countries as well. In Germany, only private autonomous regulations exist at company level. Some companies (e.g., Volkswagen and Daimler) have their own systems for preventing emails from being delivered to employees outside of their standard working hours ('Self-Regularity Model').[16] However, if there is no agreement like this, it has to be figured out to what extend limitations on availability arise from the law. The debate was sparked primarily by the following case:
W is employed by E as an emergency paramedic. A works agreement for duty planning provides for stand-in shifts and for these, among other things, that – if no specific assignment is possible beforehand – so-called unspecific stand-in shifts are assigned, which can be specified later (for day and late shifts until 8 p.m. on the previous day). If this does not happen, the employee will be present at the assigned place of work at the start of the shift. In this respect, it is sufficient to notify the employee by telephone at 7.30 a.m. that he/she is available for work. An unspecified stand-in shift is entered in the duty roster for W for 8 April 2026. E orders W to work at 7.30 pm the day before by text message at 6 am.

1. Court rulings

The Schleswig-Holstein Regional Labour Court ruled that employees are not obliged to check whether their work schedule has been changed during their leisure time. They are also not obliged to accept a message from their employer – for example, by telephone – or to read a text message. If they do not take note of information about a change to their work schedule, they will only

[16] P.M. Secunda, *The Employee Right to Disconnect*, Notre Dame Journal of International & Comparative Law, 2019, vol. 9, 1 (29 ff.); J. Hopkins, *Managing the Right to Disconnect—A Scoping Review*, sustainability, 2024, vol. 16, 4970.

receive this information when they start work. The Court stresses that one of the most fundamental personal rights is that a person can decide for themselves who they want to be available to during this time and who they do not. Therefore, during their non-working time, employees are not obliged to perform work for the benefit of others, even for a very short period of time, but have the right to be unavailable.[17] Similarly, the Labour Chamber of the French Supreme Court had already ruled in 2001 and 2004, prior to the entry into force of a statutory provision, that 'the employee is under no obligation either to accept working at home or to bring there his files and working tools, and that 'an employee cannot be reprimanded for being unavailable outside working hours'.[18]

However, the German Federal Labour Court did not agree with this: If the employees are aware, based on company regulations, that the employer will specify the time and place of work for the following day, the employees are obliged to take note of such instructions, communicated by text message, even during their leisure time. The Court derives the employee's obligation to take note of the text message in their non-working time as a so-called secondary obligation to ensure performance.[19] This is not supposed to conflict with working time and occupational health and safety law, since a rest period exists if the restrictions do not reach a significant degree of intensity and allow the employee to dispose of their time and pursue their own interests without major restrictions (de minimis threshold). According to the German Federal Labour Court, such a degree of intensity is not reached by the secondary obligation to take note of the specific details of the service. The employee is free to choose when to take note of the instructions, and the time involved is so minimal that it does not significantly impair the possibility of using leisure time.[20] However, the employer must take the employee's interests into account when exercising its right to issue instructions. During illness, the employer must limit instructions to urgent operational reasons, for example, so as not to jeopardise the recovery process.[21]

The ruling of the Court has far-reaching consequences for practice. This is because the grounds of the judgment base the obligation under the employment contract not only on the works agreement in the specific individual case, but also interprets it as part of every employment contract via a

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17 Schleswig-Holstein Regional Labour Court of 27 September 2022 – 1 Sa 39 öD/22.

18 LÉGIFRANCE, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007473856; on this C. Mishra, *Should the Right to Disconnect be Legally Enforced?*, International Journal of Trend in Scientific Research and Development, 2022, vol. 6, 2069 (2070).

19 German Federal Labour Court of 23. August 2023 – 5 AZR 349/22

20 German Federal Labour Court of 23. August 2023 – 5 AZR 349/22.

21 German Federal Labour Court of 2. November 2016 – 10 AZR 596/15.

secondary obligation to ensure performance. In any case, if there is an existing company practice or foreseeable need for short-term changes, the employee will be obliged to take note of corresponding notifications from the employer. It is not the receipt of an instruction that matters, but the fact that the employee must also accept instructions after the end of the working day.[22]

2. Critical evaluation

Some authors agree with the German Federal Labour Court's view: if certain obligations continue to apply during incapacity for work, then nothing else can apply during non-working time.[23] However, it is right to disagree with this and to assume a right to be unavailable in the sense of a 'right to disconnect' without specific legal regulation. This is already supported by the purpose of rest periods, which first and foremost shall promote health by minimising, as far as possible, any risk to the safety and health of employees that may arise from a series of work phases without the necessary rest breaks.[24] As the European Court of Justice (hereinafter: ECJ) repeatedly stresses, the right of every employee to a limitation of maximum working hours and to daily and weekly rest periods is not only a rule of Union social law that is of particular importance, but is also expressly guaranteed in Article 31(2) of the Charter of Fundamental Rights of the European Union.[25] Therefore, it is of secondary importance that the employee's personal freedom is only slightly impaired by taking note of (and responding to) notifications from the employer during their non-working time. The criterion of significant restrictions is only used by the ECJ for periods during which the employee is not at work but must remain available. If the employee actually performs work, the intensity of the work is not relevant according to the ECJ.[26] With regard to the safety and health of employees, any work-related message can impair the value of rest period, as it can cause a brief moment of anxiety ('What does my boss want now?'). The author himself once received an email from his former boss in the evening during watching football in TV, in which the boss asked about a matter in a critical tone, spoiling the evening for the author.
Furthermore, it is incorrect to state that the employee is not required to communicate with the employer, as claimed by the German Federal Labour

[22] J. Joussen, *Recht auf Unerreichbarkeit außerhalb der Arbeitszeit?*, juris – Die Monatszeitschrift, 2024, 155 (157).
[23] E. Salamon, L. Iser, *Erreichbarkeit des Arbeitnehmers außerhalb der Arbeitszeit – leistungssichernde Nebenpflichten*, Neue Zeitschrift für Arbeitsrecht, 2024, vol. 4, 242 (245).
[24] ECJ of 7. September 2006 – C-484/04.
[25] ECJ of 14. May 2019 – C-55/18 (CCOO).
[26] ECJ of 21. February 2018 – C-518/15 (Rudy Matzak).

Court, since receiving instructions also constitutes communication. This also requires the employee to interrupt their rest period. Even if, in this specific case, the employee was able to decide for himself when to take note of the employer's messages, the employee is still required to perform an action at a time when he is not obliged to do so. Even if an employee does not have to look at his smartphone all day long, the mere fact that his employer can contact him and give him instructions at any time means that he is unable to switch off. And what instructions should employees take outside of working hours? What additional work should they do outside of working hours? Although a reply to an email or a text message relating to work might take no more than five minutes, the time adds up quickly.[27] Furthermore, the reference to the minimal time required has the potential to get out of hand and blur the boundaries between contractual work obligations and leisure time. Especially in times of increasing digitalisation and blurring of the boundaries between working hours and non-working time, a clear distinction is important.[28]

II. Arguments for and against statutory regulation

Underlying the discussion is the tension between flexibility, industrial democracy and corporate self-regulation on the one hand and legal protection on the other hand: a lack of statutory regulation allows autonomous, tailored and context-specific solutions, whereas, conversely, there is no universal protection.[29] Some authors deny the necessity of a statutory regulation on the grounds that the blurring of the boundaries between work and leisure time is not a legal problem, but a mere social one. Being online is commonplace, and constant availability is supposed to be due to a widespread fear of missing out (FOMO), especially among younger people. Legal regulation should not help against this. Rather, what is needed is an awareness that the end of working hours also means the end of availability, and the willingness of the parties to the employment contract to maintain a clear separation here.[30] Indeed, studies indicate that even in firms with unavailability policies, a work place culture of

[27] T. Jochman, *Effects on Employees' Compensation Under the Right to Disconnect*, Marquette Benefits and Social Welfare Law Review, 2021, vol. 22, 209 (215).
[28] J. Joussen, *Recht auf Unerreichbarkeit außerhalb der Arbeitszeit?*, juris – Die Monatszeitschrift, 2024, 155 (157).
[29] On this in depth K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (51 ff.).
[30] L. Rudkowski, *Abgrenzungsfragen der Arbeitszeit – Zugleich Vorschlag für Anpassungen des Arbeitszeitgesetzes*, Zeitschrift für Arbeitsrecht, 2022, 510 (523); K. Jaworska, The Right to *Disconnect*, Studies on Labour Law and Social Policy, 2022, vol. 29, 51 (57); see also A. Kaishatayeva et al, *Right to Disconnect: Complexities of Legalization (In the Context of International Regulatory Experience)*, Journal of Law and Sustainability Development, 2024, vol. 12, 1 (20).

availability persists.[31] However, according to the Eurofound survey, FOMO is an important but by far not the only reason why employees respond to messages during their non-working time. While the respondents indeed stated that they want to "stay on top of things" (75%), they also feel responsible for their assignments (82%), think that this is what is expected from them (75%), fear negative consequences if they don't respond (61%), are obliged to respond immediately (59 %), or believe that this constant availability will assist with their career progression (50 %).[32] Against this background, simply changing the attitude or rising awareness do not provide significant protective effects.[33]

Only a statutory provision or a private agreement binding the parties to the employment contract to clear rules can provide the certainty that one may safely ignore such messages.[34] A right to be unavailable is intended to safeguard the restorative function of leisure time and thus the health of employees by allowing a temporary disconnection from work, protecting against an imperceptible 'slipping back' into work, and limiting and changing the 'always on' culture.[35] In a way, the right encapsulates the demand for time sovereignty in a digital context.[36] Furthermore, it is intended to improve the work-life balance.[37] Ideally, it could even – just like many other provisions of labour law – offer benefits to the employer themselves, since it should make the employees more productive: they are supposed to be left with a greater sense of physical and mental wellbeing, job satisfaction, lower turnover, as well as a

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[31] A. Ginès i Fabrellas, *How to Ensure Employees' Well-being in the Digital Age?*, IDP, No. 35, 2022, 7; K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (51).

[32] Eurofound, *Right to disconnect: Implementation and impact at company level*, 2023, p. 30 ff.

[33] D. Calderara, *Labor Law and the Right to Dis*connect, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (128).

[34] B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 (1436) f., strongly in favour of regulation M. Dolobáč, K. Skolodová, *The Right to Disconnect in the Context of Employees' Mental Health*, Adam Mickiewicz University Law Review, 2022, vol. 14, 163 (177).

[35] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, p. 15; K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (43); I. Purificato, I. Senatori, *Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation*, Diritti Lavori Mercati International, 2024, 285 (289, 291).

[36] I.V. Lagutina, *Right to Disconnect as One of the Employees' Digital Labour Rights*, Juris Europensis Scientia, 2022, vol. 3, 28 (29); K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (43).

[37] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, p. 15; D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (131).

decreased chance of 'quiet quitting'.[38] Legislation is also desirable even if the right to be unavailable is derived from general principles, as advocated above, since general principles cannot take into account the specific circumstances of individual businesses. The legitimate interest in flexibility, industrial democracy and corporate self-regulation can be taken into account by limiting statutory provisions to setting out general guidelines, leaving the details to be determined by the parties to the collective agreement, the employer and the employee.[39]

C) Approaches to statutory regulation

I. Restriction of the scope of application to non-working time

The right to be unavailable can only be a right that applies to the period before work is performed, because its realisation deprives the employee of the opportunity to even become aware of the existence of work tasks or corresponding instructions from the employer.[40] Since non-working time and rest do not necessarily coincide, one can argue that the right to be unavailable actually represents an even shorter period than non-working time, namely the period during which more intense measures are implemented to protect the psycho-physical well-being of the employee and to ensure the balance between work and private life through disconnection from technological tools.[41]
European working time law is characterised by a strict separation between 'working time' and 'rest period', which is the same as leisure time, free time, spare time etc. In this article, the term 'non-working time' is preferred for the sake of clarity. There is no intermediate category between working time and non-working time, which means that every employee's behaviour must be assigned to one of these two categories in order to apply the provisions of working time law. The Working Time Directive 2003/88/EC defines 'working time' any period during which a worker is working, at the employer's disposal

[38] G. Golding, *Introducing Australia's New Right to Disconnect*, Labour & Law Issues, 2024, vol. 46, C.1 (C.18). See also L. Lerouge, F. Pons, *Contribution to the study on the 'right to disconnect' from work*, European Labour Law Journal, 2022, vol. 13, 1 (15); C. Mishra, *Should the Right to Disconnect be Legally Enforced?*, International Journal of Trend in Scientific Research and Development, 2022, vol. 6, 2069 (2072).
[39] For possible details of the legal provisions, see below E).
[40] D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (133); B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 (1428).
[41] D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (133); see also E. Fiata, *L'iniziativa europea sul diritto alla disconnessione*, Lavoro Diritti Europa, 2021, 16.

and carrying out his activity or duties, in accordance with national laws and/or practice (Article 2 No. 1), whereas 'rest period' is defined as any period which is not working time (Article 2 No. 2). The distinction is sometimes difficult to draw and is handled differently in various jurisdictions. One issue, for example, is how to classify on-call duty, where employees must be available to their employer at all times, but they may remain at a location of their own choosing. The employee must only be able to start work in good time if necessary. While working time was previously mostly denied, the ECJ has assumed working time at least if the employee must be able to reach the workplace within 8 minutes.[42] Hence, all circumstances must be taken into account, in particular the geographical radius of action.

The classification of constant availability is also controversial. This refers to the more or less pronounced expectation that the employee can be contacted via smartphone and will respond to enquiries immediately or at least promptly.[43] If this would be considered as working time, there would be no need for a right to be unavailable, as working time regulations would apply and ensure the protection of the employee's health. However, the better arguments speak against the assumption of working time. Constant availability is purely factual in nature.[44] This is supported not least by the case law of the ECJ, according to which the actual workload of the employee is decisive: it must be examined, taking all circumstances into account, whether the employee's ability to freely organise his or her life is objectively significantly impaired – if so, this constitutes working time. [45] Furthermore, there would be a contradiction in comparison to on-call duty, which in most cases does not count as working time, even though the employee may actually be called upon to work. If constant availability were to be considered working time due to the associated stress, the category of on-call duty would no longer be tenable and would have to be considered working time in its entirety, just like standby duty. The 'threat' of work is not to be equated with the performance of work itself. It can only be classified as work if the on-call duty reaches a level of intensity that

[42] ECJ of 21 Februrary 2018 – C-518/15 (Rudy Matzak); ECJ of 11. November 2021 – C-214/20 (Dublin City Council).
[43] I. Bokor-Szöcs, *The Right to Disconnect,* Journal of Public Administration, Finance and Law, 2023, vol. 2023, 88 (95).
[44] L. Rudkowski, *Abgrenzungsfragen der Arbeitszeit – Zugleich Vorschlag für Anpassungen des Arbeitszeitgesetzes*, Zeitschrift für Arbeitsrecht, 2022, 510 (521).
[45] ECJ of 11.11.2021 – C-214/20 (Dublin City Council).

transforms quantity into quality.[46] Therefore, constant availability is only as a special form of on-call duty.[47]
However, the assessment as working time and the right to be unavailable must be strictly separated from each other. The right to be unavailable is not about classifying a specific activity as working time, but rather about the related question of the extent to which the employer may interrupt contact with the employee during their non-working time. It would be a misunderstanding to derive a right to be unavailable from the limitation of working time. The question is not whether the employee is obliged to work during a certain period of time, but rather whether the employee may even go so far as to prevent the employer from contacting him at all during this period. It is one thing for the employee to no longer be obliged to perform work, but it is quite another to allow them to go 'underground' from their employer.[48]

II. Basic concepts

It has already been mentioned in the introduction that right to be unavailable can be universally defined as the right of workers not to engage in work-related activities or communications by means of communication tools outside working time. A right in this sense with its own distinct content is conceivable in three variants: statutory targets, a direct right of the employee to ignore contact from the employer, and a ban on the employer contacting the employee.[49] The following does not address a mere restyling or reenforcing the existing regulations. This 'minimalist' approach, for example, underlies the European Social Partners' Framework Agreement on Digitalisation of 2020,[50] according to which unavailability is construed as an updated and reinforced implementation of the traditional right to rest.[51] Even though improving the

[46] H. Hanau, *Zum Flexibilisierungspotenzial der Arbeitszeitrichtlinie*, European Journal of Labour Law, 2019, 423 (429).
[47] W. Kohte, *Arbeitsschutz in der digitalen Arbeitswelt*, Neue Zeitschrift für Arbeitsrecht, 2015, 1417 (1423).
[48] B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 (1429).
[49] D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (129). An overview of the regulations in 15 countries is provided by C. Pocock, *Right to Disconnect 2026: 15 Countries, 4 Frameworks, 1 Plan*, https://employsome.com/blog/right-to-disconnect/.
[50] Available online under https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf.
[51] I. Purificato, I. Senatori, *Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation*, Diritti Lavori Mercati International, 2024, 285 (292).

enforceability of existing labour law is often sufficient and would certainly be preferable to a situation of constant availability,[52] the following section explores more extensive solutions.

1. Statutory targets

The weakest form of a right to be unavailable consists of statutory targets, to which legislation in many countries is limited. Such regulations are still characterised by a high degree of restraint and should be regarded more as 'soft law'.[53] In France, since 2016, for workplaces with 50 employees or more, the right to be unavailable must be made a mandatory subject of collective bargaining – and thus, where applicable, of a subsequent collective agreement. Accordingly, annual negotiations must be held on 'the conditions for the full exercise of the right to be unavailable by the employee and the introduction of measures to regulate the company's use of digital tools, in order to ensure compliance with rest periods and holiday entitlement, as well as respect for personal and family life'. In the absence of an agreement, the employer must, after obtaining the opinion of the Economic and Social Committee, draw up a charter setting out, among other things, 'the procedures for exercising the right to be unavailable'.[54] This approach seeks to combine legal compulsion with contractual flexibility by mandating negotiation without prescribing a specific outcome, thereby preserving sectoral autonomy. It embeds the right to disconnect within participatory workplace governance, rather than treating it as a static statutory entitlement. One advantage of this approach might be that the law ensures that measures are tailored to sectoral and enterprise specific contexts. Conversely, this implies a decentralised and outcome-dependent implementation with the result that the actual content of unavailability agreements varies significantly.[55]
Under the original 2018 regulation in Belgium, the right to be unavailable has been subject to consultation with employee representatives and collective

[52] G. Davidov rightly speaks of an 'enforcement crisis of labour law', see *A Purposive Approach to Labour Law*, Oxford University Press, Oxford 2016, p. 224; in depth *The Enforcement Crisis in Labour Law and the Fallacy of Voluntarist Solutions*, International Journal of Comparative Labour Law and Industrial Relations, 2010, vol. 26, 61.
[53] K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (46 ff); B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427, 1431; L. Rudkowski, *Abgrenzungsfragen der Arbeitszeit – Zugleich Vorschlag für Anpassungen des Arbeitszeitgesetzes*, Zeitschrift für Arbeitsrecht, 2022, 510 (522).
[54] Art. L.2242-17 Code du Travail.
[55] K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (48, 50 f.).

agreements.[56] Under Article 16, 'consultations on the separation from work and the use of digital communication tools must be organised at regular intervals and whenever the employee representatives on the committee so request'. The committee may then, on the basis of these consultations, draw up proposals and submit opinions to the employer. Under Article 17, any agreements resulting from the consultation may be incorporated into the so-called work regulations in accordance with statutory provisions or through the conclusion of a collective agreement. In 2022, more extensive protection was introduced for civil servants, which will be illuminated below.

In Italy, since 2017, the legislature has paved the way for individual agreements on the right to be unavailable by establishing requirements for a written agreement to be concluded between the employer and the employee, which deals with the performance of work outside the workplace. This sets out the employee's rest periods, as well as the technical and organisational measures required to ensure the 'separation of the employee from the technical work equipment'.[57] The right to be unavailable is restricted to work activity in agile mode, in compliance with any agreements signed by the parties and subject to any agreed periods of availability. The characteristic element of agile work, as defined in Articles 18 – 23, is the flexibility in time and space of its execution, consequent to the possibility of carrying it out 'without strict time and place constraints'. The so-called space and time de-structuring of the work performance is further characterized by mobility.[58] While not providing a definition of unavailability, the law is supposed to indirectly lead the legal operator to believe that it pertains particularly to the sphere of non-working time.[59] If the minimum rest period is violated, employees may claim compensation for damage to their physical and mental health.[60]

In Spain, since 2018, employees and public sector workers have 'the right to digital disconnection in order to ensure that their rest periods, holidays and personal and family privacy are respected outside of working hours as defined by law or collective agreements.'[61] In contrast to the French model, the Spanish

[56] Loi du 26 mars 2018 relative au renforcement de la croissance économique et de la cohésion sociale.

[57] Legge 22 maggio 2017, n. 81.

[58] I. Senatori, C. Spinelli, *(Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience*, Italian Labour Law e-Journal, 2021, vol. 14, 209 (231 ff.).

[59] C. Timellini, *La disconnessione bussa alla porta del legislatore*, in: Variazioni su Temi di Diritto del Lavoro, Giappichelli Editore, Torino 2019, p. 315 (332); D. Calderara, *Labor Law and the Right to Disconnect*, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (128).

[60] S. Kubiak, K. Magnuska, *The Right to Disconnect: Real relief for employees or just additional obligations for employers?*, 2021, p. 6.

[61] Art. 88 Ley Orgánica 3/2018, de Protección de Datos Personales y garantía de los derechos digitales.

law frames disconnection primarily as a facet of digital privacy, situating it within the broader context of data protection.[62] Under subsection 2, the arrangements for exercising this right are subject to 'the provisions of the collective agreement or, in the absence of such provisions, the agreement between the company and the employee representatives'. Furthermore, under paragraph 3, the employer shall, after consulting the employee representatives, draw up an internal policy for employees setting out, amongst other things, the procedures for exercising the right to be unavailable. In 2021, this law was extended to cover mobile working.[63]

2. Employee's right to ignore contact from the employer

More significant is a direct right of the employee to ignore messages from the employer – in other words, to 'log out' of the company's communication system ('right to disconnect') or to interrupt the communication channel with the employer ('right to be disconnected'). This goes beyond a statutory target, which still needs to be implemented through a private agreement. A right to ignore contact may involve a genuine entitlement on the part of the employee, an obligation on the part of the employer to tolerate such behaviour, or simply the absence of a legal obligation on the part of the employee to take note of messages from the employer.[64] In this case, the employer is free to contact the employee during their free time; however, the employee is entitled to ignore the message unless an exception is made for emergencies.

a) Regulatory example: Australia

A widely noted legal example of a right to ignore messages can be found in Australia, which introduced a 'right to disconnect' on 26 August 2024, initially for larger companies with at least 15 employees, and subsequently, from 26 August 2025, for all companies.[65] Accordingly, employees may ignore contact or attempts to contact them by an employer or a third party (e.g. a customer or supplier) relating to their work outside working hours, provided this is not

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[62] K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (48). In depth L. Lerouge, F. Pons, *Contribution to the study on the 'right to disconnect' from work*, European Labour Law Journal, 2022, vol. 13, 1 (8).

[63] La Carta de Derechos Digitales Española.

[64] B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 f.

[65] Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023. On this in depth G. Golding, *Introducing Australia's New Right to Disconnect*, Labour & Law Issues, 2024, vol. 46, C.1.

unreasonable. Whether an employee's refusal to respond to a contact is unreasonable depends on the specific circumstances and is assessed by taking various factors into account: The reason for the contact or attempted contact, in particular the urgency ('emergency?'); the manner in which contact is made or attempted and the extent of the disruption this causes the employee; the extent to which the employee is compensated for this (through financial or non-financial means); the nature of the employee's role and their level of responsibility; and the employee's personal circumstances, including family or caregiving responsibilities. A first Court case concerns a teacher who sued her employer in the Federal Court of Australia for damages amounting to almost AUD 800,000: he is alleged to have infringed her right to be unavailable by asking her, during the school holidays and in the run-up to a planned dismissal, to respond to a series of allegations against her.[66]
Some business representatives consider this regulation as excessive, because it could be more difficult for companies to continue making profits. A commentator in The Australian Financial Review stated that 'the hyper-politicised creation of another source of conflict between employers and employees in an already conflict-based workplace framework underscores how disengaged the political debate is from the cooperative and bargaining-based IR agenda that's needed to boost productivity'.[67] Conversely, it is argued that the right to disconnect will 'contribute to improvements in mental health and work-family balance, and increase productivity'.[68] Indeed, more than half a year since its implementation, the Australian HR Institute found that 58% of HR leaders in Australia said the legislation either 'significantly increased' or 'somewhat increased' employee engagement and productivity levels at their organisations.[69] Ultimately, the economic impact remains to be seen.
Irrespective thereof, this legislation is viewed in some academic literature as an important step towards addressing the complex challenges posed by technology-enabled flexible working models. Whilst the right to be unavailable offers a promising framework for protecting employees' leisure time, its success depends on careful implementation. The experiences of early adopters suggest that a top-down legislative approach, supplemented by sector-specific guidelines and proactive workplace policies, can foster a more balanced and productive working environment. However, even the supporters of the law

[66] https://www.gadens.com/legal-insights/first-case-involving-adverse-action-and-the-right-to-disconnect (Stand: 6.2.2026).
[67] Quoted from E. Josserand, M. Boersma, *Australia's right to disconnect from* work, Journal of Industrial Relationsm 2024, vol. 66, 703 (711).
[68] D. Pocock, The Australian Financial Review of 8 Februar 2024.
[69] https://www.hcamag.com/au/specialisation/benefits/right-to-disconnect-delivers-benefits-to-business-report/536223.

admit that legislation alone is not enough. Rather crucial are joint efforts to change workplace culture, such as awareness-raising measures, training and the implementation of practical measures that respect employees' right to disconnect and are tailored to the specific needs of different sectors and roles.[70] This is consistent with the objection already raised, namely that FOMO can undermine the effective enforcement of the law.[71]

b) Critical evaluation

A key objection to the concept of a right to ignore contact from the employer is it does not take sufficient account of the purpose of the right to be unavailable, namely to protect the employees against (imperceptibly) 'sliding' into work performance and thus ultimately serves to protect the health of employees. Reading an email is often half the step towards replying to it. Employees should be given the opportunity to switch off from work for a certain period of time without being tempted to resume it. The purpose of a right to ignore contact would be further undermined by an exception for emergencies. For no matter how precisely an emergency is defined, from the employee's perspective it is almost impossible to tell at the moment the exception is invoked whether an emergency actually exists or not. As this approach allows the employer to contact the employee at any time, the risk regarding the existence of an emergency is shifted onto the employee, with the result that, when in doubt, the employee will prefer to read the message. Thus, such a right to be unavailable would only offer the employee limited protection from their own actions and could still give rise to expectations on the employer's part, which the employee would then fear disappointing.[72] Only a genuine interruption in communication eliminates the risk of having to deal with the question of whether it would be better to respond to a particular email after all ('What I don't know won't hurt me'). However, without an exception for emergencies, the employer's interests would in turn be unduly compromised, particularly if the employee can completely block the means of communication.[73] Against this background, a right to ignore contact from the employer does not appear to allow for a fair balance of interests.

[70] E. Josserand, M. Boersma, *Australia's right to disconnect from work*, Journal of Industrial Relationsm 2024, vol. 66, 703 (715 f.). Expressly in favour of the law G. Golding, *Introducing Australia's New Right to Disconnect*, Labour & Law Issues, 2024, vol. 46, C.1 (C.17 ff.).
[71] See above under B) II.
[72] I. Bokor-Szöcs, *The Right to Disconnect,* Journal of Public Administration, Finance and Law, 2023, vol. 2023, 88 (95).
[73] B. Waas, *Das Recht auf Nichterreichbarkeit*, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 (1429).

3. Ban on the employer contacting the employee

This weakness is avoided by adopting a different approach, namely a ban on the employer contacting the employee. According to this concept, the option to make contact remains, although the employer is not permitted to contact the employee during their non-working time at all, unless an exception is made for emergencies. In case of an emergency, the employee must take note of the message and reply if necessary. This approach also includes the requirement for the employer to send a communication on the condition that the employee does not receive it during his non-working time.[74] In this scenario, the risk of an emergency arising lies with the employer: if the employee receives a message outside working hours, they know (assuming the employer is acting lawfully) that an emergency exists or has at least been deemed to exist by the employer, and that they must therefore acknowledge the message. If it subsequently transpires that a reasonable employer should not have deemed an emergency to exist, the employer has committed a breach of duty.
For example, such a right to be unavailable was introduced in Portugal for employees working remotely on 1 January 2022.[75] According to this, employers are not permitted to contact their employees during their free time, except in cases of force majeure. In Belgium, such a rule has been in place for civil servants since 1 February 2022: they may no longer be contacted outside regular working hours, unless there are 'exceptional and unforeseen circumstances'.[76] There are plans to extend this scheme to the private sector.

D) Developments at European level

At European level, an explicitly defined and recognised right to disconnect does not exist. To change this, the European Parliament proposed a directive that would complement Directive 2003/88/EC, Directive (EU) 2019/1152 on transparent and predictable working conditions, Directive (EU) 2019/1158 on work-life balance, and the Framework Directive 89/391/EEC on health and safety at work.[77]

[74] *On this D. Calderara, Labor* Law and the Right to Disconnect, Gdańskie Studia Prawnicze, 2025, vol. 2, 127 (129).
[75] Lei n.o 83/2021, on this M. Puchet, A.C. Ribeiro Costa, *Going Beyond the Right to Disconnect in a Flexible World*, Industrial Law Journal, 2022, vol. 51, 967.
[76] Arrêté royal du 2 décembre 2021 modifiant l'arrêté royal du 2 octobre 1937.
[77] Draft Report with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

The proposed directive aims to establish a right for workers to disconnect, whereby they shall not be obliged 'to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time' (Article 2(1)). Under Article 3(3), it is the responsibility of Member States to ensure the right to disconnection for workers. To this end, they shall, in particular, impose an obligation on employers to 'set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured' (Article 3(2)). Furthermore, 'Member States shall ensure that employers implement the right to disconnect in a fair, lawful and transparent manner' (Article 3(3)) and guarantee that workers can exercise their right to be unavailable (Article 4(1)), with a catalogue of minimum working conditions being laid down.
While the proposal is welcomed by some authors,[78] the benefits of such a directive are not entirely clear. Some matters are left to the Member States, but clear limits are set insofar as, on the one hand, non-availability is to be the rule in future, from which deviations are only possible in very exceptional cases, and, on the other hand, deviations are only to be permitted if they have been agreed in collective agreements.[79] Critics argue that the European Commission should rather leave the floor to the European Social Partners' Framework Agreement on Digitalisation for the implementation at national level of measures on the right to disconnect.[80] On 4 December 2025, the European Commission launched a consultation on a Quality Jobs Act, which would also provide for a right to be unavailable.[81]
It remains to be seen whether, when and in what form European legislation will come into force. As the proposed directive has not yet progressed beyond this stage, the European Commission concluded its consultation with the social partners in October 2025 and indicated that the directive would be adopted in 2026 or 2027.[82] As was to be expected, the social partners expressed differing views on the need for additional EU legislation in their responses to the consultation. The ETUC, with the support of most trade unions, advocated for

[78] I. Bokor-Szöcs, *The Right to Disconnect*, Journal of Public Administration, Finance and Law, 2023, vol. 2023, 88 (95); K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (58).
[79] B. Waas, Das Recht auf Nichterreichbarkeit, in: W. Brose et al (Eds.), Festschrift für U. Preis, C.H. Beck, München 2021, p. 1427 (1433).
[80] L. Battista, *The European Framework Agreement on Digitalisation*, Italian Labour Law e-Journal, 2021, vol. 14, 105 (117).
[81] 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, C(2025) 9944 final.
[82] C. Pocock, *Right to Disconnect 2026: 15 Countries, 4 Frameworks, 1 Plan*, https://employsome.com/blog/right-to-disconnect/.

the right to be unavailable to be regulated in a binding manner, further clarified, guaranteed to apply to all workers, and enforced. The employers' representatives called for accompanying and supportive non-legislative measures to clarify existing regulations and ensure practical implementation.[83] German employers' organisations have spoken out against a mandatory regulation, citing the resulting financial burden.[84]

E) Key elements of a regulatory framework

A complete regulatory proposal would be well beyond the scope of this article. The following remarks are therefore limited to key elements of a regulatory framework. With regard to the function of the law to ensure occupational health, personal autonomy and work-life-balance, some authors identify three interdependent elements: first, the right to refrain from performing work beyond contractual hours; second, protection from adverse consequences for disconnecting; and third, the employer's proactive duty to establish conditions that ensure disconnection.[85] These will be examined below, along with other parameters.

A key initial decision concerns the *regulatory level* (statute, collective agreement or employment contract) at which a right to be unavailable is established. Given the aforementioned tension between private autonomy and employee protection, it would be desirable to have legislation that leaves sufficient scope for private, tailor-made solutions.[86]

The *scope of application* should cover all employees, in line with the purpose of the right to disconnect,[87] even though restrictions are in place in some countries, such as in Spain or Portugal for employees working remotely or in Italy for agile work. However, *size-based exemptions* may be appropriate to

[83] 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, C(2025) 9944 final, p. 3.

[84] https://arbeitgeber.de/quality-jobs-act-droht-eu-entlastung-zu-gefaehrden (Stand: 6.2.2026).

[85] I.V. Lagutina, *Right to Disconnect as One of the Employees' Digital Labour Rights*, Juris Europensis Scientia, 2022, vol. 3, 28 (30 ff.); K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (46).

[86] In favour of a right to disconnect through collective bargaining I. Purificato, I. Senatori, *Implementing the European Social Partners Framework Agreement on Digitalization at the Crossroads of Collective Bargaining and Participation*, Diritti Lavori Mercati International, 2024, 285 (302).

[87] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, p. 16; K. Dumančić, *Implementation of "the right to disconnect" into the EU law*, EU and Comparative Law Issues and Challenges Series, 2025, vol. 9, 42 (58).

protect small businesses.[88] The threshold could be set at 15 employees – as was originally the case in Australia. In other jurisdictions, higher thresholds are also found, like 25 (Ontario)[89] 50 (France) or even 100 employees (Quebec).[90]

With regard to the content of the regulation, the basic principles have already been outlined and a *ban on employers contacting employees* has been advocated above. However, *exceptions* should always be provided for emergencies, taking the employer's interests into account.[91] The European Parliament's proposed directive refers vaguely in Article 4 to 'exceptional circumstances, such as force majeure or other emergencies', whereby the employer must provide each affected employee with a written justification of the necessity whenever this derogation is invoked. A clearer definition is desirable. Belgian law refers to 'exceptional and unforeseen reasons requiring measures that cannot wait until the next working period'.[92] The Spanish collective agreement for credit institutions refers to 'events that may pose a serious threat to individuals or cause potential harm to the company, its customers and/or its shareholders, as well as any other legal and/or regulatory events whose urgency requires the adoption of special measures or immediate responses.'[93] Swisscom's policy on remote working refers to 'emergencies that require the employee to be immediately available or to respond'.[94] According to a proposed provision in an employment contract, an exception shall apply where 'exceptional operational circumstances arise which do not allow action to be deferred until the next working period […]. Exceptional operational circumstances […] include, in particular, urgent emergencies and disasters, as well as unforeseeable situations in which there is a risk of disproportionate damage or in which the failure to carry out necessary tasks significantly jeopardises the results of previous work. […]'.[95]

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[88] Critical on this K. Lempen, *Implementing workers' right to disconnect*, in: M. Redinha, C. Carvalho, J. Vicente (eds.), New Employment Relations: Untying the Knot(s), Lisbon 2025, p. 127 (131); see also European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, p. 16. For a detailed discussion of size-based exemptions in employment law, see A. Stöhr, *Small Business Exemptions in Labor Law*, Labor Law Journal, 2018, vol. 69, 101.

[89] Employment Standards Act, 2000, Part VII.0.1.

[90] Bill n°799 (‚Right to Disconnect Act').

[91] On this K. Lempen, *Implementing workers' right to disconnect*, in: M. Redinha, C. Carvalho, J. Vicente (eds.), New Employment Relations: Untying the Knot(s), Lisbon 2025, p. 127 (133 ff.).

[92] Arrêté royal du 2 décembre 2021 modifiant l'arrêté royal du 2 octobre 1937,

[93] Spanish collective agreement for credit institutions, Article 35c.

[94] Reglement zum mobilen Arbeiten basierend auf Art. 2.3.4 des Gesamtarbeitsvertrages (GAV) Swisscom, Ziff. 7.

[95] V.D. Dohrmann, *Das Recht auf Nichterreichbarkeit - Notwendigkeit und Gestaltungsoptionen*, Betriebsberater, 2022, 2228 (2331 f.).

It must also be ensured that *employees do not suffer any disadvantages* – such as discrimination, being treated less favourably or even dismissal – as a result of exercising their right to be unavailable.[96] Italian law, for example, expressly provides that employees must not suffer any detriment in their employment relationship as a result of exercising their right to be unavailable, including disciplinary measures, and that their pay must not be reduced for this reason. In line with the Whistleblower Directive (EU) 2019/1937, a reversal of the burden of proof may apply in that, in cases of doubt, such disadvantage is deemed to be based on an employee's refusal to be available during their free time, unless the employer can prove that the disadvantage was based on other grounds.[97] Furthermore, compliance with the right to be unavailable should be *monitored*. This should not be left solely to employers, as they can too easily evade their obligations through self-assessment alone.[98] One internal solution would be to introduce a complaints procedure for employees who's right to be unavailable has been violated by their employer.[99] Possible external solutions include, for example, state inspections carried out by a public authority or other bodies (in the form of regular reports or inspections) or monitoring by the social partners. Finally, appropriate *sanctions for violations* should provide incentives to respect the right to be unavailable. The best protection is provided by monetary sanctions.[100] In Quebec, for example, the amount of the fine depends on the size of the company and the number of breaches.[101]

F) Conclusion

Constant availability can have a significant negative impact on health and safety at work, work-life balance and recovery from work. Only a statutory provision or a private agreement binding the parties to the employment contract to clear rules can provide the certainty that one may safely ignore contact from the employer. One can distinguish three basic concepts: targets, a direct right of

[96] V.D. Dohrmann, *Das Recht auf Nichterreichbarkeit - Notwendigkeit und Gestaltungsoptionen*, Betriebsberater, 2022, 2228 (2331).
[97] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, S. 26.
[98] European Law Institute, *Guiding Principles on Implementing Workers' Right to Disconnect*, 2023, S. 27.
[99] C. Mishra, *Should the Right to Disconnect be Legally Enforced?*, International Journal of Trend in Scientific Research and Development, 2022, vol. 6, 2069 (2072).
[100] T. Jochman, *Effects on Employees' Compensation Under the Right to Disconnect*, Marquette Benefits and Social Welfare Law Review, 2021, vol. 22, 209 (217); in favour of this N.C. Thang, *A Comparative Study of the Right to Disconnect with Policy Recommendations for Vietnam*, Hong Kong Journal of Social Sciences, 2025, vol. 65, 136 (143).
[101] Bill n°799 (‚Right to Disconnect Act').

the employee to ignore contact from the employer, and a ban on the employer contacting the employee. The main disadvantage of a right to ignore contact is that a right to be disconnected does not allow for contact in emergencies, or that a right to disconnect shifts the risk regarding the occurrence of an emergency onto the employee: if employees are required to take note of messages during their non-working time in emergencies, it is difficult to determine whether such an emergency exists, regardless of how sophisticated the emergency is defined. Therefore, employees will always take note of messages when in doubt. Hence, a ban on the employer contacting the employee is preferable, if it includes adequate exceptions for emergencies. In order to provide flexibility, legislators should limit themselves to the essentials and leave the details to the parties involved. The key regulatory issues are as follows: the scope, including small business exemptions; preventive action and information; the duty to reconnect; the level of regulation; the protection against adverse treatment or consequences; monitoring and enforcement; sanctions and non-regression. Ultimately, one has to bear in mind that even when a right to be unavailable has been enshrined, it should regularly be assessed and viewed as subject to improvements, taking into account the constant evolution of working conditions and the working environment.[102]

[102] K. Lempen, *Implementing workers' right to disconnect*, in: M. Redinha, C. Carvalho, J. Vicente (eds.), New Employment Relations: Untying the Knot(s), Lisbon 2025, p. 127 (143).

Blurred Lines: How Employer-Driven Volunteering Reshapes the Meaning of Work

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Abstract. This paper examines the legal classification of employee participation in corporate social responsibility (CSR) initiatives organised by employers, focusing on the boundary between work and non-work under European Union labour law. The employment relationship has evolved toward a value-based model in which employees are positioned as stakeholders advancing organisational objectives through volunteering programmes and sustainability initiatives formally characterised as voluntary. The analysis reveals that employee CSR participation has become a structured component of corporate governance, frequently coordinated during paid working hours, integrated into performance evaluation systems, publicly recognised through internal communications, and linked to career advancement. Under such conditions, formal voluntariness conceals organisational mechanisms that constrain employee autonomy and reflect structural subordination inherent in the employment relationship. The study examines whether time devoted to employer-organised CSR activities constitutes "working time" under Article 2(1) of Directive 2003/88/EC. Through systematic analysis of Court of Justice case law, including *Simap*, *Jaeger*, *Matzak*, and *BX*, the paper demonstrates that the decisive criterion lies in the employee's availability and subordination to the employer's authority. Where employers determine when, where, and how CSR activities occur, where participation is integrated into organisational oversight, and where employees perceive professional consequences for non-participation, the legal criteria of working time are fulfilled. The paper further addresses work intensification accompanying CSR participation, where unchanged contractual duties generate latent intensification through heightened productivity expectations and compressed schedules. This legal qualification carries significant consequences for remuneration, working time

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limits, and occupational health protection. The analysis contributes to understanding how contemporary corporate practices reshape labour law concepts, arguing that CSR participation materially restricting employees' autonomy should presumptively be classified as working time, preserving protective boundaries essential to employees' fundamental rights.

Keywords: *Working time; Corporate social responsibility; Directive 2003/88/EC; Employee consent; Structural subordination; Work intensification; EU labour law; Employer-organised volunteering.*

1. Introduction

The employment relationship has undergone a profound transformation over the past decades[1]. From the classical Fordist model, grounded in hierarchy, subordination, and a strictly delimited set of duties defined by the job description, it has evolved toward a relational and value-based model in which employees are increasingly regarded as integral stakeholders within the organisation. Contemporary human resource management and corporate governance discourse no longer portray employees merely as factors of production but as partners in advancing shared organisational values and societal objectives[2]. In this paradigm, the employment relationship extends beyond the economic exchange of labour for remuneration, encompassing participation in the social and environmental mission of the enterprise[3].

This reconfiguration is particularly visible in the growing involvement of employees in corporate social responsibility (CSR) and sustainability programmes. Through volunteering initiatives, environmental campaigns, and

[1] Z. Adams, *The Legal Concept of Work*, Oxford University Press, Oxford, 2022; S. Deakin, *Decoding Employment Status*, in *King's Law Journal*, 2020, vol. 31, n. 2, 180–193; A. Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe*, Oxford University Press, Oxford, 2001.

[2] I. Aust, B. Matthews, M. Muller-Camen, *Common Good HRM: A Paradigm Shift in Sustainable HRM?*, in *Human Resource Management Review*, 2020, vol. 30, 100705; A. Crane, D. Matten, S. Glozer, L. Spence, *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford University Press, New York, 2019; R. Díaz-Carrion, M. López-Fernández, P.M. Romero-Fernández, *Evidence of Different Models of Socially Responsible HRM in Europe*, in *Business Ethics: A European Review*, 2019, vol. 28, n. 1, 1–18; M.R. Greenwood, *Ethics and HRM: A Review and Conceptual Analysis*, in *Journal of Business Ethics*, 2002, vol. 36, n. 3, 261–278; D.E. Rupp, *An Employee-Centered Model of Organizational Justice and Social Responsibility*, in *Organizational Psychology Review*, 2011, vol. 1, n. 1, 72–94; G.D. Isbasoiu, *Tourists as Stakeholders. For a Better Tourist Involvement in Promoting Sustainable Tourism*, in *Jus et Civitas*, 2023, vol. 10, 41-47.

[3] T. Piketty, *Capital et Idéologie*, Éditions du Seuil, Paris, 2019.

community projects, employers promote an image of collective engagement in which both the organisation and its workforce contribute to the firm's social footprint. Employees are not only participants in such activities but also feature prominently in corporate sustainability reports, where their actions serve as tangible expressions of the company's ethical and reputational commitments. CSR thus functions as a new vector of organisational identity, blending moral discourse with managerial control and repositioning employees as ambassadors of corporate virtue[4].

However, this normative reframing of the employment relationship cannot obscure its underlying legal structure. Despite the rhetoric of shared purpose, the contract of employment remains a juridical instrument through which the employee undertakes to perform work for and under the authority of an employer in exchange for remuneration known as salary. The essential elements of subordination, direction, and control persist as the defining features of the relationship. Consequently, any activity organised, coordinated, or incentivised by the employer must be examined through the lens of these legal foundations, regardless of its ethical or philanthropic presentation.

In this context, the participation of employees in CSR initiatives, particularly those involving organised volunteering, raises fundamental legal questions. To what extent is the employee's consent to such participation genuinely free, given the inherent asymmetry of the employment relationship and the reputational and promotional incentives attached to CSR involvement? What is the legal nature of the time devoted to these activities: can it be qualified as "working time" within the meaning of Article 2(1) of Directive 2003/88/EC, or does it belong to the sphere of personal autonomy and rest? Finally, how should the potential consequences of this qualification be addressed, including the implications for remuneration, occupational safety, and the right to rest guaranteed under Article 31(2) of the Charter of Fundamental Rights of the European Union?

These questions are not merely technical but fundamental to understanding how contemporary corporate practices challenge traditional labour law boundaries. As CSR becomes an embedded component of European corporate

[4] J. Macke, D. Genari, *Systematic Literature Review on Sustainable Human Resource Management*, in *Journal of Cleaner Production*, 2019, vol. 208, n. 1, 806–815; C. Obrad, V. Gherheș, *A Human Resources Perspective on Responsible Corporate Behavior: Case Study of Multinational Companies in Western Romania*, in *Sustainability*, 2018, vol. 10, n. 3, 726; D. Satz, *What Is Wrong with the Commodification of Human Labor Power: The Argument from "Democratic Character"*, in J.D. Jonker, G.J. Rozeboom (eds.), *Working as Equals: Relational Egalitarianism and the Workplace*, Oxford University Press, Oxford, 2023, Chap. 2.

governance[5], labour law must confront the paradox that activities celebrated as voluntary expressions of solidarity may, in practice, operate as extensions of employer control. The present analysis therefore seeks to clarify the legal significance of employee participation in CSR, to assess its compatibility with the normative framework governing employment, and to contribute to a broader understanding of how contemporary corporate practices reshape the concept of "work" under European labour law.

2. Methodological Framework

The methodological approach adopted in this study is grounded in the recognition that the legal classification of employee participation in employer-driven volunteering cannot be examined in isolation from its organisational and managerial context. A purely doctrinal analysis—detached from the empirical reality of how corporate social responsibility (CSR) initiatives are designed, supervised, and experienced—would risk generating abstract conclusions unsupported by the factual mechanisms that shape employee behaviour and managerial control.

