

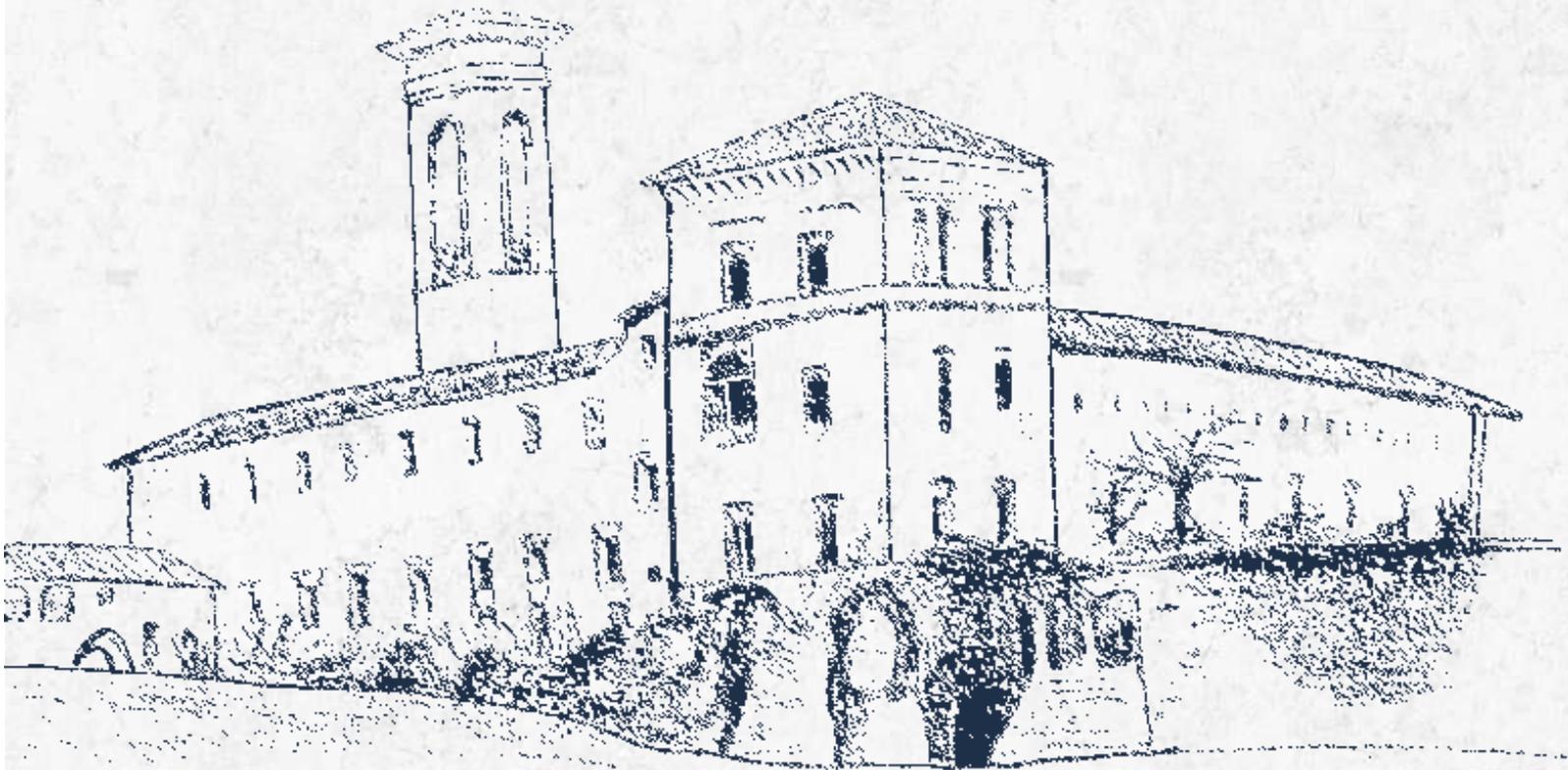
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The ECJ Doctrine on Racial Discrimination

