

The application of the EU Charter of Fundamental Rights in Italy. The Labour Law perspective

LA APLICACIÓN DE LA CARTA DE LOS DERECHOS FUNDAMENTALES
DE LA UE EN ITALIA. LA PERSPECTIVA DEL DERECHO LABORAL

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Abstract: This paper examines the application of the EU Charter of Fundamental Rights (CFR) in the Italian legal order, with a specific focus on labour law. Since the Charter gained binding force with the Treaty of Lisbon, its integration into Italy's constitutional framework—characterised by strong constitutional rights protection and the primacy of EU law—has generated important developments in the protection of workers' rights. The analysis explores how Italian courts, particularly the Constitutional Court and the Court of Cassation, employ the Charter in cases concerning non-discrimination, dignity at work, data protection, collective rights, and the protection of "vulnerable workers". While the CFR is applied primarily in situations involving the implementation of EU law, Italian jurisprudence increasingly uses it as a normative parameter to interpret domestic provisions in conformity with EU fundamental rights. This interaction has strengthened judicial scrutiny over employers' powers, reinforced procedural guarantees for employees, and expanded protections in areas such as dismissal, privacy in the workplace, and atypical employment. Nonetheless, doctrinal and judicial debates remain regarding the exact scope of the Charter, its relationship with the Italian Constitution, and the need for consistent operational criteria. The study concludes that the CFR represents a dynamic and evolving tool in Italian labour law, enhancing the multilevel protection of fundamental rights while also posing challenges for legal certainty and systematic coherence.

Keywords: Work, dignity, equality and non-discrimination, fair remuneration, workplace safety, freedom of association, collective bargaining, strike, rest and holidays.

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Resumen: Este artículo examina la aplicación de la Carta de los Derechos Fundamentales de la UE (CDF) en el ordenamiento jurídico italiano, con especial atención al derecho laboral. Desde que la Carta adquirió fuerza vinculante con el Tratado de Lisboa, su integración en el marco constitucional italiano —caracterizado por una sólida protección de los derechos constitucionales y la primacía del derecho de la UE— ha generado importantes avances en la protección de los derechos de los trabajadores. El análisis explora cómo los tribunales italianos, en particular el Tribunal Constitucional y el Tribunal de Casación, emplean la Carta en casos relacionados con la no discriminación, la dignidad en el trabajo, la protección de datos, los derechos colectivos y la protección de los trabajadores vulnerables. Si bien la CDF se aplica principalmente en situaciones que implican la implementación del derecho de la UE, la jurisprudencia italiana la utiliza cada vez más como parámetro normativo para interpretar las disposiciones nacionales de conformidad con los derechos fundamentales de la UE. Esta interacción ha fortalecido el escrutinio judicial sobre las facultades de los empleadores, reforzado las garantías procesales para los empleados y ampliado las protecciones en ámbitos como el despido, la privacidad en el lugar de trabajo y el empleo atípico. Sin embargo, aún persisten debates doctrinales y judiciales sobre el alcance exacto de la Carta, su relación con la Constitución italiana y la necesidad de criterios operativos consistentes.

Palabras clave: Trabajo, dignidad, igualdad y no discriminación, renumeración justa, seguridad en el trabajo, libertad de asociación, negociación colectiva, huelga, descanso y vacaciones.

Índice: 1. El derecho a la vida, la integridad personal y la seguridad en el trabajo (Giulia Perri). 2. Prohibición de la esclavitud y el trabajo forzoso (Giulia Perri). 3. Respeto a la vida privada y familiar. Conciliación de la vida laboral y familiar (Umberto Izzo). 4. Datos personales y la relación laboral (Giulia Perri). 5. Libertad de pensamiento, conciencia, religión y expresión (Umberto Izzo). 6. Libertad de asociación, reunión y negociación colectiva (Gianluca Giampà). 7. Libertad profesional y derecho al trabajo (Angelo Casu).

I. The right to life, personal integrity, and workplace safety (Giulia Perri)

The Charter of Fundamental Rights of the European Union, with the aim of strengthening the protection of fundamental rights in light of the evolution of society, social progress, and scientific and technological developments - as stated in its preamble - formally recognises the rights, freedoms, and principles contained therein.

Title I of the Charter, devoted to the sphere of “Dignity”, opens with its first three articles, which respectively proclaim the right to dignity, to life, and to the integrity of the person. Article 1 affirms the inviolability of human dignity, which must be respected and protected. Article 2, which enshrines the right to life, establishes that everyone has the right to life and that no one may be condemned to the death penalty or executed. Article 3 safeguards each individual's right to physical and mental integrity, specifying that, in the fields of medicine and biology, the free and informed consent of the person concerned must be respected under the conditions defined by law; that eugenic practices¹, particularly those aimed at the selection of persons, are prohibited; that making the human body or its parts, as such, a source of financial gain is forbidden; and that reproductive cloning of human beings² is banned³.

- 1 See PAVONE, Ilja Richard, «Diritti umani, dignità umana, modifica della linea germinale nell'epoca del CRISPR/Cas9», in *Corti supreme e salute*, 2025, 3, 1 ff. Upon closer examination, the reference to eugenic practices (article 3, paragraph 2) does not pertain to gene therapy, as clarified in the Explanations to the Charter of Nice, which state that: «The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its article 7(1) (g))». See Explanations relating to the Charter of Fundamental Rights (2007/C 303/02), in *Official Journal of the European Union*, 14.12.2007, C 303/17; for further clarifications see also PAVONE, Ilja Richard, «Diritti umani, dignità umana, modifica della linea germinale nell'epoca del CRISPR/Cas9», in *Corti supreme e salute*, 2025, 3, 23.
- 2 See PAVONE, Ilja Richard, «La Convenzione europea sulla biomedicina», Giuffrè Editore, Milano, 2009, 75 ff.; PAVONE, Ilja Richard, «Aspetti giuridico-internazionali dell'ingegneria genetica», in DELLA FINA, Valentina (ed. by), *Discipline giuridiche dell'ingegneria genetica*, Giuffrè Editore, Milano, 2008, 196.
- 3 These prohibitions have been reaffirmed in the Universal Declaration on Bioethics and Human Rights adopted by UNESCO in 2005. For a detailed overview on this topic see CAPORALE, Cinzia,

It is appropriate to recall, as a preliminary observation, that the original function of labour and labour law was to restore balance between parties that are only formally situated on an equal footing⁴. Thus, when addressing the rights to life, dignity, health, physical integrity, and moral personality of the worker, and when situating these rights specifically within the workplace, the primary legislative reference in the Italian legal system must necessarily be article 2087 of the Civil Code of 1942. This provision, which still serves as the “keystone” of the vast and complex regulatory system governing the protection of health and safety at work⁵, originally imposed not only obligations concerning the protection of the worker's physical integrity, but also those concerning the protection of his or her moral personality⁶. The normative content of article 2087 of the Civil Code establishes that «the employer shall adopt, in the operation of the enterprise, all measures that, according to the nature of the work, experience, and technology, are necessary to safeguard the physical integrity and moral personality of the workers»⁷.

The article thus constitutes both an open and a closing norm within the system of prevention: the provision does not exhaustively list the obligations incumbent upon the employer, nor do specific rules limit the scope of the employer's duty of safety; rather, they represent particular specifications of it⁸. Even a brief analysis of this obligation reveals its fundamental elements. Firstly, the person bound by this obligation is the employer, interpreted broadly by case law, since the provision applies also to non-entrepreneurial employers. Secondly, the employer's safety obligation consists in adopting all necessary measures to protect the worker's physical integrity and moral personality. Finally, such measures must be taken in accordance with three criteria specified by the law: the nature of the work, referring to the specific risks of the job or of the working environment; experience, meaning the precautions already implemented within the enterprise; and technology, the criterion that ensures the dynamic nature of the provision. It is precisely this last criterion, combined with the others, that allows one to view the employer's duty as one requiring the adaptation of the organisation to advances in scientific and technological progress, through constant updating⁹. The object of protection under this provision is not only the worker's physical and mental integrity, from a medical, accident-prevention, and social-relations perspective, but also his or her moral personality, and thus, more broadly, dignity itself (consider, for instance,

PAVONE, Ilja Richard (ed. by), «International Biolaw and shared ethical principles. The Universal Declaration on Bioethics and Human Rights», *Routledge*, London, 2018.

4 ZILIO GRANDI, Gaetano, «Etica del lavoro e dignità del lavoratore», in *Lavoro Diritti Europa*, 2025, 1, 2.

5 See DELOGU, Angelo, *La funzione dell'obbligo generale di sicurezza*, Aras Edizioni, Fano, 2021, 47.

6 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 125.

7 Translated by the author.

8 ALBI, Pasqualino, «Adempimento dell'obbligo di sicurezza e tutela della persona», in *Lavoro e diritto*, 2004, 4, 677.

9 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 130.

cases of workplace harassment¹⁰ - “mobbing” - straining, or work-related stress). With the adoption of the Constitution, the protection afforded by article 2087 of the Civil Code acquired a new interpretative dimension, as the concept of prevention implicit in that article came to be understood as a primary commitment¹¹. It is undisputed that the Italian Constitution recognises labour as a foundational value of the legal order, emphasising already in its first article that Italy is a democratic Republic founded on labour¹², identifying it as the principal form of expression of human personality¹³. The following article affirms the recognition of the inviolable rights of man, «both as an individual and in the social groups where his personality is expressed»¹⁴, and it is evident that one such social context is the workplace.

The Constitution, therefore, may be regarded as programmatically oriented toward protecting the worker as the weaker party in the employment relationship (see articles 4, 35, and 36), and from articles 3, 36, and 38 it follows that above all else the dignity of the working person must be guaranteed¹⁵. At this point, the right to health, recognised by Article 32 of the Constitution as a fundamental right of the individual and as an interest of the community, required an adequate protective standard. This is further reinforced by article 41, paragraph 2¹⁶, which identifies health as a limitation on the exercise of private economic initiative, stipulating that such initiative may not be conducted in a manner that causes harm to health, the environment, safety, freedom, or human dignity, thus elevating these to

10 See CASU, Angelo, «Considerazioni sul recente orientamento di legittimità in tema di mobbing», in *Giurisprudenza Italiana*, 2024, 8/9, 1905-1912.

11 See MEZZACAPPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 127.

12 SANTORO-PASSARELLI, Giuseppe, «Dignità del lavoratore e libertà di iniziativa economica, rivoluzione industriale 4.0 e rapporto di lavoro dei riders», in *Labor*, 2022, 6.

13 See MEZZACAPPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 128.

14 Translated by the author.

15 SANTORO-PASSARELLI, Giuseppe, «Dignità del lavoratore e libertà di iniziativa economica, rivoluzione industriale 4.0 e rapporto di lavoro dei riders», in *Labor*, 2022, 7. The Author highlights that, even more decisively, the combined provisions of articles 1 and 36 of the Constitution identify labour as the precondition for a dignified existence, which must in any case be guaranteed to the worker. This can easily be inferred from the fact that article 36 removes remuneration from the logic of the market by establishing that it must, in any event, be adequate. Likewise, article 38 ensures that, even in cases of involuntary unemployment, workers are provided with and guaranteed the means necessary to meet their essential needs. See also BELLOMO, Stefano, «Lavoro e dignità economica: giustizia retributiva ed interventi di sostegno al reddito e all'occupabilità», in *Rivista italiana di diritto del lavoro*, 2, 2023, 215 ff.