Accordingly, this research proceeds in two analytically distinct but complementary stages. The first stage relies on a contextual and interpretive analysis of organisational practices related to CSR and volunteering. Drawing on evidence from corporate sustainability reports and secondary literature in management, the study examines both the *patrimonial* objectives of such programmes (economic, reputational, and fiscal) and their *non-patrimonial* aims (ethical, relational, or motivational). It further analyses the organisational mechanisms through which employees are integrated into the company's volunteering activities.

This stage does not aim to quantify participation, but rather to reconstruct the normative and managerial logic underpinning these initiatives. The objective is to emphasise that CSR participation must be assessed, on a case-by-case basis, both as a genuinely voluntary expression of employee agency and as a managed form of engagement aligned with the employer's strategic and reputational objectives. This necessarily requires that the ensuing legal analysis be grounded in a rigorous establishment of the facts in each individual case.

The second stage applies this organisational understanding to the legal framework governing employment relations under European Union law. Building upon the factual findings from the first stage, the analysis examines

[5] D. Volosevici, *Corporations – Between Governance and Social Responsibility: The European Commission Approach*, in *Economic Insights – Trends and Challenges*, 2013, vol. II (LXV), n. 2, 124–135.

three interrelated legal dimensions the authenticity of the employee's consent to participate in CSR activities organised or directed by the employer; the legal qualification of the time devoted to such activities under Article 2(1) of Directive 2003/88/EC and the relevant case law of the Court of Justice of the European Union; and the implications for occupational safety and accident protection.

The methodological design thereby ensures that legal interpretation remains anchored in the concrete dynamics of organisational life. It allows for a rigorous assessment of whether participation in CSR activities—although formally voluntary—reflects the structural subordination inherent in the employment relationship.

Finally, this methodological framework recognises that the employment contract remains, in essence, a legal instrument by which the employee undertakes to perform work under the authority of the employer in exchange for remuneration. The extension of this framework to include moral or reputational obligations—such as participation in CSR programmes—calls for a careful examination of whether such practices respect the boundaries of contractual consent and the employee's rights to autonomy, rest, and safety.

3. From Ethical Engagement to Organisational Control: Employee Participation in CSR Practices

It is widely acknowledged, and has been for a long time, that corporate social responsibility (CSR) integrates social and environmental concerns with business objectives, thereby shaping corporate values and contributing to the organisation's overall reputation[6]. The growing institutionalisation of corporate social responsibility has not only reshaped the external perception of companies but also transformed the internal dynamics of employment relations. Beyond its philanthropic dimension, CSR now functions as a

[6] H.R. Bowen, *Social Responsibility of the Businessman*, Harper & Row, New York, 1953; T.J. Brown, P.A. Dacin, *The Company and the Product: Corporate Associations and Consumer Product Responses*, in *Journal of Marketing*, 1997, vol. 61, n. 1, 68–84; S. Sen, C.B. Bhattacharya, *Does Doing Good Always Lead to Doing Better? Consumer Reactions to Corporate Social Responsibility*, in *Journal of Marketing Research*, 2011, vol. 38, n. 2, 225–243; C.M. Branco, L.L. Rodrigues, *Corporate Social Responsibility and Resource-Based Perspectives*, in *Journal of Business Ethics*, 2006, vol. 69, n. 2, 111–132; X. Luo, C.B. Bhattacharya, *Corporate Social Responsibility, Customer Satisfaction, and Market Value*, in *Journal of Marketing*, 2006, vol. 70, n. 4, 1–18; G. Walsh, S.E. Beatty, *Customer-Based Corporate Reputation of a Service Firm: Scale Development and Validation*, in *Journal of the Academy of Marketing Science*, 2007, vol. 35, n. 1, 127–143; K. Walker, *A Systematic Review of the Corporate Reputation Literature: Definition, Measurement, and Theory*, in *Corporate Reputation Review*, 2010, vol. 12, n. 4, 357–387.

governance instrument that aligns employee behaviour with the organisation's strategic and reputational objectives[7].
CSR strengthens corporate identity primarily through the enhancement of image and reputational legitimacy. Companies that invest in socially responsible initiatives, move beyond mere compliance with regulatory obligations by cultivating a positive public profile that enhances their capacity to attract and retain skilled employees[8]. Such initiatives associate the enterprise with values such as ethics, solidarity, and civic engagement. At the same time, corporate social responsibility helps shape an organisational culture that genuinely reflects the company's stated commitment to social and environmental values. In organisations where internal culture is cohesive and consistent with these values, CSR initiatives tend to have a stronger impact, leading to measurable gains in performance and a positive effect on employee satisfaction[9].
When CSR principles are perceived as authentically integrated into a company's core values, rather than treated as symbolic or peripheral, they become embedded within the organisation's moral and cultural framework[10]. Under

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[7] A.D. Ellis, *The Impact of Corporate Social Responsibility on Employee Attitudes and Behaviors*, in *Academy of Management Proceedings*, Academy of Management, Briarcliff Manor, NY, 2009, 1–6; J. Shen, H. Zhang, *Socially Responsible Human Resource Management and Employee Support for External CSR: Roles of Organisational CSR Climate and Perceived CSR Directed toward Employees*, in *Journal of Business Ethics*, 2019, vol. 156, n. 3, 875–888; Z. Zhang, J. Wang, M. Jia, *Integrating the Bright and Dark Sides of Corporate Volunteering Climate: Is Corporate Volunteering Climate a Burden or Boost to Employees?*, in *British Journal of Management*, 2021, vol. 32, n. 2, 494–511.

[8] M.R. Greenwood, *Ethics and HRM: A Review and Conceptual Analysis*, in *Journal of Business Ethics*, 2002, vol. 36, n. 3, 261–278; A. Crane, D. Matten, S. Glozer, L. Spence, *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford University Press, New York, 2019; S.-R. Bang, M.-C. Choi, J.-Y. Ahn, *Human Resource Practices for Corporate Social Responsibility: Evidence from Korean Firms*, in *Frontiers in Psychology*, 2022, vol. 13, 893243.

[9] M.L. Barnett, R.M. Salomon, *Beyond Dichotomy: The Curvilinear Relationship Between Social Responsibility and Financial Performance*, in *Strategic Management Journal*, 2006, vol. 27, n. 11, 1101–1122; X. Deng, X. Long, D.A. Schuler, H. Luo, X. Zhao, *External Corporate Social Responsibility and Labor Productivity: AS-Curve Relationship and the Moderating Role of Internal CSR and Government Subsidy*, in *Corporate Social Responsibility and Environmental Management*, 2020, vol. 27, n. 1, 393–408; I. Ducassy, *Does Corporate Social Responsibility Pay Off in Times of Crisis? An Alternate Perspective on the Relationship Between Financial and Corporate Social Performance*, in *Corporate Social Responsibility and Environmental Management*, 2013, vol. 20, n. 3, 157–167; J.S. Story, F. Castanheira, *Corporate Social Responsibility and Employee Performance: Mediation Role of Job Satisfaction and Affective Commitment*, in *Corporate Social Responsibility and Environmental Management*, 2019, vol. 26, n. 6, 1361–1370; S. Valentine, G. Fleischman, *Ethics Programs, Perceived Corporate Social Responsibility and Job Satisfaction*, in *Journal of Business Ethics*, 2008, vol. 77, n. 2, 159–172.

[10] H.-R. Kim, M. Lee, H.-T. Lee, N.-M. Kim, *Corporate Social Responsibility and Employee–Company Identification*, in *Journal of Business Ethics*, 2010, vol. 95, n. 4, 557–569; R. van Dick, J.R. Crawshaw, S. Karpf et al., *Identity, Importance, and Their Roles in How Corporate Social Responsibility Affects Workplace Attitudes and Behavior*, in *Journal of Business and Psychology*, 2020, vol. 35, n. 2, 159–169; R.C. Sheel, N. Vohra, *Relationship Between Perceptions of Corporate Social Responsibility and*

such circumstances, employees are more likely to internalize the company's mission and to perceive its social and environmental commitments as congruent with their own ethical convictions and personal sense of purpose. This congruence between individual and organisational values exerts a measurable influence on employee retention. Identification with the organisation fosters affective commitment and a durable sense of belonging that transcends purely transactional or economic motivations. Employees who experience such alignment tend to exhibit higher loyalty and lower turnover intentions, as their attachment to the enterprise is grounded not merely in contractual reciprocity but in shared meaning, collective purpose, and long-term identification with the company's broader social mission[11].

Employee participation in corporate social responsibility initiatives is increasingly encouraged and institutionalised within organisations, to the extent that employees often become integral components of CSR programs themselves. Companies that incorporate CSR into performance appraisal systems actively stimulate employee engagement by linking participation to financial incentives such as bonuses or promotions[12]. This integration of CSR into reward structures transforms ostensibly voluntary activities into actions perceived as instrumental for achieving professional success.

Moreover, CSR involvement frequently functions as an implicit criterion for career advancement. Employees who participate in CSR initiatives may anticipate heightened managerial recognition, which can, in turn, enhance their prospects for promotion and professional visibility within the organisation. The symbolic and reputational dimensions of CSR engagement further reinforce these dynamics. Public acknowledgment, through awards, mentions in corporate sustainability reports, or visibility on company websites and press releases, shapes how employees perceive the social and professional value of their participation[13].

Organisational Cynicism: The Role of Employee Volunteering, in *The International Journal of Human Resource Management*, 2016, vol. 27, n. 13, 1373–1392.

[11] L. Lee, L. Chen, *Boosting Employee Retention through CSR: A Configurational Analysis*, in *Corporate Social Responsibility and Environmental Management*, 2018, vol. 25, n. 5, 948–960; M.P. Low, S.F. Ong, P.M. Tan, *Would Internal Corporate Social Responsibility Make a Difference in Professional Service Industry Employees' Turnover Intention? A Two-Stage Approach Using PLS-SEM*, in *Global Business and Management Research*, 2017, vol. 9, n. 1, 24–41; D.K. Peterson, *The Relationship Between Perceptions of Corporate Citizenship and Organisational Commitment*, in *Business and Society*, 2004, vol. 43, n. 3, 296–319; D.E. Rupp, R. Shao, D.P. Skarlicki, E.L. Paddock, T.-Y. Kim, T. Nadisic, *Corporate Social Responsibility and Employee Engagement: The Moderating Role of CSR-Specific Relative Autonomy and Individualism*, in *Journal of Organizational Behavior*, 2018, vol. 39, n. 5, 559–579.

[12] V. Soundararajan, J.A. Brown, *Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective*, in *Journal of Business Ethics*, 2016, vol. 134, n. 1, 83–102.

[13] D.E. Rupp, *op. cit.*

Employee perceptions of corporate social responsibility may vary depending on factors such as gender, occupational status, generational affiliation, and the economic sector in which individuals are employed. These differences shape both the degree of employee engagement in CSR initiatives and the way in which the benefits and broader impact of such activities are perceived. Understanding these variations is essential for assessing the voluntariness of participation and the extent to which CSR practices reinforce or mitigate structural inequalities within the employment relationship.

Research indicates that men and women may perceive and experience CSR in distinct ways, influencing their patterns of participation in volunteering or social engagement programs. As Rupp et al.[14] note, gendered value orientations play an important role in shaping employees' motivation to engage in socially responsible activities. Women, in particular, tend to display stronger pro-social and altruistic motivations, which may enhance their willingness to participate in CSR initiatives. This divergence contributes to differentiated forms of engagement, with gender-specific expectations influencing how employees align their identities with the company's social objectives. Such patterns may also reinforce organisational stereotypes, as participation becomes associated with gendered conceptions of care, empathy, or moral responsibility.

Occupational status further influences how CSR participation is perceived. Employees occupying higher hierarchical positions, such as managers or team leaders, often regard CSR involvement as an opportunity for professional development and the enhancement of personal reputation[15]. For them, CSR functions as an instrument of career advancement and social signalling within the organisation. Conversely, lower-level employees may perceive CSR participation as an additional obligation—an expectation that extends their workload without proportional recognition or compensation.

Generational affiliation also plays a central role in shaping attitudes toward CSR. Younger employees, particularly those belonging to the Millennial and Generation Z cohorts, tend to value social responsibility as an integral component of corporate identity. These generations expect their employers to demonstrate active social engagement, perceiving CSR not as a peripheral obligation but as a core dimension of organisational legitimacy. For them, participation in CSR reinforces personal and professional authenticity. By contrast, older generations, whose work identities were often shaped in

[14] D.E. Rupp, R. Shao, M.A. Thornton, D.P. Skarlicki, *Applicants' and Employees' Reactions to Corporate Social Responsibility: The Moderating Effects of First-Party Justice Perceptions and Moral Identity*, in *Personnel Psychology*, 2013, vol. 66, n. 4, 895–925.

[15] H. Choi, B. Choi, J. Byun, *The Relationship Between Corporate Social Responsibility and Earnings Management: Accounting for Endogeneity*, in *Investment Management and Financial Innovations*, 2018, vol. 15, n. 4, 69–84.

different economic and cultural contexts, may view CSR as an externally imposed or strategically motivated initiative, thereby engaging with it more instrumentally or sceptically[16].

Sectoral differences further complicate these dynamics. Employees in the non-profit or public sectors, whose professional ethos is already oriented toward collective or humanitarian objectives, generally perceive CSR more positively than those in the corporate sector, where such initiatives may be viewed as reputation-driven or marketing-oriented[17].

An examination of the sustainability reports submitted by leading EU-based corporations by market capitalization reveals a marked evolution in the role of employee volunteering—from a marginal philanthropic gesture to a structured component of corporate governance and human resources policy. What once appeared as a manifestation of individual altruism has been progressively institutionalised as an element of managerial strategy, closely tied to corporate reputation and compliance with sustainability standards.

ASML[18] offers a paradigmatic example of this managerial formalisation through its *Community Partnership Program (CPP)* and *Employee Giving* initiatives. Employees are granted eight hours of paid leave annually to participate in employer-approved projects, cumulatively generating 41,368 hours of volunteering in 2024. These activities, coordinated, financed, and supervised by the company, are expressly integrated into its operational and reputational strategy. The *Matching Gifts* programme, which allows ASML to double employee donations up to €10,000 per year, further illustrates the employer's active involvement and the embedded nature of volunteering within the firm's governance structure. Such arrangements demonstrate that employee volunteering has ceased to be spontaneous or autonomous; it functions instead as a managed activity conducted within the parameters of hierarchical authority and working time.

[16] B. Wisse, R. van Eijbergen, E.F. Rietzschel et al., *Catering to the Needs of an Aging Workforce: The Role of Employee Age in the Relationship Between Corporate Social Responsibility and Employee Satisfaction*, in *Journal of Business Ethics*, 2018, vol. 147, n. 4, 875–888

[17] S. Raub, S. Blunschi, *The Power of Meaningful Work: How Awareness of CSR Initiatives Fosters Task Significance and Positive Work Outcomes in Service Employees*, in *Cornell Hospitality Quarterly*, 2013, vol. 55, n. 1, 10–18.

[18] ASML Holding N.V. (Veldhoven, Netherlands) is a Dutch multinational corporation and the world's leading supplier of photolithography machines essential to semiconductor manufacturing. ASML Holding N.V., *Annual Report 2024*, ASML Holding N.V., Veldhoven, 2025, https://www.asml.com/en/news/press-releases/2025/asml-publishes-2024-annual-reports (accessed 17 September 2025).

Linde[19] provides an even more explicit illustration of the convergence between corporate management and employee participation. Its *Employee Community Engagement* programme permits employees to volunteer during paid working hours, subject to managerial authorization. In 2024, Linde employees devoted 80,401 hours—valued at approximately USD 1.9 million—to projects worldwide. These activities are systematically monitored, evaluated, and disclosed as indicators of employee engagement and corporate culture. Their inclusion in sustainability reporting confirms that volunteering is deployed as an instrument of organisational governance, contributing to both internal cohesion and external accountability.

LVMH[20] and L'Oréal[21] have institutionalised similar forms of participation. LVMH reports that 93% of its workforce was offered at least one opportunity to engage in employer-organised projects, with 44,764 employees participating in 2024 in initiatives focused on education, inclusion, and entrepreneurship. L'Oréal's *Citizen Day*—a global one-day volunteering event held during paid working hours—mobilized 27,000 employees across 72 countries in collaboration with 730 non-profit organisations. Both programmes are explicitly designed, branded, and scheduled by management, with participation monitored and reported as a dimension of corporate performance. Under such conditions, employee discretion is effectively absorbed into the organisational logic of CSR compliance and image-building.

By contrast, companies such as Novartis[22], AstraZeneca[23], Hermès[24], and Roche[25] adopt less formalised approaches. Their sustainability reports

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[19]Linde plc is an Irish-domiciled multinational industrial gases and engineering company. Linde plc, *Sustainable Development Report 2024*, Linde plc, Dublin, 2025, https://www.linde.com/sustainability/reporting-center (accessed 17 September 2025).

[20]LVMH Moët Hennessy Louis Vuitton SE is a French multinational luxury goods conglomerate. LVMH Moët Hennessy Louis Vuitton SE, *Universal Registration Document 2024*, LVMH Moët Hennessy Louis Vuitton SE, Paris, 2025, https://urd.lvmh.com/fr/2024 and https://www.lvmh.com/en/press/key-documents (accessed 17 September 2025).

[21] L'Oréal S.A. is a French multinational cosmetics and personal care company. L'Oréal S.A., *Universal Registration Document 2024*, L'Oréal S.A., Clichy, 2025, https://www.loreal-finance.com/en/annual-report-2024/ and https://www.loreal.com/en/esg-performance/ (accessed 17 September 2025).

[22] Novartis AG is a Swiss multinational pharmaceutical company. Novartis AG, *Novartis in Society Integrated Report 2024*, Novartis AG, Basel, 2025, https://www.novartis.com/sites/novartis_com/files/novartis-integrated-report-2024.pdf (accessed 17 September 2025).

[23]AstraZeneca PLC is a British-Swedish multinational pharmaceutical and biotechnology company. AstraZeneca PLC, *Sustainability Impact Report 2024*, AstraZeneca PLC, Cambridge, 2025, https://www.astrazeneca.com/content/dam/az/Sustainability/2025/pdf/AZ-Sustainability-Impact-Publication_May2025Final.pdf and https://www.astrazeneca.com/sustainability/resources.html (accessed 17 September 2025).

emphasise social responsibility, ethical business culture, and community investment, yet they do not specify the modalities or extent of employee volunteering. Novartis prioritises professional development and equitable remuneration; AstraZeneca reports community investments totalling USD 126.7 million across 65 countries without detailing employee involvement; Hermès and Roche refer generally to local initiatives and sustainability efforts without quantifiable indicators.
These variations in corporate practice demonstrate that CSR participation has evolved from spontaneous individual choice to institutionalised organisational activity, raising questions about the legal nature of such engagement and the authenticity of employee consent.

4. Between Freedom and Subordination: The Problem of Consent in CSR Participation

From a legal standpoint, employee participation in volunteering activities organised by the employer raises several interpretative challenges, primarily concerning the qualification of such participation as a private act or as an activity connected to the performance of work[26]. The existence of a link with the employment relationship cannot be denied where the activity is organised, promoted, or coordinated by the employer; the central issue lies, however, in identifying the intrinsic cause that motivates the employee's involvement and assessing whether the employee's consent to such participation is genuinely free.
The employment contract is formally grounded in the mutual consent of the parties. Under general principles of contract law, consent must be free, informed, and uncoerced to produce valid legal effects. However, European labour law has long recognised that the formal equality of contract law principles inadequately captures the substantive reality of the employment relationship. The structural asymmetry between employer and employee, rooted in economic dependence, information disparities, and the hierarchical

[24] Hermès International S.C.A. is a French multinational luxury fashion and leather goods house. Hermès International S.C.A., *Universal Registration Document 2024*, Hermès International S.C.A., Paris, 2025, https://finance.hermes.com/en/policies-publications/ (accessed 17 September 2025).
[25] Roche Holding AG is a Swiss multinational healthcare company active in pharmaceuticals and diagnostics. Roche Holding AG, *Sustainability Report 2024*, Roche Holding AG, Basel, 2025, https://assets.roche.com/f/164639/x/dc6ed68134/en-sustainability-report-2024.pdf (accessed 17 September 2025).
[26] S. Sekar, L. Dyaram, *What Drives Employees to Participate in Corporate Volunteering Programs?*, in *Social Responsibility Journal*, 2017, vol. 13, n. 4, 661–667.

nature of workplace organisation, fundamentally constrains the employee's capacity to exercise free choice in employment matters.

This recognition has profound implications for the legal treatment of consent in the employment context. The Court of Justice of the European Union (CJEU) has consistently held that employees cannot validly waive rights conferred by labour law, even through apparently voluntary consent, because such rights pursue objectives of public policy and the protection of health and safety[27]. In *Pfeiffer*, the Court emphasised that the protective purpose of working time legislation would be undermined if employees could contract out of maximum working time limits, given their position as the weaker party in the employment relationship[28]. Similarly, in *Fuß*, the Court reaffirmed that the fundamental right to paid annual leave cannot be waived by individual agreement, as this would enable employers to circumvent mandatory protections through contractual arrangements that employees feel economically compelled to accept[29].

This jurisprudential line establishes a crucial principle: in the employment context, formal consent does not necessarily reflect substantive autonomy. Where structural power imbalances exist, the law must look beyond the appearance of agreement to assess whether the employee genuinely retains freedom of choice or whether consent is effectively predetermined by the conditions of employment.

Participation in CSR activities organised by employers reveals precisely this tension between formal voluntariness and substantive subordination. Employers consistently characterise CSR engagement as "voluntary," thereby positioning it outside the realm of contractual obligation and working time. This characterisation serves important functions for the employer: it preserves the altruistic and ethical framing essential to CSR's reputational value, avoids triggering obligations related to remuneration and working time limits, and shifts responsibility for participation to the employee's individual choice.

However, this rhetoric of voluntariness conceals a complex organisational reality in which multiple mechanisms generate normative expectations and implicit pressures to participate. When CSR activities are coordinated during working hours, publicly celebrated through internal communications, integrated into performance appraisal systems, or visibly endorsed by senior management, they become embedded in the organisation's culture and expectations in ways

[27] *Joined Cases C-397/01 to C-403/01, Pfeiffer and Others v Deutsches Rotes Kreuz, Kreisverband Waldshut eV*, ECLI:EU:C:2004:584, paras 80–83

[28] *Ibid.*, para 82: "Those provisions are […] rules of Community social law which are of particular importance and which, in the absence of more specific Community provisions in this respect, must be given effect by the Member States."

[29] *Case C-429/09, Günter Fuß v Stadt Halle*, ECLI:EU:C:2010:717, para 32.

that constrain genuine employee choice. Several interconnected mechanisms transform formally voluntary CSR participation into an extension of managerial authority.

The incorporation of CSR participation into performance evaluations or competency frameworks signals that engagement constitutes expected organisational behaviour. The asymmetry inherent in performance management means that employees cannot freely decline participation without risking professional consequences. Research confirms that when CSR activities are linked to financial incentives such as bonuses or promotions, employees perceive participation as instrumental to professional success rather than genuinely voluntary, converting ethical engagement into a performance requirement[30].

Corporate communications frequently celebrate employee CSR participation, naming participants and quantifying volunteer hours. This public dimension creates reputational incentives that operate as soft compulsion. Employees who decline participation become conspicuously absent from visible manifestations of organisational citizenship, potentially signalling lack of commitment. Where participation is visibly tracked and celebrated, non-participation becomes a form of dissent that carries social costs within the workplace community, conditioned not only by direct employment consequences but also by peer dynamics and informal social sanctions.

Managerial behaviour and organisational culture generate powerful expectations around CSR participation even in the absence of explicit policies. When senior management visibly participates or team leaders encourage involvement, employees receive clear signals about organisational expectations. The hierarchical structure of employment means that alignment with managerial priorities affects professional prospects. This dynamic is particularly pronounced where refusal to participate must be explicitly communicated and potentially justified, placing non-participants in a psychologically and professionally uncomfortable position.

Finally, when employers schedule CSR activities during paid working hours, designate specific times and locations, or coordinate participation as team-based events, they exercise characteristic prerogatives of managerial authority. This organisational control over the modalities of participation distinguishes employer-coordinated CSR from genuinely autonomous volunteering and demonstrates that participation occurs within the structure of subordination that defines the employment relationship.

[30] V. Soundararajan, J.A. Brown, *op. cit.*

From the perspective of labour law, the question is not whether employees subjectively experience participation as voluntary or coerced, since individual perceptions may vary widely based on personality, position, and context. Rather, the question is whether the *structural conditions* surrounding participation preserve meaningful employee autonomy or whether they reflect the exercise of employer authority that legally characterises working time.

Drawing on established principles from CJEU jurisprudence and the protective rationale of labour law, voluntariness ceases to exist where participation produces explicit or implicit consequences for employment status, is organised under conditions determined by the employer, serves identifiable employer interests, or carries social and professional costs for non-participation.

Where CSR engagement is linked to performance evaluations, promotion decisions, or bonus calculations, the employee faces a choice between participation and professional disadvantage, a choice structured by the power asymmetry of the employment relationship. This principle extends beyond formally documented connections to encompass implicit consequences. Where employees reasonably believe that CSR participation affects their professional standing based on managerial communications, organisational culture, or observed patterns of recognition, the legal analysis must account for these perceived consequences even if not explicitly codified.

Similarly, where the employer determines the timing, location, or specific activities comprising CSR participation, the employee is subject to the employer's direction in a manner characteristic of working time. The allocation of paid working hours to employer-designated activities and the specification of approved charitable partners reflect the exercise of managerial prerogatives over employee time and effort. The fact that employees may genuinely support the causes involved does not alter this assessment: the decisive factor is whether the employer exercises control over the modalities of the activity, not whether the employee experiences that activity positively.

Under Directive (EU) 2022/2464 (CSRD), large companies must report on workforce engagement in sustainability initiatives. Where employee CSR participation fulfils these mandatory reporting obligations, it directly serves organisational compliance functions.

Finally, even where participation produces no direct employment consequences, the social dynamics of workplace communities may generate pressures that constrain autonomy. Labour law recognises that subordination operates not only through explicit command but also through conditions that make certain choices professionally or socially costly. The CJEU's analysis in *Matzak* illustrates this principle: the Court held that geographical and temporal constraints imposed by the employer objectively limited the employee's autonomy to pursue personal activities, thereby constituting working time[31]. Similarly, where organisational conditions make non-participation in CSR activities professionally or socially costly, employees do not retain the meaningful autonomy required for participation to qualify as genuinely voluntary personal activity.

The foregoing analysis does not suggest that all employee engagement with social causes during the employment relationship must be classified as working time. Genuine voluntariness can exist, but it requires conditions that preserve substantive employee autonomy.

Thus, genuine voluntariness exists where the employer neither organises, sponsors, nor coordinates the activity, providing at most general information about external volunteering opportunities available in the community. Participation must occur entirely outside paid working hours and workplace premises, without employer provision of time, resources, or logistical support. No connection may exist, formal or informal, between participation and employment-related evaluations, recognition systems, career progression, or professional reputation within the organisation. Employees must exercise complete discretion over whether, when, where, and how to engage in volunteering, selecting causes and organisations according to personal values and preferences. Non-participation must carry no consequences, explicit or implicit, formal or social, within the employment relationship. Finally, the employer must neither monitor nor report on employee participation, ensuring that such activities remain entirely within the sphere of private life.

These conditions ensure that the employee genuinely retains the autonomy to freely dispose of their time and that participation reflects personal choice rather than the structural subordination inherent in the employment relationship. Where these conditions are not satisfied, the formal characterisation of participation as "voluntary" cannot override the legal reality that the employee remains, in substance, at the employer's disposal and subject to the employer's authority.

5. The Legal Classification of Time Devoted to Employer-Organised CSR Activities as Working Time

The classification of time devoted to employer-organised CSR activities raises complex legal questions under EU labour law, particularly where such initiatives occur outside the employee's contractual schedule or are portrayed as voluntary engagement. Employers frequently characterise volunteering as personal engagement undertaken during employees' leisure time, thereby

[31] *Case C-518/15, Ville de Nivelles v Rudy Matzak*, ECLI:EU:C:2018:82, paras 61–62.

situating such activities beyond the scope of the employment relationship. However, when CSR activities are shaped, coordinated, or actively promoted by the organisation, through internal communications, recognition incentives, or integration into performance evaluation systems, the conceptual and legal separation of such initiatives from the employment relationship becomes increasingly difficult to sustain. These organisational features demonstrate that employer-sponsored CSR activities serve corporate objectives and strategic interests, thereby narrowing the employee's genuine freedom to decline participation without professional repercussions.

We shall next examine whether, and under what conditions, the time devoted to employer-organised CSR activities may be legally classified as "working time" within the meaning of Article 2(1) of Directive 2003/88/EC (the Working Time Directive), with reference to the relevant case law of the Court of Justice of the European Union (CJEU).

5.1. Autonomous EU Concepts of Working Time and Rest

Article 2(1) of Directive 2003/88/EC defines "working time" as "any period during which the employee is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice."[32] Article 2(2) defines a "rest period" as "any period which is not working time."[33] The Court of Justice has consistently emphasised that these concepts are mutually exclusive and must be interpreted autonomously under EU law, independent of national classifications, contractual terminology, or the parties' subjective characterisation of the activity[34].

The autonomous nature of these definitions serves to ensure uniform protection of employees' health and safety across Member States and prevents circumvention of mandatory working time protections through contractual arrangements[35]. Consequently, any time devoted to activities connected with employment must fall into one of these two categories, working time or rest, whether the activities take place within or outside contractual hours and irrespective of whether remuneration is provided[36].

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[32] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9, Article 2(1).

[33] *Ibid.*, Article 2(2).

[34] *Case C-303/98, Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, ECLI:EU:C:2000:528, paras 47–51; *Case C-151/02, Landeshauptstadt Kiel v Norbert Jaeger*, ECLI:EU:C:2003:437, para 58.

[35] *Pfeiffer and Others*, *op. cit.*, paras 80–83.

[36] *Case C-909/19, BX v Unitatea Administrativ Teritorială D*, ECLI:EU:C:2021:893, para 29.

This binary classification has particular significance where employers organise activities that are formally characterised as "voluntary" but functionally integrated into workplace expectations and organisational culture. The question becomes whether the employee retains sufficient autonomy to genuinely dispose of their time for personal purposes, or whether they remain effectively at the employer's disposal.

5.2. The Test of Availability and Subordination: CJEU Case Law

The decisive criterion for classifying time as "working time" lies not in the intensity or economic productivity of the activity, but rather in the employee's availability and subordination to the employer's authority. As established in the foundational cases of *Simap*[37], *Jaeger*[38], and *Dellas*[39], the critical factor is whether the employer determines the conditions under which the employee's time is spent and thereby restricts the employee's autonomy to pursue personal and social interests.

The CJEU has repeatedly held that a period constitutes working time when the employee is required to be physically present at a place determined by the employer and to remain available to provide services if called upon[40]. Neither the nature of the activities performed nor their direct contribution to the employer's productive output is determinative. What matters is whether the employee's freedom to manage their own time is objectively and significantly constrained by requirements imposed by the employer.

Although much of the early case law concerning working time classification arose in the context of essential public services (particularly healthcare and emergency services), the underlying principles extend more broadly to all employment relationships governed by Directive 2003/88/EC. The case of *Ville de Nivelles v Matzak* (C-518/15)[41] is particularly instructive.

In *Matzak*, the CJEU considered whether stand-by time spent by a volunteer firefighter at his home, during which he was required to respond to calls within eight minutes, constituted working time. The Court held that stand-by time during which an[42] employee must remain contactable and respond to calls from the employer within eight minutes, while required to be physically present at a

[37] *Simap*, *supra* note 34.
[38] *Jaeger*, *supra* note 34.
[39] *Case C-14/04, Abdelkader Dellas and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité*, ECLI:EU:C:2005:728.
[40] *Simap*, *supra* note 35, para 48; *Jaeger*, *supra* note 35, para 63.
[41] *Matzak*, *supra* note 31.
[42] E. Gramano, *Stand-By Time Through the Court of Justice's Lens*, in *European Labour Law Journal*, 2022, vol. 13, n. 4, 577–584.

place determined by the employer, must be regarded as working time. The Court reasoned that the obligation to remain physically present at the place determined by the employer (even if that place was the employee's home) and the geographical and temporal constraints resulting from the eight-minute response requirement objectively limited the employee's opportunities to devote himself to personal and social interests[43].

Critically, *Matzak* establishes that physical presence at the traditional workplace is not required for time to qualify as working time. What matters is whether constraints imposed by the employer objectively restrict the employee's ability to manage their time freely[44]. The intensity of the constraint is assessed functionally: does the requirement meaningfully prevent the employee from planning and engaging in personal activities?

More recently, in *BX v Unitatea Administrativ Teritorială D* (C-909/19)[45], the CJEU addressed whether mandatory vocational training undertaken outside normal working hours at the premises of an external training provider constituted working time. The Court held that where a employee receives instructions from the employer to attend vocational training to carry out their duties, and where the employer has signed the vocational training contract, the employee is at the employer's disposal during the training periods. The fact that the training did not take place at the employee's usual place of work, but at the premises of the training provider, did not prevent the periods from being classified as working time, as the employee was required to be physically present at the place determined by the employer.

This case is particularly relevant to employer-organised CSR activities. The Court emphasised that the concept of working time cannot be interpreted in a manner that would enable employers to impose training obligations outside normal working hours to the detriment of employees' right to sufficient rest, given that employees are the weaker party in the employment relationship. The Court further noted that it was irrelevant that the obligation arose from national legislation or that the activity performed during training differed from the employee's normal duties[46].

Moreover, the CJEU's case law on working time consistently emphasises the protective purpose of Directive 2003/88/EC. In *Pfeiffer and Others* (Joined

[43] L. Mitrus, *Defining Working Time versus Rest Time: An Analysis of the Recent CJEU Case Law on Stand-By Time*, in *European Labour Law Journal*, 2022, vol. 14, n. 1, 35–47; M.A. García-Muñoz Alhambra, C. Hiessl, *The Matzak Judgment of the CJEU: The Concept of Worker and the Blurring Frontiers of Work and Rest Time*, in *European Labour Law Journal*, 2019, vol. 10, n. 4, 343–352.

[44] *Ibid.*, paras 59-62.

[45] *BX v Unitatea Administrativ Teritorială D, supra* note 36.

[46] *Ibid.*, paras 32-35.

Cases C-397/01 to C-403/01)[47] and *Fuß* (C-429/09)[48], the Court confirmed that working time limitations are designed to safeguard employees' health and safety and constitute social rights that cannot be contractually waived by individual employees. This protective framework requires that the concept of "working time" be interpreted broadly to ensure effectiveness of these fundamental protections.
Similarly, in *Tyco* (C-266/14)[49], the Court held that time spent travelling between home and the first and last customers of the day by employees without a fixed workplace must be regarded as working time. The decision reinforced that spatial flexibility or organisational arrangements that disperse work across multiple locations do not negate employer control where the employee's time remains subject to the employer's instructions and the employee lacks freedom to pursue personal interests during that period.

5.3. Application to Employer-Organised CSR Activities

Applying these principles to employer-organised CSR activities, several factors suggest that time devoted to such activities should presumptively be classified as working time where:

- The employer determines when, where, and how CSR activities take place, designating specific dates, times, locations, or approved charitable partners. Employees are instructed or expected to participate, even if participation is formally characterised as "voluntary."
- CSR participation is integrated into mechanisms of organisational oversight, such as performance evaluation systems, promotion criteria, internal communications celebrating participant contributions, or implicit expectations communicated through workplace culture and managerial behaviour.
- Although participation may not be formally mandatory, employees perceive professional or reputational consequences for non-participation, particularly where senior management visibly participates or where participation is publicly tracked and recognised.
- The activities serve the employer's strategic objectives, such as enhancing corporate reputation, building team cohesion, demonstrating commitment to sustainability goals, or fulfilling corporate reporting

[47] *Pfeiffer*, *supra* note 27.
[48] *Fuß*, *supra* note 29.
[49] *Case C-266/14, Federación de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Services SA*, ECLI:EU:C:2015:578

obligations related to environmental, social, and governance (ESG) criteria.

- Employees must be physically present at designated locations at times specified by the employer, whether during or outside contractual working hours, thereby restricting their ability to freely manage their time and pursue alternative personal or family activities.

Where these conditions are satisfied, the legal criteria of availability and subordination established in *Simap*, *Jaeger*, *Matzak,* and *BX* are fulfilled. The employee is effectively "at the employer's disposal" within the meaning of Article 2(1) of Directive 2003/88/EC, even if the activity differs from their usual professional duties and even if it occurs outside their normal working hours.
Conversely, CSR activities may legitimately qualify as rest periods where the conditions for genuine voluntariness are satisfied, that is, where the employee genuinely retains autonomy to freely dispose of their time without organisational pressure or consequences

6. Latent Intensification: CSR Participation and the Cumulative Burden of Contemporary Work

Another legal concern arises from the implicit redistribution and intensification of work that frequently accompanies employee participation in CSR activities. Even when such participation takes place during nominal working hours, the total volume of contractual duties imposed on the employee generally remains unchanged. Time allocated to volunteering is therefore often compensated through heightened productivity expectations or de facto unpaid overtime compressed into the remaining working schedule. In practice, CSR participation may give rise to a form of *latent intensification*, an increase in the required pace, concentration, and output of labour, without any corresponding contractual amendment or remuneration.
In academic literature, *work intensification* is understood as the process by which employees are required to work harder, faster, or more productively within the same temporal limits, typically without additional resources or pay. Green defines it as "the rate of physical and/or mental input to work tasks performed during the working day,"[50] capturing both the physical and cognitive dimensions of effort. Since the early 2000s, scholars have identified work

[50] F. Green, *It's Been a Hard Day's Night: The Concentration and Intensification of Work in Late Twentieth-Century Britain*, in *British Journal of Industrial Relations*, 2001, vol. 39, n. 1, 56.

intensification as a defining feature of contemporary employment relations[51], reflecting profound structural changes in production systems, managerial expectations, and the psychological contract between employer and employee.

Work intensification manifests in two main forms. *Extensive intensification* involves an increase in total working hours, while *intensive intensification* occurs when employees are required to increase their output or effort within the same working time[52]. The latter form holds particular legal significance in the CSR context, where employees are frequently expected to maintain standard productivity levels despite devoting part of their working time to employer-organised volunteering. Quantitatively, this intensification translates into completing more tasks in less time, working at greater speed, multitasking, and reducing idle or recovery periods Qualitatively, it involves intensified cognitive and emotional demands: continuous self-direction, initiative-taking, lifelong learning, and complex decision-making under compressed time constraints[53].

These defining characteristics, accelerated pace, time pressure, diminished recovery periods, task accumulation, and technological acceleration, have become structural components of modern employment. Employees are required to deliver higher output within increasingly rigid deadlines, while digital tools and permanent connectivity amplify the expectation of constant responsiveness. The traditional *porosity* of the working day, formerly allowing moments of rest or reflection, has been progressively eroded[54], leaving minimal space for recuperation. Consequently, when participation in CSR activities indirectly feeds into this process, it does not occur in isolation but rather compounds an already intensified work environment, amplifying the cumulative pressures inherent in the employment relationship.

Scholars have documented that the erosion of boundaries between professional and private life contributes to heightened stress, reduced recovery opportunities, and increased burnout risk[55]. Where employer-organised CSR

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[51] F. Green, S. McIntosh, *The Intensification of Work in Europe*, in *Labour Economics*, 2001, vol. 8, n. 2, 291–308; B. Kubicek, M. Paškvan, C. Korunka, *Development and Validation of an Instrument for Assessing Job Demands Arising from Accelerated Change: The Intensification of Job Demands Scale (IDS)*, in *European Journal of Work and Organizational Psychology*, 2015, vol. 24, n. 6, 898–913.

[52] F. Green, *Why Has Work Effort Become More Intense?*, in *Industrial Relations: A Journal of Economy and Society*, 2004, vol. 43, n. 4, 709–741

[53] S. Mauno, M. Herttalampi, J. Minkkinen, T. Feldt, B. Kubicek, *Is Work Intensification Bad for Employees? A Review of Outcomes for Employees over the Last Two Decades*, in *Work & Stress*, 2022, vol. 37, n. 2, 100–125

[54] S.D. Rosso, *Mais Trabalho! A Intensificação do Labor na Sociedade Contemporânea* [*More Work! The Intensification of Labor in Contemporary Society*], Boitempo Editorial, São Paulo, 2008.

[55] H. Pluut, J. Wonders, *Not Able to Lead a Healthy Life When You Need It the Most: Dual Role of Lifestyle Behaviors in the Association of Blurred Work-Life Boundaries with Well-Being*, in *Frontiers in Psychology*, 2020, vol. 11, 607294.

activities add to employees' overall workload or diminish their capacity to rest and recuperate, they may raise concerns not only under working time provisions but also under the employer's broader duty to protect employee health under Article 31(2) of the Charter of Fundamental Rights and Directive 89/391/EEC (the Framework Directive on Safety and Health at Work).

Admittedly, establishing proof that work intensification has been generated specifically by occasional participation in employer-organised CSR activities presents significant evidentiary challenges. Demonstrating causation between discrete CSR events and measurable health impacts or violations of working time limits is methodologically complex, particularly where participation occurs infrequently or irregularly.

This difficulty is compounded by the fact that, in contemporary work organisations, what typically occurs is not isolated work intensification attributable to a single cause, but rather a *cumulative process* of intensification arising from multiple organisational practices and expectations operating concurrently[56]. These include extended working hours, increased task density, heightened performance expectations, digital connectivity demands, and various forms of "voluntary" but organisationally promoted activities, of which CSR participation may be one component[57].

These multiple intensification pressures, operating together, may collectively reach a threshold sufficient to produce adverse effects on employee health, safety, and work-life balance, even where each individual factor might appear relatively modest or reasonable in isolation. The cumulative nature of these demands renders the attribution of specific health impacts to any single organisational practice particularly problematic from an evidentiary standpoint, while simultaneously heightening the risk that the aggregate burden will exceed sustainable and lawful levels of work demands.

This cumulative dynamic underscores the importance of a precautionary approach in classifying employer-organised activities as working time. Where organisational practices incrementally extend effective working hours or reduce genuine rest periods—whether through formal requirements or through culturally embedded expectations—the protective framework of Directive

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[56] G. Bangham, M. Gustafsson, *The Time of Your Life: Time Use in London and the UK over the Past 40 Years*, Resolution Foundation, London, 2020, https://www.resolutionfoundation.org/publications/the-time-of-your-life/ (accessed 23 August 2025).

[57] C. Korunka, B. Kubicek, *Beschleunigung im Arbeitsleben: Neue Anforderungen und deren Folgen* [*Acceleration in Working Life: New Demands and Their Consequences*], in M. Morschhäuser, G. Junghanns (eds.), *Immer Schneller, Immer Mehr – Psychische Belastungen bei Wissens- und Dienstleistungsarbeit* [*Ever Faster, Ever More – Psychological Demands of Knowledge and Service Work*], Springer VS, Wiesbaden, 2013, 17–39.

2003/88/EC may be incrementally eroded. A functional analysis of whether employees retain meaningful autonomy to freely dispose of their time is therefore essential to prevent circumvention of working time protections.

7. Conclusion

The contemporary reconfiguration of the employment relationship through corporate social responsibility initiatives represents more than a shift in organisational discourse or managerial practice. It constitutes a transformation in the normative boundaries that distinguish work from non-work, subordination from autonomy, and contractual obligation from voluntary engagement. This study has demonstrated that when employees participate in CSR activities organised, coordinated, or incentivised by their employers, the resulting relationship cannot be adequately characterised through the rhetoric of voluntariness or ethical alignment alone. Instead, such participation must be rigorously assessed within the juridical framework that governs the employment relationship under European Union labour law.

The analysis has demonstrated that employer-organised CSR initiatives operate within a managerial architecture that constrains worker autonomy, transforming formally voluntary activities into components of corporate governance serving strategic and compliance objectives. Under such conditions, employee consent reflects structural subordination rather than genuine freedom of choice.

From the perspective of EU labour law, where the employer determines when, where, and how CSR activities occur, where participation is integrated into organisational oversight, and where workers perceive consequences for non-participation, the worker remains 'at the employer's disposal' within the meaning of Article 2(1) of Directive 2003/88/EC as established in the case law analysed above. This legal qualification carries significant practical consequences: it determines whether participation must be remunerated, affects calculations of maximum working time and minimum rest periods, and engages employer duties regarding occupational health and safety, particularly where CSR activities contribute to work intensification.

CSR participation, when improperly classified as rest time, may contribute to cumulative work intensification. Although establishing direct causation presents evidentiary challenges, the cumulative nature of these processes heightens risks to employee well-being and long-term health.

This study does not dispute the social value of CSR initiatives or genuine ethical motivations underlying them. However, the juridical nature of the employment relationship persists regardless of moral framing. Where CSR participation materially restricts a worker's capacity to freely dispose of their time or serves corporate objectives under managerial influence, such periods should presumptively be classified as working time.

Conversely, where participation occurs entirely at the employee's discretion, without organisational coordination, sponsorship, or consequences, and where the employee genuinely retains autonomy over the timing, location, and nature of volunteering activities, such engagement falls outside the employment relationship and legitimately qualifies as rest. The distinction depends not on the subjective intentions of the parties or the socially beneficial nature of the activities but on an objective assessment of whether the employee's freedom to manage their own time is constrained by requirements imposed by the employer.

As CSR becomes increasingly institutionalised through sustainability reporting obligations under Directive (EU) 2022/2464, these legal questions acquire heightened practical significance. Employers must ensure CSR programmes respect employment contract boundaries and mandatory labour law protections, while courts must apply functional analysis looking beyond formal labels.

Ultimately, this analysis contributes to understanding how contemporary corporate practices reshape labour law concepts. The blurring of boundaries between work and non-work poses challenges to frameworks protecting worker autonomy and wellbeing. European labour law must maintain clear conceptual distinctions and apply protective principles rigorously, ensuring that employment relations evolution does not occur at workers' fundamental rights expense. The employment relationship remains a juridical structure grounded in subordination, requiring protection against practices extending employer control beyond legitimate boundaries, even when presented as shared values, social responsibility, or collective purpose.

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European Works Councils: Worker Participation, Information and Consultation in Transnational Industrial Relations

Brusaporci and Riccardo Fazioli *

Abstract. European Works Councils (EWCs) have emerged as pivotal platforms for information and consultation in large multinational companies operating across Europe. Initially conceived as non-negotiating bodies, EWCs have evolved into laboratories for innovation in transnational industrial relations. The recent revision of Directive 2009/38/EC, approved by the European Parliament in October 2025, marks a significant advancement: it strengthens workers' representatives' rights, clarifies the scope of information and consultation, promotes best practices in social dialogue, and introduces stricter sanctions for rights violations. The new directive also recognizes the central role of trade unions and experts, enhances the protection of representatives, and broadens the definition of transnationality.