Jaime Cabeza Pereiro *

1. Introductory Remarks

The Treaty of Amsterdam – signed on 2 October 1997 and in force since 1999 – introduced Article 6 par. a) in the Treaty of Rome, currently Art. 19 of the Treaty on the Functioning of the European Union (TFEU). In its previous version, it was established that:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Apart from some trivial procedural differences, this provision and that contained in Art. 19 of the TFEU are substantially the same. Compared to Art. 157 of the TFEU – which focuses on sex discrimination – Art. 19 is characterized by a lack of direct effect¹. On all occasions, following this amendment, Directive 2000/43/CE of 29 June was passed implementing the principle of equal treatment between persons irrespective of their racial or ethnic origins. This piece of secondary legislation is thus the first legislative measure adopted by the EU to tackle racism and racial

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¹ T. Uyen Do, *A Case Odyssey into 10 Years of Anti-discrimination Law*, in *European Anti-Discrimination Law Review*, 2011, n. 12, 11. Also, S. Benedí Lahuerta, *Race Equality and TCNs, or How to Fight Discrimination with a Discriminatory Law*, in *European Law Review*, 2009, vol. 15, n. 6, 740.

discrimination². It can be argued that the European Union has taken steps in this area relatively late, at least in comparison with other supranational organizations. For this reason, the number of judgments on discrimination cases is limited. Interestingly, there have been no more than three resolutions, one of them dismissing the matter of procedural nature. However, to fully address the issue some other decisions on related topics should be taken into consideration, such as residency rights for third-country nationals or the doctrine of sex discrimination, both of which are far more developed.

All 28 EU Members have ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD). Accordingly, they are bound by this UN provision, which is in many respects as demanding as the foregoing directive. Nevertheless and somewhat paradoxically, little commitment has been reported on the part of social partners and regional authorities with regard to their duties on this score, especially from the twelve Member States that entered the European Union from 2004 to 2007, for there seems to be little awareness of the directive. Some large ethnic minorities settled in these countries – e.g. Roma communities – are living in segregated neighborhoods and under poor health and safety conditions. When it comes to minorities, there is also a lack of awareness on the implementation of anti-discrimination legislation³.

In 2000, two directives were passed on equality and non discrimination: the 2000/43/EC Directive and the 2000/78/EC Directive of 27 November, establishing a general framework for equal treatment in employment and occupation. These directives marked a turning point in the European approach to anti-discrimination laws, especially if one considers the market-driven nature of legislation on sex discrimination approved in the 1970s in furtherance of Art. 119 of the Treaty of Rome – currently, Art. 157 TFEU. The aim of this article was to avoid distortion of competition resulting from France's greater concern for provisions on sex discrimination⁴. This attempt was visible in the recitals of the first directive based on Art. 119 that is Directive 75/117/EEC of 10 February

² E. Howard, *The EU Race Directive: Time for Change*, in *International Journal of Discrimination and the Law*, 2007, vol. 8, 237.

³ See Wien, 2010, *The Impact of the Racial Equality Directive. Views of Trade Unions and Employers in the European Union*, Summary Report, European Union Agency for Fundamental Rights, 8.

⁴ See, among others, H. Monaghan, *Equality and Non Discrimination*, Bar European Group and Administrative Law Bar Association, Athens, 2011, 2.

1975 concerning the approximation of the laws of Member States relating to the application of the principle of equal pay for men and women. The directive begins with the following proposition:

whereas implementation of the principle that men and women should receive equal pay contained in Article 119 of the Treaty is an integral part of the establishment and functioning of the common market [...]

Both the directives enforced in 2000 are based on other principles incorporated in the Treaty of Rome in 1957. Since then, equality has been considered a substantive aim of European policy from the point of view of dignity. Therefore, economic efficiency loses its role as the main reason in support of European measures in the field of discrimination⁵. Obviously, this change, irrespective of the amendments introduced by the Treaty of Amsterdam, cannot be regarded as a drastic move away from previous interpretations. The ECJ had already adopted an increasing number of social values from its first judgments relating to Art. 119 of the Treaty of Rome. For instance, in *Defrenne v. Sabena*⁶, the Court regarded the social values in the original version of the 1957 Treaty and the necessity of avoiding distortions of the market as equivalent⁷. However, when the Treaty of Amsterdam entered into force, social values become relevant among the principles of the European Community. In this context, market efficiency lost its hierarchical status to justify secondary legislation on equality and discrimination.

Two years later, Directive 2002/73/EC of 23 September was passed amending Directive 76/207/EEC. Its main concern was with the enforceability of equality and anti-discrimination provisions and their effectiveness, accompanied by a number of related initiatives. Some of

⁵ A more detailed analysis is provided in L. Mason, *The Hollow Legal Shell of European Race Discrimination Policy: The EC Race Directive*, in *American Behavioral Scientist*, 2010, vol. 53, n. 12, 1733-4.