16 See LAZZARI, Chiara «Datore di lavoro e obbligo di sicurezza», in *I Working Papers di Olympus*, 2012, 7, 4-5.

values that prevail over economic freedom¹⁷. As regards article 2087 of the Civil Code, the breadth and effectiveness of the legal protection it provides are demonstrated precisely by its practical applications in safeguarding the worker's person within the workplace¹⁸. The protection of the worker's person has progressively gained increasing importance, becoming a particularly significant branch of labour law due to the specificity of its regulatory framework. Initially, however, the right to health and safety at work was approached primarily in a compensatory and individual dimension rather than a preventive and collective one¹⁹. Article 2087 itself originally served a compensatory function, although its interpretation in the light of constitutional principles gave rise to a more robust protection of health and safety²⁰. Nonetheless, until roughly twenty years ago, cases in which a judge was asked to order the employer to comply with the duty of safety were rare. This "marginalisation" of the preventive function of the obligation prompted reflection on its foundation and content²¹. Today, by contrast, the provision is constantly applied, particularly when it is necessary to fill protection gaps by resorting to general principles.

With Article 9²² of Law No. 300 of 1970 (the "Workers' Statute"), enacted precisely to address the harmfulness of workplaces in the 1960s, the concern for safety was projected onto a collective²³, rather than merely individual, plane. Although now deemed indirectly repealed by Legislative Decree No. 81 of 2008, that provision represented a clear implementation of

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- 17 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 129.
- 18 See NATULLO, Gaetano, *Continuità e innovazione nuovo Codice della sicurezza sui luoghi di lavoro*, in *Diritto Lavori Mercati*, 2009, 2, 340.
- 19 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 115.
- 20 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, Ferraro Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 116.
- 21 ALBI, Pasqualino, «Adempimento dell'obbligo di sicurezza e tutela della persona», in *Lavoro e diritto*, 2004, 4, 676.
- 22 The article provides that «Workers, through their representatives, shall have the right to monitor the implementation of regulations concerning the prevention of industrial accidents and occupational diseases, and to promote the research, development, and enforcement of all measures suitable for the protection of their health and physical integrity».
- 23 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, Franco Angeli, Milano, 2020, 116.

the constitutional principles concerning safety and health protection²⁴. This same approach was subsequently developed through European legislation (notably Directive 89/391/EEC), characterised by a preventive *ratio* focused on risk assessment and the distribution of obligations²⁵. Following several particularly tragic events, such as the 2007 *ThyssenKrupp* case in Turin, the Government undertook a process of rationalising the regulatory framework²⁶ in light of the evident weaknesses of Italy's prevention system, which was marked by a stark contrast between the high level of guarantees formally established and the low level of their actual effectiveness in workplaces²⁷. The urgent need to remedy a situation «that had surpassed all limits of tolerability, in relation both to occupational accidents and to occupational diseases»²⁸ culminated in the delegation to the Government for the reorganisation and reform of the sector (Article 1, Law No. 123 of 2007) and the subsequent adoption of Legislative Decree No. 81 of 9 April 2008. This decree consolidated the various regulations issued up to that point, later amended and supplemented by Legislative Decree No. 106 of 2009²⁹ and further subsequent modifications. The field of occupational health and safety has always been governed by a plurality of sources-international (for example, ILO Convention No. 155 of 1981) and European (formerly Community), such as the aforementioned "Framework Directive" and subsequent directives regulating specific sectors³⁰. The Italian legal framework, for its part, had been characterised by fragmented provisions requiring reorganisation³¹, which was achieved with Legislative Decree No. 81/2008. That decree now contains the general principles of the preventive system, both with respect to institutional structures and to the management of workplace prevention³².

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- 24 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, Franco Angeli, Milano, 2020, 140.
- 25 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all'evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, Franco Angeli, Milano, 2020, 117.
- 26 See NATULLO, Gaetano, «Continuità e innovazione nuovo Codice della sicurezza sui luoghi di lavoro», in *Diritto Lavori Mercati*, 2009, 2, 324.
- 27 See NATULLO, Gaetano, «Continuità e innovazione nuovo Codice della sicurezza sui luoghi di lavoro», in *Diritto Lavori Mercati*, 2009, 2, 324.
- 28 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 17 (translated by the author).
- 29 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 18.
- 30 E.g. Directive 90/270/EEC on display screen equipment, Directive 90/269/EEC on manual handling of loads, Directive 2003/88/EC on working time, Directive 94/33/EC on young workers and Directive 92/85/EEC on pregnant workers.
- 31 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 21.
- 32 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 27.

The discipline established by Legislative Decree No. 81/2008 thus confirms the criterion originally enshrined in article 2087 of the Civil Code—namely, the principle of “maximum safety”³³—which has since been consistently affirmed and applied in case law³⁴. As to its scope of application, Article 2 of Legislative Decree No. 81/2008 defines the worker as «a person who, irrespective of the type of contract, performs, with or without remuneration, [...] work activity within the organisation of a public or private employer»³⁵, thereby ascribing to the worker a «complex dimension»³⁶. This allows for the inclusion within the notion of “worker” of all persons functionally involved in the employer’s³⁷ organisational sphere and whose work performance serves the employer’s purposes, whatever their contractual status may be. Thus (with the exception of domestic work), not only subordinate employees but also workers who, though not formally employed, are subject to the employer’s direction (e.g., agency workers), as well as self-employed workers whose services, integrated within the employer’s organisation, expose them to occupational risks³⁸. Conversely, self-employed individuals who, while working for an employer, are not integrated into the employer’s organisation are excluded. Included, however, are those who, though not physically present in the employer’s workplace, are nonetheless functionally integrated into the organisation, enabling the employer to pursue its objectives (e.g., teleworkers)³⁹. Through this broad and universalistic⁴⁰ notion of “worker”, the scope of the decree extends to all contractual forms, whether autonomous or subordinate, including flexible ones (for which, however, the protections afforded to full-time, open-ended subordinate employment have been extended, even though more specific safeguards might have been preferable in view of the discontinuity and fragmentation of so-called new forms of work⁴¹)⁴².

33 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all’evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 130.

34 See MEZZACAPO Domenico, DELOGU Angelo, VERZARO Matteo, CAIROLI Stefano, FERRARO Fabrizio, «Il contributo all’evoluzione della disciplina in materia di salute e sicurezza delle lotte sindacali coeve al CRD: retrospettiva storica e prospettive di attualità», in STANZANI, Claudio (ed. by), *Il Centro Ricerche e Documentazione rischi e danni da lavoro (1974-1985). Uno studio storiografico, sociologico e giuridico di una stagione sindacale*, FrancoAngeli, Milano, 2020, 130.

35 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 36.

36 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 37.

37 See LAZZARI, Chiara, «Datore di lavoro e obbligo di sicurezza», in *I Working Papers di Olympus*, 2012, 7, 1 ff.

38 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 37.

39 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 37.

40 DELOGU, Angelo, «La definizione di lavoratore in materia di salute e sicurezza: dall’universalità della tutela ai nuovi bisogni di tutela», in *Diritto della Sicurezza sul Lavoro*, 2020, 1, 61.

41 See BELLOMO Stefano, FERRARO Fabrizio, *Modern Forms of Work. A European Comparative Study*, Sapienza University Press, 2020.

42 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 46.

A portion of legal scholarship-both past and recent-has argued that article 2087 of the Civil Code should apply to all types of employment relationships involving the protection of the worker's physical integrity and moral personality, regardless of the contractual form⁴³.

The constitutional dimension of the value protected by article 2087 may indeed justify an extensive interpretation both as to the persons protected and as to the parties bound by the obligation. It is, in fact, plainly inadmissible to deny a worker protection of his or her health on the basis of contractual type, or to maintain that a public administration, by virtue of not being an entrepreneur, is exempt from the contractual duty of safety⁴⁴. The concrete focus on occupational health and safety culminated in the legislative delegation for the reorganisation and reform of the subject matter (article 1 of Law No. 123/2007) and, subsequently, in the completion of that process with the definitive approval, on 1 April 2008, of the corresponding Legislative Decree-significantly published in the Official Gazette on the eve of Labour Day, that year dedicated in particular to workers' health and safety⁴⁵.

II. Prohibition of slavery and forced labor (Giulia Perri)

Within Title I of the Charter of Fundamental Rights, devoted to "Dignity", Article 5, entitled "Prohibition of Slavery and Forced Labour", provides that no one shall be held in slavery or servitude, that no one shall be required to perform forced or compulsory labour, and that trafficking in human beings is prohibited. At the international level, ILO Convention No. 29 of 1930 already began with the following commitment in its first article: «Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period». In the Italian legal system, the prohibition of enslavement is enshrined in article 600 of the Criminal Code. This provision states that: «Anyone who exercises over another person powers corresponding to those of the right of ownership, or anyone who reduces or maintains a person in a state of continuous subjection by forcing him or her to perform labour or sexual services, to beg, or otherwise to engage in unlawful activities involving exploitation, or to submit to the removal of organs, shall be punished by imprisonment for a term of eight to twenty years. The reduction or maintenance in a state of subjection occurs when such conduct is carried out through violence, threats, deceit, abuse of authority, or exploitation of a situation of vulnerability, physical or psychological inferiority, or necessity, or by the promise or payment of money or other benefits to a person having authority over the victim»⁴⁶. It is worth noting that, in Italy, labour itself has historically been the means through which the majority of individual and collective rights enshrined in the Constitution have been claimed

43 DELOGU, Angelo, «La definizione di lavoratore in materia di salute e sicurezza: dall'universalità della tutela ai nuovi bisogni di tutela», in *Diritto della Sicurezza sul Lavoro*, 2020, 1, 66.

44 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 54.

45 PASCUCCI, Paolo, *La tutela della salute e della sicurezza sul lavoro. Il Titolo I del d.lgs. n. 81/2008 dopo il Jobs Act*, Aras Edizioni, 2017, 17.

46 Translated by the author.

and affirmed⁴⁷. In this respect, article 603-bis⁴⁸ of the same Criminal Code criminalises unlawful intermediation and labour exploitation.

Specifically, the provision punishes not only those who «recruit labour with the purpose of assigning it to work for third parties under conditions of exploitation, taking advantage of the workers' state of need», but also those who «use, hire, or employ labour, even through intermediaries», «subjecting workers to exploitative conditions and taking advantage of their state of need». This provision is in fact the result of two separate legislative interventions: the first contained in Decree-Law No. 138 of 13 August 2011, which introduced the new offence in Chapter III, Title XII, Book II of the Criminal Code, among crimes against individual personality; and the second enacted by Law No. 199 of 2016, which entirely reformulated and expanded article 603-bis in the context of a broader set of measures aimed at preventing and combating labour exploitation in agriculture⁴⁹. Before the introduction of this offence, the absence of a provision specifically criminalising “caporalato” (gangmastering or unlawful labour intermediation) had compelled courts to subsume such conduct under other offences, such as enslavement, private violence, bodily harm, or extortion. However, this allowed punishment only for the most serious forms of exploitation. Moreover, the impact of such conduct on the worker's dignity and freedom could be prosecuted solely under the offence of reduction to or maintenance in slavery under article 600 of the Criminal Code⁵⁰. The introduction of this new and specific criminal offence was one of the consequences of the first strikes by immigrant agricultural labourers that took place in several major agricultural centres of southern Italy in

47 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 113.