Within this framework, EWCs enable workers' representatives to access strategic data and engage in dialogue with management on a wide range of issues, from economic and financial matters to employment, investment, and sustainability. While EWCs lack formal bargaining power, they have often reached agreements that exceed minimum legal requirements, addressing cross-border topics such as health and safety, social inclusion, artificial intelligence, and gender equality. Through active trade union participation and social dialogue, EWCs help reduce power imbalances between multinational corporations and workers, fostering more coordinated and less conflictual management of crises and reorganizations.

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The ongoing evolution of social dialogue and the increasing level of participation within EWCs can be key drivers of organisational competitiveness and resilience. By facilitating genuine involvement of workers in decision-making processes, EWCs foster mutual trust, shared responsibility, and innovative problem-solving. This participatory approach not only improves the quality of working life but also enables companies to adapt more effectively to challenges such as restructuring, digitalization, and sustainability, ultimately strengthening their capacity to thrive in a complex and rapidly changing European landscape.

Keywords: *European works council; Collective bargaining; Participation; European cohesion; Social dialogue.*

1. Introduction

The European Works Council (EWC) stands as one of the most significant institutional innovations in the field of transnational industrial relations in Europe[1]. Conceived in the context of European integration and the increasing globalization of business, EWCs have become a cornerstone for the development of social dialogue, information, consultation, and, increasingly, participation of workers in multinational companies[2]. Since their establishment by Directive 94/45/EC and subsequent recast by Directive 2009/38/EC, EWCs have provided a unique institutional arena primarily composed of workers' representatives, enabling structured transnational interaction with central management from different countries to meet, exchange information, and discuss issues of common concern at the European level[3].

The evolution of EWCs reflects broader trends in European industrial relations, including the diversification of national systems, the growing importance of transnational corporate strategies, and the EU's commitment to promoting social dialogue as a pillar of economic democracy[4]. The EWC regulatory framework, grounded in Article 27 of the Charter of Fundamental Rights of the European Union, sets out minimum requirements for the

[1] J. Waddington, European Works Councils: A Transnational Industrial Relations Institution in the Making. London: Routledge, 2011;

[2] S. De Spiegelaere, R. Jagodziński, J. Waddington, European Works Councils: Contested and Still in the Making. Brussels: ETUI, 2022; T. Koutroukis, European Works Councils: Their Impact on the Europeanization of Industrial Relations in an Era of Market Globalism. *Social Sciences*, 13(3), 171, 2024;

[3] R. Jagodziński, The Recast European Works Council Directive: Transnational Industrial Relations in the Making, ETUI, 2015;

[4] European Commission, Evaluation of the European Works Council Directive, 2020;

establishment, composition, and functioning of EWCs, while allowing for flexibility through negotiated agreements[5].

In light of the ongoing evolution of European industrial relations, it is particularly significant to highlight the recent revision of Directive 2009/38/EC on European Works Councils, which was approved by the European Parliament in October 2025 (hereafter: the revised EWC Directive). This revision introduces several relevant changes: it strengthens the rights of workers' representatives, clarifies the definitions of information and consultation, promotes best practices in transnational social dialogue, and establishes stricter sanctions in cases of rights violations. The central role of trade unions and experts is further recognized, the protection of workers' representatives is enhanced, and the definition of transnationality is improved. Member States will have two years to transpose the directive into national law, marking a substantial step forward towards more effective worker participation in the decision-making processes of European multinational companies.

Despite their formal status as non-negotiating bodies, over the years EWCs have, in practice, developed into platforms where agreements can be reached that go beyond the information and consultation principles, particularly in areas such as health and safety, non-discrimination, and social inclusion. The ongoing revision of the EWC Directive and the growing emphasis on participation reflect the EU's commitment to strengthening the role of workers in shaping the future of work[6]. The EWC is not only a legal instrument but also a political one, reflecting the EU's broader strategy to balance economic development and challenges with social protection[7]. The establishment of EWCs was a response to the growing power of multinational corporations and the need to ensure that workers' voices are heard in decisions that affect their livelihoods across borders[8]. The EWC thus serves as a laboratory for transnational industrial relations, where innovative practices can be developed and diffused across countries and sectors[9].

This article aims to provide a comprehensive analysis of EWCs, with a particular focus on the principles of information, consultation, and participation. Through two sectoral case studies - DS Smith, which in Italy is

[5] Directive 2009/38/EC on the Establishment of a European Works Council;
European Union, Charter of Fundamental Rights of the European Union, 2012;

[6] European Parliament, Revision of the European Works Council Directive, 2023;

[7] M. Hertwig, European Works Councils and the Crisis: Change and Resistance in Cross-Border Employee Representation at Honda and Toyota. *British Journal of Industrial Relations*, 53(2), 326–349, 2015;

[8] ETUC, Workers' Participation and European Social Dialogue, 2021;

[9] V. Pulignano, The Europeanisation of Industrial Relations: Transnational Company Agreements and EWCs. *European Journal of Industrial Relations*, 13(2), 187–207, 2007;

covered by the paper industry collective bargaining agreement, and TK Elevator, which falls under the tertiary, distribution and services sector collective bargaining framework - the article demonstrates how EWCs contribute to the positive evolution of industrial relations in Europe, fostering mutual understanding, joint problem-solving, and participatory decision-making. The analysis is trying to emphasize the importance of active trade union involvement and the potential of EWCs to serve as laboratories for innovative practices in industrial relations in a continuing evolution labor market.

2. A Unique Instrument to Develop Social Dialogue in Europe

The European Works Council (EWC) is a product of the European Union's commitment to fostering social dialogue and economic democracy across its member states. Social dialogue, as defined by the International Labour Organization (ILO), refers to all types of negotiation, consultation, or exchange of information between representatives of governments, employers, and workers on issues of common interest[10]. The EWC, established by Directive 94/45/EC, recast by Directive 2009/38/EC, and the recent revision of Directive 2009/38/EC, approved by the European Parliament in October 2025, is the first supranational institution designed to facilitate transnational information and consultation in companies operating in at least two EU or European Economic Area (EEA) countries and employing at least 1.000 workers[11]. The uniqueness of the EWC lies in its ability to bridge national industrial relations systems, which vary widely in terms of union density, collective bargaining coverage, and traditions of worker participation[12]. By providing a forum for representatives from different countries to meet, exchange information, and discuss companywide issues, EWCs foster mutual understanding and the development of a European identity among workers[13]. This transnational dimension is particularly important in the context of corporate restructuring, mergers, and acquisitions, where decisions taken at headquarters can have far-reaching consequences for employees in multiple countries[14].
The legal framework for EWCs is grounded in Article 27 of the Charter of Fundamental Rights of the European Union, which recognizes workers' rights

[10] ILO, Social Dialogue: Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalization,2013;
[11] R. Jagodziński, op. cit.;
[12] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. Cit.;
[13] J. Waddington, op. cit.;
[14] V. Pulignano, op. cit.;

to information and consultation within the undertaking. The EWC Directive sets out minimum requirements for the establishment, composition, and functioning of EWCs, while allowing for flexibility through negotiated agreements. The Directive's objectives are to improve the right to transnational information and consultation, ensure the effectiveness of EWCs, and promote the adaptation of companies to the challenges of globalization. Despite the progress made, the effectiveness of EWCs varies significantly across companies and sectors. Factors such as the commitment of management, the expertise of workers' representatives, and the quality of industrial relations at the national level all influence the functioning of EWCs. The scholarly debate has also examined what makes EWCs effective in practice and whether their role can extend beyond the minimum requirements of the Directive. Early analyses questioned the extent to which EWCs could develop functions that go beyond formal information and consultation, pointing to the importance of actors' strategies and the institutional space created by EWC agreements15. More recent case-based research has identified a set of enabling conditions for effectiveness - such as regular meetings, timely access to information, the capacity to coordinate across countries, the availability of expertise, and constructive (yet autonomous) relations with management - while also highlighting the persistence of uneven outcomes across firms and sectors[16].
A further stream of literature focuses on the interaction between EWCs, trade unions, and transnational agreements. Complementing these approaches, studies of German board-level employee representation in multinational companies provide insights into patterns of transnational articulation between national participation rights and cross-border employee representation arenas, including EWCs[17]. European Works Councils are a fundamental tool for worker participation in multinational companies. This participation takes place at an informational and consultative level, as provided for by European legislation. European social dialogue is the basis for economic democracy, which promotes social relations and workers' rights. Its importance for Europe's socio-economic development is clear, and it needs to be continually reaffirmed in the day-to-day political action of the institutions and social

[15] V. Telljohann, The European Works Councils – a role beyond the EC Directive? Transfer: European Review of Labour and Research, 11(1), 81–96,2005;
[16] M. Gold, C. Rees, What makes an effective European works council? Considerations based on three case studies. Transfer: European Review of Labour and Research, 19(4), 539–551,2013;
[17] S. Rosenbohm, T. Haipeter, German board-level employee representation in multinational companies: Patterns of transnational articulation. European Journal of Industrial Relations, 25(3), 219–232,2019;

partners[18]. Social dialogue, which, if improved and strengthened, can lead to growth throughout Europe in both social and economic terms[19]. The European Pillar of Social Rights is a beacon of European democracy and a priority for the European Union and its Member States[20]. The European Pillar of Social Rights recognises participation and collective bargaining as fundamental tools for implementing economic and social policies in Europe; the right to information and consultation fits fully into this context, and the European tool closest to its workers is represented by the European Works Council.

The principle of information is central to the functioning of EWCs and is enshrined in both the EWC Directive and national implementing legislation[21]. Information, as defined by Article 2(f) of Directive 2009/38/EC, refers to the transmission of data by the employer to the workers' representatives in such a way as to enable them to acquaint themselves with the subject matter and to examine it. The information must be provided at such time, in such fashion, and with such content as are appropriate to enable the representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations. The scope of information covers a wide range of topics, including the structure, economic and financial situation, probable development, production and sales, employment trends, investments, reorganization and substantial changes concerning organization[22]. The timely and comprehensive provision of information is essential for the effective functioning of EWCs, as it allows workers' representatives to understand the company's strategy, anticipate changes, and formulate responses[23]. However, research has shown that the quality and timeliness of information provided to EWCs vary significantly across companies and sectors[24]. In some cases, management may limit the scope of information or provide it too late for meaningful consultation. The right to information is not only a procedural requirement but also a substantive one, as it empowers workers' representatives to engage in meaningful dialogue with management and to influence decisions that affect their interests. The effectiveness of the information process depends on the willingness of management to share

[18] European Social Partners, the EU Commission and the Belgian Presidency of the Council of the EU. Val Duchesse Tripartite Declaration, 2024;
[19] D. Grimshaw, A. Koukiadaki, Tavora I., Social Dialogue and Economic Performance: What Matters for Business – A Review. International Labour Office, Geneva, 2017;
[20] La Hulpe. La Hulpe Declaration on the Future of the European Pillar of Social Rights, 2024;
[21] R. Jagodziński, op. cit.;
[22] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit.;
[23] V. Pulignano, op. cit.;
[24] J. Waddington, op. cit.;

relevant data, the capacity of representatives to analyze and interpret the information, and the existence of mechanisms for follow-up and accountability[25].

Consultation is the second pillar of the EWC's mandate and is closely linked to the principle of information. According to Article 2(g) of Directive 2009/38/EC, consultation means the establishment of dialogue and exchange of views between workers' representatives and central management at such time, in such fashion, and with such content as enables workers' representatives to express an opinion on the basis of the information provided about the proposed measures, which may be taken into account in the decision-making process. The consultation process is intended to go beyond mere notification and to provide workers' representatives with a genuine opportunity to influence decisions affecting employees at the transnational level[26]. Effective consultation requires that management not only informs representatives in a timely manner but also listens to their views and considers their input before finalizing decisions[27]. The effectiveness of consultation in EWCs depends on several factors, including the quality of information, the timing of the process, the expertise of representatives, and the willingness of management to engage in meaningful dialogue[28]. While the Directive does not grant EWCs co-decision rights, it does require that consultation take place "in such a way as to enable workers' representatives to meet with central management and obtain a reasoned response to any opinion they might formulate". Consultation is also a dynamic process, evolving in response to changes in the economic and regulatory environment. The COVID-19 pandemic, for example, highlighted the importance of timely and effective consultation in managing crises, protecting jobs, and ensuring the health and safety of workers. The experience of EWCs during the pandemic has underscored the need for robust mechanisms for consultation and for the active involvement of workers' representatives in decision making processes[29].

It is worth remembering that, apart few cases such as the decisions of the Belgian and French courts on the Renault Vilvoorde case in 1997, there are no clear mechanisms in European legislation that can stop company decisions if they are taken beforehand and without informing or consulting workers, but European legislation has a concrete scope. More than 90% of the European Union is made up of small businesses (employing up to 49 people) and a small percentage of medium-sized or large businesses. If you are part of a

[25] ETUI, European Works Councils Database, 2021;
[26] R. Jagodziński, op. cit.;
[27] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit.;
[28] J. Waddington, op. cit.;
[29] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit.;

multinational company, it is difficult to be aware of the decisions taken by senior management, which is often located in another country. Dialogue between trade unions and businesses usually takes place at local and/or national level. From a European perspective, where companies are free to produce goods and services in any country and people are free to work wherever they want, rights should be raised to the highest possible level or standard in order to avoid any kind of discrimination or deterioration in working conditions. In this regard, European legislation, directives and regulations provide a basis and certainty for workers, while collective bargaining at national and transnational level can raise standards (as can the legislation of each country). There are many nuances to this, in the sense that some work better than others; some apply the standard to the letter, while others go "beyond" it and include additional topics in their founding agreements, for example, on which they inform workers. One example is the issue of health and safety in the workplace, where management shows investments in OSH, training provided, accident rates and incidence, and other data, to give workers' representatives as complete a picture as possible of the issue at European level. It is important to remember that in practice, those who sit at the European Works Council table are not always affiliated with a trade union. This does not depend solely on declining union density rates (i.e. in Eastern European countries), but also on different national institutional settings (i.e. Germany, Austria, Netherland). While information and consultation are the core principles of the EWC, there is a growing recognition of the need to move towards a more participatory model of industrial relations in Europe[30]. Participation, in this context, refers to the involvement of workers and their representatives in the decision-making processes of the company, going beyond the mere right to be informed or consulted. The same EWC can facilitate the introduction of worker participation models in companies, for example in decision-making processes[31].

Some scholars highlight also the potential of EWCs to serve as laboratories for participatory industrial relations, where innovative practices can be developed and diffused across countries and sectors[32]. In this sense, participatory outcomes are often linked to the ways in which worker representatives coordinate across sites and to the degree of workplace trade union engagement with EWCs and transnational company agreements, which can reinforce representatives' capacity to act beyond purely procedural information and

[30] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit.;

[31] S. Lafuente, The Quiet Transnationalisation of Employee Representation at Board Level in National Laws and Practices. ETUI Working Paper, 2023;

[32] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit., V. Pulignano, op. cit.;

consultation[33]. Relatedly, the interaction between management strategies and EWC design has been described in terms of "institutional malleability", helping to explain why some EWCs develop more substantive forms of involvement, while others remain closer to compliance-oriented practices[34]. Applied research and comparative case studies also document recurring implementation challenges (e.g., resources and expertise gaps, difficulties in ensuring timely consultation) as well as practical solutions and good practices that can support more participatory EWC practices[35]. The evolution from information and consultation to participation is seen as a positive development that can contribute to the democratization of the workplace, the improvement of working conditions, and the competitiveness of European companies. Participation is not only a normative ideal but also a practical necessity in the context of globalization, digitalization, and the increasing complexity of corporate structures. By involving workers in decision-making processes, companies can benefit from their knowledge, experience, and commitment, leading to better outcomes for both employees and employers[36]. The participatory approach also fosters a culture of trust, mutual respect, and shared responsibility, which is essential for the sustainability of the European social model.

3. Case Study Analysis – EWC Participation as Positive Evolution in Industrial Relations

The following case studies examine how European Works Councils (EWCs) translate the principles of information, consultation, and participation into practice within multinational enterprises[37]. Building on the theoretical framework outlined above - and situated within the strengthened regulatory landscape established by the 2025 revision of Directive 2009/38/EC - this section analyses two distinct yet complementary trajectories through which EWCs have contributed to the evolution of transnational industrial relations. Taken together, the DS Smith and TK Elevator cases illustrate the increasing

[33] M. Whittall, M. M. Lucio, S. Mustchin, V. Telljohann, F. R. Sánchez, Workplace trade union engagement with European Works Councils and transnational agreements: The case of Volkswagen Europe. European Journal of Industrial Relations, 23(4), 397–414, 2017;

[34] V. Pulignano, J. Waddington, Management, European Works Councils and institutional malleability. European Journal of Industrial Relations, 26(1), 5–21, 2020;

[35] Eurofound, Challenges and solutions: Case studies on European Works Councils. Luxembourg: Publications Office of the European Union, 2022;

[36] S. De Spiegelaere, R. Jagodziński, J. Waddington, op. cit.;

[37] G. Brusaporci, R. Fazioli, Social Dialogue: An Essential Element of European Cohesion and Competitiveness. E-Journal of International and Comparative Labour Studies, 14(3), 2025;

capacity of EWCs to operate as dynamic institutional arenas capable of shaping organisational decision-making beyond the minimum standards set by legislation. While DS Smith demonstrates how negotiated protocols, internal committees, and structured monitoring mechanisms can consolidate worker participation in areas such as health and safety, TK Elevator shows how early involvement in technological transitions and the establishment of permanent thematic commissions can anchor workers' input in strategic production choices and company-wide safety transformation processes. Despite the different economic and industrial contexts, both cases reveal a shared capacity to leverage information, consultation, and participation in ways that align closely with the reinforced obligations and participatory ambition of the revised Directive. By analysing these two empirical examples side by side, this section highlights a broader shift from formal procedural compliance toward more substantive, participatory, and innovation-driven forms of transnational social dialogue. As such, the cases provide concrete evidence of how EWCs can function as laboratories of social innovation, enhancing organisational resilience and contributing to more democratic forms of corporate governance across multinational enterprises.

The article adopts a qualitative comparative case study approach. The two cases were selected because they illustrate distinct but complementary trajectories of EWC development in sectors characterised by strong transnational integration and significant organisational change, making them particularly relevant for assessing the participatory potential of EWCs in light of the revised Directive 2009/38/EC. The analysis is based on qualitative data drawn from EWC agreements, internal company documents, annual EWC reports, and other official materials produced within the framework of European social dialogue. The cases are analysed through a qualitative comparison informed by process-tracing logic, focusing on how specific institutional and organisational conditions bled the emergence of participatory practices beyond formal information and consultation.

3.1. The Case Study of DS Smith Group

Table 1 - Own Elaboration

National Legal Framework of EWC	Ireland
Markets of operation in UE of DS Smith	Packaging Central EMEA: Austria, Germany, Luxembourg, Switzerland, Poland, Slovakia, Czechia, Belgium, Netherlands. Packaging East EMEA: Bosnia Herzegovina, Bulgaria, Croatia, Hungary, North Macedonia, Romania, Serbia e Slovenia. Packaging France. Packaging North EMEA: Lithuania, Sweden, Estonia, Denmark, Finland, Lithuania, Norway. Packaging South West EMEA: Spain, Portugal and Morocco. Packaging South East EMEA: Italy, Turkey, Greece. Packaging UK & Ireland.
Year of foundation EWC	2006
Composition of the EWC	Employee representatives from the countries covered by the agreement; EWC Chair, EWC Director, EWC Coordinator, Diversity and Inclusion Committee, Health and Safety Committee, EWC Health & Safety Workstream, EWC Regional Executive Committee.
Year of the last EWC Agreement	2026
Relation between EWC and National T.U.	Structured cooperation with national trade unions, and UNI Europa
EWC World	
International T.U. Federation	Constant support of UNI Europa
Presence of T.U. & industrial relations in the various EU countries	Presence of T.U. with positive industrial relations in most of the single EU countries

The DS Smith case offers a salient illustration of how European Works Councils can evolve from basic information-and-consultation bodies into institutional spaces that foster structured participation and transnational coordination. This example is particularly relevant in light of the 2025 revision of Directive 2009/38/EC, which reinforces workers' rights, clarifies the scope of consultation, and strengthens the role of trade unions and experts. This case therefore serves as an empirical bridge between the theoretical framework

outlined earlier and the practical dynamics through which EWCs operate in multinational companies.
In recent years, DS Smith has developed an extensive set of practices that go beyond the minimum legal requirements set by the directive, particularly through the negotiation of European-level instruments. A prominent illustration is the 2018 Heat Stress and Heat Discomfort Protocol, a landmark agreement concluded within the EWC. The protocol addresses health and safety risks related to excessively hot and cold working environments, mandating company-wide risk assessments, preventive measures, workers' training, and clear escalation procedures. If a local site fails to respond adequately to reported issues, EWC representatives may intervene, and persistent non-compliance can trigger a joint inspection by the EWC Chair and company management. This demonstrates how EWCs can function as laboratories of innovation, enabling the codification of common standards and the diffusion of preventive practices across national boundaries.
Following the acquisition of DS Smith by International Paper, the EWC became a central locus for managing the transition. On 14 January 2026, employee representatives were called to vote on a newly renegotiated EWC agreement. The alternative was to fall under International Paper's pre-existing arrangement, which provided less favourable provisions. The renegotiated agreement—approved by a large majority—preserved the strengths of the 2019 DS Smith agreement, particularly the role of the Health and Safety Committee and the Diversity and Inclusion Committee, both of which serve as internal mechanisms that allow representatives to shape policies within their fields of competence. This outcome reflects how restructuring processes often activate the EWC as a strategic arena in which representatives seek to secure continuity, enhance participation rights, and align governance practices with the reinforced obligations introduced by the revised directive.
The new agreement introduces an explicit reference to the European regulatory framework on EWCs, while also setting a future cap of 40 members (as opposed to 50 previously), to be reached gradually through natural turnover. Moreover, although the EWC coordinator continues to be appointed by the company, a dedicated committee has been created to review internal rules and potentially reconsider the coordinator's role. These adjustments illustrate the emergence of hybrid governance arrangements in which managerial prerogatives coexist with increasingly institutionalized participatory mechanisms.
The Health and Safety Committee continues to operate through bimonthly virtual meetings, ensuring constant monitoring and fostering a European-wide dialogue with management. This committee has produced several policy documents and allows representatives to act proactively rather than merely

react to company decisions. Taken together, these instruments confirm that EWCs can transcend a purely consultative role and operate instead as structured platforms for co-design, joint monitoring, and the establishment of cross-border standards.

The acquisition by International Paper also triggered a significant reorientation of the company's safety strategy. In 2025, DS Smith experienced seven fatal accidents, with investigations conducted by the external agency DEKRA revealing systemic issues such as production pressure and near misses related to machinery contact—events with high fatality potential. The new management introduced a shift from attributing blame to individual workers towards identifying root causes and improving organisational prevention. Leadership training programmes and the creation of a Serious Injury & Fatality Prevention (SIF) team were launched, and the new HR Manager invited EWC Health and Safety Committee members to join this team as experts. Their unanimous acceptance demonstrates a shared commitment to shaping safety policies across Europe. This shift exemplifies how EWCs can accompany companies through cultural transformations, reinforcing a participatory model that aligns with the directive's ambition to empower worker representatives.

Overall, the DS Smith case provides compelling evidence that, when adequately supported by negotiated structures, continuous dialogue, and shared responsibilities, EWCs can play a decisive role in strengthening workers' rights, fostering innovative practices, and enhancing organisational resilience. It thus creates a natural analytical bridge to the subsequent case study of TK Elevator, where similar participatory logics emerge in the context of technological transition and safety governance.

3.2. The Case Study of TK Elevator Group

Table 2 - Own Elaboration

National Legal Framework of EWC	Germany
Markets of operation in UE of DS Smith	DE / Deutschland AT / Österreich BE / Belgien DK / Dänemark ES / Spanien FR / Frankreich HR / Kroatien HU / Ungarn IT / Italien LU / Luxemburg NL / Niederlande NO / Norwegen PT / Portugal SE / Schweden
Year of foundation EWC	1996 (with the previous owner Thyssenkrupp)
Composition of the EWC	Employee representatives from the countries covered by the agreement; A select committee chaired by the chairperson, plus two vice-chairperson and two additional members
Year of the last EWC Agreement	2020
Relation between EWC and National T.U.	Structured cooperation with the trade unions IG Metall, the Group Works Council and IndustriAll
EWC World	Global Work Council founded in 2024
International T.U. Federation	Constant support of IndustriAll
Presence of T.U. & industrial relations in the various EU countries	Presence of T.U. with positive industrial relations in most of the single EU countries

The TK Elevator case provides a complementary perspective on how European Works Councils can accompany technological transitions and safety-related transformations within multinational companies. As in the DS Smith case, this example demonstrates how EWC structures - when supported by clear procedures and sustained dialogue - can move beyond the minimum legal obligations of information and consultation. It therefore represents a natural continuation of the analytical trajectory established earlier, offering further empirical insight into the evolving role of EWCs in the context of the 2025 revision of Directive 2009/38/EC.

TK Elevator is a global leader in the elevator industry, with significant operations across the European Union, the European Economic Area, Switzerland, and the United Kingdom. To promote structured transnational dialogue, the company has established its EWC at its headquarters in Germany, composed of employee representatives elected or appointed in accordance with national rules. Representation ranges from one delegate in smaller countries to five in those employing more than 4,000 workers, supported by a system of alternates. In 2024, TK Elevator, together with IndustriALL Global Union, IG Metall, and the TKE Group Works Council, signed an agreement establishing a Global Union Council (GUC) - a further signal of the company's commitment to comprehensive social dialogue and to aligning corporate practice with international labour standards.

In recent years, the launch of the new EOX elevator model has served as a major testing ground for the EWC's capacity to ensure early involvement in decisions with potential transnational implications. The introduction of EOX raised concerns about the possible relocation of production from Europe to lower-cost countries, as well as potential impacts on employment and technical competences. In line with the EWC Agreement—and echoing the strengthened obligations of timely and meaningful information and consultation under the revised Directive—the Select Committee established a permanent EOX Commission in early 2023. The Commission monitored the rollout of the project, sought clarification on strategic production decisions, and engaged in dialogue with central management regarding the role of European manufacturing sites.

In March 2024, the Commission adopted a formal resolution supporting the prioritization of cabin and component production at the Móstoles site and, more broadly, within TK Elevator's internal European production network. The company's response in April 2024 confirmed that, at least for the first operational year of EOX (2024/25), core components would indeed remain in Europe, while future decisions would be guided by competitiveness, quality, and logistical efficiency. This exchange exemplifies how EWCs can operationalize the Directive's principles by intervening at a stage when their input can still shape outcomes, thereby strengthening the legitimacy of cross-border industrial relations processes.

As the production phase stabilized, the EOX Commission shifted its focus to the post-sales lifecycle of the model - installation, maintenance, and occupational safety. Its composition was accordingly revised, replacing manufacturing representatives with colleagues from the three countries with the highest sales volumes of EOX. This allowed the Commission to evaluate field-level performance, identify training needs for installers and maintenance technicians, and monitor emerging risks. This evolution mirrors the participatory dynamics observed in the DS Smith case, reinforcing the argument that EWCs can adapt their internal architecture to accompany complex technological transitions.

Beyond the EOX project, TK Elevator's EWC has increasingly shaped the company's occupational health and safety strategy, an area marked by serious incidents, including fatal accidents across Europe. Parallel to the launch of the company's Safety Transformation Program (STP), the EWC established a permanent Safety Commission composed of representatives from Portugal, France, the Netherlands, Austria, and Germany. Its initial goals included systematically collecting information on national safety conditions, developing a shared analytical questionnaire for STP implementation, and identifying priority areas for improving prevention, training, and worker protection. Early Commission activities examined worker participation in accident analyses, adequacy of equipment and training, and the extent to which co-management principles influenced safety-related decisions.

Taken together, these developments demonstrate how EWCs can serve as structured platforms for sustained participation, enabling workers to influence both strategic technological decisions and day-to-day safety governance. In doing so, TK Elevator's EWC not only supports better working conditions but also contributes to organisational resilience, innovation capacity, and competitiveness - elements at the core of the contemporary debate on the future of European industrial relations.

4. Conclusion

European Works Councils have progressively established themselves as a central pillar of transnational industrial relations, providing structured mechanisms for information, consultation, and recently also for participation within multinational companies. Conceived to ensure that workers' voices could be heard in decisions extending beyond national borders, EWCs have evolved into dynamic arenas where shared responsibilities, common learning, and innovative practices emerge. The recent revision of Directive 2009/38/EC, adopted in October 2025, reinforces this trajectory by strengthening the rights of workers' representatives, clarifying the scope of information and consultation, and enhancing the role of trade unions and experts. These developments confirm the growing relevance of EWCs in the European social model and their potential to shape more inclusive and democratic corporate governance. At the same time, the two case studies discussed in this article make it possible to assess, in practical terms, under which conditions such participatory developments actually materialize. Indeed, as summarised in Tables 1 and 2, the two case studies share a set of institutional and organisational characteristics that help explain why participatory outcomes were able to emerge. Rather than being isolated "best practices", these experiences are rooted in specific configurations of legal frameworks, company structures and actor constellations. The tables make explicit that, in both cases, EWCs operate in companies with broad European market coverage, long-standing EWC agreements, stable internal bodies (such

as select committees and thematic commissions), which provide trust between social partners, continuity and cumulative learning over time.
The case studies of DS Smith and TK Elevator illustrate in concrete and complementary ways how EWCs can function as laboratories for innovation in industrial relations. At DS Smith, the negotiation of the *Heat Stress and Heat Discomfort Protocol* shows the capacity of EWCs to deal with transversal themes - such as health and safety - by establishing common standards that go beyond legal requirements and national practices. More specifically, what "worked" in this case was the combination of a negotiated European-level protocol, clear procedural expectations at local level (risk assessment, training and preventive measures), and structured follow-up tools, including escalation pathways and the possibility of joint inspections when local responses are inadequate. In this sense, the protocol did not remain a symbolic document, but operated as a practical governance mechanism supporting implementation and accountability across countries. This example demonstrates how structured dialogue, respect and mutual trust can anticipate risks, foster preventive cultures, and protect workers in a coherent European framework. The TK Elevator case further enriches this perspective by illustrating how EWCs can actively accompany technological transitions and respond to new challenges in production organization, skills, and occupational safety. Through the EOX Commission, workers' representatives were able to engage in early monitoring of strategic production decisions, safeguard employment and competences in European sites, and contribute to a balanced framework for innovation. Here, what "worked" was the existence of a permanent thematic commission that enabled continuity and specialization, combined with a consultation process that generated formal positions (such as the Commission's resolution) and a management response within a timeframe in which outcomes could still be influenced. Similarly, the Safety Commission established in the context of the company's Safety Transformation Program (STP) shows how structured participation can help translate global policies into concrete improvements, ensuring consistent prevention practices, better training, and shared responsibility across countries. The possibility to adjust the composition and mandate of the EOX Commission over time (from production to post-sales and field safety) also indicates that participation becomes more effective when EWC structures can adapt to the lifecycle of projects. Taken together, these experiences demonstrate that when information, consultation, and participation are fully implemented, EWCs do not merely mitigate conflicts but actively contribute to creating more resilient, competitive, and socially sustainable companies. Worker participation fosters trust, improves organisational learning, and enhances the quality of corporate decisions. An international participatory model - grounded in structured dialogue, trust,

transparency, and co-responsibility - strengthens companies' capacity to navigate complex processes such as restructuring, digitalisation, sustainability transitions, and changes in global value chains. It also contributes to safer workplaces, more coherent risk-prevention strategies, and a culture in which safety is understood as a shared asset rather than a regulatory obligation.

However, these experiences also help explain why comparable outcomes are not yet more widespread. First, resources, expertise, and coordination capacities remain uneven across national delegations and across companies, which can limit representatives' ability to transform information into influence. Second, EWC practices are highly sensitive to management strategies: depending on corporate priorities, consultation may remain compliance-oriented and take place too late to affect decisions. Third, participation tends to remain episodic where there are no permanent structures (e.g., select committees or thematic commissions) and no robust routines for monitoring and follow-up. In light of this, the two cases suggest that similar developments elsewhere require at least three enabling conditions: (1) timely and sufficiently detailed information to allow an assessment before decisions are finalized; (2) consultation procedures that ensure representatives can formulate positions and receive a reasoned response; and (3) stable organisational arrangements - supported by trade unions and/or experts - capable of sustaining transnational coordination, learning, and implementation over time.

Looking ahead, the evolution of EWCs will depend on the ability of social partners to consolidate these achievements and extend them to new domains. The strengthened directive provides an important opportunity to enhance the effectiveness of EWCs, but its success will require sustained commitment from companies, trade unions, and institutions. In this respect, the revised Directive should be assessed precisely in terms of whether it supports the mechanisms that enabled participation in the two cases discussed here - namely, earlier and more meaningful consultation, clearer procedural obligations, stronger protection for representatives, an explicit role for trade unions and experts, and more credible enforcement through sanctions. While these elements can facilitate the emergence and diffusion of similar "laboratory practices", the case studies also indicate that legal reform alone is unlikely to be sufficient without organisational investments, stable internal EWC structures, and robust linkages between EWCs, national representation, and trade union support. Only through active worker participation, constructive dialogue, and a shared vision of economic democracy can EWCs continue to function as engines of social progress, contributing simultaneously to improved working conditions, organisational competitiveness, and the long-term resilience of European multinational enterprises.

Reinvigorating Collective Bargaining: A Comparative Assessment of Australia's Fair Work Act and Denmark's Collective Bargaining System

Clive Roddy Tillman*

Abstract. Australia's enterprise-level collective bargaining system has experienced a sharp decline in coverage, falling from 27% of employees in 2012 to only 15% by late 2021. This reduction reflects a broader pattern across Anglosphere nations, where decentralised bargaining structures have struggled to sustain coverage. This decline has paralleled the rise of the "fissured workplace", a term coined by US economist David Weil to describe outsourcing and fragmentation strategies used by corporations to evade employer obligations and undermine collective bargaining. The article examines the institutional drivers of the decline of enterprise bargaining coverage in Australia and explores alternative regulatory models. It argues that the Fair Work Act structurally constrains broad-based bargaining through provisions that largely restrict bargaining to a single firm. By contrast, Denmark's system of sectoral bargaining, characterised by 'organised decentralisation', sustains high levels of coverage through coordinated multi-level bargaining structures. The paper has three parts: Part 1 explains the historical context behind the decline of collective bargaining coverage in Australia with attention to the shift away from the award system. Part 2 examines the particular ways the Fair Work Act hinders broad based collective bargaining. Part 3 presents the Danish sectoral bargaining model as an alternative to enterprise-level bargaining systems. The discussion concludes that sectoral bargaining models offer a viable pathway to revitalise collective bargaining in Australia by expanding bargaining coverage and enhancing employee voice in the workplace.

Keywords: *Collective bargaining; Organised decentralisation; Disorganised decentralisation; Enterprise bargaining; Sectoral bargaining; Vertical coordination, Horizontal coordination.*

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1. Introduction: Broad-Based Bargaining Delivers Better Outcomes.

Analysis begins by clarifying the key concepts underpinning the paper, in particular the distinction between enterprise-level and multi-employer bargaining.[1] Enterprise level bargaining is a form of decentralised collective bargaining whereby negotiation takes place only for a particular group of workers at a particular firm and/or worksite.[2] Enterprise bargaining could sometimes involve a cohort of workers employed in various roles and branches within a single-enterprise - for example workers performing a range of roles within a national supermarket chain.[3] Alternatively, enterprise bargaining might only involve a narrow section of a worksite- such as butchers at a supermarket.

In contrast to the enterprise bargaining model, many countries have multi-tiered sectoral bargaining that occurs across broad national, sectoral, and multi-employer levels.[4] In these countries unions and employers (or employer representatives) bargain for collective agreements that provide coverage and compensation floors for most workers in a particular industry, occupation or region.

It is also important to highlight the fact that the two models are not mutually exclusive and there is overlap in their use and functions.[5] For example, Australia's Fair Work Act is largely focused on single enterprise agreements, however, there are provisions in legislation to allow for multi-enterprise bargaining. In addition, Denmark has a sectoral bargaining system, however a considerable degree of local bargaining is permitted under the Danish model.[6]

The above-mentioned categories are not the only way to analyse and distinguish between collective bargaining systems. Some scholars have used the far broader conceptual framework of centralised and decentralised collective

[1] For background to multi-employer bargaining see: S Forsyth, S McCrystal, *Collective Bargaining and Industrial Action Reform,* Melbourne Law School: Centre for Employment and Labour Relations Law, Melbourne, 2022; A Forsyth, T Hardy, S McCrystal, *Collective Bargaining in Fissured Work Contexts: An Analysis of Core Challenges and Novel Experiments, Federal Law Review,* 2023, vol. 51, n. 4, pp- 504- 531; M Anner, M Fisher-Daly, M Maffie, *Fissured Employment and Network Bargaining: Emerging Employment Relations Dynamics in a Contingent World of Work, Industrial and Labour Relations Review*, 2021, vol. 74, n. 3, pp 689- 714.

[2] D Madland, *Re-Union: How Bold Labor Reforms Can Repair, Revitalize and Reunite the United States,* ILR Press, Ithaca, 2021, p. 11.

[3] See for example: *Woolworths Group Limited T/A Woolworths* [2019] FWCA 7 (7 January 2019).

[4] Madland, *op cit, 2,* p. 15.

[5] S Hayter, *International Comparative Trends in Collective Bargaining, Indian Journal of Industrial Relations,* 2010, vol 45, n. 4, pp. 596- 608.

[6] T P Larsen, A Ilsøe, *Varieties of Organised Decentralisation across Sectors in Denmark: A Company Perspective*, *Industrial Relations Journal*, 2022, vol 53, n. 4, pp. 368- 389.

bargaining.[7] Within this framework there is the useful distinction between organised and disorganised decentralisation. Organised and disorganised decentralisation are terms that were initially developed by Franz Traxler. [8] Organised decentralisation involves encompassing collective bargaining at a sectoral or industry level and using these higher levels of bargaining as a framework or governance mechanism for bargaining at a lower level. In this sense, the system is articulated as each layer of bargaining supports the other and the rise of one bargaining level does not necessarily go hand in hand with a corresponding decline in other levels of bargaining.[9] Disorganised decentralisation, on the other hand, is characterised by fragmented bargaining at a local level. Disorganised decentralisation takes place outside the guiding framework of sectoral or industry level agreements. Under disorganised models, enterprise level bargaining takes a more market-oriented direction with a mixture of local union and non-union agreements that occur under weak or non-existent sectoral agreements.[10]

This article also draws upon Traxler's theory of horizontal and vertical coordination.[11] Horizontal coordination refers to the ability for bargaining actors to align outcomes across sectors and firms, thereby preventing competitive undercutting. Vertical coordination refers to the capacity for institutions to ensure compliance with bargaining units, including both workers and firms. Taken together, coordination is important for sustainable collective bargaining in a modern globalised economy, where the pressure for competitive undercutting and fragmentation is pronounced. Recent scholarship by Andersen further emphasises that such coordination operates through interwoven processes across institutional actors and bargaining levels.[12]

The empirical data reveals a strong correlation between the level of bargaining and the national rate of coverage. Across the OECD, collective bargaining

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[7] H Katz, *The Decentralisation of Collective Bargaining: A Literature Review and Comparative Analysis*, *ILR Review*, 1993, vol. 47, n. 1, pp. 3-22.

[8] F Traxler, *Farewell to Labour Market Associations? Organized Versus Disorganized Decentralization as a Map for Industrial Relations*, in C Crouch, F Traxler (eds), *Organized Industrial Relations in Europe: What Future,* Avebury, Aldershot, 1995 pp. 3-19.

[9] F Traxler, S Blaschke, B Kittle, *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change and Performance,* Oxford University Press, Oxford, 2001.

[10] F Traxler, *Collective Bargaining and Industrial Change: A Case of Disorganization? A Comparative Analysis of Eighteen OECD Countries, European Sociological Review,* 1996, vol 12, n3, pp. 271- 287; D Grimshaw, M Johnson, S Marino,, J Rubery, *Towards More Disorganised Decentralisation? Collective Bargaining in the Public Sector Under Pay Restraint, Industrial Relations Journal ,* 2017, vol 48, n. 1, pp. 22-41.

[11] F Traxler, *Coordinated Bargaining: A Stocktaking of its Preconditions, Practices, and Performance,* in *Industrial Relations Journal*, 2003, vol. 34, n. 3, pp 194-209.

[12] S K Andersen, *Multi-Employer Bargianing In Denmark: Interwoven Processes of Coordination, International Labour Review* (2024) vol. 163, n. 4, pp.693- 710, p. 694.

rates have remained high and stable only in nations where multi-employer bargaining (sectoral and national) is in place.[13] Collective bargaining coverage ranges from 49% (Switzerland) to 98% (Austria and France). The average coverage rate in countries with multi-employer/sectoral/national level of cover sits at 76.8%.[14] In comparison, collective bargaining coverage remains low in countries that have exclusively enterprise-level bargaining. Collective bargaining coverage rates have continued to decline under enterprise-level bargaining. This is even the case in countries that have legislative measures that are (relatively) more favourable to unions, such as parts of Canada and New Zealand under Labour's Employment Relations Act 2000. This shows that law reforms designed to facilitate collective bargaining and/or promote trade unionism remain largely ineffective unless laws are also passed that direct a move towards sectoral-level bargaining with articulated bargaining at a local level.

There are multiple reasons why sectoral level bargaining leads to higher collective bargaining coverage. Firstly, centralised bargaining provides the benefits of economies of scale and allows unions to bargain for large numbers of similar employees without exhausting their resources.[15] This wider scope of coverage provides unions with greater recruitment and representational opportunities. Secondly, it provides a degree of protection against hostile employers that use contracting out and fissured workplace arrangements to avoid collective bargaining altogether. Thirdly, it protects against a race to the bottom whereby enterprises that maintain collectively bargained wages and conditions are at a competitive disadvantage to those that do not. [16] Companies are therefore less likely to compete on reducing wages and conditions, this, in

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[13] R Bispinck, H Dribbusch, T Schulten, *German collective bargaining in a European perspective: Continuous erosion or re-stabilisation of multi-employer agreements?',* WSI-Diskussionspapier, No. 171, 18; OECD, *Collective bargaining in a changing world of work*, in *OECD Employment Outlook 2017*, OECD Publishing, Paris, 2017, <https://doi.org/10.1787/empl_outlook-2017-8-en> .

[14] J Visser, S Hayter, R Gammarano, *Trends in Collective Bargaining Coverage: Stability, Erosion or Decline?*, Issue Brief No.1, International Labour Organisation, Geneva, 2015.

[15] J Visser, *Trade Unions in the Balance,* ILO ACTRAV Working Paper, International Labour Organisation, Geneva, 2018; C Schnabel, *Union Membership and Collective Bargaining,* (IZA Discussion Paper No 13465, IZA Institute for Labor Economics, Bonn, 2020; G J Bamber, P Sheldon, *Collective Bargaining: Towards Decentralization,* in R Blanpain (ed), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies,* Kluwer Law International, The Hague, 2004, pp. 509 –548.

[16] J Stanford, F MacDonald, L Raynes, *Collective Bargaining and Wage Growth in Australia*, The Centre for Future Work at the Australia Institute, Sydney, 2022; T Schulten, *The Meaning of Extension for the Stability of Collective Bargaining in Europe*, Policy Brief No 4, ETUI European Economic, Employment and Social Policy, Brussels, 2016.

turn, can create a solid floor for further bargaining at a local level.[17] Sectoral bargaining reduces the incentive for employers to engage in aggressive union-busting campaigns to eliminate unions from their workplaces because unions interfere less in local wage setting.[18] Sectoral bargaining, therefore, allows unions to provide a voice for workers in small to medium-sized enterprises that would otherwise be impossible to organise on a one-by-one basis.[19]

This paper adopts a comparative case study approach, selecting Denmark and Australia as contrasting examples of decentralised collective bargaining. Denmark represents a system of "organised decentralisation" with coordinated multi-tiered bargaining and high coverage rates. Australia, on the other hand, represents a more fragmented model with declining coverage and limited coordination. Both countries experienced similar pressure to decentralise their bargaining systems in response to global economic pressures in the 1980s and 1990s, making them suitable for comparison. However, they adopted markedly different institutional responses, highlighting how decentralisation can be structured in fundamentally different ways.

Part 1: The Move Toward Decentralised Bargaining in Australia.

2. Australia's Move Away from Sectoral Regulation Towards a North American Style Enterprise Bargaining System

Arbitration first became part of the Australian industrial relations system in the late 1890s via various colonial jurisdictions.[20]The Commonwealth Conciliation and Arbitration Act 1904 (Cth) established compulsory industrial arbitration at the federal level, providing a mechanism for unions and employers to resolve disputes over pay and conditions.[21] Unions were institutionally embedded into this system because the legislation guaranteed their participation in the

[17] C L Ibsen, M Keune, *Organised Decentralisation of Collective Bargaining: Case Studies of Germany, Netherlands and Denmark*, OECD Social, Employment and Working Papers No 170, OECD Publishing, Paris, 2018.

[18] Schnabel, op cit 15, p. 15.

[19] S Cazes, A Garnero, S Martin, C Touzet, *Collective Bargaining in a Changing World of Work*, in OECD (ed), *OECD Employment Outlook 2017,* OECD Publishing, Paris, 2017.

[20] A Stewart, A Forsyth, M Irving, R Johnstone, S McCrystal, *Creighton and Stewart's Labour Law,* 6th ed, The Federation Press, Sydney, 2016; D Peetz, *Awards and Collective Bargaining in Australia: What Do They Do and are They Relevant to New Zealand?*, in *New Zealand Journal of Employment Relations,* 2020, vol. 44, n. 3, pp. 58-75.

[21] A Hawke, M Wooden, *Industrial Relations Reform in Australia: Implications for the Agricultural and Mining Sectors, The Australian Journal of Agricultural and Resource Economics,* 1998, vol. 42, n. 3, pp. 303- 319.

arbitration process.[22] Arbitration led to the making of legally enforceable awards by the tribunal. Awards developed into a comprehensive system of centralised regulation that governed a wide range of working conditions, including minimum wages, working hours, job classifications, penalty rates, redundancy entitlements and termination of employment.[23] Between 1960 and 1985 award coverage in Australia remained over at 80 per cent of the workforce.[24]

In the 1980s there was a drive by unions and employers for a more decentralised system of collective bargaining.[25] On the employer side, this was largely spurred on by the Business Council of Australia (BCA) and their 1989 report titled 'Enterprise Based Bargaining Units: A Better Way of Working'.[26] The BCA report argued that the award system was out of touch with the market requirements of individual firms. The report identified key aspects of the award system that were allegedly hurting economic productivity.[27] These included: Inflexible classification systems, restrictions on work hours, hindered skill development in the workforce, and strict demarcation/classification divisions reduced the incentive for employers to invest in upskilling/multiskilling staff.[28]

Some of these areas of reform were not necessarily controversial in themselves and in many aspects they reflected the concerns that the Australian Council of Trade Unions (ACTU) expressed in the late 80s.[29] From the ACTU's viewpoint, awards often contained structures that reflected outdated Taylorist management techniques that promoted specialisation and deskilling.[30] The

[22] R Mitchell, R Naughton, *Australian Compulsory Arbitration: Will It Survive into the Twenty-First Century, Osgoode Hall Law Journal,* 1993, vol. 31, n.2, pp. 265- 295; M Bray, J Macneil, *Individualism, Collectivism, and the Case of Awards in Australia, Journal of Industrial Relations,* 2011, vol. 53, n. 2, pp. 149- 167.