⁶ Case 43/75, *Defrenne v. Sabena* (1976).

⁷ First, in the light of the different stages of the development of social legislation in the various Member States, the aim of Article 119 is to avoid a situation in which undertakings established in States which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community competition as compared with undertakings established in States which have not yet eliminated discrimination against women workers as regards pay. Secondly, this provision forms part of the social objectives of the Community, which is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of the living and working conditions of their peoples, as is emphasized by the Preamble to the Treaty.

them had already been introduced in the two Directives of 2000, while other aspects were not covered in previous secondary legislation. Concurrently, a comparison between Directive 2000/43/EC and Directive 2000/78/EC reveals that the former contains binding procedural rules and places duties on Member States which were not present in the latter, apart from some substantive rights. Accordingly, it has been argued that a clear hierarchy exists between discrimination fields in which sex, gender and race occupy a paramount position, while the others deserve a subsidiary consideration⁸.

The transposition of Directive 2000/43/CE has been a complex process. Notwithstanding the acquired experience by Member States to incorporate into national legislation binding provisions derived from directives about sex discrimination, the majority of them failed to meet the deadline set in Art. 16. Consequently, the European Commission had to send a formal warning to all those countries that incurred delays⁹. The transposition of the directive took more than expected even in those countries which had legislated on racial and ethnic discrimination long before the issuing of the directive itself. For instance, The United Kingdom and The Netherlands, both with a long-standing tradition in terms of anti-discrimination laws which inspired the European Directive, encountered major difficulties to comply with its requirements. Among other causes, public opinion in the two countries did not consider it necessary to make further amendments to comply with the minima imposed by secondary European legislation¹⁰.

2. Some Features of Directive 2000/43/EC

The two anti-discrimination directives which were passed in 2000 signified an important step forward in legislative terms, in comparison to secondary legislation previously enforced in the field of sex equality. One of the most important aspects involved narrowing down the concept of direct discrimination. According to the new definition:

⁸ E. Howard, *The EU Race Directive: Time for Change*, International Journal of Discrimination and the Law, 2007, vol. 8, 239.

⁹ Concerning this matter, N. Boccadoro, *Housing Rights and Racial Discrimination*, in *European Anti-Discrimination Law Review*, 2009, n. 9, 23.

¹⁰ *Ibid.*, 25.

direct discrimination shall be taken to occur where one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.

As a rule, this formulation is far more accessible to plaintiffs, who might encounter less difficulty to initiate legal proceedings against a person or an institution in the event of disparate treatment on the grounds of ethnic origins. The key point consists in the possibility of affording more flexible comparators because these persons are not necessarily going to be actual ones. They can be hypothetical comparators, or real men or women who had past experience in this connection. In fact, the introduction of a hypothetical comparator is one of the most decisive advances of the 2000 Directives¹¹. The wording “would be” in the definition cannot be interpreted in any other way. Indeed, this terminology was expressly rejected in the majority of previous judgments concerning sex discrimination, although it was predictable that the doctrine would be abolished with the new definition of direct discrimination provided in Directive 2006/54/EC, which was very similar to that laid down in Directive 2000/43/EC¹².

The broad interpretation of “prohibited forms of discrimination” is also worthy of notice. Not only racial harassment, but also an instruction to discriminate against persons on the grounds of racial or ethnic origins shall be deemed discriminatory¹³. Again, the same definition applies to the three directives, yet implying an important development in comparison to previous EU legislation.

The main difference between the directive on discrimination and the other two lies in its field of application¹⁴. Whereas the last two directives deal with vocational training, employment, working conditions and workers’ involvement on an exclusive basis, the former also includes social protection, social security, healthcare, social advantages, education and access to and supply of goods and services which are available to the public, including housing. The widened scope of Directive 2000/43/EC has been pointed out in the relevant literature. For example, it has been

¹¹ L. Mason, *op. cit.*, 1735.

¹² E. Howard, *op. cit.*, 247-8.

¹³ See M. Ambrus, M. Busstra, K. Henrard, *The Racial Equality Directive and Effective Protection Against Discrimination: Mismatches between the Substantive Law and its Application*, in *Erasmus Law Review*, 2010, vol. 3, n. 3, 166.