48 Article 603-bis, Unlawful Intermediation and Labour Exploitation: «Unless the act constitutes a more serious offence, any person who commits the following shall be punished with imprisonment from one to six years and a fine ranging from 500 to 1,000 euros for each recruited worker: recruits manpower with the purpose of assigning it to work for third parties under exploitative conditions, taking advantage of the workers' state of need; employs, hires, or makes use of manpower - including through the intermediation activity referred to in point 1) - subjecting workers to exploitative conditions and taking advantage of their state of need. If the acts are committed through violence or threats, the penalty shall be imprisonment from five to eight years and a fine from 1,000 to 2,000 euros for each recruited worker. For the purposes of this article, the existence of one or more of the following circumstances shall be considered an indication of exploitation: repeated payment of wages that are clearly inconsistent with the national or territorial collective agreements concluded by the most representative trade unions at the national level, or otherwise disproportionate to the quantity and quality of the work performed; repeated violation of the provisions on working hours, rest periods, weekly rest, mandatory leave, or holidays; violations of the regulations concerning workplace health and safety; subjection of the worker to degrading working conditions, surveillance methods, or housing situations. The following circumstances constitute specific aggravating factors and entail an increase of the penalty by one third to one half: the number of recruited workers exceeds three; one or more of the recruited persons are minors of non-working age; the act exposes the exploited workers to situations of serious danger, having regard to the nature of the work to be performed and the working conditions».

49 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 122.

50 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 123.

the early 2010s⁵¹, at a time when the phenomenon of caporalato had already been expanding for years. The inclusion of the new offence in the Criminal Code through an emergency decree, as well as its adoption within an additional economic and financial stabilisation package, nevertheless revealed the absence of a comprehensive reflection on the broader phenomenon of unlawful intermediation and labour exploitation⁵².

The most significant innovation introduced by Law No. 199 of 29 October 2016 was therefore the reformulation of the offence of labour exploitation, which had not been included in the Government's original draft and was introduced during parliamentary deliberations. Parliament redrafted article 603-*bis* of the Criminal Code, taking into account many of the criticisms directed at its earlier formulation and introducing a specific offence attributable to the employer who exploits workers by taking advantage of their state of need⁵³. The principal innovation of the new version of article 603-*bis* thus lies in broadening the categories of conduct constituting the offence, thereby targeting an entire system of production based on the exploitation of workers recruited even without violence, threats, or unlawful intermediation by a gangmaster. In this way, the offence of labour exploitation is suited to addressing undeclared work and exploitative practices beyond the agricultural sector, where unlawful intermediation is not always the typical recruitment method and where exploitation often occurs without the use of violent, threatening, or intimidating behaviour towards the worker⁵⁴.

III. Respect for private and family life. Work-life balance (Umberto Izzo)

The protection of private and family life represents a fundamental pillar of both European and national legal systems, grounded in the recognition of the individual as a bearer of dignity and autonomy.

Article 7 of the Charter of Fundamental Rights of the European Union states that «everyone has the right to respect for his or her private and family life, home and communications».

The Italian Constitution also offers broad and structured protection for private and family life. It begins with article 2, which affirms «the Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human

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- 51 As the Author recalls, it was above all the strikes of agricultural labourers that took place in Rosarno in 2010 and in Nardò in 2011 - events that received significant media attention - that brought to the attention of national public opinion the appalling working and exploitative conditions to which thousands of foreign migrants, employed in seasonal agricultural work in southern Italy, were subjected. See again FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 122 ff.
- 52 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 123.
- 53 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 129.
- 54 FERRAJOLI, Carlo Ferruccio, «Il reato di sfruttamento del lavoro. Dal contrasto al caporalato all'attuazione della Costituzione», in *Costituzionalismo.it*, 3, 2023, 132.

personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled». article 13 reinforces this by declaring personal liberty to be inviolable, while article 14 ensures the protection of the home as a private and secure space. In addition, article 29⁵⁵ explicitly recognizes the family as a natural and fundamental institution within society, deserving of legal protection.

Through constitutional jurisprudence, these provisions have been interpreted to include broader rights such as privacy, personal integrity, individual self-determination and – more recently – the right to gender identity⁵⁶.

In the field of labour law, the right to respect for private life assumes a particularly significant dimension. The inherently personal nature of the employment relationship, especially in the context of subordinate work, creates an inevitable imbalance of power between employer and employee. The employer's managerial, organizational, and supervisory powers often risk extending beyond the scope of the employment performance itself, potentially encroaching on the employee's private and family life⁵⁷.

Since the regulation of personal data will be addressed in detail in the following sections⁵⁸, this section will examine the main legislative measures aimed at achieving an effective balance between professional obligations and personal life, with a specific focus on parental leaves and time flexibility.

1. Maternity leave

In the Italian legal system, maternity is protected by the Constitution⁵⁹, although such protection is still framed by a view that emphasizes the woman's role within the family – rather than from a perspective aimed at promoting a genuine work-life balance between motherhood and professional life⁶⁰.

As will be discussed in the following sections, the tendency to encourage the reconciliation of motherhood and work, along with greater paternal involvement, has only emerged through subsequent legislation, which has progressively extended the enjoyment of certain rights to working fathers⁶¹.

55 «The Republic recognises the rights of the family as a natural society founded on marriage. Marriage is based on the moral and legal equality of the spouses within the limits laid down by law to guarantee the unity of the family».

56 See Cass. 20 July 2025, No. 15138; Cost. Court 24 July 2024, No. 143.

57 Rossi, Nicolo', *Contratto di lavoro e vita privata. Profili problematici del contratto sui lavoratori subordinati*, Giappichelli, Torino, 2023, 1-2.

58 See, *infra*, par. 5.

59 «The Republic assists the formation of the family and the fulfilment of its duties, with particular consideration for large families, through economic measures and other benefits [...]» (art. 31); «Working women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child [...]» (art. 37).

60 DEL PUNTA, Riccardo, *Diritto del lavoro*, Giuffrè, Milano, 2021, 653.

61 IZZO, Umberto, «Permisos de paternidad, igualdad de género y familias homoparentales: el caso de Italia en comparación con otros países de la Unión Europea», in *Revista Justicia & Trabajo*, 5, 2024, 110.

Legislative Decree No. 151 of 2001, as amended by Legislative Decree No. 80 of 2015, contains the full body of provisions regarding the protection and support of maternity and paternity.

Specifically, Article 2 defines maternity leave as the mandatory suspension from work of the female employee.

The law, under its Article 16, strictly prohibits the employment of women during the following periods: the two months preceding the expected date of childbirth; should the birth occur after the expected date, during the time between the expected and actual date; the three months following childbirth; any days not used prior to childbirth in the event of premature delivery, which are to be added to the post-partum leave, even where the total of the pre- and post-natal periods exceeds five months; or one month prior to childbirth, if the option provided by article 20 of the aforementioned decree is exercised. As an alternative to the above arrangements, female employees may opt to suspend work exclusively after childbirth, within the five months following the event, provided that a specialist physician from the national health service (or one affiliated with it), along with the occupational health physician responsible for workplace safety, certify that such an option poses no risk to the health of either the mother or the child.

Pursuant to article 26, maternity leave may also be requested in the cases of adoption or foster care of a minor. In the case of adoption, the leave is available for the first five months following the child's entry into the family; in the case of foster care, the leave may be taken for a maximum of three months within the first five months of placement.

Throughout the entire period of maternity leave, female workers are entitled to a daily allowance equal to 80% of their salary.

2. Paternity leave

Parents are often relegated to a marginal role within the family context, frequently being regarded merely as economic providers (following the so-called *male breadwinner* model), rather than as active participants in the care and upbringing of their children⁶².

This not only undermines the overall interests of the family by hindering a fair distribution of parental responsibilities and excluding fathers from assuming an equal role in family life, but also devalues the dignity of the opposite sex by reinforcing outdated gender stereotypes that are ill-suited to contemporary society.

Nevertheless, in recent years, paternity leave has increasingly assumed a more prominent role in the context of work-life balance.

62 As a matter of fact, 44% of Europeans believe that a woman's most important role is to take care of her home and family; 43% believe that a man's most important role is to earn money (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *A Union of Equality: Gender Equality Strategy 2020-2025*).

Under Italian law, in implementation of Directive (EU) 2019/1158, Legislative Decree No. 105 of 2022 – amending Legislative Decree No. 151 of 2001 – introduced both mandatory and alternative paternity leave.

Specifically, the newly added article 27-*bis*, paragraph 1, entitles the employed father to take leave from work for a period of ten working days – non-divisible into hours and usable on a non-consecutive basis – within the time frame spanning from two months prior to the expected date of birth to five months thereafter. This entitlement also applies in the event of perinatal death of the child. In the case of multiple births, the duration of the leave is extended to twenty working days.

Legislative Decree No. 105 of 2022 also confirms that paternity leave is an autonomous right of the father and, as such, is additional to maternity leave. It may be taken even during the maternity leave period of the working mother.

Pursuant to article 28, the leave is also available to adoptive or foster fathers and is recognized for workers entitled to alternative paternity leave.

As for financial treatment, article 29 provides that during the entire period of mandatory paternity leave, a daily allowance equal to 100% of the employee's remuneration is granted. These leave periods are counted towards seniority for all purposes, including the thirteenth-month salary or holiday bonuses and paid vacation.

Vacation days or other absences to which the employee may be entitled must not coincide with the paternity leave period.

By contrast, alternative paternity leave refers to the father's right to abstain from work in place of maternity leave. The father may take such leave for the entire duration of the maternity leave, or for the remaining portion thereof, in the event of the mother's death or serious illness, abandonment of the child, or in cases where the child is placed exclusively in the father's custody.

2.1. Parental leave equality: Constitutional Court recognizes rights of intentional mothers

With judgment No. 115, filed on 21 July 2025, the Italian Constitutional Court declared the constitutional illegitimacy of article 21-*bis* of Legislative Decree No. 151 of 26 March 2001, insofar as it fails to recognise the right to mandatory paternity leave for the non-biological second mother, the so-called "intentional mother", in a same-sex female couple who are both registered as parents in the civil status records.

Indeed, Legislative Decree No. 105 of 2022 had not fully implemented Directive (EU) 2019/1158 regarding the subjective scope of its application, as it failed to include the second equivalent parent within its protections⁶³.

63 RENGÀ, Simonetta, «I congedi di paternità e parentali: da una direttiva prudente a un'occasione mancata», in (edited by) RENGÀ, Simonetta, *Lungo la strada della conciliazione: spunti per il dibattito*, Giappichelli, Torino, 2023, 10.