[23] B Creighton, *One Hundred Years of Conciliation and Arbitration Power: A Province Lost?, Melbourne University Law Review,* 2000, vol. 24, n. 3, 839-865.

[24] W Ochel, *Collective Bargaining Coverage in the OECD from the 1960s to the 1990s, ifo Institut für Wirtschaftsforschung an der Universität München,* 2001, vol. 2, n. 4, pp. 62- 65.

[25] D Peetz, *op cit 20*, 60.

[26] Business Council of Australia, *Enterprise Based Bargaining Units: A Better Way of Working*, Report to the Business Council of Australia by the Industrial Relations Study Commission, Vol. 1, Business Council of Australia, Melbourne, 1989.

[27] Business Council of Australia, *op cit 26,* p. 60.

[28] Business Council of Australia, *op cit 26,* pp. 60- 70.

[29] Business Council of Australia, *op cit 26,* pp. 74-75.

[30] H Thompson, *Structural Efficiency: Lewis Caroll Re-Visited*, *The Australian Quarterly*, 1990, vol. 62, n. 1, pp. 64- 79.

ACTU, therefore, strongly advocated award classification reform (award restructuring) that would enable greater flexibility at a workplace level.[31]

The key point of divergence was in the form that decentralisation should take. The BCA advocated enterprise level bargaining operating to the exclusion of the award system.[32] The ACTU, on the other hand, supported a multi-tiered model in which enterprise bargaining would occur within a coordinated framework of industry level regulation.[33] As late as 1992 the ACTU remained committed to a multi-tiered bargaining model similar to these that exists in central Europe and the Nordic states whereby unions negotiate industry frameworks and enterprise bargaining focuses on flexibility at the firm level.[34]

This conceptual distinction is critical. While decentralisation was widely viewed as necessary in response to changing economic conditions, it did not dictate a single institutional outcome. This paper will demonstrate through comparative experience that decentralisation can be structured in different ways. In Denmark decentralisation has been embedded into a coordinated multi-tiered bargaining system, whereas in Australia it developed into a more fragmented and disorganised form. This suggests that Australia's shift towards enterprise level bargaining reflects a particular institutional set of choices, rather than an inevitable response to globalisation.

3. The Move Towards Decentralisation: From Coordinated Reform to Institutional Rift (1985-1991)

The national wage cases from June 1986 to October 1991 were the venue where this drive towards decentralisation took place. National wage cases involved the commission using its powers of conciliation and arbitration to hand down a decision that alters the wages and conditions in the majority of awards.[35]

The 1986 National Wage Case was a re-evaluation of the centralised bargaining system in the context of an economic crisis.[36] By 1986 there was much talk about Australia's worsening economic position and these fears were crystalised

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[31] See for example Australian Council of Trade Unions, *Award Restructuring- Implications for Skill Formation and Training,* Media Release, Australian Council of Trade Unions, Melbourne, 25 October 1989.

[32] Business Council of Australia *op cit 26,* p. 123.

[33] Australian Council of Trade Unions, *Enterprise Bargaining: An ACTU Perspective,* Media Release, Australian Council of Trade Unions, Melbourne, 26 October 1992.

[34] Australian Council of Trade Unions, *The ACTU, The Accord and Enterprise Bargaining,* Media Release, Australian Council of Trade Unions, Melbourne, 3 April 1992.

[35] B Dabscheck, *Not a Super Decision: The 1986 National Wage Case, Economic Analysis and Policy,* 1987, vol. 17, n.2, pp. 179-194.

[36] *National Wage Case June 1986* (1986) 14 IR 187, 188.

in Treasurer Paul Keating's 14 May statement on talk-back radio that Australia was in danger of becoming a "banana republic", i.e. a nation relying solely on earnings from the export of raw minerals and primary industry products.[37] It was in the context of economic crisis that the Australian Industrial Relations Commission (AIRC) took its first steps to deliver flexibility within the existing centralised framework by introducing 'Principle 12'- a scheme whereby employers were able to seek to reduce or postpone the national wage increase under the grounds of economic adversity.[38] It essentially gave individual employers a degree of flexibility within the award system because it provided an avenue for the particular circumstances of an individual firm to be taken into account when applying national wage increases. Additionally, Principle 3 provided unions and employers an opportunity to bargain for overaward superannuation entitlements at an industry and enterprise level. The 1986 wage case was, therefore, an early attempt to provide a degree of flexibility and decentralisation within a framework of centralised bargaining and industry wage floors. In a sense, this was a step towards a form of organised decentralisation that Traxler described in his 1995 article.[39]

The first major sign of a breakdown of the award system occurred at the 1989 National Wage Case. The 1989 case went beyond the ACTU's calls for award reform by including wages, penalty rates, leave provisions, and working hours as areas to be reformed and restructured.[40] Although the AIRC insisted that these efficiency changes should only be implemented by agreement with a union, the unions viewed the award changes as a cave in to employer demands and an invitation for management to pressure for "negative cost cutting" workplace changes.[41]

The 1989 National Wage case proved to be highly unpopular with the union movement.[42] The AIRC's wage restraints were hardest hit in the male-dominated, skilled blue-collar sectors.[43] In turn, this created deep division within the union movement as leading blue-collar unions looked towards the implementation of a more decentralised bargaining system as a way to break free of the restraints imposed by the AIRC and the award system. It was at this

[37] B Dabscheck, *The Slow and Agonising Death of the Australian Experiment with Conciliation and Arbitration, The Journal of Industrial Relations,* 2001, vol. 43, n. 3, pp. 277- 293.
[38] *National Wage Case June 1986* (1986) 14 IR 187, 260.
[39] F Traxler, *op cit 8*.
[40] C Briggs, *Australian Exceptionalism: The Role of the Trade Unions in the Emergence of Enterprise Bargaining, The Journal of Industrial Relations,* 2001, vol. 43, n. 1, pp. 27- 43, p 33.
[41] K Norris, *Wages Policy and Wage Determination in 1989, Journal of Industrial Relations,* 1990, vol. 32, n. 1, pp. 128-134,; F Stilwell, *Wages Policy and the Accord*, *Journal of Australian Political Economy,* 1991, vol 28, pp 27- 53, p. 39.
[42] C Briggs, *op cit 40*, p. 32.
[43] C Briggs, *op cit 40*, p. 32.

point that the ACTU decided to start pushing for further decentralisation through enterprise level over-award bargaining.

The ACTU's aspirations for a 'managed decentralism' within the existing system essentially broke down in 1989 due to a rift between the unions and the AIRC as the AIRC pushed an agenda of 'efficiency' based around what the union movement believed to be excessive wage and benefit restraints.[44]

4. From Crisis to Enterprise Bargaining: The Complete Breakdown of Coordinated Reform (1991- 1993)

The breakdown of the award system intensified in April 1991 when the AIRC rejected the ACTU and ALP's Accord Mark VI proposals.[45] The union movement viewed the decision as a further erosion of award benefits, such as penalty rates and working hours, with little in return other than a mere 2.5 per cent pay increase.[46] As ACTU president Bill Kelty strongly protested: "It's a sickening decision but there is no reason for the trade union movement to eat the vomit".[47] More fundamentally, the AIRC's rejected the proposal on grounds that the parties were not "mature enough" for enterprise bargaining, highlighting the institutional constraints of the rigid centralised system.[48]

In response, the ACTU held a special conference in May 1991, where delegates endorsed a recommendation to reject the April decision and pursue direct negotiations with employers at an enterprise level.[49] These examples of union frustration and industrial unrest demonstrate that the 1991 national wage case caused a deep rift in the Australian industrial relations system. Union discontent boiled over into a drive to break free of the constraints imposed by the award system, signalling a breakdown in horizontal coordination within the institutional wage-setting framework.

In October 1991, the AIRC conceded to these pressures and introduced the first principles of enterprise bargaining.[50] Early enterprise agreements were subject to strict conditions, including the preservation of award standards and oversight of the commission, ensuring that bargaining outcomes remained

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[44] C Briggs, *op cit 40*, p. 33.

[45] Australian Council of Trade Unions, *The ACTU's View- Accord Mark VI and Enterprise Bargaining,* Media Release, Australian Council of Trade Unions, Melbourne, 27 November 1993; F Stilwell, op cit 40, p. 42.

[46] C Briggs, *op cit 40*, p. 36.

[47] Interview with Bill Kelty (Chris Briggs, Personal Interview, 8 March 1999).

[48] *National Wage Case April 1991* (1991) 36 IR 120, 156.

[49] E Davis, '*Throwing Down the Gauntlet': ACTU Special Unions Conference, May 1991, The Economic and Labour Relations Review,* 1991, vol. 2, n. 1, pp 31-41.

[50] *National Wage Case October 1991* (1991) 39 IR 127, 140-141; D Peetz, *op cit 20,* p. 60.

aligned with broader coordinated outcomes.[51] In this respect, early enterprise bargaining retained elements of what Traxler described as "organised decentralisation", in which firm-level flexibility operates within a coordinated framework.

This coordinated model proved to be short lived. In 1992 legislative reforms were passed that prioritised enterprise level bargaining and reduced the award system to a safety net.[52] The newly enacted Division 3A created a new kind of statutory enterprise agreement, the 'certified agreement'.[53] Under the 1992 reforms, awards were to be subservient to enterprise level certified agreements.[54] Awards were to operate as a mere safety net through the No Disadvantage Test (NDT).[55]

The 1992 amendments were later superseded by the *Industrial Relations Reform Act 1993* (Cth), which further limited the ability for the AIRC to refuse to register enterprise level agreements on discretionary grounds, including the public interest.[56] The most controversial measure, however, was the introduction of non-union agreement-making in the form of Enterprise Flexibility Agreements (EFAs).[57] Taken together, these developments marked a decisive shift away from organised decentralisation towards a more fragmented form of enterprise-based bargaining, consistent with Traxler's conception of disorganised decentralisation.

5. Workplace Relations Act 1996: Consolidating Disorganised Decentralisation

The *Workplace Relations Act 1996* (Cth) marked a decisive shift away from the centralised award system and towards a more fragmented model of bargaining. The Act limited awards to a narrow set of 20 'allowable matters' hence

[51] *National Wage Case October 1991* (1991) 39 IR 127, 141.

[52] *Industrial Relations Act 1988* (Cth) 134L(a); D Peetz, *op cit 20*, p. 61; M Bray, A Stewart, *From the Arbitration System to the Fair Work Act: The Changing Approach in Australia to Voice and Representation at Work*, *Adelaide Law Review*, 2013, vol. 34, n. 1, pp. 21- 40, p. 26.

[53] *Industrial Relations Act 1988* (Cth) ss 134C, and 134E.

[54] *Industrial Relations Act 1988* (Cth) s 134L (1)(a).

[55] *Industrial Relations Act 1988* (Cth) s 134E(1)(a); M Wooden, *The Transformation of Australian Industrial Relations,* The Federation Press, Sydney, 2000, p. 30.

[56] A Stewart, *The Industrial Relations Reform Act 1993: Counting the Costs*, *Australian Bulletin of Labour,* 1994, vol. 20, n. 2, pp. 140- 161, p. 158.

[57] *Industrial Relations Act 1988* (Cth) Pt VIB Div 3; A Stewart, A Forsyth, M Irving, R Johnstone, S McCrystal, *op cit 20*, p. 196; N Way, *Employers, Union Warm to Flexibility*, *The Australian Financial Review,* 10 July 1995.
<https://www.afr.com/companies/employers-unions-warm-to-flexibility-19950710-kax8t>.

reducing the ability for the AIRC the arbitrate on industrial disputes.[58] The 1996 legislation also made it easier for employers to make collective agreements without any union involvement.[59] The *Workplace Relations Act* also created a new kind of individual statutory agreement, the Australian Workplace Agreement (AWA).[60] AWAs enabled individualised wage-setting outside collective process, further weakening coordinated bargaining structures.

The move towards decentralisation was extended further in 2005 with the highly controversial *Workplace Relations Amendment (Work Choices) Act*[61] which removed the general power of the AIRC to arbitrate on industrial disputes.[62] The Award system was also rolled back in three ways. Firstly, AWAs and collective workplace agreements permanently displaced any award.[63] Secondly, the NDT test was removed and awards were no longer the reference points for new workplace agreements (both collective and individual).[64] Finally, there was a restriction on the scope for new awards or variations of existing awards by further reducing the number of allowable award matters from 20 to 14.

More fundamentally, collective bargaining was severely hindered by the fact that there was no legislative mechanism to compel reluctant employers to bargain with unions or employees.[65] Legislative provisions were added to restrict the ability of unions to organise workplaces and engage in industrial action.[66] A new form of agreement was also created- the 'employer greenfields agreement'.[67] This allowed employers to create a new business and simply draft

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58 *Workplace Relations Act 1996* (Cth) s 89A(2); M Wooden, *op cit 55*, p. 30; B Dabscheck, *op cit 37*, p. 285.

59 S McCrystal, M Bray, Non-Union Agreement-Making in Australia in Comparative Historical Context, *Comparative Labour Law and Policy Journal,* 2019, vol. 41, n. 3, pp. 753- 788, p. 765; *Workplace Relations Act 1996* (Cth) s 170LK.

60 *Workplace Relations Act 1996* (Cth) pt VID; R Cooper, B Ellem, *The Neoliberal State, Trade Unions and Collective Bargaining in Australia*, *British Journal of Industrial Relations,* 2008, vol. 46, n. 3, pp. 532- 554, p. 538.

61 *2005* (Cth).

62 A Stewart and A Forsyth, *The Journey from Work Choices to Fair Work*, in A Stewart, A Forsyth (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy,* The Federation Press, Sydney, 2009, pp. 1- 18, p 4.

63 *Workplace Relations Act 1996* (Cth) s 349; A Forsyth, B Creighton, V Gostencnik, T Sharard, *Transition to Forward With Fairness,* Thomson, Sydney, 2008, pp. 64, 68.

64 A Forsyth, V Gostencnik, J Parker, R Roach, *Navigating the Fair Work Laws,* Thomson Reuters, Sydney, 2010, p 2.

65 A Forsyth, *'Exit Stage Left', Now 'Centre Stage': Collective Bargaining under Work Choices and Fair Work,* in A Forsyth and A Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, The Federation Press, Sydney, 2009.

66 A Forsyth, V Gostencnik, J Parker, Rosemary Roach, *op cit 64*, p. 2; R Cooper, B Ellem, *op cit 60*, p. 540.

67 *Workplace Relations Act 1996* (Cth) s 330.

up a collective agreement with no other party, essentially bargaining with themselves.[68]

Taken together, these developments entrenched a model of bargaining characterised by fragmentation, weak coordination and limited collective capacity- hallmarks of Traxler's concept of disorganised decentralisation.

6. Rudd ALP Election Victory and the Fair Work Act 2009

Following the 2007 election of the ALP, the *Fair Work Act 2009* (Cth) was passed with the explicit aim of "achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action".[69] The *Fair Work Act* took several steps to reverse some of the excessively deregulatory aspects of the *Workplace Relations Act,* most notably it imposes an obligation for employers to bargain in good faith. Despite the legislator's intentions, however, collective bargaining coverage has continued to decline under the seemingly more favourable climate provided by the Fair Work Act.[70]

The Fair Work Act structurally constrains broad-based collective bargaining by preferencing agreement making at the enterprise level.[71] Although reforms were initiated in 2022, the legislation continues to place restrictions on multi-enterprise bargaining and sectoral bargaining is non-existent altogether. The legislation also contains significant barriers to initiating bargaining. In the case of first agreements, employees must navigate lengthy processes of obtaining a Majority Support Determination (MSD) and bargaining orders. This structure undermines horizontal coordination across sectors and limits the development of coordinated bargaining outcomes.

In addition, the Act permits non-union agreement making, enabling employers to introduce agreements without genuine collective negotiation.[72] This weakens the role of unions and undermines coordinated bargaining structures. The regulation of industrial action further constrains bargaining by imposing

[68] R Cooper, B Ellem, *op cit 60*, p. 543; *Workplace Relations Act 1996* (Cth) s 330.

[69] *Fair Work Act 2009* (Cth) s 3.

[70] A Pennington, *The 'Fair Work Act' and the Decline of Enterprise Bargaining in Australia's Private Sector, Australian Journal of Labour Law,* 2020, vol. 33, n. 1, pp. 68- 86.

[71] A Pennington, *op cit 70*, p. 70.

[72] U Chaudhuri, T Sarina, 'Employer-Controlled Agreement-Making: Thwarting Collective Bargaining Under the Fair Work Act' ' in S McCrystal, B Creighton, A Forsyth (eds*) Collective Bargaining under the Fair Work Act* (The Federation Press, 2018) pp. 138- 161; See also *Thiess Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FWCFB 2405; *Communications, Electric, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Fredon Industries Pty Ltd* [2021] FWCFB 3190; *Construction, Forestry, Maritime, Mining and Energy Union v Mechanical Maintenance Solutions Pty Ltd* [2022] FCAFC 15.

significant procedural requirements and enabling the ready termination of protected action.[73] This has limited the capacity of employees to exert coordinated pressure across employers, thereby undermining horizontal coordination across firms and weakening vertical coordination within workplaces, both of which are key conditions for sustainable collective bargaining systems.

Part 2: How the Fair Work Act Constrains Broad-Based Bargaining and Limits of the 2022 Reforms

7. Pre-2022 Multi-Employer Bargaining: Limited and Ineffective Pathways

Although the Fair Work Act formally permitted multi-employer bargaining prior to the 2022 reforms, the legislative pathways were either inaccessible or impractical in practice. There mechanisms existed: multi-enterprise bargaining under s 172(3); single Interest Employer Authorisations under Pt 2.4 Division 10, and the low-paid bargaining authorisation under Pt 2.4 Division 9. Of these, the first two were only available at the initiative of employers, leaving the low-paid bargaining stream as the sole avenue for unions and employees to pursue multi-employer bargaining.
The low paid bargaining stream was developed with the intent of providing an avenue for unions to bargain across multiple employers to lift wages in industries that have been traditionally low paid such as childcare, cleaning, security, and aged care services.[74] While the legislation recognised the fragmented nature of these sectors, it imposed significant constraints on access. In particular, the stringent public interest test and the Fair Work Commission's narrow definition of a low paid worker limited the capacity of workers access this stream. The low-paid bargaining stream was a complete failure. Since its implementation in 2009, it did not deliver a single bargained outcome.[75]

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[73] For background see: S McCrystal, *Why is it So Hard to Take Lawful Strike Action in Australia?, Journal of Industrial Relations,* 2019, vol. 61, n. 1, pp. 129-144.
[74] Explanatory Memorandum, Fair Work Bill 2008 (Cth) s 194; R Cooper, *Low-paid Care Work, Bargaining, and Employee Voice in Australia* in A Bogg, T Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (Oxford, 2014) pp. 55- 66, p. 61.
[75] The Australia Institute: Centre for Future Work, Submission No 18 to Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Legislation Amendment (Secure Jobs Better Pay) Bill 2022*, November 2022, p. 9.

8. Fair Work Amendment Act 2022: New Pathways to Multi-Enterprise Bargaining

The *Fair Work Amendment (Secure Jobs, Better Pay) Act* 2022 was introduced in response to declining collective bargaining coverage, the limitations of the existing enterprise-based model, and the failure of existing multi-employer bargaining pathways. The reforms established two bargaining streams: Supported Bargaining and Single Interest Employer Agreements. While these reforms improve access relative to earlier arrangements, they remain subject to structural limitations that constrain their capacity to facilitate genuinely coordinated bargaining.

9. Supported Bargaining Stream

The Supported Bargaining Stream replaced the ill-fated Low-Paid Bargaining Stream. This new stream has implemented measures to streamline the authorisation process, as the criteria have been simplified and made more flexible. The Low-Paid Bargaining stream had an onerous list of over 10 requirements under s 243 that the FWC *must* take into account when deciding to issue an authorisation. By contrast, the Supported Bargaining stream is simpler because the requirements that need to be considered have been reduced to four.[76]

To commence multi-employer supported bargaining a union must first apply to the FWC for a supported bargaining authorisation.[77] The effect of a supported bargaining authorisation is that the employers specified are subject to certain rules in relation to the bargaining process that would not apply otherwise (such as being bound by bargaining orders).[78] It is important to highlight that the supported bargaining stream was not designed to be a widely used substitute for the existing single enterprise bargaining system, instead was designed to assist and encourage employees who may find it difficult to bargain at a single-enterprise level.[79] This could either be because the precarious nature of the industry makes it difficult for them to use their industrial power to get an effective bargaining outcome, or because the ability for workers and

[76] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) sch 1 item 611.
[77] *Fair Work Act 2009* (Cth) s 242.
[78] *Fair Work Act 2009* (Cth) s 242 (1).
[79] *Fair Work Act 2009* (Cth) s 241(c).

employers to bargain effectively is reliant of external sector wide funding from a government entity.[80]
The supported bargaining stream has made it easier to obtain authorisation by simplifying and loosening access criteria. The previous low-paid bargaining stream set out a broad and exhaustive list of over 10 requirements under s 243 that the FWC had to consider when deciding to issue an authorisation. In contrast, the Supported Bargaining stream is simpler because the requirements have been reduced to four.[81] The four mandatory considerations FCW to take into consideration are:

- Pay and conditions- The FWC is required to consider the prevailing pay and conditions in an industry or sector to determine if low rates of pay exist.[82]
- Common interest test- The FWC is required to determine if the employers involved have a clearly identifiable common interest.[83]
- Bargaining efficiency– Whether the likely number of bargaining representatives would be consistent with a manageable collective bargaining process.[84]
- Any other appropriate matters. [85]

The concept of 'common interests' is perhaps the most contentious. In determining whether a group of employers have a common interest, the court must take into account: geographic location, the nature of the enterprise to which the agreement will relate and the employment terms in these enterprises, and finally whether these enterprises are funded by a State, Territory or Commonwealth government.[86]In addition to the four mandatory considerations, the commission must also be satisfied that at least some of the employees covered by the proposed agreement are represented by relevant union (not necessarily members, but must fall within the union's coverage).[87] Once these obligations under s 243(1) are satisfied, the FWC is then compelled to issue a supported bargaining authorisation. It is important to highlight that there is no requirement for unions to obtain an MSD or any similar majority support threshold. Additionally, under s 242(1)(b) a union does not even need

[80]'New Supported Bargaining Agreements', *Fair Work Commission* (Web Page) https://www.fwc.gov.au/about-us/secure-jobs-better-pay-act-whats-changing/bargaining-support-6-june-2023/new-supported
[81] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) sch 1 item 611.
[82] *Fair Work Act 2009* (Cth) s 243 (1)(b)(i).
[83] *Fair Work Act 2009* (Cth) s 243 (1)(b)(ii).
[84] *Fair Work Act 2009* (Cth) s 243 (1)(b)(iii).
[85] *Fair Work Act 2009* (Cth) s 243 (1)(b)(iv).
[86] *Fair Work Act 2009* (Cth) s 243 (2).
[87] *Fair Work Act 2009* (Cth) s 243 (1)(c).

to have members to initiate a supported bargaining authorisation.[88] This lowers barrier to entry and enabling bargaining in structurally fragmented workplaces.

It is also important to highlight that s 243A sets out two restrictions on supportive bargaining authorisations. Firstly, the FWC is prohibited from making an authorisation if the agreement would cover employees in relation to general building and construction work.[89] This demonstrates from the outset that this bargaining stream is restricted in nature. Secondly, and perhaps more importantly, a supported bargaining authorisation can not specify an employee that is already covered by a single enterprise agreement that has not yet passed its nominal expiry date. [90] This restriction underscores the broader purpose of the Fair Work Act: the supported bargaining stream is designed as an alternative to enterprise bargaining for specific groups of workers who experience difficulties bargaining at the enterprise level, rather than as a tiered system of industry-wide minimums, as seen in Denmark.

Once a supported bargaining order is in place, the FWC obtains broad facilitative powers to direct the bargaining process under s 246. At its own initiative, the FWC may provide bargaining representatives with such assistance "that the FWC considers appropriate to facilitate bargaining for the agreement" and "that the FWC could provide it in were dealing with a dispute". Additionally, once a supported bargaining order is in place, bargaining parties have access to bargaining orders.[91] Any employer specified in a supported bargaining order that is in operation is prohibited from bargaining with their employees with any other kind of agreement other than an enterprise agreement and the only kind of agreement the employer may make with their employees is a supported bargaining agreement.[92] This provision is important because it prevents employers from pushing a non-union agreement onto their workplace as a way to sidestep the system. It had no equivalent under the previous low paid bargaining stream.

Perhaps the most revolutionary aspect of this bargaining stream is s 246(3) which gives the FWC the power to provide assistance to bargaining parties by directing a person who is not an employer, but specified in the authorisation, to attend a conference if the FWC is satisfied that this person exercises a degree of control over the terms and conditions of employment.[93] This provision has commonly been discussed in reference to government funders in industries such as childcare, community services and aged care. Despite this,

[88] *Fair Work Act 2009* (Cth) s 242 (1)(b).
[89] *Fair Work Act 2009* (Cth) s 243A(4).
[90] *Fair Work Act 2009* (Cth) s 243A(1).
[91] *Fair Work Act 2009* (Cth) s 169.
[92] *Fair Work Act 2009* (Cth) s 172(7).
[93] *Fair Work Act 2009* (Cth) s 246 (3).

there is also a broader potential to be applied in instances where a large private corporation has control over employment conditions within outsource models, supply chains and franchise arrangements. This provision therefore has the potential to directly challenge the issues created by the fissured workplace, as described by David Weil. So far this potential of the bargaining stream is yet to be tested.

The supported bargaining stream commenced on 6 June 2023, and on that very day, three unions, the United Workers Union (UWU), the Australian Education Union (AEU), and the Independent Education Union (IEU), lodged applications for a supported bargaining authorisation.[94] This demonstrated the union movement's determination to invoke the new provisions to their full effect, thereby avoiding the fate of the low-paid bargaining stream, which largely remained a dormant and ineffective mechanism. The authorisation request was approved by the FWC on 27 September 2023. The authorisation covered over 64 employers and 12,000 workers.[95]

In reaching their decision, the FWC adopted a notably flexible approach to the union representation requirement under s 243(1)(c), merely observing that it was satisfied that 'at least some of the employees who will be covered by the proposed agreement are represented by the UWU, the AEU or the IEU'.[96] This illustrates that, in practice, the legislation establishes a comparatively accessible threshold for the initiation of bargaining. In doing so, it avoids the protracted union recognition processes common in other jurisdictions, which often enable employers to engage in extensive litigation and delay tactics. In reaching their decision to grant an authorisation, the FWC worked their way through the main criteria in s 243 (1). The decision demonstrated just how simple the process was compared to under the previous low paid bargaining stream. The commission decided that s 243(1)(b)(i) was satisfied because the prevailing rates of pay in the sector were close to minimum award rates.[97] Additionally, they considered the 'appropriateness' test under s 243(1)(b)(iii)

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[94] United Workers' Union, Australian Education Union & Independent Education Union of Australia, *Application for a Supported Bargaining Authorisation – Early Childhood Education and Care Industry*, Matter No B2023/538 (Fair Work Commission).

[95] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 1; United Workers Union, *Educators Win First Ever Right to Multi-Employer Bargaining*, *United Workers Union,* 27 September 2023, https://unitedworkers.org.au/archive/educators-win-first-ever-right-to-multi-employer-bargaining/

[96] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 45.

[97] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 50.

and held that despite the existence of 3 unions and 64 employers, the structure of the bargaining units meant that there was no evidence that bargaining would be unmanageable. Their decision was particularly weighted by the fact that the employer side was well organised with the ACA representing 41 employers and the Community Child Care Association (CCCA) or Community Early Learning Australia (CELA) representing the remainder. Of particular significance, the FWC contrasted the 'appropriateness' test in the current legislation with the 'public interest' test under the former low-paid bargaining stream, concluding that the appropriateness test now sets a lower threshold than the public interest test:

A standard which requires positive satisfaction as to the public interest is plainly more stringent than one which involves the exercise of a more general discretion.19 An appropriateness standard connotes that which is 'fair and just' or 'suitable' or 'fitting' and involves, we consider, an evaluative assessment of a broader and less prescriptive nature.[98]

This demonstrates that the FWC has taken a facilitative and pragmatic approach to the legislative requirements, rather than setting a high procedural bar that could frustrate access to multi-employer bargaining under the supported bargaining stream.

Similarly, the FWC adopted a broad interpretation of the statutory 'common interest' requirement. The Commission held that shared industry characteristics, regulatory frameworks, and funding arrangements are sufficient to satisfy the legislative threshold. This marks a clear departure to the more restrictive position taken by the Commission under the previous low-paid bargaining stream.

Once bargaining is concluded, employers may request a vote of approval by the employees covered by the authorisation.[99] The employees at all the workplaces will vote on the proposed agreement in separate cohorts. The agreement will be made if a majority of employees of at least one workplace vote in its favour.[100]If any workplaces vote down the proposed agreement, bargaining representatives need to apply to the FWC under s 184 to have the agreement varied so that only those workplaces that voted in favour it will be covered by the agreement.[101]

Once an agreement is made, additional employers may be added through a variation request. Such a request can be lodged by an employer, an employer

[98] *Application by United Workers' Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 176, 27.
[99] *Fair Work Act 2009* (Cth) s 181.
[100] *Fair Work Act 2009* (Cth) s 182 (2) (d).
[101] *Fair Work Act 2009* (Cth) s 184.

organisation, or a union.[102] The FWC may approve the variation if it is satisfied that the majority of employees want to be covered by the agreement, in addition to having regard to the matters listed in s 243(1)(b).[103] This coverage extension mechanism gives unions a powerful tool, as it allows them to bring extra employers under the scope of an existing agreement even after it has been created. To give an example of just how effective this mechanism can be, we must turn once more to the Early Childhood Education and Care Multi-Employer Enterprise Agreement 2024-2026 (ECEC Agreement) that was approved on 10 December 2024. Since January 2025 there have been eight successful applications by unions to join employers to the agreement, these successful applications have added 434 employers to the agreement in the short timespan span of under a year.[104]

The ECEC Agreement is an early example of how the supported bargaining stream can quickly expand agreement coverage to thousands of employees, effectively functioning as a form of sectoral bargaining. The positive results of the ECEC agreement speak for themselves, a 10% pay increase was locked in for the first year of operation with a 5% in the second year.[105] This pay increase was made possible through a commitment of financial support from the Commonwealth government, something that would have been very difficult to coordinate without the supported bargaining stream.[106]

This successful outcome was also enabled by strong employer backing and the involvement of the Australian Childcare Alliance (ACA). Employers themselves gave evidence showing that they shared similar characteristics and interests, support that proved significant in convincing the FWC to issue an authorisation. Most importantly, employer support demonstrates the effectiveness of the stream's design, particularly as employers in the childcare sector viewed multi-employer supported bargaining as beneficial, not least because it enabled a government funder to participate directly in negotiations.

Despite these positive developments, the early childhood education example has been an isolated success story because as of April 2026 it remains the first and only supported bargaining application to produce a completed agreement. Although supported bargaining authorisations have been issued and bargaining has begun across a range of sectors (from government-funded community services to McDonald's franchises), the early childhood agreement remains the

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102 *Fair Work Act 2009* (Cth) s 244 (3).
103 *Fair Work Act 2009* (Cth) s 216BA.
104 *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461.
105 *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461 at 26.
106 *Early Childhood Education and Care Multi-Employer Agreement 2024- 2026* [2024] FWCFB 461 at 26.

only one finalised. The fact that just one agreement has emerged in more than two years underscores the narrow reach and slow progress of this bargaining stream and its inadequacy at delivering genuine sectoral bargaining.

10. Single Interest Bargaining Stream

The second major change relates to reforms of the existing single interest bargaining stream which commenced on 6 June 2023. The amendments to the single interest employer authorisations system attempts to broaden access to multi-enterprise bargaining in several ways. Firstly, an employee bargaining representative can now put forward an application for a single interest employer authorisation (unlike the previous system that only permitted employers to seek an authorisation). Secondly, a ministerial declaration is no longer required for non-franchisee applications. Thirdly, the "common interest" test is a lot more flexible than the previous test set out in s 247 which requires the minister to consider a mandatory seven matters before issuing a declaration. Fourthly, a union can apply for a single interest employer agreement to be varied to allow for an extension of coverage to additional enterprises (provided that certain criteria are met, such as majority employee support, common interests, etc).[107] Another positive change in the 2022 amendments is the removal of the ban on industrial action for multi-enterprise bargaining. Industrial action can now be taken for a single interest agreement or a supported bargaining agreement provided that a minimum of 120 hours notice is given.[108]

Although broader access to multi-enterprise agreements is welcoming, there are some serious shortcomings of the single interest authorisation scheme. The 2022 amendment contains a rather onerous test for employees to initiate a single interest agreement. To commence bargaining, the union needs to prove that a majority of employees in each workplace included in the proposed single interest agreement are in favour of bargaining.[109] This requirement presents a significant challenge, as unions may be compelled to undertake lengthy campaigns to secure majority support across various workplaces, which could be both time-consuming and resource-intensive. Essentially the Fair Work Commission plays a gatekeeper role.[110] Consequently, this situation may

[107] *Fair Work Act 2009* (Cth) s 216DB.
[108] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 579.
[109] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 633A.
[110] A Forsyth, *What Difference Can the Law Really Make? 'Ascending' and 'Descending' from Enterprise-Based Bargaining in Australian Law,* in P Tomassetti, A Bugada, A Forsyth (eds.), *The Law and Collective Bargaining: Sources and Patterns of Regulation in the Modern World of Work,* Hart Publishing, Oxford, 2026, 189-207.

undermine the intended benefits of the reforms due to the substantial demands it places on union resources.

A further problem with the 2022 reforms to the single interest agreement system is that there is still uncertainty as to the extent to which it would genuinely allow for access to multi-enterprise agreement making. The act provides access to single interest employer agreements in cases where the employees across the various enterprises share a "clearly identifiable common interest". At this early stage it is uncertain exactly how this will be interpreted and whether it will result in large industry wide bargaining cohorts or whether it will be narrowly interpreted to only apply to a small grouping of businesses. It is also uncertain how the "common interest" test will apply to outsourced workers and businesses in a large supply chain.

Another shortcoming of single interest employer authorisations is that they cannot be made for "small business" employers. Employers that hire fewer than 20 employees fall under this exemption.[111] This provision is a major shortcoming of the system for two reasons. Firstly, it potentially denies collective bargaining to large sections of the workforce that are unable to access single enterprise bargaining due to the size of their workplaces. Secondly, some employers/suppliers could use small contracting companies to exploit the small business loophole and escape bargaining obligations. In addition to the small business exemption, a single-interest bargaining application cannot include an employer already covered by an enterprise agreement that has not yet reached its nominal expiry date.[112] This exclusion automatically removes a significant number of employers from eligibility, underscoring the single-interest bargaining stream's inadequacy in facilitating genuine sectoral bargaining. Since the very purpose of the reforms was to provide greater access to collective bargaining in the 21st-century world of the fissured workforce, these exclusions appear to defeat the purpose of the reforms.

Finally, it should be highlighted that even though there are some positive changes in the 2022 amendments, this does not automatically guarantee a revitalisation of collective bargaining. Empirical findings reveal a persistent lack of revitalisation in collective bargaining despite the 2022 amendments. Since the legislative changes have taken effect, there have been few instances of bargaining under the single-interest bargaining stream. Using quantitative data collected by Emeritus Professor Mark Bray and Professor Alison Preston, since 21 February 2025 there had been 19 single-interest authorisations issued

[111] *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) Sch 1 item 633A.
[112] *Fair Work Act 2009* (Cth) ss ss 249(1)(1B)(e)) and 249(1D).

and only 3 agreements approved.[113] Not only is the number of finalised agreements considerably low, but of the 19 authorisations issued, the overwhelming majority have been confined to government, non-profit, and educational sectors. Only three authorisations have been made in the commercial private sector, underscoring the system's limited penetration in the broader workforce.[114]

The question remains, therefore, as to the extent to which greater access to multi-enterprise bargaining under tightly controlled conditions would genuinely achieve the wider goal of revitalising collective bargaining overall. At face value, it appears that the ALP intends for multi-enterprise bargaining to play an auxiliary role as an alternative way to lift wages in low paid industries without a history of collective bargaining. Unless multi-enterprise bargaining takes a more central role in our IR system, there is always a danger that we will continue to see businesses competing to reduce wages and conditions to gain a competitive advantage.

Part 3: The Danish Experience of Sectoral Bargaining and Organised Decentralisation

11. Overview of the Danish Model

Collective bargaining in Denmark operates through a coordinated multi-level structure. Three tiers of collective bargaining operate in tandem and complement each other. Denmark's sectoral agreements provide broad frameworks that cover pay and conditions for an entire industry, however they also leave room for further negotiations at the company level. This section focuses primarily on collective bargaining in the private sector. This is primarily because wages in the public sector are directly regulated by wage increases at private sector bargaining rounds.[115] Since 1984, the government and public sector unions agreed on a regulatory scheme (*Reguleringsordningen*) whereby wage

[113] Biomedical Engineers (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2024-2028; Nurses and Midwives (Victorian Public Sector) Single Interest Employer Agreement 2024–2028; AMWU On-Site Construction HVAC Workers NSW Enterprise Agreement 2023–2027.

[114] See *AMWU* [2024] FWC 395; *APESMA v Great Southern Energy Pty Ltd T/A Delta Coal, Whitehaven Coal Mining Ltd, Peabody Energy Australia Coal Pty Ltd, Ulan Coal Mines Ltd* [2024] FWCFB; *Hungry Jacks Pty Ltd T/A Hungry Jack's* [2024] FWC 2275.

[115] S K Andersen, C Ibsen, K Alsos, K Nergaard, P Sauramo, *Changes in Wage Policy and Collective Bargaining in the Nordic Countries – Comparison of Denmark, Finland, Norway and Sweden* in G Van Gyes, T Schulten, *Wage Bargaining Under the New European Economic Governance: Alternative Strategies for Inclusive Growth,* European Trade Union Institute, Brussels, 2015, pp. 139-168, p. 142.

increases are capped at 80 per cent of the difference between observed wage increases in the public and private sectors.[116]

The Danish model has historically been based upon voluntarism and self-regulation of the labour market by unions and employer organisations. Legislation plays a minimal role, and the vast majority of workplace rights are contained in collective agreements. Notably, Denmark does not have a legislated minimum wage, and pay is typically governed by provisions contained within collective agreements.[117]

Given that the Danish model is largely based on self-regulation, the role of peak-level organisations is critical. On the employer side, the DA (*Dansk Arbejdsgiverforening*, Confederation of Danish Employers) is Denmark's peak employer confederation comprising of 11 private sector employer organisations. The DA represents approx. 25,000 companies that employ over 50 per cent of the private sector workforce.[118] The most powerful member of DA is DI (*Dansk Industri*, Confederation of Danish Industry) which represents approximately 11,700 companies.[119] In addition to the DA, the only other private sector employers confederation is the *Finans Danmark Arbejdsgiver*.[120] This confederation services employers in the finance and banking sector.

On the employee side, the largest trade union confederation has historically been the LO (*Landsorganisationen i Danmark*). Founded in 1898, its membership largely consisted of skilled and unskilled blue-collar workers in the private sector. As of January 2019, the LO merged with Confederation of Professionals in Denmark (*Funktionærernes og Tjenestemændenes Fælles råd*, FTF) to form a new trade union confederation, the Confederation of Trade Unions (*Fagbevægelsens Hovedorganisation*, FH). The FTF were a predominantly white-collar union confederation that represented salaried employees in the public sector. The FH is currently the largest trade union confederation and has 1.4 million members, organised in 79 affiliated unions. In addition to the FH there

116 S K Andersen, J E Dølvik, C L Ibsen, *Nordic Labour Market Models in Open Markets,* European Trade Union Institute, Brussels, 2014, p. 29; *Medarbejder- og Kompetencestyrelsen,* Reguleringsordningen, 1 April 2023 https://pav.medst.dk/lon/reguleringsordningen ; A B Christensen, *Anders Bondo om OK-Forhandlingerne: Lønstigningerne er et Spil for Galleriet*, *Altinget,* 27 February 2024, https://www.altinget.dk/artikel/anders-bondo-om-ok-forhandlingerne-loenstigningerne-er-spil-for-galleriet.

117 S K Andersen, S Kaine, R D. Lansbury, *Decentralised Bargaining in Denmark and Australia: Voluntarism versus Legal Regulation*, (2017) 43(1) *National Institute of Labour Studies Incorporated* 45, 60-61.

118 Confederation of Danish Employers*, Abour DA* https://www.da.dk/en/about-da/.

119 DA: Confederation of Danish Employers ,*Member Organisations,* https://www.da.dk/en/about-da/member-organisations/.

120 Finans Denmark Arbejdsgiver , https://arbejdsgiver.finansdanmark.dk/.

is one other confederation that represents staff at universities and education centres, the Danish Confederation of Academics (*Akademikernes Centralorganisation*, AC). Taken together, private sector union density in Denmark remains relatively stable at over 60 per cent.[121] This stands in sharp contrast to the low levels of union density in Australia, which sits at 12 per cent, and the OECD average of only 15 per cent.[122]

The primary role of the two peak-level private sector confederations, the FH and DA, is that of coordinators of private sector bargaining rounds.[123] This is achieved by setting common expiry dates and timeframes for collective agreements, ensuring the bargaining demands are within the framework set by the manufacturing agreement, and working with the conciliator to ensure that sector level bargaining parties reach agreement.[124] In the private sector collective bargaining is essentially a system of pattern bargaining through which the export-exposed manufacturing sector sets the framework for the rest of the labour market.[125] This process is coordinated by the two major employer and employee confederations through the state conciliation board. Once bargaining commences, the confederations play a coordinating role by ensuring the negotiations begin with the industrial sector which sets the framework for other sectors to follow throughout the entire round of bargaining.

The modern Danish industrial relations system can be traced back to the September Agreement (*Septemberforliget*) that was agreed between the two newly founded confederations for private sector employers and employees, the Danish Employers' and Masters' Confederation (forerunners to the *Arbejdsgiverforening*, DA) and the Danish Federation of Trade Unions (forerunners to the *Landsorganisationen i Danmark*, LO). An amended version of the Main Agreement (*Hovedaftalen*) is still in force today and the latest version

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[121] OECD, *Trade Union Density and Collective Bargaining Coverage (Data Explorer),* OECD Statistics, Paris, https://data-explorer.oecd.org/ (accessed 29 April 2026).

[122] Australian Bureau of Statistics, T*rade Union Membership*, 14 December 2022 https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release .

[123] J S Madsen, J Due, S K Andersen, *Employment Relations in Denmark*, in R D Lansbury, G J Bamber (eds), *International and Comparative Employment Relations,* Routledge, Oxford, 2020, pp. 209-234, p. 223; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 29.

[124] C L Ibsen, M Keune, A Garnero, *Organised Decentralisation of Collective Bargaining: Case studies of Germany, Netherlands and Denmark*, OECD Social, Employment and Migration WorkingPapers No. 217, OECD Publishing Paris, August 2018, p. 23; J Due, J S Madsen, C S Jensen, *The September Compromise: A Strategic Choice by Danish Employers in 1899, Historical Studies in Industrial Relations,* 2000, vol. 10, pp. 43- 70, p. 53.

[125] C L Ibsen, *The Role of Mediation Institutions in Sweden and Denmark after Centralized Bargaining, British Journal of Industrial Relations,* 2016, vol. 54, n. 2, pp. 285- 310, pp. 285- 286; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 29.

was updated in 1993.[126] Despite the changes and amendments, the key rights and obligations set out in the original 1899 document remain unchanged.[127]
The September Agreement recognised unions as legitimate parties in the industrial relations process.[128] The agreement provided a mutual acknowledgement that the peak-level employer and union confederations, the DA and LO, would "work together… for peaceful, stable, and good relations".[129] In return for recognition of the right to organise collectively, the unions recognised the right for employers to exercise managerial prerogative.[130] Both parties recognised each other's methods of exerting industrial pressure during collective bargaining. The employer organisations recognised the right to strike, and unions recognised the right for employers to initiate lockouts. Although the September Agreement did not lead to the full centralisation of collective bargaining, it set up a framework for a more institutionalised bargaining system. This is most evident from the fact that the two major industrial confederations, the LO and DA, agreed to take a central role in the regulation of industrial action, the settlement of disputes and resolution of breaches to existing collective agreements.[131] This system allowed a sectoral level bargaining with national level coordination to develop over the subsequent decades.

12. Collective Bargaining Step 1: Sector Level Negotiation

A private sector bargaining round usually starts in the manufacturing sector.[132] Negotiations take place between Dansk Industri (DI) and CO-Industri - a massive cartel of nine unions that include some of Denmark's largest blue-collar unions (this includes key industrial players such as 3F Industry and

[126] *Hovedaftalen* af 1973 med ændringer pr.1. marts 1981, 1. marts 1987 og 1. Januar 1993.
[127] A Wolthers, *The Danish Trade Union Movement, Equality and Diversity,* FIU-Ligestilling, Copenhagen, 2016, 17.
[128] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[129] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[130] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 4.
[131] *The September Agreement: Agreement between The Danish Employer's Association and the Danish Federation of Labor* (5 September 1899) section 3; C Jørgensen, *September Compromise Marks 100th Anniversary*, Eurofound, 27 August 1999
https://www.eurofound.europa.eu/en/resources/article/1999/september-compromise-marks-100th-anniversary.
[132] C L Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24- 25.

Dansk Metal).[133] Before bargaining commences, the two organisations consult their respective membership bases in various information meetings across Denmark.[134] At this stage the unions analyse rank-and-file concerns and filter them against the claims of their counterpart, DI, to ensure the claims are viable and not disruptive of the bargaining process.[135] A key part of the negotiation process involves the lead negotiators from both sides taking a trip abroad to discuss key bargaining issues in a media/constituent-free environment.[136] During these trips abroad, potential pressure points are identified and lead negotiations work out ways to deal with them without derailing negotiations.[137] This demonstrates a key aspect of the Danish system which is based on open communication, social partnership, and mutual cooperation.

No piece of legislation dictates that negotiations must be done in this particular manner (even the Main Agreement is silent on this) other than it being unwritten custom that the manufacturing agreement is bargained first, and all other rounds of negotiations have to work within the established framework.[138] The reason why bargaining takes place around a framework set by the manufacturing sector is because manufacturing is tied to the export market and linked directly to Denmark's external economic competitiveness.[139] This ensures that cost-increases in sheltered sectors do not spill over into exposed sectors.