The mentioned ruling therefore represents a historic turning point for LGBT+ rights in Italy, affirming the principle of substantive equality in parental recognition and care responsibilities, and aligning national legislation with the evolving European framework on family and non-discrimination.

3. Parental leave

In addition to maternity or paternity leave, parental leave is also provided for. This is defined as an optional period of leave available to either the mother or the father, which may be taken by both parents within the first twelve years of the child's life. The leave may be taken either as a continuous period or in separate segments and may not exceed eleven months in total in the case of a single parent or in the case of a parent who has been granted exclusive custody of the child pursuant to article 337-*quater* of the Italian Civil Code. In such cases, the other parent forfeits any unused portion of the leave.

This entitlement applies to the working mother, after the end of the maternity leave period, for a continuous or segmented period not exceeding six months, and to the working father from the birth of the child, for a continuous or segmented period also not exceeding six months. During this leave, an allowance equal to 30% of the average daily wage is payable, up to the child's twelfth year of life, for a maximum total period of nine months between both parents.

4. Time flexibility

Although there is no longer an established legal right to agile work (remote or flexible work) for parents in Italy – since the use of such arrangements now requires a mutual agreement between employer and employee – article 18, paragraph 3-*bis* of Law No. 81/2017 does provide a specific protection for working parents, establishing a priority right for parents of young or disabled children when requesting agile work arrangements. According to this provision: «public and private employers who enter into agreements for the performance of work in agile mode are, in any case, required to give priority to requests for agile work arrangements submitted by female and male employees with children up to twelve years of age, or with no age limit in the case of children with disabilities [...]».

Despite the existing legal framework, a stronger commitment from institutions and social partners is desirable to ensure that the evolving needs of modern families are effectively met. Remote working remains a valuable resource for parents, particularly after a period of parental leave. Promoting this mode of work not only supports the reconciliation of professional and family life, but also contributes significantly to employees' well-being and overall productivity.

IV. Personal data and the employment relationship (Giulia Perri)

Articles 7 and 8 of the Charter of Fundamental Rights, contained in Title II devoted to “Freedoms”, enshrine respect for private and family life and the protection of personal data.

The protection of the worker's private sphere⁶⁴, once primarily connected to article 7 - which establishes that «Everyone has the right to respect for his or her private and family life⁶⁵, home and communications» - is now increasingly understood in light of the protection of personal data. This right constitutes a safeguard against interference by others in one's private sphere and recalls the traditional conception of privacy as a guarantee of private and family life. Privacy is, in fact, the story of an evolving right whose origins date back to the late nineteenth century, when in the United States the need was first felt to protect the private sphere belonging to every individual⁶⁶. Article 8 of the European Convention on Human Rights, concerning the protection of personal data, establishes that everyone has the right to the protection of personal data concerning them and that such data must be processed fairly, for specified purposes, and on the basis of the consent of the person concerned or another legitimate basis laid down by law. The broader protection of the worker's "privacy"⁶⁷ is one of the cornerstones of labour law, essential to safeguard the worker's dignity⁶⁸, and it first developed in the 1970s⁶⁹. The areas of protection intersecting with privacy are, as mentioned, manifold.

The first major area concerns the protection of the worker from employer monitoring - a field in which privacy and dignity often overlap⁷⁰. In the Italian legal system, the immediate reference here is the Worker's Statute (Law No. 300 of 1970), which contains several provisions recognising and regulating the employer's power of control. The limitation of this right does not, in itself, prohibit checks on the correct performance of work⁷¹, as the employer's interest in verifying compliance mitigates the worker's expectation of confidentiality regarding their work activity⁷². The situation differs, however, when monitoring occurs without the worker's knowledge: covert surveillance constitutes a violation of the right to protection against unauthorised or unconscious interference within one's working sphere⁷³. Such monitoring is prohibited under Italian law, whether carried out by unidentified personnel not authorised as supervisory staff (article 3), or through automated systems intentionally designed for that purpose (article 4)⁷⁴.

64 See ICHINO, Pietro, *Diritto alla riservatezza e diritto al segreto nel rapporto di lavoro. La disciplina della circolazione delle informazioni nell'impresa* Milano, Giuffrè, 1979.

65 FOGLIA, Laura, «La privacy come limite alla subordinazione: diritto alla disconnessione e rifiuto della prestazione», in *Dirittifondamentali.it*, 2020, 2, 105.

66 See Francesca LAQUINTA, Alessandra INGRAO, «La privacy e i dati sensibili del lavoratore legati all'utilizzo di social networks. Quando prevenire è meglio che curare», in *Diritto delle Relazioni Industriali*, 2014, 4, 1029.

67 See PIZZETTI, Franco, *Privacy e il diritto europeo alla protezione dei dati personali. Dalla Direttiva 95/46 al nuovo Regolamento europeo*, Giappichelli, Torino, 2016.

68 ZILLI, Anna, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini Giuridica, Pisa, 2022, 27.

69 ZILLI, Anna, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini Giuridica, Pisa, 2022, 28.

70 CASILLO, Rosa, «La dignità nel rapporto di lavoro», in *WP C.S.D.L.E. "Massimo D'Antona"* .IT, 2008, 610 ff.

71 CASILLO, Rosa, «La dignità nel rapporto di lavoro», in *WP C.S.D.L.E. "Massimo D'Antona"* .IT, 2008, 610.

72 CASILLO, Rosa, «La dignità nel rapporto di lavoro», in *WP C.S.D.L.E. "Massimo D'Antona"* .IT, 2008, 610.

73 CASILLO, Rosa, «La dignità nel rapporto di lavoro», in *WP C.S.D.L.E. "Massimo D'Antona"* .IT, 2008, 611.

74 CASILLO, Rosa, «La dignità nel rapporto di lavoro», in *WP C.S.D.L.E. "Massimo D'Antona"* .IT, 2008, 611.

A watershed moment in this regard was the COVID-19 pandemic, which profoundly accelerated changes in work organisation and modalities, heightening concerns related to remote monitoring. article 4⁷⁵ of the Worker's Statute regulates the employer's use of audiovisual systems (such as cameras and other remote monitoring devices), including technological or digital tools (such as computers), establishing a number of restrictions. Firstly, audiovisual equipment and other instruments capable of remotely monitoring workers' activity may be used «solely for organisational and production-related needs, for workplace safety, and for the protection of company assets».

Their exclusive purpose, therefore, cannot be the direct supervision of employees' performance. Furthermore, there is a procedural requirement: such systems may be installed only following a collective agreement with the unitary or company trade union representatives, or, in their absence, upon prior authorisation from the territorial or central office of the National Labour Inspectorate. These authorisations serve to verify the legitimacy of the employer's declared needs justifying the installation.

There is, however, an exception: the provision does not apply to tools used by the worker to perform their duties or to instruments for recording attendance or access. Unlike monitoring devices, these tools fall outside the procedural guarantees set out in article 4(1) of the Worker's Statute⁷⁶. In such cases, productivity interests prevail over privacy, allowing more flexible use of these instruments even when they result in indirect monitoring. Nonetheless, paragraph 3 of the same article stipulates that the information collected may be used for all employment-related purposes only if the worker has been adequately informed about the use of such tools and the manner of the controls, and provided that the processing complies with Legislative Decree No. 196 of 30 June 2003 - enacted in implementation of EU Regulation (EU) 2016/679 (the General Data Protection Regulation, or GDPR), which now forms the principal normative foundation in this area⁷⁷.

Today, therefore, this provision allows the employer to use information gathered through such systems, or by accessing the tools used by the worker to perform their tasks, for all employment-related purposes⁷⁸. On the other hand, the protection of personal data often comes into tension with certain types of monitoring—such as surveillance via social networks, or health checks (Article 5 of the Worker's Statute) and the health surveillance procedures governed by Legislative Decree No. 81 of 2008. EU Regulation No. 679/2016 referred the issue of data processing in employment relationships to national legislation (Recital 155⁷⁹

75 Modified by article 23, Legislative Decree n. 151 of 2015.

76 D'ARCANGELO, Lucia, «Data protection e sicurezza sul lavoro: un documento di valutazione dei rischi (DVR) anche per la privacy?», in *Diritto della Sicurezza sul Lavoro*, 2024, 1, 52.

77 Francesca LAQUINTA, Alessandra INGRAO, «La privacy e i dati sensibili del lavoratore legati all'utilizzo di social networks. Quando prevenire è meglio che curare», in *Diritto delle Relazioni Industriali*, 2014, 4, 1032.

78 See ZILLI, Anna, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini Giuridica, Pisa, 2022, 30.

79 «The law of the Member States or collective agreements, including “company agreements,” may establish specific rules regarding the processing of employees’ personal data within the context of employment relationships, in particular concerning the conditions under which personal data may be processed on the basis of the employee's consent, for purposes related to recruitment, performance of the employment contract—including compliance with obligations established by

and Article 88⁸⁰), and the subsequent Legislative Decree No. 101 of 2018 amended several parts of Legislative Decree No. 196 of 2003⁸¹. This legislative intervention confirmed that the worker's consent is not required for the processing of their personal data, including sensitive data, by virtue of the exemptions provided for in Article 2-sexies of the latter decree.

The task of coordination lies with the Italian Data Protection Authority, whose actions have contributed to balancing the protection of privacy with the need for information to circulate within employment and labour markets to the benefit of workers⁸².

Under current law, certain categories of personal data enjoy enhanced protection: it is prohibited to process data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as genetic data, biometric data used for unique identification, health data, or data concerning sexual life or sexual orientation (Article 9 GDPR). However, this prohibition is subject to exceptions, notably when processing is necessary for exercising specific rights of the controller or the data subject in the field of labour law, social security, and social protection, to the extent authorised by Union or Member State law or by collective agreements, and subject to appropriate safeguards (Article 9(2) (b)). The same Regulation further provides that Member States may, by law or collective agreement, adopt more specific provisions to ensure the protection of employees' rights in the processing of personal data within the employment context - particularly for recruitment, contract execution, work organisation, or occupational health and safety. Such provisions include safeguards for human dignity, especially regarding transparency in processing and the transfer of personal data in connection with workplace monitoring systems. Equally important is the prohibition on the employer, both in hiring and during the course of employment, from conducting inquiries into the worker's political, religious, or trade union opinions, or into matters unrelated to the assessment of professional aptitude (Article 8 of the Worker's Statute⁸³). Considering the implications such intrusions may have within the workplace, it is evident that a negative assessment based on an employee's refusal to work on certain days of the week for religious reasons constitutes an unlawful invasion of personal privacy-particularly

law or collective agreements—management, planning, and organization of work, equality and diversity in the workplace, occupational health and safety, and for the exercise and enjoyment, whether individual or collective, of rights and benefits associated with employment, as well as for purposes related to the termination of the employment relationship» (Translated by the author).

80 «In defining detailed rules regarding the format and procedures applicable to the notification of personal data breaches, it is appropriate to duly take into account the circumstances of such a breach, for example by determining whether the personal data were or were not protected by adequate technical safeguards designed to effectively mitigate the risk of identity theft or other forms of misuse. Furthermore, these rules and procedures should appropriately consider the legitimate interests of law enforcement authorities, where premature disclosure could unnecessarily impede the investigation into the circumstances of a personal data breach» (Translated by the author).