The coordinated bargaining framework largely developed in the 1980s due to negotiations between the DA and LO on ways to improve Denmark's international economic competitiveness in an increasingly globalised economy.[140] The post-war economic boom had ended in the developed western economies and a move away from bargaining at a confederation level towards coordinated sectoral bargaining was seen as a way to improve economic efficiency through flexibility and wage moderation. Dominant employers in the manufacturing sector called for the elimination of national

[133] Co Industri, *Co Industri: Info & Fakta In English*, 2 January 2024 https://www.co-industri.dk/fakta/english.

[134] C L Ibsen, C H Ellersgaard, A G Larsen, *Quiet Politics, Trade Unions, and the Political Elite Network: The Case of Denmark, Politics & Society,* 2021, vol. 49, n. 1, pp. 43- 73, p. 61.

[135] *Ibid,* p. 61.

[136] *Ibid*, 61.

[137] *Ibid*, 61.

[138] S K Andersen, C L Ibsen, K Alsos, K Nergaard, P Sauramo, *op cit 115*, p. 142.

[139] S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p 39; C Ibsen, *op cit 125,* pp. 285- 286.

[140] T Iversen, *Power, Flexibility, and the Breakdown of Centralized Wage Bargaining: Denmark and Sweden in Comparative Perspective: Denmark and Sweden in Comparative Perspective, Comparative Politics,* 1996, vol. 28, n. 2, pp. 399- 436, p. 423; C Ibsen, *Trade Unions in Denmark,* Friedrich Ebert Stiftung, Berlin, 2012, p. 8.

confederate-level bargaining which they viewed as an added cost.[141] Instead of bargaining predominantly at a national level, some employers wanted bargaining to predominantly take place at a sectoral level.[142]

The drive towards coordinated pattern bargaining was intensified on 8 December 1987 when the LO, DA and government signed a tripartite 'Common Declaration' (*Fælleserklæringen*).[143] The *Fælleserklæringen* aimed to ensure that labour costs in Denmark do not rise at a faster rate than what is sustainable for the export exposed manufacturing sector.[144] The unions agreed to wage moderation in return for a social wage based around pay increases, job guarantees, pension schemes and welfare arrangements tied to economic growth.[145] The effect of the *Fælleserklæringen* was to link productivity increases and welfare arrangements to the collective bargaining system.[146] Traditionally, collective bargaining dealt almost exclusively in matters concerning working hours and pay. However, in 1989 the manufacturing sector began to develop occupational pension schemes within collective agreements (*arbejdsmarkedspensionsordninger*).[147] This has since been extended to cover a wider range of social-welfare issues such as paid parental leave (2004), continuing education (2007), discretionary leave provisions (2007), and severance pay (2010).[148]

This move towards sectoral bargaining within a framework set by the manufacturing agreement was fully realised in 1991-1992 with the creation of two large bargaining blocks in manufacturing.[149] On the employer side, the DI was created in 1991 through the merger of various employer associations in manufacturing.[150] The DI currently represents over 60 per cent of employment within the DA.[151] Due to its large voting power within the DA executive, the DI has a *de facto* power of veto over all sectoral agreements.[152] Similarly, in 1992, Co-industri was founded as a bargaining cartel comprising of blue-collar

[141] C Ibsen, '*op cit 125,* p 293.
[142] S K Andersen, S Kaine, R D. Lansbury, *op cit 117*, p. 51.
[143] C Ibsen, '*op cit 125,* p. 293.
[144] J Lind, H Knudsen, *Denmark: The Long Lasting Class Compromise, Employee Relations,* 2018, vol. 40, n. 4, pp. 580- 599, p. 585.
[145] C Ibsen, '*op cit 125,* p. 293.
[146] J Madsen, J Due, S K Andersen, *From Centralised Decentralisation towards Multi-Level Regulation,* Conference Paper presented at the Proceedings of the 6th European IIRA Congress: Working Europe: Visions and Realities, 25 June 2001, p. 22.
[147] Jørgen Steen Madsen, Jesper Due, Søren Kaj Andersen, *op cit 123*, p. 224.
[148] S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 31.
[149] T Iversen, *op cit 140*, p. 423.
[150] *Ibid*, 423.
[151] C L Ibsen, *Three Approaches to Coordinated Bargaining: A Case for Power-Based Explanations, European Journal of Industrial Relations,* 2015, vol. 21, n. 1, pp. 39- 56, p. 48.
[152] S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 30.

industrial unions. The existence of these large and unified bargaining blocks ensured a strong "cross-class alliance in manufacturing – with 15 concentrated actors on both sides – was born".[153] The DI and Co-industri's influence has been a major reason why coordinated pattern bargaining, led by the manufacturing industry, has remained in Denmark, despite calls from more radical elements of the employer cohort for greater decentralisation.[154]
During the bargaining period itself, the two manufacturing cartels negotiate on a "labour cost norm" that is based on sustainable minimum wage increases linked to the export sector and non-wage issues such as parental leave, pension contributions, training support programs, etc.[155] Once the two manufacturing cartels reach an agreement on the "labour cost norm", it becomes a "framework agreement" (*Gennembrudsforlig*) for the entire round of private sector bargaining.[156] Once negotiations for the Industrial agreement are concluded, all the other private sector industries negotiate/ renew their respective sectoral agreement. All other sectoral agreements are bargained within the "labour cost norm" framework provided by the industrial agreement.[157]

13. Collective Bargaining Step 2: The Conciliation Phase and Proposal Agreement (*Maeglingsforslag*)

Once the bulk of sector level negotiations are completed, the two leading private sector confederations (FH and DA) meet before the government conciliator to wrap up the bargaining round. Through conciliation, the peak confederations ensure that agreements are completed, and any unresolved issues are finalised into a single proposal by the conciliator.

The conciliation board is endowed with specific powers as outlined in the Mediation Act. It may compel parties to engage in negotiations when there is a likelihood of an impending conflict.[158] Additionally, it can order a deferral of

153 C L Ibsen, *op cit 151*, p. 48.
154 S K Andersen, S Kaine, R D. Lansbury, *op cit 117*, p. 51.
155 C L Ibsen, C H Ellersgaard, A G Larsen, *op cit* 134, p. 61; C Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24- 25.
156 C Ibsen, M Keune, A Garnero, *op cit 124*, p. 25; S K Andersen, C L Ibsen, K Alsos, K Nergaard, P Sauramo, *op cit 115*, p. 142.
157 C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.
158 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999]

strikes and lockouts for a duration of up to two weeks.[159] The board is also empowered to call upon the disputing parties to resume negotiations on specific points of disagreement.[160] Furthermore, it can compel parties to testify before the Labour Court if there are matters that are uncertain and need further clarification. [161] The board has the authority to demand information about strikes and lockouts from bargaining parties. Conciliators are also authorised to submit a mediation proposal and to offer recommendations on concessions that could facilitate a peaceful conclusion to a dispute. [162]
If the two peak-level confederations disagree on key issues, the role of the conciliator is to assist them in reaching an agreement.[163] The DA and FH can also use the mediation process to tie up any sector level negotiations that may have reached impasse.[164] As the conciliator collects the elements of the different agreements in one proposal settlement, the areas or sectors where agreements have not been reached are combined into a single proposal agreement (*Maeglingsforslag*).[165] The proposal agreement contains provisions that are to apply to where agreement has not been reached by the relevant sectoral union/s and employer organisations. It also contains common provisions for all agreements in the private sector.[166] Usually, these provisions are based around the industrial agreement which sets the framework for the negation round. It is important to highlight that mediation is a voluntary process and neither of the two confederations are obligated to accept the proposal agreement. In addition, the conciliator's proposal is largely based on weighing

159 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 3 (3).
160 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 3.
161 Section 6 (2).
162 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] Section 4 Paragraph 3.
163'Forligsmandens Mæglingsforslag Samler Enighed og Uenighed', Dansk Industri (Web Page) < https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/forligsmandens-maglingsforslag-samler-enighed-og-uenighed/>.
164 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 12 psc 3.
165 *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 4 (3).
166 'Forligsmandens Mæglingsforslag Samler Enighed og Uenighed', Dansk Industri (Web Page) < https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/forligsmandens-maglingsforslag-samler-enighed-og-uenighed/>.

up the *balance of power between the bargaining parties* and not on external socio-economic factors.[167] The Conciliators assess the balance of power between the parties so that the proposal agreement would correspond with the result of potential industrial action taken by the parties.[168] It is the industrial bargaining power of the parties that drive the process. This process differs greatly from Australia's current modern award system which is a form of state-driven sectoral regulation based on a multitude of factors that primarily include, but is not limited to, a wide range of social and economic considerations.[169]

The two confederations are required to reach an agreement and have members vote in favour of it before the March 1 deadline.[170] If parties do not reach an agreement by the March 1 deadline, bargaining parties usually send each other a warning that an industrial conflict will commence at the termination of the existing collective agreement.[171] At this stage the conciliator can exercise its powers under the Mediation Act to extend negotiations two times for up to 14 days.[172] The purpose of this provision is to give the parties more time to reach agreement and short-circuit threats of industrial action that may impede the bargaining process.[173] If no agreement can be reached after the extended deadline, the conciliator can declare the negotiations permanently closed. After five days, members of the two confederations can apply to use industrial action (ie strikes and lockouts) to promote their interests (see the section below on industrial action for more information). More frequently, however, the mediation process is finalised when the DA and FH agree on the conciliator's proposal agreement. The proposal agreement is then presented to the members of the two confederations, DA and FH, in a single ballot for approval.[174] In Danish, this power is called *Sammenkædning* and is often translated in English as the Concatenation Right (i.e. the right of the

[167] J Due, J S Madsen, C S Jensen, L K Patersen, *The Survival of the Danish Model,* DJOF Publishing, Copenhagen, 1993, p. 126.
[168] *Ibid,* p. 126.
[169] See *Fair Work Act 2009* (Cth) s 134 (1).
[170] J Lind, *Denmark: The Sacred Cow of Collective Bargaining is Still Alive* in T Müller, K Vandaele, J Waddington (eds), *Collective Bargaining in Europe: Towards an Endgame* European Trade Union Institute, Brussels, 2019, pp. 151- 171, p. 165.
[171] *Ibid.*
[172] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 4 (5); s 4 (6).
[173] C L Ibsen, *Conciliation, Mediation and Arbitration in Collective Bargaining in Western Europe: In Search of Control, European Journal of Industrial Relations,* 2021, vol. 27, n. 1, pp. 23- 39, p. 25.
[174] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* pp. 96-97.

conciliator to concatenate votes into one pool).[175] At this stage, non-renewed agreements are linked to the total mediation proposal.[176]
A key feature of the Danish system is the centralised voting procedure, whereby the conciliator presents a proposal agreement and then pools together all the agreements into a single voting bloc. This mechanism enables peak-level coordination by ensuring that agreement-making occurs across industries simultaneously and reduces the risk of fragmented outcomes. [177] As Madsen *et al* observed, 'Through this voting procedure collective bargaining at sector level was in reality merged into a common multi-industry bargaining process'.[178]

14. Collective Bargaining Step 3: Voting for Replacement Agreements

Agreement by the confederations alone is insufficient; the proposal must also be approved by employers and union members through a vote. Notably, voting takes place in a single block across all sectors. Rejecting an agreement is difficult for two reasons. Firstly, on the employer side, the DI hold over 50 per cent of the vote and hence defection from the norm is very difficult.[179] On the union side, rejection requires a majority. If less than 40 per cent of eligible votes participate, then at least 25 per cent of eligible voters are required to vote 'no' for a proposal to be rejected.[180] Since members of the large Co-industri unions hold a voting majority, unions that try to defect from the "labour cost norm" and "framework agreement" (*Gennembrudsforlig*) can be easily outvoted by the Co-industri unions.
The unique voting system, combined with the strong voting power of the Co-industri unions, makes defection from the manufacturing sector's framework agreement difficult.[181] As a result, the Danish voting system has been successful at delivering stable outcomes and resolving industrial tensions, albeit under a concentrated bargaining structure where opposing interests to the manufacturing sector's labour cost norm may be marginalised.[182] In contrast to the Australian experience of decentralisation, where existing coordinating structures became sites of conflict and industrial actors increasingly pursued

[175] *Ibid,* pp. 95- 96.
[176] ; S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 30.
[177] C LvIbsen, M Keune, A Garnero, *op cit 124*, p 23.
[178] J Madsen, J Due, S K Andersen, *op cit 146,* p. 9.
[179] C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.
[180] *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] § 12 paragraph 8.; C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.
[181] C L Ibsen, *op cit 151*, p. 49.
[182] *Ibid.*

divergent strategies, coordination in Denmark is actively maintained through institutional design. This system is largely the product of unique historical developments, and its transferability to other industrial relations systems remains uncertain.[183]

If the employers and union members vote in favour of the agreement, then it comes into force on 1 March.[184] The new agreement would create a general peace obligation (*fredspligt*) for the term of the agreement, this means that industrial action would not be legal if it concerns a matter regulated by the collective agreement.[185]

If the agreement is voted down, the DA and FH meet again before the conciliator to work out a new proposal agreement. If agreement can not be reached after five days, then both parties have a right to initiate a "conflict".[186] Since the existing collective agreements would have expired by this point, industrial action in the form of strikes and lockouts would be a legitimate means of applying bargaining pressure on the opposing side.[187] The capacity for parties to employ industrial force when required is a central pillar of the Danish system. As Due and Madsen observe, "The risk of conflict is the engine of the system. It is the element that secures concessions". [188]

Government intervention also operates as a backstop within the Danish model. If strikes and lockouts continue without a resolution in sight, the government may elect to step in and resolve the conflict. The ability for the government to step in and legislate as a last resort is essential because the structure of Danmark's centralised bargaining system, with its coordinated agreement expiry dates, exposes large parts of the economy to dire economic consequences if negotiations break down.[189]

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183 W Galenson, *The Danish System of Labor Relations: A Study in Industrial Peace,* Harvard, Cambridge MA, 1952, p. 108.

184 Dansk Industri, *Overenskomster Træder Først i Kraft, når Mæglingsforslag Bliver Vedtaget',* https://www-danskindustri-dk.translate.goog/ok2023/nyhedsarkiv/2023/3/overenskomster-trader-forst-i-kraft-nar-maglingsforslag-bliver-vedtaget/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp .

185 Hovedaftalen af 1973 med ændringer pr.1. marts 1981, 1. marts 1987 or 1. januar 1993, Section 2; *Bekendtgørelse af lov om mægling i arbejdsstridigheder* [Act on Mediation in Labor Disputes, cf. Executive Order No. 192 of 6 March 1997 with the amendments resulting from Act No. 1078 of 29 December 1999] s 2.

186 Dansk Industri, *Risiko for konflikt ved overenskomstforhandlinger,* https://www.danskindustri.dk/ok2023/nyhedsarkiv/2023/3/risiko-for-konflikt-ved-overenskomstforhandlinger/.

187 *Ibid.*

188 J Due, J S Madsen, *Septemberforliget og den Danske Model,* FAOS, Copenhagen, 1999, p. 3.

189 J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167, p. 136.*

There is no fixed rule governing when and how intervention occurs.[190] Government interventions are few and far between, the last time the government intervened to suspend industrial action was in the general strike of 1998. This uncertainty is often seen as beneficial, as it encourages parties to reach agreement rather than risk state intervention.[191]
Collective bargaining in Denmark remains highly organised and the leading employer and employee confederations play a central coordinating role in the system. This is largely due to the coordination of bargaining through a unique mediation system and voting procedure, in contrast to the more fragmented bargaining system of Australia, where coordination across firms is limited. Although collective bargaining has been partially decentralised to the sectoral level, the conciliation process remains highly centralised and controlled by the DA, FH and state conciliator.[192]
The mediation system, coupled with potential government intervention, has been effective at delivering high levels of bargaining coverage and avoiding widespread conflicts.[193] This is clearly demonstrated by the occurrence of only three significant private sector conflicts over the past fifty years, specifically in the years 1973, 1985 and 1998, a level of stability not observed in the more decentralised systems.[194] A large part of the success of the Danish model can be attributed to what Due *et al* describe as a *centralisation of competence.*[195] Although bargaining takes place across multiple levels, conciliation and government intervention provides a clear institutionalised process for resolving bargaining impasses and concluding agreements, in contrast to systems where coordination mechanisms are weak or absent.[196] The mediation process, with its unique voting system, has been effective at constraining defectors from Denmark's manufacturing led pattern bargaining.[197] In this respect the two largest bargaining cartels, the DI and Co-industri, provide stability to the system of higher level sectoral bargaining. This process reinforces horizontal coordination by aligning outcomes across sectors, while institutional supports ensure vertical coordination within bargaining units.

15. Sustaining High Bargaining Coverage in Denmark

[190] Galenson, *op cit 183*, p.135.
[191] *Ibid,* 135.
[192] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p.183.
[193] J S Madsen, J Due, S K Andersen, '*op cit 123*, p. 227.
[194] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* pp 134- 135.
[195] *Ibid,* p. 117.
[196] *Ibid,* 117.
[197] C L Ibsen, *op cit 151*, p. 49.

Collective bargaining coverage in Denmark remains exceptionally high with over 80 per cent of Danes working under a collective agreement. This stands well above the OECD average of 32 per cent.[198] Coverage is near universal in the public sector and remains high in the private sector at approximately 65 to 75 per cent.[199]

Under Danish law, a collective agreement is a legal contract binding only on parties privy to it.[200] This is because Denmark has never had generally binding collective agreements (agreements with an *erga omnes* effect) i.e. whereby a collective agreement is extended by a government administrative act to be binding on entire sectors and/or industries.[201] There is also no legislation stipulating how to enter into a collective agreement, its content, or the conclusion and termination of an agreement. These rules are determined solely by the unions and employer organisations, along with case law created from the interpretation of voluntary agreements.[202] Denmark has a multi-tier collective bargaining model that involves bargaining at an industry, sectoral and local level. Sectoral agreements are negotiated by unions and employer organisations to cover an entire industry and then applied to all enterprises that are members of the relevant employer association.[203] The two main confederations of employer associations in Denmark are the DA and FA. Over 53 per cent of private sector employees work for an employer that is a member of either the DA or FA, this means that sectoral collective agreements entered between a DA/Finans Denmark Arbejdsgiver member and the relevant union/s are automatically extended to slightly over half the Danish private sector.[204] Consequently, the high levels of employer association membership ensures that bargaining coverage remains stable, even in the absence of legal provisions extending coverage.

Although employer association membership is notably high at 53 per cent, it is equally important to recognise that almost half of employers do not belong to employer associations and consequently are not automatically covered by sectoral agreements. Since Denmark does not have any legislative extension mechanisms, the way bargaining coverage remains high is by "adoption

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198 OECD*, Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing Paris, 2019, p. 15.

199 J Lind, *op cit 170*, p. 156.

200 O Hasselbalch, *Labour Law in Denmark,* Kluwer Law International, 2019, Ch 4, §1. 817.

201 R Nielsen, Ryanair-Sagen – som Eksempel på Retskildeudviklingen i Dansk Arbejdsret i EU-Kontekst' in P A Nielson, P K Schmidt, K D Weber (eds), *Erhvervsretlige emner : Juridisk Institut CBS,* Djøf Forlag, Copenhagen 2015, pp. 211- 231, p. 212.

202 Hasselbalch, *op cit 200*, Ch 4 §1. 814.

203 *Ibid,* Ch 4 §1. 812.

204 J Due and J S Madsen, *The Danish Model of Industrial Relations: Erosion or Renewal?* , *Journal of Industrial Relations,* 2008, vol. 50, n. 3, p. 513- 529, p. 516.

agreements" (*tiltrædelsesoverenskomst*) whereby unions persuade and/or pressure employers to adopt sectoral standards.[205] This process is supported by the use of sympathy strikes and boycotts against non-compliant employers.[206]

The importance of adoption agreements and the threat of sector wide sympathy strike action is a significant contributor to Denmark's high bargaining coverage. This dynamic is illustrated by two high-profile labour disputes from Denmark's history that demonstrate the capacity of Danish unions to enforce sectoral coordination through cross-sectoral industrial action against individual employers seeking to operate outside the sectoral bargaining framework. The first occurred in 1981 and involved the American fast-food retailer McDonald's. When McDonald's entered Denmark they refused to sign on to the hotel and restaurant collective agreement and, instead, the company aggressively pursued direct dealings with individual employees.[207] In response, the LO and restaurant workers union RBF (*RestaurationsBranchens Forbund*) launched a campaign to pressure McDonald's to sign on to a collective agreement. The company refused to sign and after eight years of conflict, things finally reached a boiling point in 1989 when 16 LO affiliated unions pledged their commitment to sympathy strike action.[208] Transport unions boycotted freight, construction unions refused to build new restaurants for the company and the Danish Typographical Union (*Dansk Typograf-Forbund*) blacklisted McDonald's advertisements in national newspapers.[209] Through the use of mass cross-sectoral industrial pressure, McDonald's finally gave in and bargained with the RBF.[210]

The Ryanair dispute, which emerged in 2015, serves as a further example of how industrial pressure can be used to prevent single employers from undermining sectoral standards. This conflict arose when the Irish airline declined to engage in negotiations for a collective agreement concerning pilots and cabin crew stationed at their bases in Copenhagen and Billund.[211] Much like McDonald's, this case is illustrates the sectoral logic of the Danish model, demonstrating how unions can use sympathy action to enforce coordination

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[205] J S Madsen, J Due, S K Andersen, *op cit 123,* p. 222.

[206] J Lind, *op cit 170*, p. 162.

[207] T Royle, *Worker Representation under Threat -The McDonald's Corporation and the Effectiveness of Statutory Works Councils in Seven European Union Countries, Comparative Labor Law and Policy Journal*, 2001, vol. 22, n. 1, pp. 395-432, p. 405; J McCarthy, *Winning in Secondary: Secondary Boycotts in the United States and Denmark, Arizona Journal of International and Comparative Law,* 2024, vol. 41, n. 1, pp. 108- 133, p. 109.

[208] T Knudsen, *McDonald's i Defensiven*, in *Kuverter,* February 1989, n. 3, 8.

[209] *Ibid.*

[210] Jack McCarthy, *op cit 201*, p. 110.

[211] D Golden, R Erne, *Ryanair pilots: Unlikely Pioneers of Transnational Collective Action, European Journal of Industrial Relations,* 2022, vol. 28, n. 4, pp. 451- 469, p. 457.

and prevent individual employers from operating outside collectively agreed standards.

The conflict began on 9 January 2015 when The Services Union (*Serviceforbundet*) sent a letter to Ryanair expressing their intent for the company to sign a collective agreement for pilots and cabin crew at their Copenhagen and Billund bases. The company responded on 20 January 2015 explaining that they did not recognise unions (which they describe as "third parties") and instead negotiated directly with staff. In addition, Ryanair maintained that since their staff were employed under Irish employment contracts, they were therefore not subject to local Danish labour regulations.[212] The company's hardline refusal to negotiate was largely due to its policy at the time to refuse recognition of any forms of organised labour or collective bargaining (this position has since been reversed in 2017).[213]

In response to Ryanair's refusal to negotiate, *Serviceforbundet* issued a main conflict notice (hovedkonfliktvarsel) on 3 February 2015. The conflict notice outlined the union's intent to take strike action and blockade the company from 26 March 2015.[214] Ryanair responded by proclaiming that they will contest any notice of conflict with legal proceedings.[215] On 3 February 2015, the LO filed a complaint to the Danish Labour Court to establish the legality of the main conflict notice.[216] There were two key issues at stake in the court proceedings. Firstly, whether *Serviceforbundet* had a right to demand Ryanair sign onto a collective agreement. Secondly, the court was called upon to determine whether *Serviceforbundet* had a right to issue a main conflict notice with an intent to take industrial action against the company even though they had no members employed at the worksite.

On 1 July 2015, the Labour Court gave three reasons for its judgement.[217] Firstly, the court based its reasoning on the general legal principle of *lex loci delicti*, which prescribes that the law be applied in the place where a wrongful act had taken place (ie Denmark).[218] Secondly, the court maintained that staff members at Ryanair's bases in Copenhagen and Billund had a strong connection to Denmark.[219] The final reason (and most relevant to this paper) was closely related to the nature of the Danish model itself. The court emphasised the importance of expanding collective agreement coverage, noting

212 *Ibid*, 457.
213 *Ibid*, 451.
214 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 2.
215 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 3.
216 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083.
217 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083.
218 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 25.
219 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 25.

that the Danish model relies on collective agreements to regulate wages and conditions rather than statutory minimum standards.[220]

The court further clarified that a Danish union is permitted to negotiate with a company as long as it has a vested "interest" in doing so. What constitutes an "interest" is very broad and includes the protection of members at other workplaces from companies that avoid collective bargaining and undercut union wages. The court expressly recognised a broad union interest in preventing employers from undercutting collectively agreed standards.[221]
The judgement by the Labour Court reflects the broad and sectoral nature of collective bargaining under the Danish system and the commitment to extend sectoral agreements across a wide section of the workplace. Bargaining concerns the regulation of working conditions for the entire sector and or workforce. Consequently, a union, or group of unions, could be permitted to blockade a workplace where they lack membership to compel adherence with sectoral standards. Following the court's decision, Ryanair closed its Danish bases in July 2015.[222] In 2021, the airline re-opened its bases in Denmark under collective agreements with Dansk Metal.[223]
In summary, given that almost half of employers are not affiliated with an employer organisation, adoption agreements and industrial pressure through sympathy strike action plays a vital role in keeping bargaining coverage high and ensuring that unorganised workplaces do not undercut sectoral standards.[224] The Ryanair and McDonald's examples demonstrate that a dispute within a single enterprise could potentially escalate into a dispute with the entire Danish union movement. These two examples demonstrate how horizontal coordination is enforced across sectors through cross-sectoral industrial action. This stands in contrast to Australia, where disputes remain largely confined to the enterprise level, limiting the capacity for coordination across firms and sectors.

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220 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 27.
221 Arbejdsrettens dom af 1. juli 2015 In case no. AR2015.0083, 35- 36; See also: J Due and J S Madsen, *op cit 188,* 3.
222 D Crouch, *Ryanair Closes Denmark Operation to Head Off Union Row*, The Guardian Online, 17 July 2015, https://www.theguardian.com/business/2015/jul/17/ryanair-closes-denmark-operation-temporarily-to-sidestep-union-dispute .
223 Kristine Nødgaard-Nielsen, *FPU: Dansk Metal har fredet Ryanair for selv at lave overenskomster med lavprisselskabet*, Fagbladet Luftfart, 14 September 2022, https://luftfart.dk/fpu-dansk-metal-har-fredet-ryanair-for-selv-at-lave-overenskomster-med-lavprisselskabet ; *Ryanair to reopen base at Copenhagen Airport*, The Local DK, 22 August 2023, https://www.thelocal.dk/20230822/ryanair-to-reopen-base-at-copenhagen-airport .
224 J S Madsen, J Due, S K Andersen, *op cit 123,* p. 222.

16. Firm Level Bargaining in a System of Organised Decentralisation

In addition to sector level bargaining, a considerable level of collective bargaining also takes place at a firm level through local agreements. This section examines the historical background of local agreements, their operation, their interaction with other bargaining levels, and how they differ from both sectoral agreements and single-enterprise agreements.

Local agreements are a particular kind of agreement that is bargained at a company or group level and cover firm specific issues such as rostering arrangements, pay, working hours, employee consultation procedures, workplace training, and overtime.[225] No legislation directly governs local agreements.[226] Instead, local agreements are created by provisions in sectoral collective agreements, hence their content and structure are set out within the sectoral agreements themselves. Local agreements can only be made between a company and a union representative, they cannot be made between individual employees or groups of non-unionised employees.[227] They are designed to supplement sectoral level collective agreements, not replace them. A local agreement cannot contain terms less favourable than those outlined in the relevant sectoral agreement.[228]

Most sectoral agreements contain provisions permitting the right to negotiate local wages once a year.[229] Bargaining units can take various forms. Some firms have company-wide agreements, while others have specific workplace agreements or agreements that cover a particular group of workers based on occupation.[230] Local bargaining parties are usually required to submit their local agreements to the peak-level confederations for review and record keeping.[231]

The most radical shift towards firm level decentralisation occurred in the late 80s when employers pushed for a more flexible wage-setting system.[232] Although enterprise level negotiations always existed in the Danish system, it was not until the 1980s and 1990s that enterprise bargaining began to take off.[233] As mentioned above, pressure from global economic circumstances

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225 Hvad er en lokalaftale?, HK, https://www.hk.dk/raadogstoette/overenskomst/hvad-er-en-lokalaftale>.

226 Lokalaftaler, Dansk Industri, 1 April 2023, https://www.danskindustri.dk/vi-radgiver-dig/personale/overenskomster-og-det-fagretlige-system/lokalaftaler/.

227 T P Larsen, A Ilsøe, *op cit 7*, 377.

228 J Lind, *op cit 170*, p. 151.

229 *Ibid,* p. 159.

230 C L Ibsen, M Keune, A Garnero, *op cit 124*, p. 25.

231 See for example the requirement under the Industrial Agreement: *Industrial Agreement* 2023-2025 Chapter II, Clause 8, Subclause 7.

232 J Lind, *op cit 170*, p. 159; J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p. 198.

233 T P Larsen, A Ilsøe, *op cit 7,* 376.

surrounding the 1987 Common Declaration prompted a gradual decentralisation of bargaining away from the confederation level to the sector organisation level, coupled with delegation of bargaining rights to parties at enterprise level.[234] The floodgates finally opened during the private sector bargaining round of 1991 when all manufacturing workers that were previously on normal (*normalløn*) and minimum wage (*minimalløn*) arrangements were immediately transferred to minimum pay (*mindstebetaling*) arrangements.[235] The bargaining round of 1991 also marked a significant expansion of localised pay agreements numerous industries, as the multi-tiered bargaining framework that had been prevalent in the manufacturing sector started to establish itself as the standard across the entire workforce.[236] In the private sector today around 85 per cent of workers covered sectoral agreements have their rates of pay set by some form of firm level wage negotiations.[237]

Denmark's system of organised decentralisation is sustained by high levels of union density and on-site union affiliated workplace representatives. Local bargaining is union driven and local shop steward networks play a pivotal role in workplace negotiations. They also link enterprise and sectoral levels by channelling workplace grievances into demands for national unions to take up at sectoral negotiations.[238] Shop stewards are formally recognised in sectoral collective agreements, and over 70 per cent of covered firms have local union representation.[239] This stands in contrast to more fragmented systems such as Australia, where workplace level representation is less embedded.

This system of union led local bargaining supports vertical coordination by ensuring that enterprise level bargaining continues to operate within a sectoral framework. Accordingly, the Danish system has been referred to as an articulated two tier bargaining model.[240] This approach offers several benefits, including the capacity for local bargaining representatives to concentrate on the specific requirements of the firm, the potential to cultivate flexibility at the firm level within a union bargaining structure, and an enhanced opportunity for employee voice at the local level by engaging local participants more actively in the bargaining process.[241]

[234] J Due, J S Madsen, *op cit 204,* pp. 514- 519.
[235] J Due, J S Madsen, C S Jensen, L K Patersen, *op cit 167,* p. 224.
[236] *Ibid.*
[237] C L Ibsen, M Keune, A Garnero, *op cit 124*, pp. 24.
[238] S K Andersen, *op cit 12,* 704.
[239] A Ilsøe, A Pekarek, R Fells, *Partnership under Pressure: A Process Perspective on Decentralized Bargaining in Danish and Australian Manufacturing, European Journal of Industrial Relations,* 2018, vol. 24, n. 1, pp. 55-71, p. 58.
[240] J Visser, *Variation in Decentralization: Articulation and Legal Culture*, in T P Larsen and A Ilsøe (eds), *Den Danske Model Set Udefra,* DJOF Publishing, Copenhagen 2016, p. 53.
[241] J Lind, *op cit 170*, p. 161.

Conclusions and Final Remarks

The comparison between Australia and Denmark demonstrates that outcomes of decentralisation are not determined by global economic pressures alone, but are equally the product of the institutional framework within which bargaining takes place. Denmark's multi-level bargaining model integrates the advantageous elements of both sectoral and enterprise-level negotiations. This model facilitates employee voice at both the local and sectoral levels, enabling sector-wide matters to be addressed at the sectoral level while allowing firm-specific concerns to be managed locally. This has led to Denmark developing into a system that Traxler would classify as "organised decentralisation", in which coordination across sectors is maintained while preserving flexibility at a firm level.[242] By contrast, Australia's predominantly enterprise-based model lacks these institutional coordinating structures. This has resulted in a more fragmented and less stable bargaining system.

In the 1980s, both Australia and Denmark faced similar pressure to reform their industrial relations systems in response to global economic change. Australian unions initially supported a multi-tiered bargaining system not too dissimilar to the Nordic model. With the political influence that the ACTU had via the Accord, the union movement had the opportunity to push for decentralisation within a more organised framework.[243] The ACTU explicitly wanted enterprise bargaining to operate within the existing award system and serve as "a safety valve for defusing wage pressure in labour market hotspots".[244] It envisioned enterprise bargaining as an "overaward" mechanism, whereby productivity-based bargaining operated within the framework of sectoral minimum award rates. This model would have enabled decentralisation within an organised framework broadly consistent with Denmark's system, supported by strong union structures and channels for employee voice at an enterprise level.[245]

The historical events between 1991 to 2009, however, saw Australia adopting a system of disorganised decentralisation whereby bargaining predominantly takes place at an enterprise level. Unique historical circumstances led to Australia moving towards a US-inspired single-enterprise bargaining model. In particular, the rift between unions, employer organisations and the AIRC was a core reason for the shift towards disorganised decentralisation. In contrast to Australia, Denmark's system of voluntary collective bargaining remains

242 S K Andersen, J E Dølvik, C L Ibsen, *op cit 116*, p. 27.
243 C Briggs, *op cit 40*, p. 39.
244 *Ibid*, 34.
245 *Ibid.*

resilient. Denmark responded to the economic challenges of corporate globalisation in the 1980s by achieving flexibility through articulated organised decentralisation. In Denmark, firm level bargaining takes place within a framework set by sectoral level bargaining. The Danish two-tier bargaining model has proved to be effective at delivering the benefits of widescale bargaining coverage while at the same time allowing a level of flexibility for employers and unions to make arrangements to bargain at the firm level.[246] This demonstrates that the move towards disorganised decentralisation and the subsequent decline in collective bargaining coverage is not an inevitable consequence of the drive for firm level flexibility. Denmark has managed to adapt its collective bargaining system to the needs of a competitive market economy without following the disorganised decentralisation model that has been prevalent in the Anglo-American sphere. Denmark's model of organised decentralisation is a synthesis of the dual need to preserve collective bargaining coverage and allocate specific bargaining duties to firm-level players.

The Danish model demonstrates that high levels of collective bargaining coverage can be sustained under conditions of decentralisation where broad-based bargaining and coordination are preserved. With collective bargaining coverage at approximately 80% of employees, Denmark has avoided the decline in coverage observed in disorganised enterprise-based modes such as Australia. Its coordinated multi-level bargaining system has allowed Denmark to avoid the inflexibilities that sectoral bargaining models are often accused of, while at the same time providing a bargaining framework that prevents the race-to-the-bottom in wages and conditions that we have seen in countries with fragmented bargaining systems. This demonstrates the capacity for the Danish model to sustain both horizontal coordination across sectors and vertical coordination within bargaining units, thus ensuring that decentralisation does not degenerate into fragmentation.

[246] J Visser, S Hayter and R Gammarano, *op cit 14*.

Family Caregivers in Croatia: Between Paid and Unpaid Work in the Social Welfare System

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Abstract. Throughout history, the care for children, elderly and disabled family members in the family structure was traditionally entrusted to women, but with the beginning of the industrial revolution and the progress of urbanization, the need for all able-bodied family members to work arose, which triggered the need for new forms of care. This caused an additional burden on family members (primarily women) because now, in addition to their work, they still had children and elderly family members to care for. In welfare state theories, these situations were attempted to be alleviated by social policies that would provide compensation to caregivers and provide them with formal caregiver status instead of an informal one, recognizing their vital contribution to society.

In Croatia, there was also a need to clarify the status of caregivers, especially prompted by the factors such as the aging population, declining birth rate, and the emigration of a part of the working-age population (caused especially by country's EU accession in 2013), which created a shortage of educated and qualified personnel to provide adequate care for those in need of it. Despite the import of foreign labour force, the needs have not been met adequately, and the solution here continues to be state intervention by establishing the institute of caregivers and caregiver parents.

Additional amendments to the already existing Social Welfare Act have provided the opportunity for family members to provide care almost professionally (under strict and definitive legally prescribed conditions), thus meeting the needs of children with disabilities and elderly people in need of care, while at the same time integrating care providers into the workforce,

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preventing their inactivity and giving them all the rights and obligations of a worker. This form of "work" has not yet reached its full potential, and this paper will analyse the changes introduced by the new law and how the legal status of caregivers is regulated and whether there are some possibilities of it to change, allowing the caregivers to be considered equal and active participants on the labour market.

Keywords: *Welfare state; Caregiver; Formal and informal care; Social Welfare Act.*

1. The Welfare State

The welfare state, as an ideal type developed in industrial societies, was primarily designed to meet the needs that were inadequately addressed through the market, such as interruptions of income due to retirement, unemployment, illness, disability and any other mismatches between income and need during one's life cycle.[1] It also took on responsibilities in other significant areas, such as healthcare and education, where reliance on private markets would have otherwise been inefficient. As a contrast to that, in most countries, the social care for the elderly and the disabled has been left to be handled by the family structure, with state interventions in that area being limited and corresponding services weakly developed.[2]

European welfare states have undergone substantial changes throughout the years, in terms of objectives, areas of interventions, and instruments, with different challenges and expectations in front of them. They are expected to help and push non-working people back into the employment, complement work income for the working poor, help parents reconcile work and family life, promote gender equality, support child development, and provide social services for an ageing society.[3]

Demographic and economic transformations have placed new pressures on the existing arrangements and the rising life expectancy, and the growing proportion of elderly increased the demands for social care and caused a strain to traditional pension and healthcare systems.[4] Improvements in medical care and supportive services have also led to significantly higher survival rates among children with severe developmental or neurological disabilities, particularly in those groups that were previously considered unlikely to survive

[1] P. Taylor-Gooby, (ed.) (2006.), *New Risks, New Welfare: The Transformation of the European Welfare State*, Oxford University Press, p. 2

[2] *Ibidem*

[3] G. Bonoli and D. Natali (eds) *The politics of the new welfare state*, Oxford, Oxford University Press, 2012, p. 3

[4] P. Taylor-Gooby, *op.cit.*, p. 3

further into childhood.[5] Number of people depending on the care of others has therefore significantly increased, both in children and adults with disabilities, as well as the elderly. Parallelly to this, labour market changes, primarily due to technological developments in production, resulting in decline of unskilled industrial jobs and international competition, have tightened the link between education and employment, exposing poorly educated groups to greater risks of exclusion. Care responsibilities further complicated this picture, as they limited employment opportunities and reduced income, affecting employment and heightening the risk of family poverty,[6] at the same time as women have managed to gain greater advancement in education and employment and were continuing to press for more equal opportunities.[7] The family structure changed, going from having only one main provider, to sharing this role between two, both men and women participating on the labour market.

These structural changes happening in the post-industrial society are what scholars refer to as "new social risks"[8]. They are linked to family formation, care responsibilities and access to employment, affecting people at earlier stages of their lives, making them reconcile paid work with care obligations, and they also expose vulnerable groups to heightened risks of poverty and exclusion. As a result of that, the boundary between the public and private responsibilities has been redrawn, raising normative questions about the distribution of obligations between families, markets and the state itself.[9]

Depending on the national regime, these risks are addressed differently across Europe. In Nordic countries, well-developed care services and active labour market policies manage to mitigate many of the tensions by supporting both employment and caregiving. In corporatist systems of Central Europe[10] reliance on traditional gender roles and compromises between social partners delays the development of collective provision. Liberal regimes[11] prioritise market-based solutions, resulting in unequal access to care, while Mediterranean systems heavily rely on family caregiving, reinforcing women's employment disadvantages. Comparative research confirms that welfare states

[5] D. Strauss, R. Shavelle, R.J. Reynolds, L. Rosenbloom, and S.M. Day, (2007) *Survival in cerebral palsy in the last 20 years: signs of improvement?* in *Developmental Medicine & Child Neurology*, 49(2), 86–92, p. 86

[6] P. Taylor-Gooby, *op.cit.*, pp. 3-4

[7] *Ibidem*, p. 2

[8] Unlike the previously mentioned "old social risks" such as sickness, disability or retirement which affected large sections of the industrial working class

[9] P. Taylor-Gooby, *op.cit.*, pp. 5-6

[10] Using Esping-Andersen's typology, also called conservative or Bismarckian systems, which would include countries such as Germany, Austria, France, Belgium, Luxembourg

[11] Such as United Kingdom and Ireland in Europe

shape caregiving arrangements by determining whether support is provided through formal services, caregiver's allowances or family obligations.[12] One of the welfare state policies' goals is to organize care for the elderly and the disabled as well as to influence the distribution of social risks, gender equality and class stratification. By expanding public services and "defamiliarizing" care, some regimes have succeeded to reduce the intensity of informal caregiving and support women's labour market participation. These regimes also directly affect the caregivers' ability to remain in employment, by influencing whether the care is recognized, compensated and supported through public infrastructure.[13]

If we take Croatia into consideration, since this paper will have the country's approach to family caregiving arrangements as its main focus, we can recognize that, by all its characteristics, it could be described as a blend of two models - the Mediterranean welfare state model, where the provision of caregiving services is limited and the majority of responsibilities is burdened upon family members, but it also demonstrates some elements of corporatist model, where the social benefits are heavily relying on state intervention. We will analyse the care services provided to children with developmental issues and adults with disabilities, in the frame of the Social Welfare Act and the institutes of parent caregiver and caregiver, both combining family care and provision delivered by the state, while giving the caregiver a status similar to that of an employed person, with some important differences that will be discussed throughout the paper.

2. Rising Disability Rates and Shortage of Institutional Care

Current estimates suggest that more than one billion people, which would be around 15% of the world's current population, live with some form of disability, while between 110 million and 190 million people experience significant difficulties in functioning through daily activities. In Croatia, the data on the prevalence of disability are monitored through the Croatian Register of Person with Disabilities, demonstrating a rising trend in disability rates. In 2007, persons with disabilities accounted for 10.7% of the country's total population, while the most recent data from September 2024 indicates an increase to 17%.[14] The majority of persons with disabilities, 304,692 (46.6% of

[12] A. BERTOGG and S. STRAUSS, *Spousal care-giving arrangements in Europe: the role of gender, socio-economic status and the welfare state* in *Ageing & Society*, 40(4) (2020), 735-758, p. 740

[13] *Ibidem*, p. 736

[14] T. Benjak, G. Vuletić, A. Vuljanić, V. Vasiljev Marchesi, Z. Špoljarić, D. Bouillet, L. Kiš-Glavaš, M. Mirić, M. Gojčeta, M. Dumančić and M. Pavlić (2022) *Kvaliteta života osoba s invaliditetom starije životne dobi u Republici Hrvatskoj* in *Medica Jadertina*, 52(4), 247–256, p. 248

the total number) are aged 65 and over, while 268,658 (41.1%) fall within the working-age population group (20-65)[15]. Disability rates are also on the rise in childhood population, from ages 0-19, accounting for 12.3% of all persons with disabilities.[16]

The growing number of persons with disabilities, together with an increasingly ageing population, raises a critical question about the future of formal care, specifically how it will be organized and whether sufficient care professionals will be available to provide it, or if family members will be expected to step in and carry out the majority of the necessary care.