81 Personal Data Protection Code containing provisions for the adaptation of national legislation to Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data, as well as on the free movement of such data, and repealing Directive 95/46/EC.

82 See ZILLI, Anna, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini Giuridica, Pisa, 2022, 29.

83 See also AIMO, Mariapaola, «Dalle schedature dei lavoratori alla profilazione tramite algoritmi: serve ancora l'art. 8 dello Statuto dei lavoratori?», in *Lavoro e diritto*, XXXV, 2021, 3-4, 585 ff.

reprehensible in a multicultural society. In today's society, individual identity is shaped by daily choices that reveal various aspects and pieces of information about the person, many of which are potentially accessible to third parties through increasingly sophisticated digital technologies⁸⁴.

In this context, the GDPR has also emerged as a key instrument in regulating automated work and in shaping the new models of protection necessary to safeguard personal data in the employment relationship. The use of technologies based on artificial intelligence within work processes impacts workers' fundamental rights, making it increasingly necessary to strike an appropriate balance between managerial powers and employees' rights⁸⁵. In this new work ecosystem - marked by a profound transformation of work organisation - it becomes essential to protect workers from the massive and pervasive collection of any data pertaining to their personal sphere, avoiding over-regulation in favour of more streamlined⁸⁶ yet equally effective legal frameworks. In technologically advanced enterprises, data collected on workers have become part of the company's informational assets, which "self-generates" by producing further data useful for future corporate decisions⁸⁷. The reverse side of this dynamic, however, lies in its potential consequences for work organisation and employee well-being⁸⁸. It can thus be said that the framework of social protections in the context of artificial intelligence is completed through the complementarity of Regulation (EU) 2024/1689⁸⁹ with national social protection systems and through its interdependence with privacy law⁹⁰.

V. Freedom of thought, conscience, religion, and expresión (Umberto Izzo)

Article 10 of the Charter of Fundamental Rights of the European Union affirms that «everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. The

84 Francesca IQUINTA, Alessandra INGRAO, «La privacy e i dati sensibili del lavoratore legati all'utilizzo di social networks. Quando prevenire è meglio che curare», in *Diritto delle Relazioni Industriali*, 2014, 4, 1031. The authors cite also Rodotà, Stefano, «Tecnopolitica. La democrazia e le nuove tecnologie della comunicazione», Roma-Bari, 2004, *passim*.

85 D'ARCANGELO, Lucia, «Data protection e sicurezza sul lavoro: un documento di valutazione dei rischi (DVR) anche per la privacy?», in *Diritto della Sicurezza sul Lavoro*, 2024, 1, 49.

86 D'ARCANGELO, Lucia, «Data protection e sicurezza sul lavoro: un documento di valutazione dei rischi (DVR) anche per la privacy?», in *Diritto della Sicurezza sul Lavoro*, 2024, 1, 49.

87 D'ARCANGELO, Lucia, «Data protection e sicurezza sul lavoro: un documento di valutazione dei rischi (DVR) anche per la privacy?», in *Diritto della Sicurezza sul Lavoro*, 2024, 1, 51.

88 D'ARCANGELO, Lucia, «Data protection e sicurezza sul lavoro: un documento di valutazione dei rischi (DVR) anche per la privacy?», in *Diritto della Sicurezza sul Lavoro*, 2024, 1, 51.

89 SU CUI SI LEGGA TEBANO, Laura, «Poteri datoriali e dati biometrici nel contesto dell'AI Act», in *Federalismi.it*, 2023, 25, 198 ff.

90 CIUCCIOVINO, Silvia, «RISORSE UMANE, INTELLIGENZA ARTIFICIALE E REGOLAMENTO (UE) 2024/1689», in *Diritto delle Relazioni Industriali*, 2024, 23, 593.

right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right».

In the Italy, Article 2 of the Constitution acknowledges and guarantees the inviolable rights of individuals, both as individuals and within the social groups where their personality develops. It also emphasizes the necessity of fulfilling the inescapable duties of political, economic, and social solidarity.

Regarding religion specifically, Article 19 states that everyone has the right «to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality».

Furthermore, Article 21 upholds the right of all individuals to freely express their thoughts through speech, writing, or any other form of communication.

In the context of labour law, as seen in the jurisprudence of the Court of Justice of the European Union⁹¹, these freedoms take on a particularly significant dimension. The workplace is not merely a space of economic exchange but also one where individuals bring their identities, beliefs, and values. Therefore, the protection of freedom of thought, religion, and expression within employment relationships becomes essential to ensuring human dignity at work.

1. Freedom of thought and anti-discrimination under Italian Workers' Statute

Law No. 300/1970 (commonly known as the *Workers' Statute*) plays a fundamental role in protecting workers' freedom of opinion. Article 1 explicitly affirms that: «workers, without distinction of political opinions, trade union affiliation, or religious belief, have the right, in the places where they carry out their work, to freely express their thoughts, in compliance with the principles of the Constitution and the provisions of this law».

The described constitutional and legislative guarantee is given concrete implementation through various provisions aimed at safeguarding the personal sphere of workers and ensuring the full respect of their individual freedoms.

Specifically, the Italian legislature first introduced a restriction on the employer's intrusion into the worker's personal sphere through Article 8 of the *Workers' Statute*, which expressly prohibits any investigations, including those conducted through third parties, into matters that are irrelevant to the assessment of professional suitability⁹². With any doubts, this prohibition

91 CJEU, 28 November 2023, case C-148/22, *Commune d'Ans*; CJEU, 14 March 2017, case C-157/1, *Achbita v. G4S Secure Solutions NV*; CJEU, 13 July 2016, case C-188/15, *Bouagnaoui v. Micropole*.

92 The provision must be read in conjunction with article 9 of Regulation (EU) 2016/697, pursuant to which: «Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited». However, the previous paragraph «shall not apply if [...] processing is necessary for the purposes of carrying out

serves as a crucial safeguard for the worker's individual freedoms and as a protection against any form of discrimination or undue pressure based on personal convictions.

This protection is further reinforced by anti-discrimination legislation, particularly Article 15 of the Workers' Statute⁹³ and Legislative Decree No. 216/2003, which implements EU Directive 2000/78/EC and prohibits any form of direct or indirect discrimination in the workplace based, among other things, on religion or personal beliefs⁹⁴.

1.1. The limits of Article 8 of the Workers' Statute in the digital age

However, in the age of new technologies and the widespread phenomenon of public sharing, this regulation may, in some respects, appear outdated and insufficiently effective⁹⁵.

Consider the case of a job applicant. Prior to the interview, the employer conducts a simple online search and comes across the applicant's Facebook profile. From this profile, the employer may access posts in which the applicant expresses views aligned with a specific political ideology – for instance, support for a controversial political movement or criticism of government policies.

Formally, such data should not be used either during the selection process or throughout the employment relationship. However, the employer, without providing any explicit justification, may lawfully decide not to hire the candidate based on that information, without the candidate being able to prove any discrimination or breach of the legal prohibition.

Even when considering the period following the establishment of the employment relationship, Article 8 does not appear to provide truly effective protection – particularly in

the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject». For a comment on the connection between the two articles, see SITZIA, Andrea, «I limiti ai controlli tra giurisprudenza nazionale e CEDU», in (edited by) BELLAVISTA, Alessandro, SANTUCCI, Rosario, *Tecnologie digitali, poteri datoriali e diritti dei lavoratori*, Giappichelli, Torino, 2022, 114 ff.

93 «Any agreement or act aimed at the following shall be deemed null and void: a) making the employment of a worker conditional upon their joining or not joining a trade union, or upon their resignation from a trade union; b) dismissing a worker, discriminating against them in the assignment of job titles or duties, in transfers, in disciplinary actions, or otherwise causing them harm due to their trade union membership or activity, or their participation in a strike. The provisions of the preceding paragraph shall also apply to any agreements or acts intended to discriminate on the grounds of political opinion, religion, race, language, sex, disability, age, nationality, sexual orientation, or personal beliefs».

94 For an overview of Italian anti-discrimination legislation, see MEZZACAPO, Domenico, «L'effettività della normativa antidiscriminatoria e la Direttiva 2023/970/UE in materia di trasparenza retributiva uomo/donna», in *Lavoro e previdenza oggi*, 5-6, 2023, 332 ff.

95 See FORLIVESI, Michele, «Il controllo della vita del lavoratore attraverso i social network», in (edited by) TULLINI, Patrizia *Web e lavoro: profili evolutivi e tutela*, Giappichelli, 2017, 37 ff., who questions whether the provision set out in article 8 of the Workers' Statute is still capable of effectively protecting workers in the new digital environment, particularly in relation to the use of social media profiles.

situations where it remains ambiguous whether certain personal information or behaviors shared online might legitimately affect the employment relationship.

2. Use of social networks and its implications for the employment relationship

Finally, it is important to clarify that Article 1 of the Workers' Statute safeguards workers' freedom of opinion «in the places where they carry out their work».

Therefore, what legal framework applies to conduct occurring *outside* the workplace?

A particularly relevant issue in this regard concerns posts published on social media platforms – an area in which Italian case law has provided significant guidance.

Particularly, in the private sector, courts generally hold that an employee cannot be dismissed for social networks posts that express criticism of their employer, provided that such posts are characterized by calm tones⁹⁶ and reflect the employees' interest in expressing their views on the management of business activities that may impact their working and living conditions⁹⁷.

In other words, according to our case law, to avoid unlawfully exercising the right to criticism, «it is essential that, from a substantive perspective, the facts reported by the employee must always adhere to the criterion of truthfulness, while from a purely formal perspective, the expression of such criticism must never exceed the boundaries of propriety, decorum, and expressive relevance»⁹⁸.

On the contrary, in circumstances where openly dishonorable qualities, defamatory references, or distortions likely to provoke contempt and ridicule are attributed to the company

96 Court of Cassation No. 11645 of 14.05.2018.

97 Trib. Firenze No. 396 of 3.03.2022, but also Court of Cassation no. 1379 of 18.01.2019.

98 Court of Cassation No. n. 17784 of 4.05.2022. Regarding the applicable requirements, see also Court of Appeal of Brescia, Labour Section, Judgment No. 281 of 3.11.2022, which held that a worker's right to criticise the employer is subject to three main limitations. First, the facts reported must be true. Second, the manner in which the criticism is expressed must comply with standards of fairness, moderation, and dignity, avoiding offensive or disrespectful language. Third, the criticism must be relevant, i.e., it must concern issues connected to the employment relationship or other legitimate interests, excluding gratuitous personal attacks unrelated to the work context. If even one of these limitations is exceeded, the criticism may constitute conduct capable of amounting to a disciplinary offence, as it may damage the employer's honour, reputation, or dignity; see also Criminal Court of Cassation, Fifth Section, Judgment No. 33994 of 4.06.2024, which held that both formal and substantive moderation are respected if the expressions used do not degenerate into gratuitous personal attacks and if the criticism is not used as a pretext to undermine the dignity of the subject; Court of Cassation No. 11220 of 2004; Court of Cassation No. 29008 of 2008; Court of Cassation No. 23798 of 2007; Court of Cassation No. 21362 of 2013; Court of Cassation No. 19092 of 2018; Court of Cassation No. 1379 of 18.01.2019; Court of Cassation No. 19621 of 11.07.2023; Court of Cassation No. 30087 of 21.10.2024; Court of Cassation No. 2058 of 29.01.2025; Court of Cassation No. 5331 of 28.02.2025.

or its representatives, the employee's conduct may constitute just cause for dismissal, «even in the absence of the subjective and objective elements required to establish the criminal offense of defamation»⁹⁹.