Alongside countries like Bulgaria, Romania, Hungary and Slovenia, Croatia is expecting a pronounced "care drain"[17] in the recent years, with its skilled and professionally trained care workers emigrating out of the country. The main drivers of this trend are higher pay and better working conditions abroad, which attract experienced care workers to wealthier EU countries. This intensifies labour shortages in lower-income economies such as Croatia, which is simultaneously facing a rapid aging of the population, a galloping trend through all of the European continent. According to the most recent, 2021 population census, 22% of Croatia's 3,87 million inhabitants are aged 65 and over, and the European Commission estimates that, by the year 2030, this share could rise up to 30%.[18]

The Croatian long-term care system is therefore currently relying predominantly on the care provided by family members, despite it becoming increasingly unsustainable due to shrinking family size, greater geographic mobility and the growing labour market participation of women, who continue to provide the majority of informal care. According to an OECD survey from 2023, future generations of Croatian women are unlikely to prioritize caregiving to the same extent, which will further intensify the demand for formal services. Between 2013 and 2023, approximately 2,400 skilled nurses emigrated from Croatia, with the healthcare system currently requiring 4,000 additional nursing staff.[19] Despite an immigration surge currently ongoing in

[15] 20-64 years

[16] Izvješće o osobama s invaliditetom u Republici Hrvatskoj (autor T. Benjak), Hrvatski zavod za javno zdravstvo, Zagreb, rujan 2024., https://www.hzjz.hr/wp-content/uploads/2024/10/Bilten_-_osobe_s_invaliditetom_2024_g.-1.pdf (Accessed on 10 August 2025)

[17] The 2021 Ageing Report, *Economic and Budgetary Projections for the EU Member States (2019-2070),* European Commission, Institutional Paper 148, May 2021, https://economy-finance.ec.europa.eu/publications/2021-ageing-report-economic-and-budgetary-projections-eu-member-states-2019-2070_en, (Accessed on 10 August 2025)

[18] M. Bađun (2024), *Long-Term Care Workforce in Croatia: A Qualitative Study on the Potential Role of Immigration* in *Revija za socijalnu politiku, 31*(3), 261-278, p. 262

[19] *Loc.cit.*

the country, Croatia is mostly drawing in foreign workers in sectors such as construction, tourism and service[20], while it is not attractive enough for care workers, especially compared to countries such as Austria or Germany. One of the reasons for this might also be the administrative and language barriers when entering the country and the longevity of the process of obtaining a valid nursing licence.[21] A statistical review of issued permits for residence and work of foreigners published by the Ministry of the Interior shows that between the years 2017 and 2020, healthcare and social welfare accounted for less than 1% of all permits issued.[22]
With all this in mind, it has become clear that most of the children and persons with disabilities in need of a long-term care are not going to get the necessary care in institutions and will instead rely on that provided by their family members. Changes affecting the structure and dynamics of the family, society and system have strong implications for the development of informal care and the ability of the family to provide support to individuals in need.[23] The shift to informal care hasn't been only a side-effect of insufficient personnel in the area of formal care, but has been an argument[24] experts, researchers and even politicians use when discussing deinstitutionalization of care, stating that persons with disabilities should be more included into the society, as their life quality could be improved by remaining in the family.[25]

3. Informal Caregivers and their Compensation

The description of who can be seen as an informal caregiver outlines access to any services offered by the governments and has important repercussions for the support they receive, and it varies in different national and regional legislation. The term informal caregiver or carer is often used inter-changeably with the term family carer or caregiver. Some notions of informal caregivers tend to exclude paid but non-professional caregivers providing care in private

[20] Statistika usluga Test tržišta rada i Radne dozvole, https://www.hzz.hr/statistika/statistika-usluga-test-trzista-rada-i-radne-dozvole/, (Accessed on 10 October 2025)
[21] M. Bađun, *op.cit*, pp. 272-273
[22] H. Butković, V. Samardžija and I. Rukavina (2022) *Foreign workers in Croatia: Challenges and opportunities for economic and social development*. Zagreb: Institut za razvoj i međunarodne odnose (IRMO), p. 148
[23] M. Banadinović, D. Vočanec, I. Lukačević, Lovrenčić, K. Lončarek and A. Džakula, *Role and perspectives of informal care: a qualitative study of informal caregivers in the Republic of Croatia* in *BMJ Open* 2023;13:e074454. doi:10.1136/bmjopen-2023-074454, p. 2
[24] Eurocarers, 2022, *Informal care, poverty and social exclusion*, Eurocarers Position Paper. Available at https://eurocarers.org/ (Accessed on 15 August 2025)
[25] B. Teodorović and D. Bratković, *Osobe s teškoćama u razvoju u sustavu socijalne skrbi* in *Revija za socijalnu politiku*, vol. 8, no. 3–4 (2001), 279–290, p. 282

households. Others focus only on those providing informal care to older people with specific care needs.
In France, the informal caregiver[26] of an older person losing autonomy refers to "any person who is cohabiting or having a close and stable relationship with the person in need of care, and who is helping frequently and regularly, on a non-professional basis, to accomplish all or part of the activities of daily living".[27] In Italy, a caregiver is defined as "a non-professional individual, typically a family member who provides continuous care to a severely dependent person within a defined personal relationship".[28] With all this in mind, we could define informal care as non-professional care provided, by choice or by default, by family members (next of kin), friends, neighbours or other persons caring for people with long-term care needs at all ages, usually in private households. The informal caregivers are not only important co-producers of long-term care, but they are also persons in need of being recognized and provided with material and non-material support.[29]
The role of informal caregivers is still dominated by women of working age, but the increase in the share of women in the labour market has also affected the dynamics of providing care at home. Meeting the needs of informal caregivers is one of the tasks of public services, aiming to ensure not only adequate care, but an adequate quality of life as well.[30] The result is the increase in care programmes for informal caregivers that include financial benefits, special legal or work statuses and programmes focusing on respite, or rest from the care.[31] Benefits and services for caregivers have always been in the shadow of long-term care policies primarily focusing on the care recipients. In the EU, among the Member States we can differentiate between three different types of so-called cash-for-care allowances, with the degree of support varying according to the type of allowance and the level of their generosity.
The first type of allowance is paid to the care recipient, based on the level of need and sometimes income, reserved for employing a caregiver. While not directly providing a service, it provides a mean to afford suitable care. This allowance reduces the need for family care and enables caregivers in

[26] "Proche aidant" or informal carer, defined by the Act on adapting society to an ageing population (*Code de l'action sociale et des familles* (France), art L113-1-3, inserted by *Loi n° 2015-1776 du 28 décembre 2015 relative à l'adaptation de la société au vieillissement)*

[27] United Nations Economic Commission for Europe (UNECE) (2019) *Policy Brief on Ageing No. 22: The Role of Housing in Long-Term Care of Older Persons*. Geneva: United Nations Economic Commission for Europe. Available at: https://unece.org/ (Accessed on 27 August 2025)

[28] Legge 27 dicembre 2017, n. 205, art. 1, comma 255 (Italy)

[29] United Nations Economic Commission for Europe (UNECE) (2019), *loc.cit.*

[30] *Ibidem*

[31] *Ibidem*

employment to carry on working. Sometimes, this allowance can also be used to hire a family member, allowing the caregiver the choice between being paid to perform care and staying in their previous job, as well as offering inactive family members the opportunity of becoming paid working caregivers.[32] The second type of care allowance is also paid to the care recipient, but it can be used freely and doesn't have to be strictly used for acquiring care services with the allowance sometimes being offered as an alternative to services.[33] In many cases, this care allowance is used to pay for care in the informal, often migrant, labour market, or to informally compensate the either way present and included family caregiver.[34] It can be difficult for countries to control what care recipients effectively do with these cash benefits, in particular when they are provided without any monitoring, and it has been argued that a lack of control of cash benefits can fuel a grey market.[35]

The third type of care allowance is the caregiver's allowance – unlike the first two examples, specifically provided to the family caregiver who must apply for it. Eligibility criteria vary according to the age and the severity of the disability, the caregiver's earnings, whether or not they are in employment, if they have a legal residence in the home of the care recipient, the age of the caregiver, their gender or their marital status. As opposed to the first type of benefits, this care allowance does not constitute a formal wage and is not based on a formal work contract.[36] In all countries providing this allowance, caregivers build up social security entitlements towards the old age pension funds. Some countries grant similar social security entitlements even in the absence of a caregiver's allowance. The person must be recognised as being the main caregiver, with no additional help from social care services or from a hired person paid through a publicly financed allowance.[37] The different patterns are based on the inclusiveness of the system, the role of the cash for care schemes and their specific regulations, as well as the views of informal care and the care work that they entail.[38]

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32 B. Vanhercke, S. Sabato and D. Bouget (eds.) (2017) *Social policy in the European Union: state of play 2017, Brussels*, European Trade Union Institute (ETUI) and European Social Observatory (OSE), pp. 168 -169

33 *Ibidem*

34 *Ibidem*

35 OECD, *Supporting Informal Carers of Older People: Policies to Leave No Carer Behind*, OECD Health Working Paper No 140 (Directorate for Employment, Labour and Social Affairs, Health Committee, 2023), p. 41

36 B. Vanhercke, S. Sabato and D. Bouget (eds.), *loc.cit.*

37 *Ibidem*

38 B. Da Roit and B. Le Bihan (2010) *Similar and yet so different: Cash-for-care in six European countries' long-term care policies*. Social Policy & Administration, 44(3), 286–305, p. 305

The Croatian legislator chose the type of allowance that is paid to the caregiver, establishing the institute through the Social Welfare Act, differentiating between a caregiver and a parent caregiver, where either of these statuses is given to a family member providing majority of the care, describing it not only as a social policy measure aimed at ensuring quality care to children and adults with disabilities, but also serving as an active labour market measure, given that the caregivers are individuals who are not engaged in any other form of paid employment. Some of these caregivers have left their jobs in order to assume the role of a caregiver, while others were outside of the labour force prior to starting to care for a dependent family member or a child with disabilities, and are now once again being activated and are engaging in activities after a period of economic inactivity or unemployment.

When trying to categorize the type of care these caregivers are providing, the question that arises is – once the state is included and playing the part that would usually belong to an employer, could we talk about formalized care once again and have we reached a point of formalisation of previously informal care? While care now becomes comparable to real work, with it including regular and predictable monthly payments[39] and recognized social security rights, forming a relationship between the state and the caregiver, it still lacks one key element for it to be able to stand on an equal footing with formal care, and that is professional training and validation of skills, leaving the parent caregivers and caregivers without proper education and professional guidance, which prevents them from being categorized as formal caregivers and equate them to professional care workers. Their duties are strictly tied to the one (or more) individual they are providing care for, and once their status is for whichever reason terminated, they wouldn't be able to use this experience and potential medical or technical knowledge as relevant for continuing their careers as professional care workers and competitively participate on the labour market as such. Also, we cannot put it into the same category as regular work because, despite having some similarities, it is lacking a key element of employer-employee relationship and an employment contract that defines it, including all the rights and obligations that it would usually contain. The obligations of a caregiver and a parent caregiver derive solely from the Social Welfare Act, as do the responsibilities of the state. This is why we analyse the institution of parent caregiver and caregiver, under the Croatian Social Welfare Act, as a variant of paid, but still informal care.

[39] United Nations Economic Commission for Europe (UNECE), *loc.cit.*

4. Croatian Social Welfare Act and the Parent Caregiver and Caregiver Status

The Republic of Croatia, as a welfare state, assures the right to assistance to all its citizens under the same conditions. Social welfare includes a series of benefits and services aimed at securing subsistence to the persons who have been left without necessary means, and it incorporates assistance such as financial aid and institutional care. In addition to that, it includes a whole series of professional measures in the field of the family-law protection, the protection of children and the youth, assistance to persons with disabilities and to the elderly.[40] The funds for carrying out these social welfare activities are secured in the state budget, as well as in the budgets of local and regional governments. Institute for Social Work is the governing body, and its offices may be established exclusively by the Republic of Croatia, while social welfare homes and centres for assistance and care may be established by other subjects[41] as well. The proceedings for granting social welfare rights are conducted by the Institute for Social Work office branches which operate on the local level in almost all larger towns across the country. The Croatian social welfare system includes financial support, social welfare services and institutional care – all governed by the Social Welfare Act as the main normative source.[42]

The institutes of a parent caregiver and a caregiver are also regulated by the Act, which defines the circle of the possible beneficiaries (both caregivers and care recipients), the conditions under which the status is recognized, the rights attached to it, as well as the circumstances that lead to the suspension or termination of the status. To get where we are regarding these institutes today, a lot of changes to the initial version of the Act were made throughout the years, with the newest, 2023 version's most important changes being the significant widening the circle of persons who can attain the status, raising the amount of monthly allowance and postponing the termination of the status in those cases where it's caused by the death of a child.

The lawmaker's intent is to align the national legislature with the European Pillar of Social Rights (EPSR), which is an initiative jointly approved by the European Parliament, the European Council and the European Commission

[40] N. Žganec (2002), *Social welfare in the Republic of Croatia; on the road towards reform* in Lj. Kaliterna Lipovčan, S.-A. Dahl (eds.) *Employment Policies and Welfare Reform*. Zagreb: Institut društvenih znanosti Ivo Pilar, 178–196, p. 179

[41] Including religious communities, corporations, associations and other domestic and international physical and legal persons by means of the resources they have secured for that purpose by themselves.

[42] N. Žganec, *op.cit.*, p.180

defining 20 principles for the European Union to become more inclusive, fairer and to improve the lives of all of its citizens.[43] Its goal is to build fairer and better functioning labour markets across the EU, as well as good welfare systems for the benefit of all its citizens. Some of the core principles are addressing the rights and needs of caregivers, such as Principle 9, addressing the work-life balance and stating how parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. In Principle 18 long-term care is addressed as everyone's right to affordable and quality services, with special accent on home-care and community-based services. Principle 12 states how all workers, including self-employed and those with atypical employment contracts, have the right to adequate protection – which can be further extended to informal caregivers and their right to protection against poverty and social exclusion.

While the institute of parent caregiver and caregiver existed in the previous variations of the Act as well, Croatia is trying to improve its social policy towards an innovative welfare state, implementing the principles of the EPSR into its legislation,[44] the same way it does with other areas of social policy and protection, especially when it comes to labour market modernization and the measures of social inclusion.

4.1. Recognizing the Caregiver Status

The process of recognizing the caregiver status of an individual starts at the request of the intended person, who applies to their local Institute for Social Work office, providing comprehensive medical documentation of the intended care recipient, which can sometimes mean that years' worth of medical documentation is being submitted, adding to the longevity of the bureaucratic procedure itself, partly due to the limited capacities of the staff. From there, the person has to go through a detailed assessment at the Institute for expertise, professional rehabilitation and employment of persons with disabilities, whose opinion is sent back Institute for Social Work, who then determines whether or not the status will be awarded.

It's an administrative procedure involving two separate public institutions, as well as requiring previous medical documentation and has been largely

[43] European Pillar of Social Rights, https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-pillar-social-rights-building-fairer-and-more-inclusive-european-union_en, (Accessed on 16 August 2025)

[44] The European Pillar of Social Rights in 20 principles, https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-pillar-social-rights-building-fairer-and-more-inclusive-european-union/european-pillar-social-rights-20-principles_en, (Accessed on 16 August 2025)

criticized by the public, interested persons and the representatives of the media. The procedure can also be started on-line[45], through an automated portal "e-Građani", which provides public services electronically and might offer easier access to the intended applicants, allowing remote processing without the need to visit the Institute's offices. Once the process is over, the right is granted or denied on the basis of a decision from the designated Institute for Social Work and, in a case of a positive decision, it is recognized from the day that the decision becomes legally effective.[46] So, instead of an employment contract signed by two parties, the status of a caregiver is determined by an official, one-sided decision, issued and signed by the Institute, which is one of the main reasons this relationship between the beneficiary and the state cannot be considered that of an employment, as its missing one of the key elements to be recognized as that.
The number of caregivers is published annually by the Ministry of Labour, Pension System, Family and Social Policy and in the year 2024 there were 6,996 caregivers in total (6,037 parent caregivers and 959 caregivers). In Table 1 we can observe a total number of caregivers increasing from 2019 onwards, with a slight decrease of caregiver number in the years of the COVID-19 pandemic, while the number of parent caregivers experienced constant increase.

Table 1 Number of registered caregivers in Croatia from 2019 - 2024

Year	Number of parent caregivers	Number of caregivers	Total number
2019	3,934	799	4,733
2020	4,551	626	5,177
2021	4,747	590	5,337
2022	4,883	682	5,565
2023	5,694	851	6,545
2024	6,037	959	6,996

Source: Ministry of Labour, Pension System, Family and Social Policy, Annual Statistical Reports[47]

[45] Uvedena mogućnost podnošenja zahtjeva za priznavanje prava na status roditelja njegovatelja ili njegovatelja i preuzimanja potvrde u ime djeteta o statusu u sustavu socijalne skrbi na portalu e-Građani, https://mrosp.gov.hr/vijesti/13148 (Accessed on 16 August 2025)
[46] Pravo na status roditelja njegovatelja ili status njegovatelja, https://gov.hr/hr/pravo-na-status-roditelja-njegovatelja-ili-status-njegovatelja/726?lang=hr, (Accessed on 12 August 2025)
[47] Available at https://mrosp.gov.hr/pristup-informacijama-16/strategije-planovi-programi-izvjesca-statistika/statisticka-izvjesca/12012, (Accessed on 26 October 2025)

In the last two years, 2023 and 2024, the data on the gender of the caregivers has been published as well, and it clearly demonstrates that most of the caregivers from both of these groups are women, especially dominating the category of parent caregivers, adding to the theory of Croatia still being a society with traditional gender role divide, where women predominately take on the roles of primary caregivers for the children, the disabled persons and the elderly. The aforementioned data can be observed in Table 2, where we can see how the percentage of women in both groups of caregivers doesn't go below 76%.

Table 2 Percentage of women out of registered caregivers in Croatia from 2023-2024

Year	Percentage of women parent caregivers	Percentage of women caregivers	Percentage of women in total
2023	90.79%	76.03%	88.88%
2024	90.95%	76.54%	89.98%

Source: Ministry of Labour, Pension System, Family and Social Policy, Annual Statistical Reports[48]

The two types of caregivers are regulated with nine Articles (61-69) of the Social Welfare Act, beginning with the definition of the institute itself. In Article 61 it is stated that the status of a parent caregiver or that of a caregiver can be granted for the care of a child with developmental disabilities or a person with a disability, who is entirely dependent on another person's help, concerning the fulfilment of their basic needs. This includes the following cases:

1. where an individual's survival depends on specific medical or technical procedures that, by the recommendation of a physician, can be performed by the caregiver;
2. where the individual is completely immobile or relies on the assistance of different orthopaedic aids;
3. where the individual has a fourth-degree autism spectrum disorder[49];
4. where the individual suffers from multiple fourth-degree impairments, which includes physical, mental, intellectual or sensory impairments.

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[48] *Ibidem*

[49] The degree of disability in relation to work is determined using a scale of five degrees (0-4) and the fourth degree is if the obstacles and difficulties in relation to work are complete and are rated from 96% to 100%, as described in the Rulebook on professional rehabilitation and centres for professional rehabilitation of persons with disabilities (Official Gazette of the Republic of Croatia 44/14)

The caregiver status is granted to a person chosen by the individual with disability or by their legal representative, provided that they meet the requirements prescribed by the Act. The status of a parent caregiver is reserved for the parent of a child with developmental disabilities or a person with disability. In cases where there are two or more affected children or persons within the same family, both parents may be granted this status[50], which is a novelty introduced by the newest addendum to the Act and hasn't been a possibility until recently.
Parents are not the only ones who can exercise the right, as the status can also be given to a legal spouse, partner or life-partner of a parent. The circle has also been broadened, including informal partners as well as persons in registered, same-sex partnerships. Where parents are absent, unable to provide care, or do not live in the same household with the child, the status can be extended onto an even wider circle of persons, including relatives in the direct line and up to the second degree of collateral kinship.[51]
As it was pointed out before, it is not sufficient for a person to be chosen by the person with disability to become a caregiver, or for them to be a parent of a child with a disability to become a parent caregiver, as they also need to fulfil a specific list of requirements, stated in the Article 64, the first one being that they have to be of legal age and possess a legal capacity, both of which are under the Croatian law acquired once a person turns 18 years of age[52]. In the case of a parent caregiver, one of the requirements is for them not to be stripped of their parental capacity by a court ruling. A caregiver must demonstrate a psychophysical ability to provide care, and they have to live in the same household, including having the same permanent residence, as the person they are providing for. When the individual's survival depends on specific medical or technical procedures, the caregiver has to be trained in providing these actions.
When discussing the age of the parent caregiver and the caregiver, it becomes apparent that the lawmaker's intent was to use some elements of typical employment relationship and build them into this institute as well – one of them being restricting the age at 65, which is also a legal retirement age in Croatia[53]. In cases where a person continues to meet all the other requirements, the status may be further extended, having the care recipient's best interest in

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[50] Social Welfare Act (Official Gazette of the Republic of Croatia 18/22,46/22,119/22, 71/23,156/23,61/25), Article 62
[51] *Ibidem*
[52] As set by the Family Act (Official Gazette of the Republic of Croatia 103/15, 98/19, 47/20, 49/23, 156/23). But in some cases such as when a person is a minor and gets a court ordered legal capacity in order to enter a marriage
[53] Pension Insurance Act (Official Gazette of the Republic of Croatia 96/25), Article 38

mind. In a similar way, persons can also continue to work after the age of 65, but in both cases, the continuation doesn't happen automatically and it's a process that requires additional administrative and legal evaluation. If the Institute for Social Work comes to a conclusion that there are no legal obstacles for the status to be prolonged, it extends it after the caregiver reaches the age of 65. This is significant because a person's disability doesn't cease once their caregiver reaches the retirement age, they still continue to have the same needs and the requirements as before and it is easier for someone who is already accustomed to it to continue providing the care, with allowing a well-known and established routine to proceed, instead of forcing the care recipient to have to move into an institution and get used to new arrangements.
In those cases where the care recipient is entitled to institutional care or to arrangements that include a full-day stay services (except in cases of accommodation provided to the victims of domestic violence), where a parent is currently exercising their maternal, paternal or adoptive leave or when there are legal barriers such as parental right restrictions or existing lifelong maintenance contracts – the status of a parent caregiver or a caregiver cannot be lawfully recognized.[54]

4.2. Compensation and Work Restrictions

Although the compensation is paid monthly, along with the health and pension contributions, it cannot be considered a salary but rather a social benefit, as it is not subjected to taxation and its amount remains below that of the current minimum wage in Croatia. The amount of the compensation itself is tied to the severity of the disability and the number of care recipients on one caregiver. It is tied to and calculated as a percentage of the government determined base – an amount set periodically by a government decision. The base for the year 2025 is set to €75 and for comparison, from 2016 to 2024 it was set to €66.36, with the fact that the change doesn't happen annually or follow the yearly growth of national minimum wage causing criticism.
There are three categories of the compensation:
1. €750 monthly (1000% of the base amount) to a parent caregiver or a caregiver who is caring for a child or a person with a disability.
2. €900 monthly (1200% of the base amount) to a parent caregiver or a caregiver who is caring for a child or a person with a disability who, due to their health conditions, cannot participate in community programmes or services.

[54] Social Welfare Act. *op.cit.*, Article 64

3. €1125 monthly (1500% of the base amount) to a parent caregiver who is independently caring for two or more children or persons with disabilities.

In case that the status comes to a termination, the caregiver has the same rights as a formally employed workers, regarding the Croatian Employment Service, where they can apply for remuneration, provided that they are fulfilling the rest of the conditions prescribed by the Labour Market Act.[55]

Since the institute is designed for persons not included in employment of any kind, the caregivers and parent caregivers are therefore prohibited from being simultaneously engaged in other professional economic activities. Therefore, a caregiver who enters employment, self-employment, freelance employment, trade or a similar paid activity, automatically loses their status. Although the Social Welfare Act itself doesn't explicitly address part-time or contract-based work, in practice, the Institute for Social Work considers any paid work incompatible with the role of a caregiver, as it suggests that the person might not be fully dedicated to providing necessary care. This strict interpretation by the institution contrasts the treatment of any regular employees, as they are permitted to work overtime and hold multiple employment contracts at the same time, the current Labour Act recently abandoning its norms that stated that, in case when a worker wanted to work more than 40 hours per week and sign a contract with a different employer, they had to acquire a written permission of their current employer to do so. Since the Social Welfare Act doesn't mention whether or not these situations terminate the status itself, as long as it adheres to the Tax Act and doesn't take away from their caregiver responsibilities, it shouldn't lead to the termination of the status.

4.3. Respite Care

Article 66 of the Social Welfare Act introduces the possibility for a parent caregiver or a caregiver to take four weeks of paid leave throughout the year. During this period, as well as during the period of temporary incapacity to provide care that lasts up to two months and which is determined by the health insurance regulations, a child with developmental difficulties or a person with a disability may be granted the right to use accommodation services in an institution or in a temporary foster family instead. For the duration of these circumstances, the caregiver is still entitled to the compensation despite temporarily taking a pause from providing the care. This was heavily influenced by the Labour Act's Article 77, which states that every worker is entitled to

[55] If the employment didn't end with a fault or will of their own and they have spent at least nine months in employment in the past 24 months (6 months for persons under the age of 30)

four weeks of rest yearly and in this case, caregivers were given the same legal minimum respite as persons in employment.

The problem regarding respite, is that the caregivers reside in the same household with the person they are taking care of, and it's difficult for them to use their guaranteed time for rest. Since this is their family member, they stay with them even throughout this time of respite, continuing their duties and not taking any real time off. This issue mainly occurs because, even though the law states that during that time the care recipient can be given an accommodation service, that doesn't usually happen in practice. There are not enough accommodation capacities available, and it is not adequately organized for an institution to take care of someone for such a short time, especially in the case of the paid sick leave, if it's a case of a sudden and unexpected ailment.

The practice has so far demonstrated that these rights are rarely used and the available data from 2022 states that only 8 parent caregivers and none of the caregivers have used the time of leave, while only one caregiver used paid sick leave throughout the year.[56]

There is a state-wide government initiative under the name of "Rest from care" presented by the Ministry of Work, Pension System and Social Policy, aimed at parent caregivers and caregivers, providing them with adequate respite, where social service providers, civil society organizations and religious communities will be included as support. The project itself is predicted to last for 18 months and include up to 820 caregivers, with €4,9 million being allocated from ESF+ Fund and 35 contracts with organizations signed. This should help take the burden from the caregivers while the care recipients would be provided with quality care during that time. The goal of this pilot project is for it to become a crucial social service supported by the Social Welfare Act. The activities provided by this scheme are not envisioned as lasting only during the caregiver's rest time, but it would also include various supporting activities throughout the year, such as individual and group counselling and psychosocial support, as well as organized workshops for parent caregivers, organized trips and excursions.[57] This mechanism is seen as a assistance to the included families while improving the quality of their life during the entire caregiving period.

[56] Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike (2023.), *Godišnje statističko izvješće o korisnicima i pravima u socijalnoj skrbi u republici Hrvatskoj u 2022. godini*, Zagreb: Ministarstvo rada, mirovinskog sustava, obitelji i socijalne politike, https://mrosp.gov.hr/pristup-informacijama-16/strategije-planovi-programi-izvjesca-statistika/statisticka-izvjesca/12012, (Accessed on 27 August 2025)

[57] Predstavljen pilot projekt "Odmor od skrbi" za roditelje njegovatelje i njegovatelje, https://vlada.gov.hr/vijesti/predstavljen-pilot-projekt-odmor-od-skrbi-za-roditelje-njegovatelje-i-njegovatelje/44282?lang=hr (Accessed on 28 August 2025)

4.4. Suspension and Termination of the Status

The Social Welfare Act, throughout Articles 67 and 68 distinguishes between suspension and termination of the status, naming them as two reasons where the caregiver status ceases – either temporarily or permanently. Suspension is a temporary halt of the benefit payments, where the caregiver retains their official status and remains "in employment". That means that the state still continues to cover their healthcare and pension benefits, and they have no obligation to apply for the unemployment benefits instead. These situations often happen while the parent is on a maternal, paternal or adoptive leave for another child. It is similar to these types of leaves when exercised during regular employment – as they are getting a monetary compensation through the state financed health fund during that time, instead of getting their usual compensation.

Termination on the other hand characterizes a complete cessation of the parent caregiver's or caregiver's status, including all the rights and obligations deriving from it. This can either happen upon the caregiver's request, voluntarily or involuntarily – if one of the prescribed legal conditions is met. Once the right is terminated, the caregiver loses their status and all the attached benefits, and in order to regain them, they would have to go through a new application and approval process, where the Institute for Social Work would have to determine anew whether they are eligible or not.

The situations where it terminates involuntarily can happen due to the following circumstances, applying to both parent caregiver and caregiver:

- when one of the initial conditions from Article 61 or 63 ceases to exist or changes;
- if the caregiver doesn't perform their duties out of unjustifiable reasons;
- if the caregiver is in retention or is serving a prison sentence;
- if the caregiver enters employment or engages in a trade, self-employment, or any other professional activity;
- when the caregiver reaches the age of 65;
- upon expiry of a two-month period in the case of temporary incapacity to provide care;
- upon the death of the care recipient, and only in the case of a parent caregiver – no longer than ten months from the date of death of a child with development disabilities;
- upon the death of the caregiver;

- when the care recipient enters into a lifelong maintenance contract or out of any other reason from Article 64 occurring (the initial requirements for a person to be appointed as caregiver).

Here, we can observe that there is a slight difference between a parent caregiver and a caregiver in cases where the care recipient dies, which is also one of the novelties introduced with the addendum of the Act. The termination day of the benefit is the same as the day of death, when the caregiver is providing care to an adult, when in cases of parent caregivers, their status can be prolonged up to additional ten months after the child's death. Since a death of a child is considered to be a profoundly disruptive life-event, allowing the status to continue gives parents both emotional and financial space to cope with the grief and adapt to upcoming life changes. In these cases, the return to the labour market is not forced and these ten months serve as an adaptation period, providing them some time before expecting their return into the labour market.

After the status ending, the caregiver becomes an unemployed person and they can apply to the Croatian Employment Service, under the same conditions as persons that were in regular employment, as mentioned earlier. In order for them to attain unemployment benefits – the insured period has to last minimally nine months and the reason for the termination has to be out of no fault of their own.

Conclusion

Despite of the existing legal framework, parent caregivers and caregivers often remain without adequate support and face numerous systemic barriers. Among these are lengthy administrative procedures, inconsistent practices among regional office branches of the Croatian Institute for Social Work, lack of available community-based services, and a generally lacking coordination between the health, education, and social welfare systems in the country.[58] Although conceived as a commendable idea and instrument of the social welfare system, that same system has not yet found suitable solutions for many issues linked to this right. Some of these include the lack of institutional support for professional counselling and psychosocial assistance, as well as the absence of organized replacements during rest or sick leave, often leaving caregivers to arrange and organise their substitutes themselves.

[58] Roditelji njegovatelji: Status bez sigurnosti, rad bez predaha, https://www.edusinfo.hr/aktualno/iz-obrazovanja/roditelji-njegovatelji-status-bez-sigurnosti-rad-bez-predaha-65365 (Accessed on 20 August 2025)

The problems that usually arise in these cases, and what caregivers stress out as common are various, such as isolation of the caregivers in the society, the gruelling administrative process of attaining the status, the inability to use rest and sick days, and inequality on the labour market. The situation affects them physically and mentally, raising thoughts about the present and the future, with often present anxiety over what will happen next. The caregiver must be prepared for anything to happen at any time, which creates the stress of never being able to rest from responsibility.[59] Unlike employment, where the responsibility ends with the person's daily shift ending, where they can go home and have their daily rest, unbothered by the workplace pressure, caregivers live in the same household with the persons they are caring for and their shifts effectively last 24 hours a day, despite officially "working" only eight hours, as that is the amount of hours they are ensured and paid for. Here, we have the regular, so called "9-5" turning into a lengthy "24/7", with being on high-alert the entire time.

Their role is not only to care for the basic needs of the care recipient, but they also have to ensure a stable environment, provide supervision and emotional support, manage difficult behaviour, make decisions on their behalf, financially manage the care and the needs related to it, as well as often provide nursing care and therapeutic tasks. In addition to specific care and responsibilities, they must continue to perform usual daily tasks that were their responsibility before; being a parent, a partner, taking care of the entire household and juggle a multitude of tasks simultaneously.[60]

The caregivers who disrupt their careers and leave the labour force to meet the fulltime demands of caretaking can face substantial economic risks and both short-term and long-term financial struggles. These risks include loss of income, reduced career opportunities and savings and substantially lower pension benefits.[61] For unskilled and low-income workers, this trade-off may appear positive in the short-term, incentivising them to withdraw from the formal labour market[62], but even this group may face disruptions to employment continuing even after the care provision has stopped,[63] and they may not be able to return to the labour market in the same capacity. Skilled

[59] A. Jarling, I. Rydström, M. Ernsth-Bravell, M. Nyström, and A.-C. Dalheim-Englund, *A responsibility that never rests – the life situation of a family caregiver to an older person* in *Scandinavian Journal of Caring Sciences*, vol. 34 (2020), 44–51, p. 47

[60] C.S. Fernandes and M. Angelo, *Family caregivers: what do they need? An integrative review* in *Revista da Escola de Enfermagem da USP*, vol. 50, no. 4 (2016), 672–678, p. 675

[61] S.C. Reinhard, S. Caldera, A. Houser and R.B. Choula (2023), *Valuing the invaluable 2023 update: strengthening supports for family caregivers* in *AARP Public Policy Institute*, p. 9

[62] B. Vanhercke, S. Sabato and D. Bouget, *op.cit.*, p. 171

[63] S.C. Reinhard, S. Caldera, A. Houser and R.B. Choula, *loc.cit.*

workers may find it especially difficult, considering that during their time spent as caregivers, they were not actively participating in the labour market in the way that they weren't getting relevant work experience and furthering necessary skills. In many cases, caregiving lasts for years, and once it ends, there has already been a significant gap in the person's work experience, and they will find it more difficult to find an adequate job later on.

This is why it should be important to think about different initiatives or activation policies that would help caregivers reskill and return to work after a period of caring[64], as well as include them into schemes that might help them upgrade their skills even while they are still performing their duties. This might not only include skills directly associated with their already existing ones and match their education, as a mean to keep them relevant and later on competitive on the labour market, but could also include improving their medical training and education, since most of them are not adequately educated to perform their duties.

Croatian Employment Service is currently not developing any specifically targeted active labour market policies, but caregivers can only exercise their rights to receive unemployment benefits and participate in the same programmes supported by the CES, under the same conditions as persons in employment. According to the Ombudsperson for Persons with Disabilities, caregivers are not asking for any privileges, but simply for recognition of their invisible everyday lives and an equal position in society. The system should ensure them dignity, security, and support through a clearly defined status, the right to rest, education, psychosocial assistance, and a chance to be included in the community as equals to any other category of citizens.[65]

To make this institute not only sustainable but also attractive to a wider range of potential beneficiaries, it is necessary to develop adequate institutional support and adopt a set of clear rules and regulations to govern it. Until then, it remains primarily an alternative option for unemployed persons to participate on the labour market (but not as active workers with real effect on the economy) and it cannot be considered a substitute for "real" employment or a career. Rather, it should be viewed as part of the framework tied to the welfare state, stepping in when there are no other viable solutions and primarily benefiting the care recipient, serving as an alternative to institutionalization of care.

[64] Eurocarers. 2022., *op.cit.*

[65] Roditelji njegovatelji: Status bez sigurnosti, rad bez predaha, *op.cit.*

Labour of Love and Silence: Between Legal Non-Recognition and Artistic Representation of Women's Unpaid Work in Poland (1945–Present)

Kamila Naumowicz, Joanna Unterschuetz *

Abstract. This article examines the relationship between the legal non-recognition of women's unpaid domestic and care work and its representation in Polish visual art from the end of the Second World War to the present. Combining legal analysis with art-historical inquiry, it argues that the invisibility of women's labour is produced both through its exclusion from legal definitions of work and through cultural representations that have historically rendered such labour ordinary and unremarkable. The article analyses the concept of unpaid work in the Polish legal framework and discusses recent international developments, particularly within the International Labour Organization, aimed at increasing the recognition of care work. It then traces changing artistic representations of women's labour through the works of Aleksander Kobzdej, Helena Korklińska-Żyrmont, Juliusz Studnicki, Andrzej Wróblewski, Elżbieta Jabłońska, Julita Wójcik, Małgorzata Mirga-Tas, Katarzyna Krakowiak-Bałka and Liliana Zeic, placing them within the broader context of international feminist art. The article demonstrates that while earlier artistic representations often reinforced traditional gender roles, contemporary art increasingly challenges the symbolic invisibility of women's labour. It concludes that recognising unpaid work requires both legal reform and a broader cultural transformation of how work and social value are understood.

Keywords: *unpaid care work, women's labour, labour law, feminist art, Poland*

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1. Introduction

1.1. Methodology

This article adopts a qualitative, interpretive approach situated at the intersection of legal analysis and art-historical inquiry in order to examine how women's invisible labour has been represented in Polish visual arts from the post-World War II period to the present. The study combines analysis of normative frameworks and cultural representations.

The methodological point of departure is the distinction between the legal recognition of work and its social and cultural visibility. While legal systems define what counts as "work" and determine the scope of protection afforded to different forms of labour, visual art offers insight into how such activities are perceived, valued, or marginalised within a given society. This dual analytical lens makes it possible to identify tensions between the formal exclusion of unpaid domestic and care work from legal categories and its representation - or absence - in visual culture.

The article proceeds through a contextual analysis of selected artworks, situating them within their broader historical, political, and economic environments. In particular, it examines how successive ideological frameworks in Poland - from socialist state policies to post-1989 market transformations - have influenced both the legal status of women's labour and its artistic representation. This approach enables the identification of parallels and divergences between the evolution of normative structures and the changing visual narratives surrounding women's everyday activities.

The paper adopts the assumption that visual representations actively participate in the construction of meaning, contributing to the reinforcement or contestation of dominant understandings of gender roles and labour. By combining legal and art-historical perspectives, the article seeks to demonstrate that the invisibility of women's labour is not only a consequence of its exclusion from formal legal definitions, but also a phenomenon reproduced - or critically challenged - within cultural and visual regimes of representation. The invisibility of women's labour should therefore be understood as a phenomenon produced at the intersection of legal exclusion and symbolic representation.

1.2. Invisible Women's Work from a Historical Perspective

The contemporary understanding of work was shaped during the period of industrialization and urbanization, when organizational structures and relationships between employers and employees were being developed. Society has been divided into economically active and inactive individuals, depending on whether they participated in the production of goods and services intended for sale. The development of wage labour transformed the perception of work. Value began to be attributed primarily to activities that could be monetized and traded on the market, and work came to be understood as actions performed in exchange for remuneration. Since the nineteenth century this approach led to the exclusion of reproductive labour, performed mainly within households by women, from economic and political consideration. Women's unpaid activities became invisible. They were not measured nor compared with men's paid labour, which became the dominant and recognized form of work.

In Poland, in the period before and during the Second World War, women were assigned traditional roles in the society: they were expected to be mothers and wives, not actively participating in public life but becoming a symbol: the Polish Mother. During difficult centuries in Polish history of on-going wars and the lost of independence, it was women who managed the household or the family businesses, while men were fighting or imprisoned. A "Polish Mother" was a symbol of a heroic woman capable of bearing any difficulty, as well as to give birth to new generations of Polish patriots[1].

After 1945, the symbol of the Polish Mother underwent a transformation, replaced by another stereotype of the socialist Polish woman: one that can do any type of work, previously assigned to men (e.g. could ride a tractor or produce bricks). Yet, the problem of discrimination rose – regardless of their position or skills, women were paid less for their work, offered lower positions and were still responsible for the majority of care and household duties.

The collapse of communism in Poland opened new perspectives for education and career for women - a new image of the ideal woman emerged, blending elements of the traditional Polish Mother with those of a modern businesswoman. The ideal Polish woman nowadays is expected to successfully balance her professional achievements with a satisfying family life and domestic labour[2].

Today, the traditional division between women's unpaid domestic labour and men's paid employment has been replaced by what is referred to as

[1] A. Imbierowicz, *Matka Polka w defensywie? Przemiany mitu i jego wpływ na macierzyństwo polskich kobiet*, Ogrody Nauk i Sztuk, vol. 2, 2012, 431-432, M. Genzels, *Wyzwania dla Polski wynikające z sytuacji kobiet na rynku pracy*, Zeszyty Naukowe UEK, n. 903, 2013, 7-9.

[2] M. Genzels, *Wyzwania dla Polski wynikające z sytuacji kobiet na rynku pracy*, Zeszyty Naukowe UEK, n. 903, 2013, 8.

partial specialization – women now also perform paid work and participate actively in the labour market while simultaneously engaging in unpaid domestic and care work[3]. Although women's increased participation in the labour market has reduced gender disparities, it has also imposed a double burden on them – combining paid and unpaid work, which, despite its crucial role in societal development, remains undervalued and continues to be excluded from the formal definition of "work"[4].

1.3. The Concept of Work and Unpaid Work in the Polish Legal Framework

In Polish, work is defined as "a purposeful human activity aimed at producing specific material or cultural goods"[5]. According to the Article 24 of the Constitution of the Republic of Poland, work is under the protection of the Republic, yet Polish legislation lacks a statutory definition of 'work'. The concept of work, as used in the Constitution, is understood as an effort directed toward producing a specific good or achieving a specific goal, regardless of the form or type of work performed (piecework, self-employment, agricultural work, or employment based on civil-law contracts, etc.)[6]. It might therefore seem that the Constitution protects all forms of work; however, certain types of activity remain outside its scope of protection – namely, so-called *invisible work*.

In the case law of the Constitutional Tribunal (Judgment of 2 June 2015, K 1/13), an "employee" has been defined as a person performing remunerated work for another, regardless of the form or legal basis of such work, and possessing professional interests that may be collectively protected. Invisible work, however, is characterized by the fact that it is unpaid and is not governed by any legal relationship with the recipient of the work, who is most often a family member or another close person. Therefore, it is not regulated nor recognised as "work" in the Polish legal system.

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[3] A. Zachorowska-Mazurkiewicz, *Praca kobiet w teorii ekonomii. Perspektywa ekonomii głównego nurtu i ekonomii feministycznej,* Kraków, 2016, 17-19.

[4] A. Franconi, K. Naumowicz, *Remote Work during COVID-19 Pandemic and the Right to Disconnect: Implications for Women's Incorporation in the Digital World of Work*, Z Problematyki Prawa Pracy i Polityki Socjalnej, vol. 19, n. 2, 2021, 1-20.

[5] *Dictionary of the Polish Language*, PWN, https://sjp.pwn.pl/slowniki/praca.html.

[6] P. Tuleja, *Art. 24*, in P. Czarny, M. Florczak-Wątor, B. Naleziński, P. Radziewicz, P. Tuleja, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa, 2023, LEX el.

Unpaid care work encompasses all non-remunerated activities performed within a household or for members of the community, including care giving and domestic tasks such as cooking, cleaning, fetching water and fuel, as well as caring for children, older persons, the ill, or persons with disabilities[7]. Beyond care and domestic work, invisible (unpaid) work includes a range of other activities such as educational, emotional, mental, and organizational labour – including engagement in out-of-school learning, emotional support, motivation, logistics, and management[8].

Until recently, unpaid domestic and care work had not been taken into account in economic policy. Today, however, its measurement is recognized as an important component of labour statistics and a key indicator of gender inequality[9]. It is widely recognized that, in both developed and developing countries, women perform substantially more unpaid work than men – the gender gap in this regard ranges from two to nearly five hours per day[10]. Globally, women devote three times as much time to unpaid care work as men. Consequently, unpaid care work constitutes one of the primary barriers preventing women from entering employment and accessing better, decent working conditions.

According to the International Labour Organization's report *The Impact of Care Responsibilities on Women's Labour Force Participation*[11], as many as 708 million women worldwide remain outside the labour market due to unpaid caregiving responsibilities (compared to 40 million men). Data collected from 125 countries indicate that caregiving obligations are the main barrier to women's labour force participation, whereas for men, the primary barriers are education or health-related issues. This clearly demonstrates that women disproportionately bear the burden of childcare, eldercare, and household management.

These inequalities were further amplified during the COVID-19 pandemic. Statistical research indicates that performing paid work from home combined with caregiving responsibilities significantly increased pressure on women and intensified their involvement in unpaid work[12].

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[7] UN Women, A Toolkit on Paid and Unpaid Care Work: From 3Rs to 5Rs, New York, 2022, 5.

[8] J. Czerniak-Swędzioł, E. Kumor-Jezierska, *O statusie prawnym osoby wykonującej pracę niewidzialną*, Forum Prawnicze, n. 1 (85), 2025, 33.

[9] https://ilostat.ilo.org/topics/unpaid-work/

[10] R. Antonopoulos, *The Unpaid Care Work-Paid Work Connection*, Working Paper n. 86, International Labour Office, Geneva, 2009, 3.

[11] ILO, *The Impact of Care Responsibilities on Women's Labour Force Participation*, Geneva, 2024, 1-22.

[12] K. Naumowicz, *The Impact of Remote Work Regulations during COVID-19 Pandemic on Work-Life Balance in Poland*, Praca i Zabezpieczenie Społeczne, n. 1, 2022, 23-30;

These responsibilities also affect women's paid employment – the combination of paid work with care giving for children and elderly persons results in lower income levels for women (a phenomenon called motherhood penalty and elderly care penalty)[13].
Even though invisible work has not been recognised legally in Polish legal system, recently it has increasingly attracted attention in the fields of economics, sociology, and international law. The International Labour Organization has also recognized the issue, urging states to prioritize the measurement of unpaid domestic and care work and to collect relevant statistical data. Such data are crucial for improving the understanding of the phenomenon and for developing policies that support individuals engaged in domestic and caregiving work, both within and outside the labour market[14].
On 14 June 2024, the International Labour Organization adopted the *Resolution concerning decent work and the care economy*. It emphasizes that "Care work, paid and unpaid, is essential to all other work. A well-functioning and robust care economy contributes to a healthier present and future workforce, creates jobs, supports businesses and enhances productivity" and is also crucial for building resilience to crises. The ILO acknowledges that women make up the majority of paid and unpaid care workers worldwide and that the pandemic magnified the disproportionate burden of unpaid care work carried by women. It further stresses that care provision, financing, regulation, and the assurance of high standards of quality, safety, and health are primarily the responsibility of the State. The resolution thus calls on governments and employers to address the unequal gender distribution of paid and unpaid care work, to promote women's economic inclusion beyond care giving roles – including through changing social norms and gender stereotypes related to care – and to raise public awareness of the social and economic value of care work.

2. Art as an Instrument of Social Representation

Feminist scholars Griselda Pollock and Rozsika Parker emphasized that the image of woman in art is not a reflection of reality but an ideological construct, "a means of perpetuating the division between the private and

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Eurofound, *COVID-19 Pandemic and the Gender Divide at Work and Home*, Luxembourg, 2022, 1-86.
13 D. Witkowska, K. Kompa, *Opieka nad dziećmi i osobami starszymi a wynagrodzenia pracowników w Polsce*, Przegląd Statystyczny, vol. LXVI, n. 2, 2019, 138-139.
14ILO, *The Impact of Care Responsibilities on Women's Labour Force Participation*, Geneva, 2024, 11.

the public spheres"[15]. In Vision and Difference, Pollock stressed that an analysis of the female image requires reflection on the viewer - on who looks and how[16].

This understanding may be further deepened by situating art within the broader framework of symbolic communication that underpins both culture and law. For centuries, legal culture has relied on the circulation of symbols in order to shape social attitudes and secure acceptance for existing or emerging normative orders. Law operates through formal rules and sanctions, but it depends on the internalisation of patterns of behaviour that become part of collective consciousness. In this sense, legal norms, much like moral or customary norms, are transmitted through social practices, institutions, and systems of communication, and must be recognised and understood by members of a given community in order to be effective[17].

Symbols and language make possible the accumulation of cultural heritage, determine the content of thought and aspiration, and enable the creation of artistic goods as well as moral systems[18]. Therefore they play a crucial role in linking abstract normative frameworks with lived social experience. Social organisation depends as much on the existence of legal rules, as on the shared recognition of symbolic forms that evoke common values and guide behaviour. The effectiveness of law is thus closely connected with how it is perceived, interpreted, and evaluated within society - whether it is regarded as legitimate, just, or worthy of compliance. These perceptions are shaped not only by formal institutions such as courts or legislatures, but also by cultural representations that mediate the meaning of law in everyday life[19].

In this context, visual art may be understood as one of the key sites where such symbolic processes take place. Artistic representations reflects social reality and participate in the construction and transformation of the symbolic order within which law operates. By rendering certain forms of labour visible while marginalising others, art contributes to the broader cultural framework that influences whether particular activities are recognised as socially valuable and, ultimately, as deserving of legal protection.

[15] R. Parker, G. Pollock, *Dawne mistrzynie. Kobiety sztuka i ideologia*, Warszawa 2025, 146

[16] G. Pollock, *Vision and Difference: Femininity, Feminism and Histories of Art*, London, 1988, 73.

[17] M. Borucka-Arctowa, *O społecznym działaniu prawa*, Warszawa, 1967, 113.

[18] J. Szczepański, *Podstawowe pojęcia socjologii*, Warszawa, 1965, 103.

[19] J. Unterschuetz, *Symbole i alegorie prawa w malarstwie, Elbląg*, 2014, 18.

This relationship becomes particularly significant in periods of political and social transformation, when existing symbolic orders are destabilised and new meanings are negotiated. Changes in political regimes are often accompanied by shifts in both legal frameworks and systems of representation, as old symbols lose their legitimacy and new ones are introduced or reinterpreted. In such moments, art can reveal the tensions between continuity and change, as well as the persistence of underlying social hierarchies despite formal legal reforms[20].
In this sense, art may be understood as a system for the production of meanings that regulates access to symbolic power and interacts with legal constructions of social reality. The image of woman - whether as worker, mother, or object of the gaze - constitutes one of the key instruments in the construction of social order, not only at the level of cultural representation but also in shaping the conditions under which women's labour is recognised, valued, or rendered invisible within the legal sphere. Depictions of labour - particularly women's labour - constitute one of the most sensitive domains in which art exposes the social structure of its era.

3. The Working Woman in Art before the Nineteenth Century

Labour constitutes one of the oldest themes in the history of art. From harvest scenes in the margins of medieval manuscripts to the monumental depictions of labourers in the age of industrialization, artists have repeatedly sought to capture the relationship between the human being and production, between the body and effort.
Within this long continuum of representations, the working woman generally appeared in a subordinate manner - as a background figure completing the composition, or as an embodiment of specific moral ideals. Her labour was often depicted in a symbolic or allegorical way, devoid of any real economic dimension.
In Medieval and Renaissance cycles of the months (for example, Labours of the Months in the miniatures from *Très Riches Heures du duc de Berry*), women appear alongside men, yet their activities - spinning, harvesting, feeding children - are inscribed within the rhythm of nature and everyday life. These actions are not treated as labour in the economic sense, but rather as elements of biological and moral order.
In early modern iconography, women's work acquires a didactic and moral dimension. The woman at the spinning wheel, with the needle or the child, becomes a symbol of virtue, devotion, and domestic order. One

[20] J. Unterschuetz, op.cit., 19.

may cite, for example, the Dutch series of moralizing prints devoted to the ethics of work[21]. In the series "*The Praise of a Noble Woman*" (Dirk VolkertszoonCoornhert -1522–1590-after Maarten van Heemskerck - 1498–1574), the biblical ideal of the woman is presented. In individual engravings, women are shown engaged in such activities as spinning or serving meals to family members[22].
In the seventeenth-century series of prints entitled *House works*– Geertruydt Roghman (1625–1651), women's everyday occupations correspond to the recommendations contained in seventeenth-century household manuals and the duties of a wife listed therein[23]. These include sewing, cooking, spinning, and wiping dishes. Conversely, the image of a woman who has fallen asleep at her spinning is associated with vices such as laziness, carelessness, and the abandonment of duty[24].
In this way, an iconographic tradition was formed in which women's labour - repetitive, invisible, and every day - was self-evident. These representations correspond to a period in which women's domestic labour remained outside the scope of legal recognition as "work", reinforcing its symbolic marginalisation. Only the emergence of realism and social art in the nineteenth century brought an attempt to break with this convention.

4. The Nineteenth Century – Between Realism and Moralism

In the nineteenth century, with the development of realism and social art, the theme of women's labour acquired new significance. For the first time, women began to be depicted as real participants in economic life, rather than merely as allegories of moral virtues. Yet their representation continued to reflect social ambivalence - on the one hand, a fascination with the reality of labour; on the other, the reinforcement of gender and class hierarchies. Women were often portrayed working in the fields, emphasizing their association with the nurturing realm of nature[25]. The image of the peasant woman was rendered in a realist convention, illustrating the hardships of agricultural labour, as in Jean-François Millet's "*The Gleaners*" (1857), or highlighting women's strength and progress at work, as in Courbet's "*The Grain Sifters*"(1855).

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[21]M. Adamska, *Women's Roles in European Prints of the 15th-19th Centuries. A Look at the Concept Behind This Catalogue*, in *Woman's Work Is Never Done*, eds. A. Oleśkiewicz, J. Taylor-Kucia, Kraków, 2013, 38.
[22]*Woman's Work Is Never Done*, eds. A.Oleśkiewicz, J. Taylor-Kucia, Kraków, 2013, 58-60.
[23]Ibidem. 64.
[24]L. Nochlin, *Representing Women*, London, 1999, 88-89.
[25] L. Nochlin, op.cit., 85.

In the second half of the nineteenth century, a new figure appeared - the industrial female worker. Women's labour outside the home was still perceived negatively, and only poverty, which compelled a woman to work in order to fulfill her "natural" role as provider, made such labour deserving of understanding and compassion[26]. In a sense, representations of factory workers continued the visual tradition of women at the spinning wheel. Santiago Rusiñol's "Textile Factory" (1889) portrays women at the looms, dressed in work aprons and headscarves protecting them from dust, within a modern, well-lit interior of an actual textile factory owned by the painter's family[27].Artists of the period also drew attention to child labour. For instance, Joan Planella (1849–1910) depicts a "Girl Worker" (1882), where the contrast between the fragile figure of the girl and the massive weaving machine is striking.

Constantin Meunier, a Belgian painter and sculptor known for his depictions of workers, also portrayed women labouring in mines alongside men. The motif of the coal bearers (les hiercheuses) recurs frequently in Meunier's work - for example, in "*A Coal Miner*" (1887), which presents a woman in work clothes, clogs, and a headscarf, leaning on a shovel beside a cart full of coal[28]. Likewise, in "*The Return of the Miners*" (1885), among the group of workers returning from labour across the mining landscape, a woman is present. In "*Three Female Miners*" (1885), women are depicted during moments of rest (*Les Hiercheuses*, c. 1885–90), or just before work begins ("*Female Miner Descending into the Pit*", between 1870–1905). Whereas Meunier's male miners - immersed entirely in their toil - are clearly intended to evoke pity, the *hiercheuses* embody explicitly idealized notions of the grandeur and dignity of labour[29]. Meunier's social realism - spiritually akin to Courbet and Zola - created an aesthetic of compassion and solidarity that would find continuation in twentieth-century Socialist Realist painting.

At the same time, in the realist painting of the Scandinavian countries, alongside depictions of women's wage labour, artists frequently turned to scenes of domestic life, showing women engaged in simple household tasks. For example, Marie Krøyer's"*Interior with a Sewing Girl*" (not dated) presents a woman absorbed in sewing, seated in a cozy, bright, bourgeois interior. Richard Bergh (1858–1919) painted "*Portrait of the Artist's Wife*" (1886), showing her gazing at the viewer as if momentarily distracted from

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[26] L. Nochlin, op.cit., 82.
[27] *Arte y transformaciones sociales en España 1885-1910*, ed. J. Barón, Madrid, 2024, 123-124.
[28] D. Deplechin, F. Vandepitte, *Constantin Meunier Museum*, Brussels, 2021, 75.
[29] P. J. Hilden, *The Rhetoric and Iconography of Reform: Women Coal Miners in Belgium, 1840-1914*, The Historical Journal, vol. 34, 1991, 429.

her sewing; on one hand she wears a thimble, in the other she holds scissors, and on her lap lies a light, patterned fabric.
The nineteenth century may thus be regarded as a transitional moment: the woman becomes visible as a worker, yet her image still bears the imprint of moralism and aestheticization. This ambivalence - between emancipation and tradition - would become the point of departure for twentieth-century art and the first feminist reinterpretations of women's labour.

5. Socialist Realism and the Postwar Image of the Working Woman

After 1945, Poland found itself in a new political and ideological context. The political and legal system of the Polish People's Republic (PRL) underwent Sovietization and was defined by a highly centralized socialist state structure operating under the hegemonic control of the communist party and the political dominance of the Soviet Union[30]. The social ideals were defined by the communist party, based on the ideological principles of Marx and Lenin, and the workers were considered a new leading class in the society[31].
The 1952 Constitution[32] expressly guaranteed the principle of formal equality between men and women, including in the sphere of employment. Article 66 affirmed women's equal rights in political, economic, cultural and social life, thereby embedding gender equality as a legally protected component of the socialist labour regime. The adoption of the Labour Code (*Kodeks pracy*) in 1974[33], which entered into force on 1 January 1975, marked the first systematic consolidation of Polish labour law into a unified legal framework. It included a dedicated set of provisions (Chapter VIII) on the protection of women's work, such as maternity leaves, workplace accommodations and protection against dismissal during pregnancy and maternity.

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[30] J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warszawa, 2009, 676; J. Wrona, *Rola PZPR w państwie i społeczeństwie polskim*, Remembrance and Justice, n. 2 (32), 2018, 62.
[31] J. Wrona, *Rola PZPR w państwie i społeczeństwie polskim*, Remembrance and Justice, n. 2 (32), 2018, 64-65
[32] Constitution of the Polish People's Republic (*Konstytucja Polskiej Rzeczypospolitej Ludowej*) from 22 July 1952, Journal of Laws of 1952 n. 33, item 232, https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19520330232/O/D19520232.pdf
[33] Labour Code (*Kodeks pracy*) from 26 June 1974, Journal of Laws of 1974, n. 24 item 141,
https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/O/D19740141.pdf

This concept of formal equality, however, operated primarily at the level of legal abstraction and did not necessarily translate into substantive equality within workplaces. Just like in many communist states women were formally guaranteed equal rights with men, female employment rates were high, and public childcare was accessible, women nonetheless contended with traditional patriarchal culture, which valued them primarily for their attractiveness and associated them with domestic and maternal roles. Combined with professional labour, this resulted in a double burden. Despite the officially propagated ideology of equality of the sexes, the preferred sex of workers was an important criterion specified by employers in their job announcements and there were far more job positions offered to men than women –the historical data shows that soon after the war women were 60-70% of all the job seekers[34].The Stalinism era and fast industrialisation plans made a significant change in women employment as the party's industrial goals could not be realised "without mass vocational mobilisation of women". Women were offered jobs typically performed by men, accompanied by communist propaganda and slogans of "emancipation of women through making them part of production"[35].

Yet, in times of crisis, when the demand for workforce decreased significantly, the dismissal of the workers depended on their family status: employment reduction actions were aimed at married working women, as "possessing additional sources of subsistence" and "number of working persons in the family" were criteria for dismissal[36]. The unequal treatment of women was evident: their primary role was still seen in the family and household, their professional activity was considered as the economic necessity to contribute to the household budget. In other cases, when women were not forced to maintain a family, a woman's work would only be considered "will and pleasure", not a must[37].. Furthermore, family and marital status influenced how women were perceived as workers: they were mainly employed in low-quality positions as their professional role needed to be subordinated to her family duties[38].

The new political and ideological order influenced also the artistic activity. The first decade after World War II was marked by efforts to establish Socialist Realism as the dominant artistic trend. In the period lasting

[34] N. Jarska, *Gender and Labour in Post-War Communist Poland: Female Unemployment 1945-1970*, Acta Poloniae Historica, n. 110, 2014, 50-54.

[35] N. Jarska, op.cit., 61.

[36] N. Jarska, op.cit., 63-64.

[37] N. Jarska, op.cit., 77.

[38] N. Jarska, op.cit., 84.

roughly fifteen years, between 1949 and 1955, the new work of art was expected to be realistic, legible, creative, and social. The latter meant that it was to be ideological, imbued with optimism, committed to the "struggle for socialism," serving society by mobilizing its consciousness for both struggle and labour[39].

These political imperatives were widely debated among contemporary artists. Some chose to conform to the new trend, while others steered their work in such a way that they could function within a niche, hoping to survive the darkest period[40].

The doctrine of Socialist Realism, officially proclaimed in 1949, subordinated artistic creation to the task of building a "new society" - a society of working people united in the common effort of postwar reconstruction. Artists were to depict the world "as it should be," in accordance with the principle that art must educate and shape class consciousness. In socialist discourse, labour in the strict sense referred to productive work, though the analogies with domestic labour - equally monotonous and repetitive - are self-evident[41].

During this period, representations of workers were numerous. A well-known example is Aleksander Kobzdej's painting "*Podaj cegłę" (Pass the Brick*, 1950), depicting builders at work.

Kobzdej's "*Brick makers*" portray three women, most likely shown during a work break: one of them appears older and weary, withdrawn or marginalized; the two younger women are engaged in conversation. Unlike the *hiercheuses* portrayed by Constantin Meunier, these figures radiate no pride - only fatigue and exhaustion. The dynamic activity of men in "*Pass the brick*" contrasts with the silence and passivity of the women, whose task is to produce the building material (bricks) used by the male "heroes of labour."

Yet, within the art of this period, the motif of the working woman also appeared as both a declaration of emancipation and an instrument of propaganda. An example is the painting created around 1950 by Helena Korklińska-Żyrmont (1900–1984), "*Portret przodownicy pracy ob. Hauptówny Elżbiety (przodownica pracy)" (Portrait of Comrade Elżbieta Haupt, Heroine of*

[39] J. Szczepaniak, *Sztuka narzucona i wyrzucona. 10 lat galerii sztuki socrealizmu w Kozłówce, in Socrealizm: fabuły, komunikaty, ikony*, ed. K. Stępnik, M. Piechota, Lublin, 2006, 514.

[40] J. Ilkosz, *Malarstwo realizmu socjalistycznego w Polsce* in *Sztuka polska po 1945 roku: materiały Sesji Stowarzyszenia Historyków Sztuki*, ed. T. Hrankowska, Warszawa, 1984, 206-208; *Nowocześni a socrealizm*, vol. 1, ed. M. Świca, J. Chrobak, Kraków, 2000, 35.

[41] H. Bilewicz, *Nostalgia i mizeria socrealizmu. Gertruda Wysocka – przodownica pracy Juliusza Studnickiego jako alegoria realna*, Porta Aurea, n. 18, 2019, 173.

Labour (model worker)) On the reverse of the canvas are two handwritten labels, one partly damaged, as well as a certificate reading:

> We hereby certify that comrade Elżbieta Haupt, fish-gutter at the Centrala Rybna of Fish Processing Plant No. 1 in Gdynia, exceeded her work norm by 229%. Gdynia, 26 April 1950.

The painting depicts a woman wearing a headscarf and work apron, holding a knife at a table with several fish before her. In the background, through the window, one can see the Gdańsk Bay and the port of Gdynia. Despite its ideological context, the portrait retains warmth and individuality. The artist does not present the heroine in a heroic pose but as a real person - a woman with a fair, serious, and calm face, marked by focus and character.

A similar motif appears in Juliusz Studnicki's "*Gertruda Wysocka – przodownica pracy*" "*Gertruda Wysocka - Herione of Labour*" (1950). The painting presents the interior of a fish-processing plant, with a woman cleaning a fish as the central figure. Shown frontally, half-length, with a tool in her hands, she looks directly at the viewer. Her calm, self-assured posture and focused gaze lend the scene the character of a psychological portrait rather than a purely propagandistic image of a "heroine of labour." In the background, against a grey tiled wall, other women are visible at work, arranged in a rhythmic horizontal sequence. The subdued, cool colour palette - greys, greens, browns, and blues - corresponds with the theme of daily physical labour. Studnicki's painterly technique is loose, with a visible texture, especially in the depiction of the fish.

Although created during the Socialist Realist period, the painting is distinguished by its lack of pathos and its authenticity - it is a portrait of a woman in her real environment rather than an ideological apotheosis of labour. As Hubert Bilewicz notes, "*Gertruda Wysocka- Herione of Labour*" is both a reminiscence and a paraphrase of Manet's Bar at the Folies-Bergère[42]Against the backdrop of other working women, the central figure remains motionless and pensive; her gaze is filled with melancholy, indifference, and inner detachment. This aura of nostalgia - absent from typical, heroizing representations of Socialist Realism - turns Studnicki's work not into an affirmation of labour but into a reflection on alienation, becoming a "real allegory" [43].

[42]H. Bilewicz, op.cit., 175.
[43]H. Bilewicz, op.cit., 178.

6. Andrzej Wróblewski: Portraits of a Daily Life during the Socialist Era

The work of Andrzej Wróblewski (1927–1957) represents one of the most significant turning points in the history of postwar Polish art. After a brief period of alignment with the doctrine of Socialist Realism (1949–1950), the artist consistently developed his own pictorial language - rooted in figuration, symbol, and the experience of everyday life. In his late paintings and drawings, produced between 1954 and 1957, Wróblewski elaborated his own version of genre painting, creating what might be called a "portrait of daily life." His works, often reminiscent of photographic stills, capture scenes of domestic and external reality. Within these compositions appear members of his immediate family - his wife, Teresa, and their newborn son, affectionately called "Kitek"[44]

Wróblewski's painting "*Matka i córka. Pranie*" (1956) - *Mother and Daughter. A Laundry*. depicts a seemingly ordinary domestic scene that conceals a profound social commentary. Within a closed interior, two women are shown - a younger one hanging laundry and an older one sitting, half-asleep. The light colour palette and gentle tonality of the composition create an illusion of calm, yet beneath this serenity lies the quiet drama of everyday existence. The colourful fabrics obscuring the women's faces symbolize both a limited perspective and the invisibility of women whose labour - silent and confined within the domestic sphere - remains unacknowledged. Wróblewski presents here two stages of life bound by the same routine: youth absorbed in repetitive tasks and old age suspended in stillness. The scene becomes a metaphor of enclosure and subdued endurance, where daily labour replaces freedom and self-realization. "*Mother and Daughter. A Laundry*" is thus an image of non-productive work - work that creates no lasting material good, but sustains the world through rhythm and order. In this painting, Wróblewski breaks away from the language of Socialist Realism: there are no "heroines of labour," no pathos of progress - only a human being who persists.

In numerous sketches from 1955–1957, Wróblewski portrayed his wife, Teresa Rudowicz, engaged in daily activities - ironing, cooking, reading. The drawing *Teresa prasująca*, "*Kompozycja figuralna nr 646*" (*Figural Composition No. 646*, undated), shows her bent over an ironing board, her face turned downward, absorbed and absent. Depicted half-length and in slight perspective foreshortening, with her hair falling over her forehead,

[44]K. Mieczkowska, *Wystawa jako komunikat społeczny. O odbiorze semiotycznym w praktyce, in Wróblewski and After… Art of Direct Realism*, ed. M. Kozieł, M. Lachowski, Lublin, 2023, 7.

Teresa becomes a symbol of womanly everydayness - unheroic, yet dignified and inwardly strong. In Wróblewski's sensibility, this is not merely a record of gesture but also a subtle emotional portrait - a manifestation of tenderness toward a close person and, at the same time, a reflection on the value of quiet, invisible effort.

A special place in this period of Wróblewski's oeuvre is occupied by the cycles "*Kolejki*" (*Queues*) and "*Poczekalnie*" (*Waiting Rooms*), in which he ironically depicted the gray everydayness of life in the People's Republic of Poland. Operating within the cultural system of his time, the artist used these scenes to comment on the propagandistic slogans of the era, the existential burden, and the sense of confinement. In *Kolejka*, the figures are nearly identical - emotionless, isolated, enduring in passive waiting. Their shared direction, a symbolic march toward an inevitable fate, intensifies the atmosphere of resignation. Particularly striking is the image of a child sitting lifelessly on a bench - like a doll - serving as a metaphor for the loss of spontaneity and freedom. Among the seated and standing figures are also women - shopping, waiting in line - engaged in the kind of labour so integral to the austere reality of the postwar years that it becomes almost invisible. The queue thus becomes a metaphor for a society in waiting - for improvement, for meaning, for the end of struggle. Women sustain the world through their very presence and endurance.

Here, women's labour appears both as an expression of everyday repetition and as an element of the surrounding world that defines the artist's reality. Wróblewski restores the body - the female body in motion, at work, in fatigue, in stillness. This is not the heroism of action, but the heroism of persistence, tenderness, and empathy.

The works presented in this chapter show how the lack of recognition of domestic unpaid reproductive activity as work coincides with representation of women performing daily, mundane tasks as revealing the pieces of intimate household pictures or illustration of tiring social reality.

7. Worldwide Feminist Art on Work

It was only with the rise of feminist thought in the art of the 1960s and 1970s that a new perspective on women's labour emerged: no longer as background, but as a subject in its own right and as an instrument of social critique. Artists such as Judy Chicago and Martha Rosler drew attention to the "invisibility" of women's domestic and emotional work. This perspective would later resonate in the practices of Polish artists after 1990, when the end of the socialist regime facilitated greater access to

Western artistic currents. The works discussed below demonstrate that the activity of Polish feminist artists did not emerge in isolation, but developed within a broader transnational context of feminist critique, while at the same time responding to the specific historical, social, and political conditions of post-socialist Poland. Within the international context of feminist reflection on women's labour, the work of the American artist Martha Rosler occupies a particularly significant place. As one of the leading figures of 1970s critical art, Rosler combined performance, photomontage, visual essay, and installation to create works that have since become classics of feminist iconoclasm, while remaining a vital point of reference for contemporary artists. Rosler focused on domestic space - particularly the kitchen - as a site of both physical confinement and potential emancipation through symbolic action.

Her video-performance "*Semiotics of the Kitchen*" (1975) is arguably her most famous work. In it, Rosler - parodying a cooking show - presents successive kitchen utensils, from A to Z, illustrating each with abrupt, mechanical gestures. She uses kitchen tools as symbols of oppression - an alphabet of everyday violence in which a woman speaks only the language imposed upon her. This gesture deconstructs not only the language of domestic "usefulness," but also exposes the violence embedded in routine feminine tasks. As Laure Adler notes, in Rosler's work the kitchen becomes "an arena of symbolic struggle in which the alphabet of oppression is reversed"[45].

In subsequent cycles such as "*Bringing the War Home"* (1967–1972), Rosler juxtaposed war photographs - primarily from Vietnam - with colourful, hyper-aestheticized images of American interiors taken from consumer magazines and television advertisements promoting consumerist and sexist ideals and products[46]. These photomontages reveal the brutal symbiosis between global politics and domestic life - depicting women as consumers, caregivers, and instruments of social legitimization. Such juxtapositions expose that women's labour is not isolated from the mechanisms of structural violence but is instead one of its hidden components, masked by the aesthetics of everyday life.

Rosler - like Polish artists in 2000s - extends the notion of labour to include unpaid, care-based, and prestige-deprived activities. Her works build a bridge between the local and the systemic, showing that the kitchen need not be a prison but can become a laboratory of resistance.

[45]L. Adler, C. Viéville, *Beware of the Woman Artist, Munich*, 2024, 80.
[46]K. Hassel, *Historia sztuki bez mężczyzn*, Warszawa, 2024, 267.

Judy Chicago's monumental installation "*The Dinner Party*" (1974–79) transforms the acts of cooking and setting the table into a testimony to women's achievements in culture. The central element of the work is a triangular table, each side measuring nearly fifteen meters, with thirty-nine place settings commemorating women from history, legend, or mythology, and 999 additional names inscribed on a ceramic base beneath the table. Each place setting includes a hand-painted ceramic plate designed by Chicago, along with chalices, utensils, and an embroidered runner corresponding to the historical period and geographic region of each woman represented[47].
These works overturn the traditional understanding of women's "calling": actions once deemed marginal - cleaning, cooking, caring - become artistic and political gestures.
A direct extension of this reflection is Mierle Laderman Ukeles's "*Manifesto for Maintenance Art*" (1969), in which the artist observed that her everyday caregiving duties - feeding, cleaning, childcare - had vanished entirely from both art and social visibility.
In the Manifesto, Ukeles writes:

> Two basic systems: Development and Maintenance.
> The sourball of every revolution: after the revolution, who's going to pick up the garbage on Monday morning?
> (...)
> I am an artist. I am a woman. I am a wife. I am a mother (random order).
> I do a hell of a lot of washing, cleaning, cooking, renewing, supporting, preserving, etc. Also (up to now separately) I 'do' Art.
> Now, I will simply do these maintenance everyday things, and flush them up to consciousness, exhibit them as Art. (…)
> My working will be the work.

Through this declaration, Ukeles exposed the asymmetry between creative labour - associated with progress - and maintenance labour - associated with care and everydayness. In her performance "*Washing/Tracks/Maintenance*" (Whitney Museum, 1973), the artist publicly washed the museum's steps. In her outdoor performance cycles Washing/Tracks/Care, she confronted the social perception of those who struggle to reconcile professional work with the duty of care[48].

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[47] W. Chadwick, *Kobiety, sztuka i społeczeństwo,* Poznań, 2025, 392.
[48] K. Hassel, op.cit., 337.

8. The Interpretation of Invisible Labour in Polish Art after 1990

The situation of women in capitalist and socialist countries differed considerably. After 1989 Poland faced a political and economic transformation, which profoundly reshaped the conditions of women's labour in Poland, both in the formal economy and the unpaid domestic and care work. The transition from a socialist model to a market-driven system brought significant changes to labour regulations, social protections and employment policies.

High unemployment rates that Poland had to face during the first years of transformation, following reforms to the Labour Code, and the restructuring of the social security system shifted responsibility for economic security from the state to the individual. With the collapse of state-run childcare infrastructure, women vulnerability to dismissals and the feminization of part-time or informal work, it has intensified gender inequalities in both paid and unpaid work. Domestic and care labour continued to be invisible: seen as non-economic activity, remained legally and economically unrecognized.

A situation began to change after Poland's accession to the European Union in 2004. The legal framework regarding women's labour was reshaped by the implementation of EU directives on equality, work-life balance, and social protection into Polish Labour Code[49]. It has expanded anti-discrimination regulations and protections of maternity and paternity aiming at improving women's participation in the labour market and the balance between family and work life of both sexes. One of the major changes was the adoption of Directive 2019/1158/EU which introduced new standards on work-life balance. The amendments to the Polish

[49] The Polish Labour Code lists 34 directives that have been incorporated to the Polish Labour Law, among which Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or
are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ
L 348, 28.11.1992), Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13), Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.07.2019, p. 79).

Labour Code entered into force on 26 April 2023[50] and modified or added new provisions in terms of paternity leave, parental leave (art. 182^{1}a–182^{1}g – extended duration, non-transferable 9 weeks), carers' leave (added art. 173^{1}), and flexible working arrangements (art. 188^{1} – right to request flexible working arrangements such as remote work for parents/carers).
Although European integration brought significant changes into Polish legal framework in terms of gender equality, the still existing disparities in gender roles reveal a multi-dimensional issue between legal harmonization and the persistent structural undervaluation of women's invisible labour. The situation of women on the labour market is still conditioned by multiple barriers and stereotypes regarding their family and care duties - women are to be seen by employers as "high-risk" workers while men are more universal employees[51], which European legislator is trying to change by promoting the equal sharing of caring responsibilities between men and women:

> The imbalance in the design of work-life balance policies between women and men reinforces gender stereotypes and differences between work and care. Policies on equal treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles, and the social partners are encouraged to act upon their key role in informing both workers and employers and raising their awareness of tackling discrimination. Furthermore, the use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment [52].

Yet, despite its formal availability, fathers make limited use of parental leave, a pattern shaped both by the family-policy system and by cultural expectations surrounding gender and caregiving. It proves that the

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[50] Act of 9 March 2023 amending the Labour Code and certain other acts, Journal of Laws of 2023, item 641, https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20230000641.

[51] J. Czerniak-Swędzioł, *Zatrudnienie kobiet w dobie przemian postindustrialnych,* in *Zatrudnienie w epoce postindustrialnej*, ed. B. Godlewska-Bujok, K. Walczak, Warszawa, 2021, 45-46.
[52] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU, Recital 11.

existing legal framework is not enough to change the cultural stereotypes and more complex solutions are needed[53].

Similarly, in the art world, women's creative output - like women's experience more broadly - was marginalized. New narratives were introduced only with the rise of feminist art history, which in Poland began to develop after the political and economic transformations of 1989[54].

Comparison of the works of Rosler and Ukeles with those of later Polish artists - such as Wójcik, Jabłońska, Janin, or Krakowiak-Bałka - reveals both contextual differences but also striking affinities: the kitchen as a stage, the body as a medium, irony as a strategy. For all these artists, art is not a narrative about women, but an act that exposes the structures of the world - economic, cultural, and aesthetic.

After 1989, within the new reality of systemic and economic transformation, the landscape of art also changed. Polish contemporary art increasingly addressed themes of everyday life, privacy, corporeality, and the relationship between gender and institutional structures. In this context, particular significance was gained by the work of women artists who turned domestic chores and emotional labour into creative media.

In her photographic series "*Supermatka*" (2002–2005) – "*Super-Mother*", Elżbieta Jabłońska depicts herself seated in a domestic setting - kitchen or living room - holding her young son on her lap and dressed as a superhero, wearing a cape, striking dynamic poses, with a serious expression. The artist assumes the roles of pop-culture icons - Batman, Superman, Spider-Man - thus transforming the figure of the housewife and mother, who performs daily tasks such as cooking, cleaning, and childcare, into that of a hero[55]. Jabłońska thereby exposes the social expectations placed upon women who, despite formal equality, still shoulder disproportionate domestic labour while being expected to embody the roles of perfect mother, diligent worker, and ideal woman. The irony of these works arises from the contrast between form (heroic, comic-book aesthetics) and content (monotony and exhaustion).

In the performance "*Przez żołądek do serca*" (*Through the Stomach to the Heart,* performances organise from 1999-2003*)*, presented during an exhibition opening, Jabłońska draws upon cultural stereotypes of femininity - the

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[53]K. Suwada, *Care Involvement and Power Relations. Parenting and Gender in Contemporary Poland*, Journal of Family Research, vol. 34, n. 3, 2022, 893-895.
[54]K. Majewska-Gude, *Nie ma fal. Międzynarodowa sztuka feministyczna*, in *Chcemy całego życia. Feminizmy w sztuce polskiej*, ed. A. Rayzacher, K. Majewska-Gude, Sopot-Gdańsk, 2024, 47.
[55]M. Krajewski, *Elżbieta Jabłońska*, in *Nowe zjawiska w sztuce polskiej po 2000*, ed. G. Borkowski, A. Mazur, M. Branicka, Warszawa, 2005, 202.

"gastronomic mother," the resourceful homemaker, the ideal housewife - and transforms actions that typically remain behind the scenes into art[56]
A seminal figure within this current is JulitaWójcik, who in 2001 performed *Obieranie ziemniaków* (*Peeling Potatoes*) at the Zachęta Gallery. Dressed in an apron, the artist sat on a kitchen stool in the middle of the exhibition space, peeling potatoes - a gesture unambiguously associated with domestic, caregiving labour performed by women. Visitors to the gallery were also invited to participate. The act of peeling potatoes highlighted stereotypical divisions between "female" and "male" activities, between invisible and prestigious labour[57]. The performance proved controversial and difficult for some to accept, prompting discussions about the boundaries of art[58].
These works also align with the concept of "*krzątanina*" (domestic bustle), inspired by the philosophical essays of Jolanta Brach-Czaina: "*Krzątanina* belongs to our principal categories of being-in-the-world. It is a mode of existence within everyday life" [59].This idea is continued by Anna Płotnicka, initiator and curator of the exhibitions "*Krzątanina 1*" and "*Krzątanina 2*", organized by BWA Awangarda in Wrocław (2001) and BWA in Zielona Góra (2004). Reflecting on her life and artistic practice, Płotnicka wrote:

> Once my daughter asked me: 'When do you make your art? Because I can't see it - you just bustle around and make dinner.'
> Krzątanina [domestic bustle] is what I do every day. In the midst of activity I sometimes pause, and then a new idea comes to me, or I recall something extraordinary that once happened. Layers of banal actions sometimes reveal the miraculous through the flashes of insight that come while washing the dishes. (...)
> One can practice art incidentally, in the course of constant busyness, without distinguishing between the two, seamlessly[60]

These artists thus took a clear stance toward the exploitation of women as unpaid providers of care and domestic labour. As Angela Dimitrakaki and Kirsten Lloyd observe:

[56]M. Krajewski, op.cit., 202; W. Chadwick, op.cit., 525-526.
[57]A. Rayzacher, *Transformujemy. O sztuce feministycznej okresu transformacji*, in *Chcemy całego życia. Feminizmy w sztuce polskiej*, ed. A. Rayzacher, K. Majewska-Gude, Sopot-Gdańsk, 2024, 108.
[58] K. Pawełek, *Julita Wójcik*, in *Nowe zjawiska w sztuce polskiej*, ed. G. Borkowski, A. Mazur, M. Branicka, Warszawa, 2005, 322.
[59] J. Brach-Czaina, *Szczeliny istnienia*, Warszawa, 1992, 70.
[60]A. Płotnicka, *Krzątaniny z Jolantą Brach-Czainą*, Czas Kultury, n. 1, 2022, 118.

> The requirements of a nineteenth-century art world, where women's immaterial and material labour in the home provided the invisible infrastructure to careers and the marketing of artworks (and which sustained the 'family wage' dream even in the 1970s), find their antithesis in the twenty-first-century 'useful art' - that is, useful artistic (and not least curatorial) labour, which now enters the art institution as the latter attempts to become a visible infrastructure.[61]

In the works discussed here, as in Ukeles's performances, one can discern - in often comical stagings of visibility and invisibility that characterize many forms of institutional and social labour - the crucial role of invisible, gendered "maintenance work" (cleaning, repair, caretaking) within the public sphere and the domain of art. These gestures can also be read as satires on the supposed autonomy of art and on the gendered, class-based, and racialized politics underpinning it [62]. Both Wójcik and Jabłońska deliberately situate their actions at the intersection of private and public space. The kitchen, the living room, and the gallery become arenas where the struggle for the visibility of women's labour unfolds. Crucially, these works also serve as institutional commentary: both artists not only critique social norms but also decode the mechanisms of the art world itself, which for decades marginalized women's experiences. In this sense, their work participates in the broader current of feminist art that does not speak about women, but shows women in action. Art ceases to be representation and becomes practice - a repeated gesture, a persistent effort, a physical act seeking not applause but visibility. The contemporary woman in art is no longer a "heroine of labour" or a victim; she is a worker in the symbolic economy of visibility, reclaiming her voice and space through irony and performance.

In subsequent years, the theme of labour and care was developed by Małgorzata Mirga-Tas (b. 1978). Her monumental textiles, such as Re-enchanting the World (Venice Biennale, 2022), depict the everyday life of Romani women: sewing, cooking, resting, preparing for celebrations. Using traditional techniques of patchwork and embroidery, the artist turns them into media of memory and visibility politics, creating narratives

[61] A. Dimitrakaki, K. Lloyd, *Social Reproduction Struggles and Art History: An Introduction*, Third Text, vol. 31, n. 1, 2017, 7-8.

[62] M. Vishmidt, *Marna imitacja produkcji: feministyczne dzieła sztuki na taśmie reprodukcji społecznej*, in *Wszyscy ludzie będą siostrami*, ed. J. Sokołowska, Łódź, 2018, 172-173.

grounded in real experiences. Her work embodies the current of Romani feminism, drawing upon intergenerational sisterhood and community[63].
In *Re-enchanting the World*, presented at the Venice Biennale, Mirga-Tas combines personal experience and local stories with the Renaissance frescoes of the Palazzo Schifanoia in Ferrara. The lower register of the installation portrays scenes from her hometown, focusing mainly on women, their relationships, and their daily activities. The portraits are built from fragments of fabric drawn from the wardrobes of the depicted individuals[64]. The motif of women's labour - performed at home, outside, and for the benefit of the community - is strongly present in Mirga-Tas's tapestries. Hanging laundry, sewing, preparing food - all become visual metaphors for collective sustenance. As Ethel C. Brooks writes:

> Romani people have taken what has been thrown away and made it beautiful, useful - through our work, our skill, and our imagination. Often this work, particularly that of Romani women, has been invisibilized as reproductive labour. (...) This is a particularly feminist space, a product of women's work: the stitching, sewing, quilting, and weaving that form these tapestries come from oft-overlooked practices and forms of gendered, racialized labour[65]

The most contemporary continuation of this lineage is found in the work of Katarzyna Krakowiak-Bałka, who operates through the language of sound and architecture. In the exhibition "*Autoportrety*" (Self-Portraits, National Museum in Warsaw, 2023–2024), she presented the installation "*Czysto*" (Purely), based on the sounds of cleaning and scrubbing. The artist used contact microphones to record rustles and shuffles that form an acoustic self-portrait of physical labour.
As described in the exhibition catalogue curated by Tomasz Jeziorowski and Katarzyna Szydłowska-Schiller:

> Set in the space of the National Museum, the performative interpretation of the score for the piece titled Purely involves the sonic transcription of the physical activity of cleaning. Played back from a speaker, the pre-recorded sounds made by actors' mouths mimic those we all know well

[63] A. Mirga-Kruszelnicka, *Stwarzając historię. Twórczość Małgorzaty Mirgi-Tas w perspektywie makro i mikro*, in *Wędrujące obrazy. Małgorzata Mirga-Tas*, ed. W. Szymański, N. Żak, Kraków, 2022, 19.
[64] W. Szymański, J. Warsza, *The Introduction*, in *Małgorzata Mirga-Tas. Re-enchanting the World*, Warszawa-Berlin, 2022, 16.
[65] E. C. Brooks, *WhatIs Re-enchantment? Małgorzata Mirga-Tas and the Palace of Our Dreams*, in *Małgorzata Mirga-Tas. Re-enchanting the World*, ed. W. Szymański, J. Warsza, Warszawa-Berlin, 2022, 119.

> from doing household chores: sweeping, vacuuming, the clatter of kitchen utensils. This musical score is entirely based on Polish postalveolar and sibilant consonants heard in words denoting actions such as brushing, scrubbing, washing, wiping, and airing. The visitor entering the exhibition is greeted by a jumble of sounds emitted at irregular intervals by a specially programmed apparatus. Krakowiak-Bałka creates her self-portrait through the medium she feels most comfortable in. As a woman artist, she combines two roles in Purely: that of domestic caretaker and that of creator of a technologically complex sound installation, thereby compelling us to acknowledge the importance of both[66]

The action of cleaning is also presented in intarsia works of Lilliana Zeic, a young Polish artist using craftmanship techniques to convey narratives of "trauma, regeneration and the desire to belong beyond established social patterns"[67]. The images of "*Miotlarki"* (Brush-maker women) , who order and care for the space around them are smaller in scale than her other works in this technique (around 40 x 20 cm).
Each represents a single nude female figure (rendered in lighter poplar burl) set against a flat, dark, monochromatic background (California walnut burl), evoking allegorical figures holding a brush as an attribute. In one work (*Miotlarka 4*, 2025) the woman is mindfully sweeping the floor. Such image appears often as a background figure (e.g. Pieter de Hooch, 1629-1684, *Interior with a woman and Child* 1655; Pieter Janssens Elinga 1623-1682, *Interior with painter, Woman reading and Maid Sweeping* 1668). In others she holds the broom in a dance-like gesture- embracing it as a partner (*Miotlarka 1*, 2025) or raising it above her head and flowing long hair (*Miotlarka 3*, 2025). These figures also evoke the image of a witch with a broom[68]. Mona Chollet further observes:

> Because of its phallic shape, the broom on which they rode a stride, in addition to being an inverted symbol of the household, was also meant to testify to their sexual freedom. The sabbath, in turn, was perceived as a site of unbridled lust, subject to no control whatsoever[69]

In the intarsia works of Liliana Zeic the brush-maker women gracefully fulfil their traditional role as cleaner serving the others and ordering the

[66] T. Jeziorowski, K. Szydłowska-Schiller,*Autoportrety / Self-Portraits,* Warszawa, 2025, 111.
[67] K. Różniak Szabelska, *Craftsmanship in Liliana Zeic's Artisticpractice*, in *Nettlebrides, Weirdos, Spooks: The Art of Liliana Zeic,* (ed.) P. Lisowski, Wrocław 2025, 111.
[68] The earliest known depiction of a woman flying on a broom appears in the margin of the manuscript *Le champion des dames* by Martin le Franc, dating from 1440.
[69] M. Chollet, *Czarownice. Niezwyciężona siła kobiet*, trans. S. Królak, Kraków 2019, 20–21.

space and a symbol of resistance to dominant narrative and reclaiming the world and search for freedom.

All these projects - from Wójcik and Jabłońska to Janin, Mirga-Tas, Krakowiak-Bałka and Zeic - share a common aesthetic of care: an affirmation of repetition, attentiveness, and responsibility. Women's art redefines the meaning of labour, shifting it from the margins of privacy to the centre of social reflection. Washing, cooking, sewing, and cleaning become gestures of visibility - forms of being in the world that confer meaning upon the everyday. At the same time, these gestures - cleaning, stitching, caring, nurturing - are forms of political action that transform the very notion of creativity into one of responsibility.

Conclusions

From both legal and art history perspective, the perception of women's unpaid work has undergone a notable change - from complete invisibility and marginalization to growing recognition of its essential social role. In recent years, international instruments such as the ILO *Resolution concerning Decent Work and the Care Economy* (2024) have begun to redefine the notion of work more broadly, including care, emotional, and household activities in its definition and recognizing its importance for economic stability and gender equality. This change of perception toward the unpaid women's work can be noticed also in the approach of Polish decision-makers, and has led to the introduction of some measures and policies recognizing the social and economic importance of care work.

An example of such measures in Poland may be the Act of 31 January 2019 on the Supplementary Parental Benefit, aimed at "providing essential means of subsistence to persons who have resigned from employment or other gainful activity, or have not undertaken such activity, due to child-rearing responsibilities" (Art. 1 of the Act). The benefit, known as the "*Mother 4+"* programme, is granted to mothers who have given birth to and raised, or have raised, at least four children. In exceptional cases – such as the mother's death, abandonment of the children, or long-term cessation of childcare – the benefit may also be granted to fathers.

As explained in the government's justification of the draft act, the legislator's intent was "to honour and appreciate the period of child-rearing" and "the proposed amendments emphasize the socially important function, primarily fulfilled by women, of raising children – a function crucial for the country's development"[70]. However, this solution has

[70] Justification of the Draft Act, Parliamentary Paper n. 3157, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3157.

several shortcomings and has already been criticized in the legal scholarship[71]. The right to the benefit was granted only to individuals whose pension entitlement did not reach at least the minimum pension amount. Consequently, women who managed to combine raising a large family with paid employment sufficient to earn a minimum pension were excluded from the programme.

Even though this solution has clear limitations, it nonetheless represents an important step toward recognizing the value of women's invisible labour. It signals a growing awareness that unpaid work contributes significantly to social and economic life and the disparities that it has been causing till now. However, it should be underlined that this is only one among many measures that must be undertaken to fully recognise invisible labour as work that deserves legal recognition, institutional protection, and inclusion in public policy.

A similar revaluation has taken place in art and can be observed in changing visual representations of women's labour. For centuries, art has been portraying women's domestic activities as acts of rather moral virtue than of social or economic significance. But the feminist art of the XX and XXI century is bringing more attention to everyday women's activities with the scope that legal discourse is also trying to achieve: the recognition of care as a visible and valuable social activity, that deserves to be considered as work. The changes that we observe both in legal discourse and artistic creativity, prove that the struggle to recognize women's unpaid labour is a question of both juridical and cultural nature - that redefines not only the meaning of work, but also the frameworks through which societies notice and value every human activity. It is a question of awareness that care work constitutes an essential value to human well-being and should not be invisible.

This analysis has shown that the invisibility of women's labour is not merely the result of its exclusion from legal definitions, but also of its position within a broader symbolic order that has historically rendered such work self-evident and therefore unrecognised. The gradual convergence of legal reforms and artistic practices suggests that this symbolic order is being reconfigured. In this sense, the recognition of care work emerges not only as a matter of legal adjustment, but as part of a

[71] E. Kumor-Jezierska, *Rodzicielskie świadczenie uzupełniające – MAMA 4+ – oczekiwania i realia*, Roczniki Administracji i Prawa, vol. 21, 2021, 487-496; J. Czerniak-Swędzioł, E. Kumor-Jezierska, *O statusie prawnym osoby wykonującej pracę niewidzialną*, Forum Prawnicze, n. 1 (85), 2025, 35.

wider cultural transformation that reshapes how societies define value, productivity, and social contribution.

Summary

Unpaid or invisible labour encompasses activities such as household chores, childcare, eldercare, and other forms of domestic work that are not financially compensated. Emotional labour involves managing one's own emotions and those of others to maintain social harmony, often within family and community settings. These forms of labour are predominantly undertaken by women and are essential for the functioning of households and societies.

In the aftermath of World War II, Poland, under socialist governance, promoted women's participation in the workforce as part of broader industrialization efforts. However, despite formal employment, women continued to bear the primary responsibility for domestic duties, leading to a "double burden" of paid and unpaid work.

The transition to a market economy in the 1990s brought about significant socio-economic changes. Economic restructuring led to job losses, particularly in industries where women were overrepresented. This period saw a reinforcement of gender disparities, with women's unpaid labour becoming more pronounced amid reduced public support.

Today, women in Poland continue to perform a disproportionate share of invisible labour. The "motherhood penalty," wherein mothers face wage reductions and limited career advancement opportunities, remains a significant issue, reflecting ongoing biases in the labour market.

On this background the paper presents how the invisible labour of women is presented in visual arts in Poland after World War II until today. The authors intend to demonstrate how the economic and political factors influenced the way women performing their daily chores were represented taking examples of such artists as Aleksander Kobzdej, Juliusz Studnicki, Andrzej Wróblewski, Elżbieta Jabłońska, Julita Wójcik, Małgorzata Mirga-Tas, Katarzyna Krakowiak-Bałka and Liliana Zeic.

Visual arts have long served as a powerful mirror of societal values, norms, and transformations. Furthermore, the gendered division of labour has been a recurring subject in visual arts, revealing societal expectations around men’s and women’s roles. As discussed by feminist art historians, women were historically depicted performing unpaid domestic work, reinforcing their confinement to the private sphere. However, in the 20th century, especially through feminist and conceptual art, these roles began to be re-evaluated. Artists highlighted the invisibility and undervaluation

of women's labour, thereby challenging dominant social narratives and advocating for gender equity.
The art reflects the evolution of generational perspectives on invisible labour. Older generations, shaped by socialist ideals and traditional norms, often accepted the dual role of women as workers and primary caregivers. Younger generations, influenced by global feminist movements and increased educational opportunities, are more likely to challenge traditional gender roles and advocate for equitable distribution of domestic responsibilities.

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Invisible Labour, Visible Struggles: The Plight of Domestic Workers in Post-COVID 19 Pandemic India

Kingshuk Sarkar, Faiza Ruksar Arif, Sreerupa Sengupta *

Abstract. Although domestic workers are an integral part of India's urban, informal economy; they continue to face marginalisation, stigmatization, and undervaluation of their work. The pandemic aggravated the vulnerability of domestic workers and they struggled to maintain their livelihood. This paper investigates the challenges faced by domestic workers in Goa and West Bengal during the COVID-19 pandemic. This study conducted in-depth interviews with trade union leaders and a survey among domestic workers (n=412) to examine the impact of the COVID pandemic on domestic workers, highlighting the inadequacy of existing legal framework to safeguard their interests during the crisis and explore the collective bargaining capacity of the domestic workers nurtured by the trade union. Primary data analysis revealed job loss, wage reductions, and other forms of exploitation and risks for domestic workers. The study also highlighted the helplessness of trade unions to ensure the basic labour rights of domestic workers during and post-pandemic as well as the lack of collective bargaining power of workers to ensure their basic labour rights. The paper argues for a more effective legal framework to ensure basic labour rights and the inclusion of domestic work as legitimate employment.

Keywords: *Domestic Workers; Trade Unions; Informal Labour; COVID-19; Working Conditions.*

1. Introduction

The growth of paid domestic work has been a characteristic of contemporary development in most of the economies. The growth of the sector, globally, can be located within the unequal economic development over a period of time. The new approach to this sector has been marked by intensified discussion on regulating the sector. The International

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Labour Organisation (ILO) adopted the Domestic Workers Convention (No. 189) in 2011. The Convention defined domestic workers as those workers who work "in or for a household or households on an occupational basis".[1] This was the first international Convention entirely devoted to domestic workers which recognized contribution of the domestic workers to the global economy and as key members of the care economy. This Convention cemented the acceptance of this sector as a sector of employment and gave a call to all governments to come up with legislative interventions. The Convention 189 also highlighted that despite the contribution of the domestic workers towards sustaining the global economy, there is persistent undervaluation of domestic work.