However, it should be noted that there are rulings in which the same Supreme Court appears less stringent on this point, mandating that a worker cannot be fired because of highly offensive statements posted on *Facebook* when these actions were justified by a longstanding series of grievances raised by the workers (in the specific case, related to the health conditions of the workplace)¹⁰⁰.

VI. Freedom of association, assembly, and collective bargaining (Gianluca Giampà)

The norms of the European Charter of Fundamental Rights relevant to freedom of association, assembly, and collective bargaining are indeed those contained in Articles 12 and 28. As will be analysed, these two articles are closely linked.

Article 12 recognises the general right “to freedom of peaceful assembly and to freedom of association at all levels”, a right that is included in the vast majority of modern constitutions, as well as in international human rights conventions at both global and regional levels.

Despite the non-innovative nature of this provision, it is important to note that, unlike other similar norms, in this case the right is recognised with an explicit reference to trade union freedom, as the text of the article specifies that the right operates “in particular in political, trade union and civic matters”. This explicit reference to trade union freedom is uncommon in constitutions or international conventions that generally recognise the freedom of association, where such reference is often considered implicit or regulated by a separate provision¹⁰¹. The European legislator's choice to expressly include trade union freedom is particularly significant, given the Charter's aim of emphasising the social objectives of the European Union, that were often neglected during the early decades of European integration¹⁰².

This significance becomes even clearer when examining the subsequent part of the provision, which specifies that the recognition of trade union freedom “implies the right of everyone to form and to join trade unions for the protection of his or her interests”. The norm therefore recognises freedom of association, trade union freedom, and the right to autonomously organise trade unions, with respect to both their internal structure and the activities they carry out.

99 Court of Appeal of Ancona, Labour Section, Judgment No. 39 of 5.02.2024.

100 See Court of Cassation No. 26446 of 10.10.2024.

101 See, for example, the Universal Declaration of Human Rights, where the specification of freedom of association as trade union freedom is dealt with separately (articles 20 and 23).

102 See ASHIAGBOR, Diamond: «Economic and Social Rights in the European Charter of Fundamental Rights», in *European Human Rights Law Review*, 2004, pag. 63-64. Cfr. Voogsgeerd, Herman: «The EU Charter of Fundamental Rights and its Impact on Labor Law: a Plea for a Proportionality-Test “Light”», in *Goettingen Journal of International Law*, 2012, pag. 313-337.

The content of this provision clearly recalls Article 11 of the European Convention on Human Rights, with which it shares much of its wording. Consequently, the case law of the European Court of Human Rights can, with the necessary caution, provide valuable support for its interpretation and application. Furthermore, Article 12 is closely connected with ILO Conventions Nos. 87 and 98¹⁰³, which represent a fundamental global benchmark for the regulation of trade union freedom and rights.

Coming to the implementation of these principles in Italy, it has to be highlighted that the Italian Constitution contains a similar provision in article 39. The first paragraph of the Article provides for the freedom to organise trade unions. This provision is separate from the one that generally recognizes freedom of association (article 18). The choice made by the framers of the Italian Constitution has been interpreted as a way to underline the importance of trade union freedom among the different possible forms of freedom of association¹⁰⁴, recognizing the pivotal role of workers' organizations in the constitutional framework.

It is also important to note that article 39 refers, according to the vast majority of scholars¹⁰⁵ - though with some dissenting opinions¹⁰⁶ - only to workers' associations and not to employers' ones. According to this interpretation, the Constitution intends to guarantee a prevailing function to the former.

This feature is not shared by the majority of international conventions on human and labour rights. For example, in all ILO legislation, workers' and employers' associations are considered together and placed on the same level. This probably depends on the tripartite structure of the ILO, which often requires a broader compromise that includes employers' representatives¹⁰⁷.

The Italian Constitution says no more about trade union freedom, apart from the never-implemented provisions on the registration of trade unions for particular purposes, including the conclusion of collective agreements with *erga omnes* efficacy.

Post-war Italian scholars waited a long time for a law regulating trade union matters¹⁰⁸, including the organization and registration of trade unions. This law never came, as the most

103 See on the Conventions: NOVITZ, Tonia: «Freedom of Association and 'Fairness at Work'. An Assessment of the Impact and Relevance of ILO Convention No. 87 on its Fiftieth Anniversary», in *Industrial Law Journal*, 1998, pag. 169 ff.; Dunning, Harold: «The origins of Convention No. 87 on freedom of association and the right to organize», in *International Labour Review*, 1998, pag. 149 ff.; Gernigon, Bernard: «Collective bargaining. Sixty years after its international recognition», International Labour Organization, Geneva, 2008.

104 GIUGNI, Gino: «Art. 39», in VV. AA., *Rapporti economici*, I, Art. 35-40, in Branca, Giovanni, *Commentario della Costituzione*, Zanichelli - Soc. ed. Foro italiano, Bologna - Roma, 1979, pag. 264-265.

105 SANTORO-PASSARELLI, Giuseppe: «Sulla libertà sindacale dell'imprenditore», in *Rivista trimestrale di diritto e procedura civile*, 1976, pag. 170 ff.; Giugni, Gino: «Diritto sindacale», Cacucci, Bari, 2011, pag. 41.

106 PROIA, Giampiero: «Il contratto collettivo tra libertà di scelta e standard minimi di trattamento», in *Massimario di giurisprudenza del lavoro*, 2020, pag. 945.

107 On tripartitism, see GÖTT, Henner: «The ILO's Model of Labour Governance», in *The Law of Interactions Between International Organizations*, Springer, Berlin, 2020, pag. 13 ff.

108 Scholars referred to the notion of «transitory trade union law» (Carullo, Vincenzo: «Diritto sindacale transitorio», Giuffrè, Milano, 1960).

representative trade unions began to organize themselves through voluntary and autonomous processes, regulating their relationships by means of private law agreements¹⁰⁹.

Law No. 300 of 1970, the so-called Workers' Statute, introduced some provisions that added to the general constitutional framework. In particular, Article 14 reiterates that the right to form and join trade unions, as well as the right to carry out related activities, is recognized for all workers in all workplaces. The same law also declares null and void any discriminatory acts adopted for trade union reasons (article 15) and establishes a framework under which, under certain conditions, trade unions can appoint workers' representatives in each workplace (article 19) and exercise certain rights, such as holding paid assemblies, taking paid and unpaid leave for trade union purposes, and organizing consultations among workers. Furthermore, article 17 prohibits employers from organizing or funding workers' organizations¹¹⁰.

Apart from the provisions mentioned above, as of today, there is no law specifically governing trade union freedom and organization, and the implementation of the single provision contained in article 39 has been left to the courts, which have progressively provided answers to the various issues arising from the practical experience of trade union activity.

In general, it is possible to identify some fundamental principles that have guided the application of the principles of trade union freedom.

Firstly, this freedom must be understood as encompassing both the right to join and the right not to join an organization¹¹¹. In other words, there is also a negative right not to join any organization. The importance of this principle derives from the fact that, under fascism, workers were obliged to join the association related to their occupation¹¹². These associations, entirely controlled by public authorities, were called "corporations".

This consideration leads to another fundamental corollary of the recognition of trade union freedom: the organization must be fully independent from the State and, more generally, from public authorities. This means that the State cannot impose obligations that restrict the freedom to organize at the international, national, or local level¹¹³.

109 As well testified by one of the first comprehensive studies on the matter: Persiani, Mattia: «Saggio sull'autonomia privata collettiva», Cedam, Padova, 1972.

110 All the norms mentioned were extensively commented on by Italian scholars. Among the earliest commentaries, it is worth mentioning VV. AA.: «Statuto dei diritti dei lavoratori», Zanichelli - Soc. ed. Foro italiano, Bologna - Roma, 1972; Prosperetti, Ubaldo (directed by): «Commentario dello statuto dei lavoratori», Giuffrè, Milano, 1975. For a recent overview, see FERRARO, Fabrizio: «Libertà sindacale», in MEZZACAPO, Domenico; PRETEROTI, Antonio; VALENTE, Lucia, *Diritto e processo del lavoro e della previdenza sociale. Privato e pubblico*, di Giuseppe Santoro-Passarelli, Utet, Torino, 2025, pag. 1647 ff.

111 For an international labour law perspective in the light of the ECHR, see MANTOUVALOU, Virginia: «Is There a Human Right Not to Be a Union Member? Labour Rights under the European Convention on Human Rights», in FENWICK, Novitz (eds), *Human Rights at Work*, Hart, Oxford, 2010, pag. 439 ff.

112 See, in an historical perspective, STOLZI, Irene: «Alfredo Rocco e Giuseppe Bottai: l'ordinamento corporativo», in Mazzotta, Oronzo (edited by), *Introduzione al diritto sindacale Letture e riletture*, 1, Giappichelli, Torino, p. 7 ff.

113 Cfr. BELLOCCHI, Paola: «La libertà sindacale», in Proia, Giampiero (edited by), *Organizzazione sindacale e contrattazione collettiva*, Cedam, Padova, 2014, pag. 6.

In Italy, the common practice adopted by trade unions is to take the form of an “unrecognised association,” a particular type of legal entity regulated by the Italian Civil Code under a very brief set of rules¹¹⁴.

Trade unions are also commonly organized as associations of associations. There is usually an organization at a higher level (generally called a “confederation”) that includes national associations organized according to the industry in which they represent workers. Consequently, the same organization may represent different categories of workers — for example, both manual and office workers — operating in the same industry. Although this is the most common form, there are also cases in which a trade union represents only workers with a certain qualification (as happens, for instance, with teachers or airline pilots)¹¹⁵.

It can be said, thus, that trade union freedom is granted, in the Italian legal system, by Article 39 of the Italian Constitution, as interpreted and applied by the courts, and by some norms of the so-called Workers’ Statute. Although this framework may appear unproblematic, the application of Article 39 has raised various issues, as the norm was often used by the Constitutional Court as a parameter to declare certain provisions constitutionally unlawful.

It is not possible to analyse each case in this brief overview. Nevertheless, one case is worth mentioning: Article 19 of the Workers’ Statute was declared constitutionally unlawful in 2013¹¹⁶ because it recognised the right to designate representatives at the company level only to trade unions that had signed a collective agreement applied in that company. According to the Italian Constitutional Court, the norm effectively granted the employer the power to select the trade unions that could have representatives, since it is the employer itself that chooses the parties with whom to conclude a collective agreement. This was considered incompatible with trade union freedom as established by Article 39. Consequently, the Court stated that the norm must be interpreted in such a way that it also recognises the right to nominate representatives to trade unions that had at least participated in bargaining with the employer, even if they ultimately did not sign the collective agreement¹¹⁷.