According to an ILO Report (2023), globally there were at least 75.6 million domestic workers, with women accounting for 76.2 per cent. While the ILO Convention of Domestic Workers (No.189) in 2011 recognised domestic workers as key members of the care economy; unfortunately, even today, they constitute a precarious segment of the global labour force.[2] In 2021, the ILO published a report which highlighted the progress made by all countries in ten years since the Convention (in 2011) on making decent work a reality for the domestic workers. According to the report, domestic work has over the years, become an important source of employment, representing 2.3 percent of employment, worldwide.[3] The forecast of the report was that the demand for domestic workers will grow in the light of an ageing population, increase in long term care needs and the trend of outsourcing domestic and care work. In these ten years, the number of digital labour platforms has also risen eightfold from 28 in 2011 to 224 in 2010.[4]

In the last two decades, India has witnessed a massive growth in the demand for domestic work. For instance, the percentage of domestic workers in total female employment in the service sector increased from

[1] International Labour Organisation (ILO), *The Road to Decent Work for Domestic Workers*, 2003, Geneva. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_883181.pdf (accessed February 1, 2025).

[2] ILO, *The road to Decent Work for Domestic Workers*, 2023, Geneva. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_883181.pdf (accessed February 1, 2025).

[3] ILO, *Making Decent Work a Reality for Domestic Workers*, 2001, Geneva. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_800224.pdf (accessed February 1, 2025)

[4] ILO, *Making Decent Work a Reality for Domestic Workers*, op.cit.

11.8 percent in 1999-2000 to 27.1 percent in 2004-05.[5] As per NSSO 2009-2010, there were 2.52 million domestic workers while ILO estimated that there were over 4 million domestic workers.[6] Current official estimates state there are 4.7 million domestic workers (out of which 3 million are women) but unofficial estimates claim there are more than 20 million domestic workers. Factors such as availability of disposable income, time poverty among working women, reduction in the state investment on care, changing lifestyle of the middle class and presence of children and geriatric people in the household have led more people to invest in paid care work by employing part-time domestic workers.[7] Additionally, poor women find it easier to take up job as a domestic worker in their vicinity as sometimes it is the only option available to them to provide for themselves and their family. Although domestic work is one of the largest sectors for employment, yet there is a paucity of official data. Also, it continues to remain an unregulated sector.

Despite the increase in the number of domestic workers in India, the sector remains largely unregulated, and this poses serious concern for women's work, wages, working conditions and their agency. Since domestic work happens in the private sphere of households, it is beyond the ambit of labour laws. Additionally, the intimate setting of domestic work in private households creates unique power dynamics, with employers wielding significant influence over workers' lives. The operation of the domestic worker in the private realm of the household has led to their neglect and marginalisation in the public discourse, as well as forced them to navigate exploitative conditions without formal contracts, legal protections and access to social securities.[8]

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[5] N. Neetha, *Regulating Domestic Work* in *Economic and Political Weekly*, 2008, vol. 43, no. 37, 26–28.

[6] S. Jain, and U.S. Mishra, *Demand for Domestic Workers in India: Its Characteristics and Correlates* in *Indian Journal of Labour Economics,* 2018, vol. 61, 659–679.

[7] N. Neetha, *Making of Female Breadwinners: Migration and Social Networking of Women Domestics in Delhi* in *Economic and Political Weekly*, 2004, vol. 39, no. 17, 1681–1688; N. Neetha, *Contours of domestic service: Characteristics, work relations and regulation* in *The Indian Journal of Labour Economics*, 2009, Vol. 52, no. 3, 489-506; R. Ray and S. Qayum, *Cultures of Servitude: Modernity, Domesticity, and Class in India*, Oxford University Press, New Delhi, 2009; N. Vasanthi, N, *Addressing paid domestic work: A public policy concern* in *Economic and Political Weekly*, 2011, 85-93; ILO and IHD, *Persisting Servitude and Gradual Shifts towards Recognition and Dignity of Labour: A study of Employers of Domestic Workers in Delhi and Mumbai*, 2017, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_622812.pdf (accessed February 2, 2025).

[8] N. Neetha, *Misconstrued Notions and Misplaced Interventions: An Assessment of State Policy on Domestic Work in India* in *Indian Journal of Labour Economics*, 2021, vol.64, 543–564.

Following the ILO Convention No.189 (2011), since the last decade, India has included domestic workers in some of their laws, such as the Child Labour (Prohibition and Regulation) Act 1986 (through an amendment in 2006), the Unorganised Social Security Act 2008 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. Trade unions emerged as another means of institutionalising paid domestic work and promoting worker rights. Domestic workers formed trade unions in various states, including Bihar, Delhi, Jharkhand, Rajasthan, Tamil Nadu, West Bengal, but the informality of the sector poses as the biggest barrier towards legal recognition and mobilisation.

In 2019, the COVID-19 pandemic exacerbated the vulnerabilities, exposing the continued systemic neglect of domestic workers in the country. Households became sites of heightened health concerns and economic distress; many workers experienced job loss, wage reductions, or increased workloads without corresponding safety measures. Live-in workers providing care services, in particular, were trapped in exploitative conditions and often denied mobility or access to healthcare. In addition, despite the existence of trade unions for domestic workers, in many parts of the country, they were excluded from pandemic relief measures. The pandemic, therefore, has catalysed a renewed focus on the precarious state of domestic workers within the care workforce and the urgent need for systemic reforms to address their structural marginalization.

This paper examines the impact of the COVID-19 pandemic on domestic workers, highlights the inadequacy of the existing legal framework to safeguard their interests during the crisis and examines the collective bargaining capacity of the domestic workers nurtured by the trade union. By drawing on existing literature, participant narratives from trade unions and a survey among domestic workers, the paper situates domestic work within broader labour rights discourses, highlighting both the unique challenges workers face and the opportunities for systemic change.

2. Literature Review

Domestic work in India is a form of labour that is simultaneously indispensable and yet structurally devalued. Domestic workers are workers whose labour is rendered socially invisible because it is feminised, caste-marked, performed inside private homes, and frequently framed as care, loyalty, or household assistance rather than as formal work.[9] This review, therefore, examines domestic workers' precarity through four interrelated dimensions: social devaluation, economic insecurity, legal fragmentation, and collective organising.

Social Devaluation: Caste, Gender, and the Private Household

A central thread in the literature is that domestic work is shaped by caste-based and gendered divisions of labour. Joseph et al. (2018)[10] document how caste-based discrimination in Bengaluru relegates lower-caste women to stigmatised forms of labour such as waste picking, cleaning, and domestic work. Thus, the entry point into the occupation of domestic work is not only through poverty or lack of opportunity but also has historical linkages to caste-based ideas of service, bodily labour, cleanliness, and social hierarchy.[11] The location of lower-caste women in such work, therefore, reflects the continuing reproduction of caste through urban labour markets.

Gender further compounds this caste-based devaluation. Domestic work is socially treated as an extension of women's unpaid household responsibilities rather than as skilled labour that requires wages, rights, and regulation.[12] Chadha (2020) describes domestic work as marked by a dual invisibility: it is hidden because it takes place inside private homes, and it is further devalued because caregiving and household maintenance are viewed as natural extensions of women's roles. This naturalisation weakens domestic workers' recognition as workers and makes their labour appear ordinary, affective, and feminine rather than skilled, economic, and rights-bearing.[13]

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[9] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles* in *Economic and Political Weekly,* 2020, vol. 55, no. 3, 21–27; J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers* in *Journal of Poverty Studies*, 2013, vol. 19, no. 4, 243–259; G. Joseph, S. Mukherjee, & R. Narayan, *Caste and labour markets: Domestic workers in Bengaluru* in *Indian Journal of Labour Economics,* 2018, vol. 61, no. 1, 47–64; S. Sen, and N.Sengupta, *Domestic Days Women, Work and Politics in Contemporary Kolkata*. Oxford University Press, New Delhi, 2016.

[10] Joseph et al., *Caste and labour markets: Domestic workers in Bengaluru,* op.cit.

[11] Ibid.

[12] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; V. A. Zelizer, *The purchase of intimacy* in *Law & Social Inquiry*, 2000, vol. 25, no.3, 817–848.

[13] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; J. Jones, *Labour of love, labour of sorrow: black women, work and the family,*

Caste, gender, and class produce layered vulnerabilities, particularly for lower-caste and migrant women, who are often confined to low-wage and socially stigmatised occupations, connecting domestic work to the feminisation of poverty, where women's paid work remains vital for household survival but remains framed as supplementary, low-value, and insecure.[14] The assumption that women are secondary earners further depresses wages and obscures the fact that many domestic workers may be primary earners or part of female-headed households.[15]

The private household is central to this devaluation. Sen and Sengupta (2016) argue that domestic work is devalued because it is located in the "private" realm, where the civic contract and formal labour regulation are treated as having limited force. The home is imagined as a familial and emotional space rather than as a workplace, even when it is sustained through paid labour.[16] This allows employers to frame the employment relationship in terms of trust, loyalty, obligation, and fictive kinship rather than wages, contracts, working hours, and enforceable rights.[17]

The concept of "pragmatic intimacy" is useful for understanding this contradiction. Domestic workers may be described as "like family," but this intimacy rarely produces equality, protection, or security. Instead, it creates a personalised employment relationship in which the worker is neither fully recognised as a worker nor genuinely accepted as family.[18] This ambiguity has practical consequences: wages, leave, sick support, rest, and emergency assistance often depend on employer goodwill rather than on legal entitlement.[19]

from slavery to the present, Basic Books, New York, 2010; V. A. Zelizer, *The purchase of intimacy,* op.cit.

[14] J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers,* op.cit; D.M. Pearce, *The feminization of poverty: Women, work, and welfare* in *Urban and Social Change Review,* 1978, vol. 11, no. 1, 28–36.

[15] Ibid.

[16] S. Sen, and N. Sengupta, *Domestic Days Women, Work and Politics in Contemporary Kolkata,* op.cit.

[17] A. Ghatak, A., & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014*, *Working Paper No.*255, 2020; Sen, and N. Sengupta, *Domestic Days Women, Work and Politics in Contemporary Kolkata,* op.cit.

[18] A. Ghatak, A., & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014,* op.cit.

[19] Ibid; N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit

Economic Precarity: Informality, Labour Surplus, and Low Wages

Domestic work in India is also marked by economic precarity since it is located within the informal sector, where labour regulation is weak, and employment relations are skewed: unwritten, personalised, and insecure.[20] Domestic workers commonly work without formal contracts, defined working hours, paid leave, job security, or standardised grievance mechanisms.[21] This informality exposes workers to arbitrary wage deductions, uncertain support during illness, and dismissal without compensation.[22]

Domestic work must also be understood within wider labour-market conditions, particularly the oversupply of unskilled labour. India's structural transformation has remained partial: surplus labour released from agriculture has not been adequately absorbed into secure manufacturing or formal service-sector employment.[23] As a result, a large reserve army of labour survives through precarious informal work in urban spaces, including domestic work.[24] This surplus labour condition contributes to low wages because domestic work has relatively low entry barriers, and there is a large pool of workers seeking employment. Thus, domestic work is low-paid because it sits at the intersection of informality, labour surplus, feminised skill devaluation, and caste-class hierarchy.[25]

The association of domestic work with care further weakens bargaining power. Jones (2010) describes such work as the "labour of love," while Zelizer (2000) shows how care work is often separated from material expectations. In the context of domestic workers, this moral separation is

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[20] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India* in *Canadian Journal of Women and the Law,* 2011, vol. 23, no. 1, 97–120.

[21] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit; A. Ghatak, A., & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014,* op.cit.

[22] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.

[23] R. Abraham, *Structural change and labour productivity growth in India: Role of informal workers*, Working Paper No. 386, Institute for Social and Economic Change, 2017.

[24] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India,* op.cit; K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India*, *NLI Research Studies Series*, No. 137, 2019.

[25] J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers,* op.cit; N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; Joseph et al., *Caste and labour markets: Domestic workers in Bengaluru,* op.cit.

deeply exploitative: the work is paid, but the language around it often treats it as affection, help, duty, or feminine competence rather than as labour requiring fair compensation.[26] This is why domestic workers may be expected to show loyalty and flexibility while receiving low wages, limited leave, and no secure employment guarantees.[27]

Legal Recognition and Policy Fragmentation

The legal history of domestic work in India has been one of repeated recognition without comprehensive protection. The regulation of domestic workers was first attempted in 1959, when the Domestic Workers (Conditions of Service) Bill and the All India Domestic Servants Bill were tabled as private member bills in the Rajya Sabha and Lok Sabha, respectively. These bills included clauses on minimum wages, maximum working hours, and registration of domestic workers by local police.[28] Further private member bills were introduced in the Lok Sabha in 1972 and 1996, but these efforts did not result in a comprehensive legal framework for domestic workers.[29]

Certain laws have since been extended to domestic workers in limited ways. The Child Labour (Prohibition and Regulation) Act, 1986, through an amendment in 2006, addressed child domestic labour. The Unorganised Workers' Social Security Act, 2008, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, have also been extended to domestic workers in specific respects.[30] However, these legal extensions remain fragmented and inadequate because they do not amount to a comprehensive labour regime regulating domestic workers' wages, working hours, occupational safety, leave, social security, and grievance redressal.[31]

State-level welfare mechanisms have also been uneven. Some Indian states have attempted to use welfare boards or specific provisions to extend

[26] J. Jones, *Labour of love, labour of sorrow: black women, work and the family, from slavery to the present*, op. cit; V. A. Zelizer, *The purchase of intimacy,* op.cit.

[27] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; A. Ghatak, & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014,* op.cit.; K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India,* op.cit.

[28] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit

[29] Ibid.

[30] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.

[31] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.

social security benefits to domestic workers. Central schemes such as the National Old Age Pension Scheme, the National Family Benefit Scheme, and the Pradhan Mantri Suraksha Bima Yojana provide some forms of support to informal-sector workers.[32] However, these measures do not provide comprehensive coverage. Chadha (2020) argues that existing legal and welfare provisions remain fragmented and inadequate, while SEWA[33] notes that domestic workers' coverage under the Rashtriya Swasthya Bima Yojana and the Unorganised Workers' Social Security Act, 2008, remains piecemeal.

One important legal intervention has been the inclusion of domestic work within scheduled employment under the Minimum Wages Act, 1948, coinciding with the global recognition of domestic workers' rights through ILO Convention 189 in 2011. However, Sarkar (2019) argues that significant concerns remain around defining domestic work, calculating wages, and enforcing minimum wage provisions. This is particularly important because formal inclusion does not necessarily produce protection when work is performed inside dispersed private households and mediated through personalised employment relations.[34]

The Occupational Safety, Health and Working Conditions Code introduced in 2020 further illustrates the limits of legal recognition. By excluding private households from the definition of a workplace, the Code leaves domestic workers outside the scope of occupational health, safety, and working condition protections. This exclusion is significant because domestic workers face occupational risks, including physically demanding labour, long hours, exposure to cleaning substances, verbal abuse, health risks, and sexual harassment, yet the private household is not treated as a workplace requiring regulation.[35]

The legal problem is therefore not a complete absence but a partial and fragmented recognition. Domestic workers appear within some laws, schemes, and welfare discussions, but they remain excluded from a comprehensive legal framework that treats them as full workers. This

[32] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.

[33] SEWA is an acronym for Self-Employed Women's Association. It is the largest trade union centre for women workers in India's informal economy, formed in 1972. SEWA has its presence in various states of India.

[34] Ibid*;* K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India,* op.cit.

[35] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.; A. Ghatak, A., & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014,* op.cit

produces a contradictory form of recognition: domestic workers are visible enough to be selectively regulated, but not visible enough to receive enforceable and universal labour protections.[36]

Collective Organising and the Struggle for Worker Hood

Trade unions and worker collectives are central to challenging the invisibility of domestic work, but organising domestic workers is structurally difficult. Domestic workers are employed in private, dispersed, and physically isolated households rather than in a shared workplace.[37] Many work part-time for multiple employers, often without formal contracts or a clearly defined employer-employee relationship.[38] These conditions hinder traditional trade union models that depend on a common workplace, shared employer, and stable worker identity.[39]

The personalised nature of domestic work also makes mobilisation difficult. Workers may depend on employers not only for wages but also for housing, references, emergency assistance, or continued access to employment networks. This dependency reinforces paternalistic relationships and discourages workers from challenging exploitative practices.[40] Because grievances occur inside separate households, workers may initially experience wage cuts, abuse, or overwork as individual problems rather than as shared labour issues.

Hirsch (2015) argues that "framing" is therefore a crucial tool in mobilising domestic workers. Framing creates cognitive and physical spaces for workers to discuss shared concerns, question existing power

[36] N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India,* op.cit; S. Sen, and N. Sengupta, *Domestic Days Women, Work and Politics in Contemporary Kolkata,* op.cit.

[37] N. Kabeer, K. Milward, & R.M. Sudarshan, *Organising women workers in the informal economy* in *Gender & Development,* 2013, vol. 21, no. 2, 249–263; N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.

[38] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.; A. Cornwall, C.M. Oliveira, & T. Goncalves, *If you don't see a light in the darkness, you must light a fire*, in N. Kabeer, R. Sudarshan, & K. Milward (eds.), *Organising women workers in the informal economy: Beyond the weapons of the weak*, Zed Books, 2013, 149–180.

[39] N. Kabeer, K. Milward, & R.M. Sudarshan, *Organising women workers in the informal economy,* op.cit; Ibid.

[40] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.; A. Ghatak, & K. Sarkar, *Economic status of domestic workers and the institutional support for them in India: Evidence from NSS 2014,* op.cit.

structures, and move from a "servant" identity to a "worker" identity.[41] This shift is politically significant because it allows domestic workers to reinterpret their experiences as labour exploitation rather than personal misfortune or employer-specific conflict.

Jiang and Korczynski (2016) similarly highlight the importance of "communities of coping," informal networks through which domestic workers connect, share experiences, and collectively articulate demands. These networks are important because they allow workers to move from isolation toward solidarity, especially when linked to formal advocacy platforms.[42] Joseph et al. (2018) show a similar shift in Bengaluru, where domestic workers moved from accepting symbolic gestures, such as festive gifts, to demanding material benefits, such as bonuses. This shift reflects the emergence of collective consciousness and a stronger claim to domestic work as labour deserving economic recognition.[43]

In India, the mobilisation of domestic workers can be traced to the National Domestic Workers' Movement, which began in 1985 in Mumbai and Chennai. The movement emerged to address the indignity and abuse faced by domestic workers in their workplaces and has since grown into collectives across several Indian cities. Its work focuses on capacity building, social security, lobbying for domestic workers' rights, and addressing trafficking and unsafe migration.[44]

SEWA has also played a significant role in organising, training, and placing domestic workers. Since the late 1990s, SEWA has trained domestic workers and placed them in jobs, beginning in Trivandrum and later extending to Kerala, Delhi, and Bihar. The nature of training has changed over time in response to market demands, with increasing emphasis on professionalism, punctuality, personal hygiene, integrity, and honesty. However, the placement of trained domestic workers at suitable wages has remained a persistent challenge.[45]

SEWA's model is important because it combines skills training, legal awareness, and collective bargaining. Evans and Nambiar (2013) argue

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[41] E.L. Hirsch, *Sacrifice for the cause: Group processes, recruitment, and commitment in a student social movement*, in A. D. Morris & C. McClurg Mueller (eds.), *Frontiers in social movement theory*, Yale University Press, 2015, 101–113.

[42] M. Korczynski, *Communities of Coping: Collective Emotional Labour in Service Work*, *Organization,* 2003, vol. 10, 55 – 79; Z. Jiang, & M. Korczynski, *When the 'Unorganizeable' Organize: The Collective Mobilisation of Migrant Domestic Workers in London*, *Human Relations*, 2016, vol. 69, no. 3, 813 –838.

[43] G. Joseph, S. Mukherjee, & R. Narayan, *Caste and labour markets: Domestic workers in Bengaluru*, op.cit.

[44] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.

[45] Ibid.

that unionisation and collective action are necessary for empowering domestic workers to challenge exploitative norms and negotiate better conditions. Banerjee (2021) similarly argues that neighbourhood-based organising by NGOs creates shared spaces where domestic workers can connect, access skills training, build legal awareness, and advocate for their rights. These organising strategies matter because domestic workers' isolation is not only physical but political; collective spaces allow workers to become visible as a labouring constituency.[46]

The rise of commercial placement agencies creates a different set of concerns. In the last decade, several commercial placement agencies have emerged in urban areas to train domestic workers and place them in households.[47] However, there is no definite data on the number of such agencies in India, and the absence of adequate studies makes it difficult to assess their impact on workers' placement, wages, and bargaining capacity.[48] In the absence of regulation, placement agencies may become sites of trafficking, sexual exploitation, and economic abuse. Even when workers are skilled, a lack of legal protection prevents them from bargaining for higher wages, allowing employers to access trained domestic workers while continuing to pay low wages.[49]

This distinction between worker-based organisations and commercial placement agencies is important. Worker-based organisations such as NDWM and SEWA seek to build collective power, rights awareness, and worker identity. Commercial placement agencies, unless regulated, may reproduce market-based exploitation by supplying trained labour without transforming wages, rights, or working conditions. The literature therefore suggests that decent work for domestic workers depends not merely on training or placement, but on collectivisation, regulation, and cultural revaluation of domestic labour.[50]

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[46] J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers,* op.cit; A. Banerjee, *Neighbourhood-based organizing: Empowering domestic workers through shared spaces*, *Journal of Labour Studies,* 2021, vol. 13, no. 2, 45–62.

[47] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.

[48] ILO, *Indispensable yet Unprotected: Working Conditions of Indian Domestic Workers at Home and Abroad*, 2015, Geneva. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40declaration/documents/publication/wcms_378058.pdf ((accessed on February 10, 2025)

[49] N. Neetha, & R. Palriwala, *The absence of state law: Domestic workers in India*, op.cit.; N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit; K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India,* op.cit;

[50] J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers,* op.cit; A. Banerjee, *Neighbourhood-based organizing: Empowering domestic*

Achieving decent work for domestic workers, therefore, requires more than piecemeal welfare schemes or partial legal inclusion. It requires comprehensive labour regulation, enforceable minimum wages, occupational safety protections, social security, protection from harassment, and accessible grievance mechanisms.[51] It also requires cultural revaluation: domestic work must be recognised as skilled, necessary, and economically valuable labour rather than as a natural feminine duty, caste-marked service, or familial assistance.[52]

COVID-19 and the Intensification of Existing Vulnerabilities

The COVID-19 pandemic intensified the vulnerabilities already embedded in domestic work. According to the International Labour Organization, more than 75% of informal domestic workers globally experienced significant job losses or wage cuts during the pandemic.[53] For domestic workers, the crisis translated into sudden unemployment, wage reduction, unpaid leave, increased work demands, and intensified dependence on employer discretion.[54].

Workers who retained employment did not necessarily experience security. Many faced increased workloads without proportional wage adjustments, particularly as cleaning, sanitisation, and care responsibilities expanded during the pandemic[55]. Those who continued entering employer households were exposed to heightened health risks, often without access to basic personal protective equipment such as masks or gloves[56]. The pandemic, therefore, intensified the contradiction of domestic work: employers depended on workers to maintain household hygiene and care, but workers' own health and safety were weakly protected.[57]

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workers through shared spaces, op.cit.; K. Sarkar, *Complexity in the determination of minimum wages for the domestic workers in India,* op.cit.

51 S. Sen, and N. Sengupta, *Domestic Days Women, Work and Politics in Contemporary Kolkata,* op.cit.

52 Ibid.; J. Jones, *Labour of love, labour of sorrow: black women, work and the family, from slavery to the present*, op. cit; V. A. Zelizer, *The purchase of intimacy,* op cit.

53 ILO, *The impact of COVID-19 on domestic workers: Preliminary Assessment*, 2020, Geneva. https://www.ilo.org/global/topics/domestic-workers/publications/WCMS_748368/lang--en/index.htm (accessed on February 15, 2025).

54 Ibid; N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.

55 N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.

56 Ibid.

57 Ibid.

Live-in workers were especially vulnerable because employer-imposed restrictions on movement could produce conditions of surveillance and confinement.[58] Under the justification of infection control, workers' mobility, access to healthcare, rest, and autonomy could be controlled by employers.[59] The household thus became both a workplace and a space of restriction, deepening the worker's dependency and blurring the boundary between employment and confinement.

The pandemic also exposed the consequences of domestic workers' exclusion from formal labour laws and social protection schemes. Evans and Nambiar (2013) argue that domestic workers' location in informal labour leaves them without reliable access to unemployment benefits, health insurance, or emergency relief. During COVID-19, this lack of social safety nets became especially visible, as workers had to absorb job loss, wage cuts, health risks, and mobility restrictions without adequate institutional support.[60]

Moreover, the pandemic made it evident that a one-size-fits-all approach towards addressing the needs and problems faced by domestic workers will not be effective. It is important to note that the challenges faced by domestic workers are shaped by multiple axes of identity, which govern their relationship with the trade union and their capacity to bargain with their employees. Only through an intersectional[61] approach is it possible to understand the interaction between gender, caste, class and other categories of social difference that create multiple forms of oppression and marginalisation for domestic workers. Therefore, for a nuanced understanding of the vulnerabilities of domestic workers in India, an intersectional perspective is essential.

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[58] Ibid.

[59] Ibid.

[60] J. Evans, & M. Nambiar, *Intersectionality and the feminisation of poverty: A case study on domestic workers,* op.cit; N. Chadha, *The dual invisibility of domestic workers: Gendered and economic marginalisation in caregiving roles*, op.cit.; International Labour Organization, *The impact of COVID-19 on domestic workers: Preliminary Assessment*, op cit.

[61] The term "intersectionality" was coined in 1989 by Kimberlé Williams Crenshaw. Intersectionality focuses on uncovering and understanding the experiences and challenges faced by individuals who occupy multiple and intersecting group identities. Intersectional approach provides an analytical framework to understand and analyse the intersecting and cumulative forms of discrimination faced by women in their daily lives. The central ideas of intersectionality have long historic roots – black activists and feminists, as well as post-colonial, queer and other scholars have all produced work that reveals the interdependent complex social norms and systems that shape human lives.

Additionally, the pandemic highlighted without rights-based mobilisation, domestic workers may continue to remain visible as helpers but invisible as workers.

3. Methodology

Study Design

The study investigated the lived experiences of domestic workers, focusing on their work, working conditions, and their collectivisation in trade unions against the backdrop of the COVID-19 pandemic. It aimed to document the impact of the pandemic on their work experiences and to examine the extent to which unionisation has mitigated these negative effects. The study was conducted in Kolkata and Goa from March to December 2022. Kolkata and Goa as the site of study were selected for their significance in the domestic worker movement. Kolkata is notable as the home of the first trade union for domestic workers, established in 2015. Goa, on the other hand, is characterized by a diverse domestic worker population, comprising both locals and migrants from other states.

The study employed a mixed-methods approach, integrating qualitative and quantitative tools to ensure a comprehensive understanding of the issues. Data collection methods included in-depth interviews (IDIs), focus group discussions (FGDs), and surveys (n=412). IDIs were conducted with trade union leaders, NGO/CBO officials, and the labour commissioner to understand trade union activities, the role of NGOs, and the benefits provided to domestic workers. FGDs were held with domestic workers registered with trade unions or collectives to gather insights on their work conditions, challenges, and experiences, which also informed the survey design. Finally, surveys were administered to domestic workers registered with trade unions to collect data on employment terms, social security, and challenges faced during the pandemic.

Research Questions

The study was guided by the following research questions:

1. How has the collectivisation of domestic workers changed their working conditions, bargaining power with employers, and their ability to address their long-term unmet practical needs?

2. How did COVID-19 pandemic affect domestic workers' employment, working conditions, and their capacity to deal with challenges?
3. In what ways did unionisation help domestic workers navigate and reduce the pandemic-related challenges?

Sampling

A survey questionnaire was developed based on the study's objectives, an extensive literature review, and the findings from FGDs. It covered themes such as basic worker profiles, working conditions, awareness and access to social security, perceptions of domestic work, the role of collectivization, skilling and occupational health, and challenges during the pandemic, including employment status, health, and social security access. Participants were identified using a snowball sampling method in both cities. Inclusion criteria for the sample were: a) domestic workers registered with a trade union; b) those who have lived in the vicinity of their workplaces for generations; c) those who commute daily; and d) those who migrated from other villages within the past ten years. In total, 412 domestic workers were surveyed, with 211 participants from Goa and 201 from Kolkata.

Table 1: Participant Profile

Participant Characteristics	Goa	Kolkata
Sample Size	211	201
Marital Status		
- Married	78.5%	70.3%
- Divorced	0.45%	0.5%
- Separated	0.45%	5.9%
- Unmarried	8.5%	8.4%
- Widowed	12.1%	14.9%
Social Group		
- Genera	54.7%	63.86%
- OBC	9.9%	0%
- SC	28.2%	34.2%
- ST	7.2%	1.9%

Educational Qualification		
- Illiterate (unable to sign)	12.6%	4.5%
- Illiterate (able to sign)	1.8%	9.9%
- Less than 5th Standard	27.3%	47.0%
- Completed 5th Standard	8.5%	12.9%
- Completed 8th Standard	11.6%	18.8%
- Completed 10th Standard	24.2%	4.5%
- Completed 12th Standard	13.9%	2%
Household Headship		
- Female-headed households	60%	40%
Housing		
- Own House	66.8%	61.9%
- Rented House	33.2%	38.1%
Economic Indicators		
- Average Monthly Salary (INR)	₹11,505.38	₹5,942.08
- Average Expenditure (INR)	₹9,521.08	₹6,000

Ethical Considerations

The study adhered to strict ethical research practices to ensure the dignity, autonomy, and confidentiality of participants. Informed consent was obtained from all participants before administering research instruments, ensuring they were fully aware of the study's objectives and their role in it.

4. Findings

Valuation of Paid and Unpaid Domestic Work

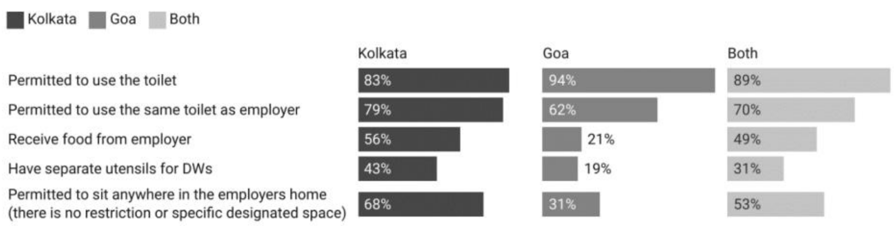
Domestic workers are uniquely positioned to experience "double domesticity" where their gendered role of "caregiver" leads to them taking care of their own home's unpaid domestic and care work before going for paid domestic and care work that in turn remains "unpaid" or "invisible" institutionally. Respondents mentioned cooking for family members and preparing their children ready for school before their work. More than 80% of respondents from Goa reported receiving no support in household responsibilities. In comparison, 45% of workers from Kolkata receive some form of support – but mostly from other female household members. Half of the respondents belong to female-headed households. Another form of "double burden" experienced by domestic workers is in the case of their husbands being incapacitated – either due to mobility issues, alcoholism, loss of job etc. In these situations, they are expected to adapt to the role of "primary caregiver" in the household and the "primary breadwinner" outside the household. Domestic worker burdens are also affected by their migratory status. Post covid, workers in Kolkata can run their households on their salary while workers from Goa largely faced challenges in managing the cost of living in Goa alongside sending money to their natal homes.

Dignity of the Domestic Worker

The interplay between paid domestic work and unpaid household labour underscores the systemic undervaluation of women's labour. A key insight into the lived experiences of domestic workers indicates that their labour both paid and unpaid, has been framed as "natural" to women, thus denying its professional legitimacy. The 'domestic helper' through providing a paid service occupies a "domestic positionality" where domestic work is framed as a "labour of love" blending caregiving and services in ways that evade any formal valuation or regulation. This paradigm becomes the foundation for employee-employer relationships where employers frame wages as a 'charitable act" rather than a fair contract of professional services.
Respondent narratives also indicate that the COVID pandemic has heightened economic and emotional exploitation of their labour where the private and familial nature of their workplace created "pragmatic intimacy" – between their employers and them. They were often treated as extensions of the family, relied on for errands, chores and care labour without prior discussion or agreement (it was seen as a natural extension of the domestic services they offered) and also received 'gifts of care' in form of hand-me-downs and items their employers chose to 'give away'. The experience of pragmatic intimacy is further convoluted by the act of "advance dependency" – where most domestic workers especially migrant workers find themselves isolated and lonely in an unfamiliar city without any support. Due to the uncertainty and polarisation of the pandemic, financial emergencies, fees for children, sending money back to their families etc became impertinent causing them to enter agreements with their employers for large lump sums, payments on their behalf or other flexible modes of payments. Findings from the study indicate a significant reduction in their bargaining power and reinforce economic and social dependency. This intimate framing of paid domestic work extracts not only emotional labour but also perpetuates asymmetrical power dynamics, where 'emotional dependency' is leveraged to justify economic

exploitation. A respondent corroborated this with *"I work in five households; no one gives me food/tea or water. I work there for so many years."* And another stated, *"Many families give us the food that they can't have. If we refuse to eat they question us."*
There also exists a lack of dignity attached to domestic workers where they are privy to intimate details of their employer's households yet most often denied basic human decency. Employee behaviours around water and food consumption, bathroom usage and giving things to their domestic help are embedded in classist and casteist undertones. These socio-economic indicators were further compounded with health-related paranoia during the pandemic, leading to hypervigilance and a shift in the treatment of domestic workers. One participant shared *"Yes, we can't use their toilet. I can clean it but I can't use it. Sometimes when we ask for a glass of water they tell us why we don't carry our own bottle."*

Table 1: Indicators of Dignity of Labour in Domestic Work



Source: Authors survey calculations

Trade Unions as Support Systems

Collective action and unionisation play a critical role in advocating for the rights of domestic workers. Regional variations in union membership and the reliance on NGO interventions underscore the structural barriers to organising domestic workers. In both our sites of enquiry, Goa and Kolkata – domestic workers' trade unions were registered under the Trade Union Act 1926 during 2017 and 2018 (pre-pandemic). Both unions were initiated by civil society organisations/NGOs who had been mobilizing these women domestic workers as part of their various socio-economic interventions. This initial intervention was critical in consciousness-raising where domestic workers learnt about their basic rights as citizens and workers.

Union membership was significantly higher in Kolkata (44%) compared to Goa (26%), reflecting a longer history of collectivisation efforts in Kolkata. Respondents reported receiving awareness-building sessions, celebrating labour rights days and building a support
system. However, retention and utilising the information remained challenges leading to the absence of follow-ups and affirmative action. A large number of respondents who had union membership found unions to be inadequate in addressing their needs or bringing about tangible change in their working conditions but acknowledged their importance in providing support and safety as a collectivised entity.
In both Kolkata and Goa, formation of trade unions was initiated and supported by civil society organizations (CSOs). In Kolkata, a number of CSOs worked among the domestic workers during the last 2-3 decades and they have mobilized these workers and made them aware about the labour rights and other human rights as citizens of the country. These CSOs are visible and quite accessible to the domestic workers in Kolkata. In Goa too, domestic workers were mobilized by NGOs and helped them actively to form and register a trade union. In both Kolkata and Goa, domestic workers' trade unions are not politically affiliated and have their independent existence.

Table 2: Trade Union Membership and Support

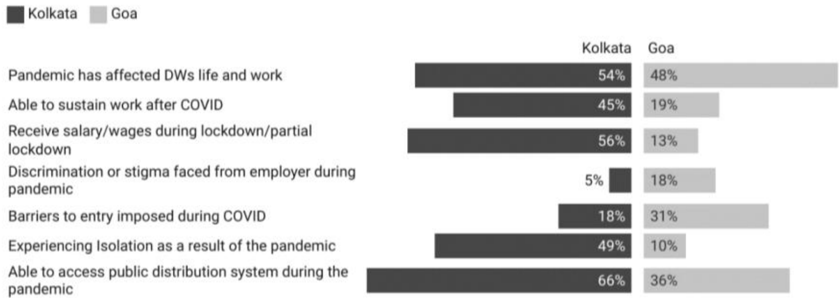
Source: Authors survey calculations

Both the state's trade unions remain constrained in terms of wider mobilisation owing to conflicts of interest. In Kolkata, the domestic workers' trade union's activities and membership overlapped with that of the civil society organization that helped its formation. This led to the organization actively opposing its members enrolling as trade union members and blaming trade union leaders for enticing and poaching its members, causing more friction than fruition. In Goa, despite no explicit conflicts, the trade union remains an extension of the missionary movement from which it originated.

Employment & Income Disparities

Given that the domestic space is characterised as "private" it has led to a repeated absence of standardised wages, fixed work hours, and safety considerations. Additionally, post-COVID, many employers opted to handle domestic work themselves rather than re-hiring workers. This trend exacerbated unemployment and reinforced the expendability of domestic workers, further eroding their bargaining power on remuneration or the nature of work. Many respondents indicated mistreatment, *"Sometimes employees fire us from our work without prior notice, sometimes they deny to pay our salary. Many people blame us for theft; they even slap/hit us."* The employers continue to decide wage rates usually against the number of tasks, disregarding the time taken or the size of the family. This has led to severe wage Disparities. Respondents in Goa earned an average of ₹11,505/month, nearly double the ₹5,942/month reported by workers in Kolkata. Workers from Goa work 1-2 houses while those from Kolkata work a minimum of 3-4 houses daily to reach the same salary owing to the employer's spending capacity and cost of living between the two cities. The Out-of-Pocket Expenditures on food and healthcare constituted significant portions of workers' incomes, with 87% of respondents in Goa and 72% in Kolkata relying on private healthcare services. This lacuna highlights that the respondents despite being in trade unions are not fully aware of government healthcare schemes or do not have easy access to government healthcare schemes.

Table 3: Impact of COVID on employment and income

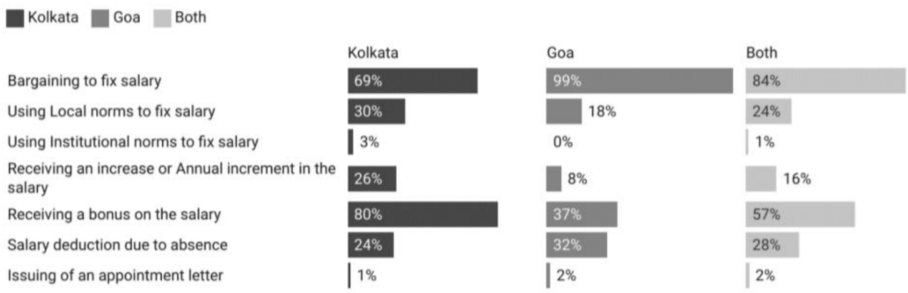


Source: Authors survey calculations

Contracts & Salary

Insights from Goa and Kolkata reveal a significant internalisation of the exploitation faced by domestic workers (DWs) with regard to contract and salary. Although worker expressed, *"Weekly leave and increment in salary will make our condition better"*; they do not bargain for it for fear of losing job. This internalisation of exploitation also stems from long-standing power imbalances and a lack of awareness about their rights. Worker unions - Samithis' have been instrumental in helping workers understand basic entitlements, such as demanding leaves and protesting salary deductions. However, trade unions have yet to translate these efforts into actual power or enforceable protections. With no alternative avenues for protection or redressal, domestic workers remain vulnerable. As one worker admitted, *"I never knew that four days off in a month is my right."*

Table 4: Contract and Salary Structures



Source: Authors survey calculations

Trade Unions have emerged as a stop-gap for mistreatment where respondents from both cities convene to discuss negotiation and problem-solving strategies on salary issues and employer misconduct and even show up to workplaces to de-escalate situations and show solidarity. A respondent shared that she told her employers if they want to remove her from work then they have to inform her one month earlier, otherwise they have to give her three months' salary. Another respondent shared that earlier they were afraid of taking leaves, but now they demand four monthly leaves. A powerful outcome has been that of holding space and addressing gender-based violence. A respondent stated, *"We have made it very clear that if our husband tortures us we will beat them back."*

Work and Health Conditions

The COVID-19 pandemic has profoundly reshaped the domestic work sector, creating a paradoxical market dynamic. While forced migration, poverty, and health concerns have swelled the supply of domestic workers, demand has significantly reduced. Agriculture is no longer the dominant labour occupation due to reduced landholdings and erratic income caused by climate change, pushing many, especially women, into domestic work. This has led to a reserve army of labour comprising the most vulnerable, including wives of construction and bonded workers, who are compelled to accept exploitative conditions in the domestic work sector.

Table 5: Working conditions of domestic workers post-COVID

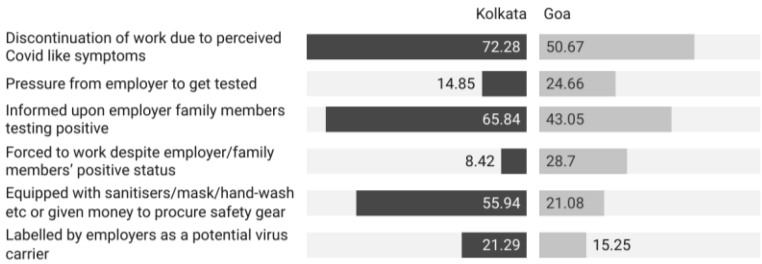
Category	Percentage of Domestic Workers Affected (%)
No access to lunch breaks	33
No access to toilets	24
No access to food and water at the workplace	18
Prohibited from using the same utensils as employers	26
Prohibited from using the same furniture as employers	40
Prohibited from wearing footwear	22
No access to leave for illness	13

Source: Authors survey calculations

While the unions have not resulted in direct championing for better working conditions, it has created a safe space for the women to find a solution, and 'show up' for each other (both socio-emotionally and physically). A respondent shared an abhorrent case the union tackled: *"One of our friend's employer once denied her pay. When she protested they locked her in the house. When she did not return all of us went there but the security guard did not allow us to enter. We conveyed everything to the guard and the girl was unlocked after that."*

Health and safety are critical aspects of domestic work but remain severely neglected due to the privatized and informal nature of the sector. The pandemic narratives further highlighted these vulnerabilities, revealing systemic inequities and exploitative practices. In Goa, 78% of respondents reported no employer-provided health measures, while this figure was 81% in Kolkata. Domestic workers were often expected to self-fund COVID-19 tests, continue working despite infected family members, and were rarely provided with protective gear. Moreover, they were stigmatized as "carriers" of the virus, with many losing their jobs abruptly at the mere suspicion of illness. This termination, devoid of relief packages or alternative work opportunities, underscores the precariousness and lack of social protections in the sector.

Table 6: COVID protocols and working conditions



Source: Authors survey calculations

Despite being in trade unions respondents were unable to quantify and advocate for health risks and organisational hazards. Most of the workers from both cities cited discomfort due to bending (63%), standing for prolonged hours (53.2%), and working for long hours without food (32%). Respondents reported back pain, swelling, skin infections or burning incidents when cooking, hand pain and heat strokes during the summer. A respondent shared about her health ordeal, *"Sometimes I have to wait for 5-6 hours, so I avoid drinking water in the morning. I have developed a problem in my kidney due to this. I leave for work at 7 am and return at 2 pm. I get the chance to go to the toilet after returning from work so I also have urinary tract infections frequently"*. A lack of health protocols for the DWs was only amplified by a lack of empathy and accountability by employers. Respondents shared that upon articulating their health concerns they were met with statements such as, *"If you have so much pain in your body then leave the work"*, or *"Why do you expect special treatment? This is part and parcel of this kind of work"*.

4. Conclusion

The fact remains that domestic work remains at the fringes of the urban informal economy in India; although the number of workers are growing in Indian cities and they are conspicuous in urban work space. It's a case of visible work but invisible workers. As domestic space is still not recognized as workspace, labour rights like minimum wage, paid leave, pension, provident fund, medical facilities, occupational safety health, collective bargaining are still elusive for domestic workers. Trade unions of domestic workers have come up certain states, including Kolkata and Goa, but those TUs could not make much headway into ensuring basic labour entitlements.

Domestic workers' trade unions in Goa and Kolkata face significant challenges in addressing the systemic neglect of domestic work. A major issue is their exclusion from the tripartite framework of labour administration, which comprises state officials, employers, and union representatives. This framework is critical for policy decisions such as fixing minimum wages and workplace protections. However, domestic workers' trade unions remain too small to represent the sector effectively and are unable to gain access to this structure. The absence of recognition for domestic work as scheduled employment further compounds their exclusion, as decisions on minimum wages are made by tripartite entities like the State Minimum Wages Advisory Board. Without representation in these forums, domestic workers' needs remain unaddressed in broader labour policy negotiations.

These exclusions from the tripartite decision-making bodies are because that most of the TUs in domestic work space are independent trade unions and outside the mainstream trade union ecosystem. Historically, trade union formation and growth are attached to political parties in India. All major trade unions in today's India, are attached to existing political parties with an exception of SEWA which is mobilizing women in unorganized sectors. Trade unions are given recognition as Central Trade Unions (CTU) based on membership figures. Mainstream politically affiliated trade unions get the recognition based on membership figures. First 12 CTUs get recognition as CTUs from the government (by, default also by the employers) and can participate in tripartite consultation and social dialogue. TUs in domestic work are small and not part of major mainstream TUs and thus get excluded from the decision-making process.

Resource inadequacy and leadership constraints further limit the capacity of domestic workers' trade unions. These unions often lack financial resources due to their small membership sizes and their inability to affiliate with politically supported mainstream trade unions. In Kolkata, union leaders have expressed concerns over insufficient funds to support mobilization efforts. Members have also pointed to the antagonistic attitude of parent NGOs, which hinders progress and leaves unions dependent on civil society interventions. This dependency has prevented unions from transitioning into independent entities capable of effectively advocating for basic labour rights.

The fragmented, casual, and invisible nature of domestic work adds to the difficulties of organizing workers under traditional trade union models. While NGOs provide initial guidance, they often lack the technical expertise and long-term resources required to sustain unions, leaving them isolated and under-resourced. Many domestic workers' trade unions resort to symbolic actions, such as organizing events for International Domestic Workers' Day, which are valuable for visibility and solidarity but insufficient to address systemic issues.

The absence of representation in tripartite systems underscores the need for trade unions to evolve in their structure and approach. Integrating financial support systems, technical guidance, and targeted policy advocacy tailored to the unique challenges of domestic workers is essential. For instance, structural reforms that create viable employment opportunities outside the domestic work sector can reduce reliance on this form of labour, while strengthening unions' capacity to address systemic issues.

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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

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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 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

[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.

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 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].

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[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.

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 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

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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.

urgency of strong legislative measures capable of providing effective protection at both national and international levels".

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.

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[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

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 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

[9] Irpimedia, *"Come ti senti"*, 2023, https://irpimedia.irpi.eu/cometisenti/ (accessed June 10, 2025).

and forms of dependency on the internet and social media. One in three respondents explicitly referred to depression.
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.

[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.

"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 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."

[12] Ziccardi G., *Online Political Hate Speech in Europe: The Rise of New Extremisms*, EE Publishing, Northampton, 2020.

"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 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

[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.

respond to danger through "fight or flight" mechanisms; however, when 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

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