As regards Article 28 of the Charter, it provides for “the right to negotiate and conclude collective agreements” and “to take collective action to defend their interests, including strike action”. European Union law thus explicitly recognises both the right to bargain collectively and the right to strike¹¹⁸. This is particularly relevant considering that other international

114 See DELL’OLIO, Mattia: «L’organizzazione e l’azione sindacale in generale», in DELL’OLIO, Mattia; BRANCA, Giorgio, *L’organizzazione e l’azione sindacale*, in Mazzoni, Giuliano (directed by), *Enciclopedia giuridica del lavoro*, I, Cedam, Padova, 1980, pag. 127 ff.

115 FERRARO, Fabrizio: «Libertà sindacale», in MEZZACAPO, Domenico; PRETEROTI, Antonio; VALENTE, Lucia, *Diritto e processo del lavoro e della previdenza sociale. Privato e pubblico*, di Giuseppe Santoro-Passarelli, Utet, Torino, 2025, pag. 1650-1651. Cfr. Mazzotta, Ortonzo: «Diritto sindacale», Giappichelli, Torino, 2017, pag. 21-22.

116 Italian Constitutional Court, 23th July 2013, n. 231.

117 The judgement was widely discussed by Italian scholars. Among them, see SANTORO-PASSARELLI, Giuseppe: «La partecipazione alle trattative come criterio di misurazione della rappresentatività sindacale e l’applicazione dell’art. 28 dello Statuto dei lavoratori», in *Diritto delle relazioni industriali*, 2013, pag. 1143 ff.

118 It should be noted that, under the ECJ’s case law, the right to strike has been significantly limited in the balance with economic freedoms, as clearly illustrated by the Viking and Laval judgments.

labour law sources, such as ILO Conventions No. 87 and 98 and Article 11 of the European Convention on Human Rights, do not do so. In particular, it is debated whether the right to strike is recognised under the ILO Conventions¹¹⁹. Recently, after a strong confrontation between employers' and workers' representatives within the ILO bodies, the question was submitted to the International Court of Justice¹²⁰. Likewise, the right to bargain collectively under the ECHR was recognised as a necessary corollary of the freedom of association established by Article 11 only through the interpretative work of the case law¹²¹. Therefore, it is possible to say that the CFREU encompasses a broader recognition of trade union freedom and rights compared with other international law sources.

From the point of view of the Italian legal framework, the right to bargain collectively is not directly recognised by the implemented norms of the Constitution, but it has always been considered a direct and essential consequence of the recognition of trade union freedom¹²².

The non-implementation of paragraphs 2–4 of Article 39 of the Constitution implies that there are no specific procedures for concluding collective agreements and that they have the same effects as private law contracts, without any kind of *erga omnes* or extended efficacy. Nevertheless, collective bargaining processes remain dynamic within the Italian industrial relations system, and Italian workers have historically enjoyed wide coverage under collective agreements¹²³. In recent decades, with the weakening of the contractual strength of trade unions, the issue of extending collective agreements signed by the most representative organisations has attracted considerable attention¹²⁴.

See HEPPLÉ, Bob: «The European Right to Strike Revisited», in *Giornale di diritto del lavoro e delle relazioni industriali*, 2013, pag. 575-576. See also BALLESTRERO, Maria Vittoria: «La protezione dei diritti sociali nell'Unione europea. Il caso del diritto di sciopero», in *Labor*, 2020, pag. 495 ff.

119 REGENBOGEN, Sonia: «The International Labour Organization and Freedom of Association: Does Freedom of Association Include the Right to Strike», in *Canadian Labour and Employment Law Journal*, 2021, pag. 385 ff. Cfr. BORZAGA, Matteo; SALOMONE, Riccardo: «Challenging the right to strike or attacking the ILOs monitoring system? The possible consequences of recent Employers claims on the enforcement perspectives of International Labour Standards», in *SIS Working Paper*, 2015. BELLACE, Janice R.: «The ILO and the right to strike», in *International Labour Review*, 2014, pag. 29 ff.

120 MARINELLI, Francesca: «Lo sciopero è un diritto di rango internazionale? L'OIL rimette la questione alla Corte Internazionale di Giustizia», in *Labor*, 2024, pag. 405 ff.; PERRONE, Francesca: «Sugli effetti orizzontali delle norme sul diritto di sciopero alla luce di una recente richiesta di parere alla Corte internazionale di giustizia», in *Rivista di diritto civile*, 2024, pag. 1507 ff.

121 See, in particular, the judgement on the case *Demir and Baykara v. Turkey*, 12 November 2008. Cfr., on this issue, PANTANO, Fabio: «Competition, Economic Freedoms and Collective Action: What the Us can teach Europe», in *Italian Labour Law e-Journal*, 2019, pag. 142-143. See also MANTOUVALOU, Virginia: «Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation», in *Human Rights Law Review*, 2013, pag. 529 ff.

122 See, on the relationship between the Constitutional norm and the right to bargain collectively, D'ANTONA, Massimo: «Il quarto comma dell'art. 39 della Costituzione, oggi», in *Giornale di diritto del lavoro e delle relazioni industriali*, 1998, pag. 665 ff.

123 See, for updated data, the XXV Rapporto sul mercato del lavoro e sulla contrattazione collettiva by the Italian National Council for Economics and Labour (CNEL).

124 See on the issue, recently, FERRARO, Fabrizio: *L'ultrattività del contratto collettivo*, Giappichelli, Torino, 2025, pag. 291 ff.

Many provisions in the Italian legal system favour the application of the most representative collective agreements — for example, by making the granting of public benefits¹²⁵ or participation in public tenders conditional on the application of one of these agreements¹²⁶. Moreover, the wages established by such agreements are *de facto* extended to all workers, since it is a well-established principle in case law that remuneration below the level set by the most representative agreements must be considered contrary to the constitutional principle of fair remuneration provided by Article 36¹²⁷.

Thus, despite the absence of a rule that legally extends the efficacy of collective agreements, Italian law provides various mechanisms to encourage their broader application by employers, thereby implementing in practice the right guaranteed by Article 28.

It is also worth noting that in Italy it is common practice to conclude collective agreements applicable to self-employed workers¹²⁸. Notable cases include agents, sports workers, actors, and riders. Consequently, the issue of the compatibility of such agreements with European Union competition law — a topic that has been strongly debated in recent times¹²⁹ — has had limited relevance in the Italian context.

The right to strike is directly recognised by Article 40 of the Italian Constitution, which provides that it “is exercised within the law that regulates it”. Despite the brief formulation of the norm, a law regulating the right to strike has never been adopted. Therefore, many of the relevant issues related to it were addressed by case law, especially that of the Constitutional Court. Many judgments in the 1950s and 1960s declared constitutionally unlawful the criminal norms that, under fascism, had punished certain forms of strike¹³⁰.

The right to strike is considered an individual right that must be exercised collectively¹³¹. The legitimacy is recognised not only for strikes with contractual or economic purposes but

125 Article 1, paragraph 1175, law no. 296/2006.

126 See article 29, paragraph 1-bis, legislative decree no. 276/2003, that extended the discipline also to private procurement.

127 See BELLOMO, Stefano: «Retribuzione sufficiente e autonomia collettiva», Giappichelli, Torino, 2002, pag. 51 ff.

128 GRAMANO, Elena; «Italy», in Waas, Bernd; HIESSL, Christina, *Collective Bargaining for Self-Employed Workers in Europe: Approaches to Reconcile Competition Law and Labour Rights*, Wolters Kluwer Law, Alphen aan den Rijn, 2021, pag. 155 ff.; VILLA, Ester: «A proposito di lavoro autonomo e contratti collettivi: il lento avvicinamento fra diritto europeo della concorrenza e prospettiva costituzionale», *Labor*, 2024, pag. 235-237.

129 Among the last published contributions, see GIOVANNONE, Maria: «Guidelines on collective agreements regarding the solo self-employed persons: another (controversial) immunity to EU competition rules», in *Diritti lavori mercati internazionali*, 2023, pag. 1 ff.; STYLOGGIANNIS, Charalampos: «The effective application of the right to collective bargaining for self-employed (platform) workers: ‘Not such an easy task’», in *European Labour Law Journal*, 2023, pag. 494 ff.; GIAMPÀ, Gianluca: «Collective Bargaining for Solo Self-Employed Persons in the European Union. Assessing the Efficacy of the European Commission’s Guidelines», in *Diritti lavori mercati internazionali*, 2024, pag. 243 ff.

130 Cfr. on this issue PASSANITI, Paolo: «Lo sciopero nella Repubblica fondata sul lavoro. Gli anni ‘50 di un diritto garantito a metà», in *Lavoro e diritto*, 2016, pag. 531 ff.

131 Cfr. SANTORO-PASSARELLI, Giuseppe: «La responsabilità delle organizzazioni sindacali», in *Rivista Italiana per le Scienze Giuridiche*, 2012, pag. 364-365.

also for those with merely political aims¹³². From a subjective point of view, the right to strike is recognised not only for employees but also for self-employed workers and even for small business owners without employees¹³³.

The only regulation of the right to strike concerns public services that are considered essential by law. Law No. 146 of 1990 provides certain limits to prevent the exercise of the right to strike in this sector from interfering with other constitutional rights of citizens, such as the rights to health, education, or free movement¹³⁴. In this regard, the law, among other measures, provides for the obligation of prior notice for such strikes and for the identification of essential services that must be guaranteed during the strike. The application of the law is supervised by an independent authority.

VII. Professional freedom and the right to work (Angelo Casu)

The right to work and to pursue a freely chosen or accepted occupation is protected at the European Union level by article 15 of the Charter of Fundamental Rights of the European Union.

This provision is of particular significance in light of article 6 of the Treaty on European Union, which accords primary legal value to the rights, freedoms and principles enshrined in the Charter.

Article 15 CFREU encompasses three distinct principles through which the right to work is expressed. In addition to the general right of every person to work and to pursue a freely chosen or accepted occupation, paragraphs 2 and 3 give concrete form to that right, respectively, for Union citizens and for third-country nationals.

Indeed, article 15(2) provides that every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment, and to provide services in any Member State. This paragraph appears, today, to perform a “clarifying” function with respect to the freedoms already guaranteed under articles 45, 49 and 56 of the Treaty on the Functioning of the European Union (TFEU). In this regard, scholars have observed that Article 15 must be read through a functionalist lens, aimed at “the elimination of barriers and obstacles to the proper functioning of the internal market”¹³⁵.

132 See, among others, BAVARO, Vincenzo: «Lo sciopero e il diritto fra innovazione, tradizione e ragione pratica», in *Lavoro e diritto*, 2015, pag. 285 ff.

133 RAZZOLINI, Orsola: «Organizzazione e azione collettiva nei lavori autonomi», in *Politiche sociali*, 2021, pag. 41 ff.; RAZZOLINI, Orsola: «L'azione e l'astensione collettiva dei piccoli imprenditori», in *Working papers AISRI*, 2011.

134 See PINO, Giovanni: «Manuale sul conflitto nei servizi pubblici essenziali», Giappichelli, Torino, 2025.

135 ALAIMO, Anna, «Il diritto al lavoro fra Costituzione nazionale e Carte europee dei diritti: un diritto “aperto” e “multilivello”», in *WP CSDLE*, No. 60, 2008, p. 44.

Il paragrafo 3 dell'art. 15 costituisce, d'altra parte, una specificazione dell'art. 153, lett. g), TFUE, secondo il quale, al fine di conseguire gli obiettivi di politica sociale dell'art. 151 TFUE, l'Unione europea sostiene e completa l'azione degli Stati membri nel settore delle «condizioni di impiego dei cittadini dei paesi terzi che soggiornano legalmente nel territorio dell'Unione». A tal proposito, si introduce un principio di non discriminazione del cittadino extracomunitario rispetto al cittadino UE con riferimento alle «condizioni di lavoro».

Paragraph 3 of article 15, in turn, specifies article 153(g) TFEU, pursuant to which, in order to achieve the social policy objectives, set forth in article 151 TFEU, the Union supports and complements the actions of Member States in the field of "working conditions for third-country nationals legally residing in the territory of the Union." Accordingly, it introduces a principle of non-discrimination between third-country nationals and EU citizens in respect of "working conditions."

From the combined reading of article 15 CFREU and article 4 of the Italian Constitution, two particularly significant dimensions emerge: one subjective, the other objective.

As regards the subjective dimension, article 15 draws no distinction between employees and self-employed workers. This is particularly noteworthy within EU law, which traditionally regards the self-employed, much like undertakings, as actors in the competitive market.

As regards the objective dimension, it remains to be examined whether article 15 CFREU may, in interpretative terms, reflect the developments reached by Italian constitutional case law concerning article 4 of the Constitution, understood as a principle aimed at ensuring the stability of employment¹³⁶.

The right to work set forth in article 15 of the Charter of Fundamental Rights of the European Union applies to both self-employment and employment under a contract of subordination. This principle thus fits within an international framework that tends to ensure the protection of work without typological distinctions¹³⁷.

The fundamental right to work is distinct from the freedom to conduct a business, which is recognised by the Member States pursuant to article 16 of the Charter. The Court of Justice has clarified that the freedom to conduct a business includes, in particular, the right of every undertaking to make free use—within the limits of liability for its own actions—of the economic, technical and financial resources at its disposal¹³⁸. The distinction—both as to justiciability and as to substance—between a right, on the one hand, and a freedom, on the other, is of considerable practical importance. The recognition of the freedom to conduct a business, unlike the right to work, must conform to national laws and practices, whereas article 15 of the Charter guarantees the right to work in absolute terms.

Similarly, the Italian constitutional framework confirms the different levels of protection afforded to the right to work (article 4 of the Constitution) and to the freedom of enterprise

136 Cf. SALAZAR, Carmela, «Il principio lavoristico», in *I principi fondamentali*, edited by M. BENVENUTI – R. BIFULCO, *Trattato di diritto costituzionale*, Giappichelli, Turin, 2024, p. 92 et seq.

137 Cf. ILO Centenary Declaration for the Future of Work (Geneva, 21 June 2019). In the literature, FERRARO, Francesco, *Studio sulla collaborazione coordinata*, Giappichelli, Turin, 2023, p. 10.

138 Court of Justice, Judgment of 16 March 2016, *Lidl GmbH*, Case C-134/15, par. 27.

(article 41 of the Constitution)¹³⁹. Indeed, article 41 expressly limits entrepreneurial freedom by reference to the criterion of «social utility». According to a part of Italian legal scholarship, the reconciliation between these two principles—required in the interest of legal certainty—must be «filled with normative content by the legislature»¹⁴⁰.

EU law has traditionally assimilated the self-employed professional to the entrepreneur. In this sense, the case law of the Court of Justice has held that «within the field of competition law, the concept of an undertaking encompasses any entity engaged in an economic activity»¹⁴¹ and that «an economic activity consists in offering goods or services on a given market»¹⁴², which includes self-employed workers.

Nevertheless, Article 15 of the Charter, as stated, protects both the freedom to choose and to pursue self-employment and the right to work itself. This provision thus possesses interpretative value conducive to the expansion of labour protection in all its forms and manifestations¹⁴³. It supports a conception of labour law centred on the person of the worker, without regard to the legal form of the employment relationship.

In recent years, however, various EU soft-law initiatives, such as the European Pillar of Social Rights, have signalled a shift towards a more generalised protection of work¹⁴⁴.

It should be made clear, in any case, that this issue concerns the protection afforded to genuine self-employment, and not the distinct question of so-called “false self-employment”.

In the Italian legal system, self-employment—although historically subject to less extensive and more fragmented protection than subordinate employment—is now covered by specific protective legislation. This evolution is reflected in Law No. 81 of 2017, by which the legislature introduced a series of safeguards aimed at strengthening the contractual position of self-employed workers in the labour market¹⁴⁵. The intention was to overcome the protective vacuum that had long characterised self-employment, previously governed primarily by the provisions of the Civil Code on contracts for services (articles 2222 et seq.).

139 Pursuant to article 41 of the Italian Constitution, private economic initiative may not be conducted in conflict with social utility or in such a manner as to cause harm to health, the environment, safety, liberty or human dignity. On the balancing between these principles, see MANCINI, Federico Giuseppe, Art. 4, in V. SCIALOJA – G. BRANCA (eds.), *Principi fondamentali. Art. 1–12. Commentario della Costituzione*, Zanichelli, Bologna, 1975, p. 214. See also SANTORO-PASSARELLI, Giuseppe, *Il diritto del lavoro a cinquant'anni dallo Statuto*, in *Rivista Italiana di Diritto del Lavoro*, 2020, No. 2, p. 121 et seq.

140 SANTORO-PASSARELLI, Giuseppe, *La funzione del diritto del lavoro*, in *Rivista Italiana di Diritto del Lavoro*, 2018, No. 3, p. 345.

141 Court of Justice, Judgment of 19 February 2002, *Wouters*, Case C-309/99, par. 46.

142 Court of Justice, Judgment of 19 February 2002, *Wouters*, Case C-309/99, par. 47.

143 NOGLER, Luca, “La libertà di lavorare”, in R. MASTROIANNI – O. POLICINO – S. ALLEGREZZA – F. PAPALARDO – O. RAZZOLINI (eds.), *Carta dei diritti fondamentali dell'Unione Europea. Commentario*, Giuffrè, Milan, 2017, p. 299 et seq.

144 Cf. FERRARO, Fabrizio, entry «Lavoro autonomo non imprenditoriale», in *Digesto delle discipline privatistiche – Sezione commerciale*, Vol. IX, 2022, p. 231.

145 Sul tema cf. FERRARO, Fabrizio, entry *Lavoro autonomo non imprenditoriale*, in *Digesto delle discipline privatistiche – Sezione commerciale*, Vol. IX, 2022, p. 231 et seq.

Moreover, the Constitutional Court has expressly held that self-employment also falls within the ambit of article 4 of the Constitution¹⁴⁶.

Having delineated the scope of article 15 of the Charter of Fundamental Rights of the European Union, it is appropriate to examine the evolution of the Italian constitutional principle contained in article 4(1) of the Constitution, which provides that «the Republic recognises the right of all citizens to work and promotes the conditions that render this right effective».

In the case law of the Italian Constitutional Court, Article 4 has often been employed as a constitutional parameter for assessing the compatibility of legislation on dismissals with the overarching labour principle. In this context, the Court engages in a balancing exercise between the employer's power of termination, grounded in article 41 of the Constitution (freedom of enterprise), and the protection of employment, guaranteed under article 4.

From the earliest decisions of the Court, an interpretation has emerged that views Article 4 not merely as a safeguard of the (positive) freedom to access the labour market, but also as a guarantee of the stability of employment relationships.

To that end, the Court has emphasised that article 4 does not create «perfect legal relationships»¹⁴⁷ between citizens and the State, and that, in affirming the «social importance of work»¹⁴⁸, the legislature is thereby called upon to foster the economic, social and legal conditions necessary to secure the employment of all citizens capable of working¹⁴⁹.

The Court has gone further, requiring the legislature to adapt the legal framework governing open-ended employment contracts in order to ensure «continuity of employment for all»¹⁵⁰.

In its Judgment No. 65 of 1965, the Constitutional Court, while addressing the issue of dismissals, extended the protection of article 4 to encompass other dimensions of workers' rights, including «trade-union, political and religious freedom»¹⁵¹.

These judicial guidelines were subsequently implemented through legislative reforms. Reference may be made, in particular, to the introduction of "just cause" and "justified reason" for dismissal under Law No. 604 of 1966, and to the array of rights introduced by the Workers' Statute (Law No. 300 of 1970)—notably article 18, which established a general right to reinstatement in cases of unlawful dismissal. These measures reflected the «need to contain the employer's freedom to terminate the employment contract and to expand the worker's protection in respect of job retention»¹⁵².

It must be emphasised, however, that the balance struck by the Court between article 4 and article 41 of the Constitution does not imply a categorical preference for reinstatement over monetary compensation. The Constitutional Court has repeatedly affirmed that the

146 CONSTITUTIONAL COURT, Judgment No. 70 of 2025.

147 CONSTITUTIONAL COURT, Judgment No. 3 of 1957.

148 CONSTITUTIONAL COURT, Judgment No. 3 of 1957.

149 CONSTITUTIONAL COURT, Judgment No. 45 of 1965.

150 CONSTITUTIONAL COURT, Judgment No. 45 of 1965.

151 CONSTITUTIONAL COURT, Judgment No. 45 of 1965.

152 CONSTITUTIONAL COURT, Judgment No. 194 of 1970.

implementation of the right to work lies within the «discretion of the legislature, both as to the timing and the methods of enforcement¹⁵³ [...] provided that the principle of reasonableness is respected¹⁵⁴».

In more recent case law, the Court has focused its scrutiny on whether compensatory remedies provide adequate deterrence against unjustified dismissal¹⁵⁵.

Furthermore, as the latest judgments have clarified, the assessment of reasonableness and adequacy must also extend to dismissals effected by small undertakings¹⁵⁶, which are subject to lower employment thresholds¹⁵⁷.

Accordingly, the combined reading of article 15 of the Charter of Fundamental Rights of the European Union and the constitutional case law on Article 4 of the Italian Constitution reveals a broader interpretative space than a merely formalistic understanding of the right to work as the freedom to accept or refuse employment within the internal market. The Italian constitutional principle, in its active dimension, requires the legislature to adopt public policies promoting employment stability, thereby shielding the European principle from restrictive interpretations.

Such an understanding is consistent with article 53 of the Charter of Fundamental Rights of the European Union, which provides that nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by the constitutions of the Member States.

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153 CONSTITUTIONAL COURT, Judgment No. 46 of 2000.

154 CONSTITUTIONAL COURT, Judgment No. 104 of 2018, par. 7.1.

155 CONSTITUTIONAL COURT, Judgment No. 194 of 2018. In that case, the Court required that the calculation of compensation should not depend solely on the employer's length of service.

156 CONSTITUTIONAL COURT, Judgment No. 183 of 2022.

157 CONSTITUTIONAL COURT, Judgment No. 118 of 2025.

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