¹⁴ According to Howard, “One of the strong features of the Race Directive”, *op. cit.*, 239.

argued that it was the first piece of EU legislation dealing with the prohibition of discrimination in the access to services¹⁵.

Concerning social protection and social advantages, it is interesting to note that according to the Memorandum of the Proposal for the Directive, the expression “social advantages” has the same meaning as in Regulation (ECC) 1612/68 on freedom of movement for migrant workers – currently replaced by Regulation (EEC) 492/2011 of the European Parliament and of the Council of 5 April 2011 – in the manner that the European Court of Justice has interpreted it: “benefits of an economic or cultural nature which are granted within the Member States either by public authorities or private organizations”¹⁶. This amendment has to be regarded as a relevant one, taking into consideration the broad definition that the ECJ gives to this terminology¹⁷.

Access to and supply of goods and services which are available to the public involve another interesting field of application covered by the anti-discrimination directive. On close inspection, this is the only one dealing with either discrimination in employment or while accessing services. As far as sex discrimination is concerned, Directive 2004/114/EC of 13 December 2004 was passed subsequent to Directive 2002/73/EC, implementing the principle of equal treatment between men and women in the access and supply of goods and services. In addition, in the context of the Employment Equality Framework Directive 2000/78/EC, a proposal was advanced for a Council Directive to implement the principle

¹⁵ J. Ringenheimer, *The Prohibition of Racial and Ethnic Discrimination in Access to Services under EU Law*, in *European Anti-Discrimination Law Review*, 2010, n. 10, 12.

¹⁶ On this point, see Howard, E., *op cit.*, 245. Pursuant to the Memorandum, “examples include concessionary travel on public transport, reduced prices for access to cultural or other events and subsidized meals in schools for children from low income families”. See Proposal for a Council Directive implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, Brussels, 25 November 1999, COM(1999) 566 final, 7.

¹⁷ Tellingly, “as regards migrant workers and frontier workers, the fact that they have participated in the employment market of a Member State establishes, in principle, a sufficient link of integration with the society of that Member State, allowing them to benefit from the principle of equal treatment, as compared with national workers, as regards social advantages. That principle is applicable not only to all employment and working conditions, but also to all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory (see, inter alia, Case C-85/96 Martínez Sala [1998] ECR I-2691, paragraph 25, and Commission v Germany, paragraph 39)”. Case C-542/09, *European Commission v Kingdom of the Netherlands*, Judgment of the Court of 14 June 2012.

of equal treatment between persons, irrespective of religion or belief, disability, age or sexual orientation, which is still under evaluation. Directive 2000/43/EC provides a definition of “services” which is rather controversial. Paragraph 11 of Directive 2004/113/EC points out that services should be taken to be those within the meaning of article 50 of the Treaty (currently, Art. 57 of the Treaty on the Functioning of the European Union –TFEU-): “services shall be considered to be ‘services’ within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons”¹⁸. Consequently, for the purposes of the 2004 directive on sex discrimination, it is useful to go through the ECJ doctrine on the concept of services¹⁹. Nonetheless, the fact that Directive 2000/43/EC kept silent about the links with the free movement of services must be also taken into account. Above all, it is necessary to consider the different perspective of Art. 57 of TFEU and the foregoing anti-discrimination directive: the free movement of services is based on market considerations and is more business-oriented. Conversely, the Racial Equality Directive is concerned with the protection of human rights, which is acknowledged to be one of the fundamental principles of the European Union. In consequence, services are likely to be considered in a broader sense in this second field, not restricted to economic activities but also including activities without commercial translation or whose value can hardly be paid with remuneration²⁰. Goods and services available to the public are of diverse nature although housing is expressly cited. Within this scope, contracts concerning the sale, tenancy or loan of properties in the public or in the private sector are included, and access to home ownership constitutes without any doubt one of the most important aspects of this field. With regard to housing, there have been some rulings from French, Belgian or Dutch tribunals

¹⁸ And the definition goes on: “‘Services’ shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions”.

¹⁹ For instance, in Case 544/11, *Petersen*, Judgment of the Court of 28 February 2013, it was argued that “the first paragraph of Article 57 TFEU provides that services are to be considered to be ‘services’ within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Furthermore, it follows from the case-law of the Court that the provisions relating to the freedom to provide services are connected to activities carried out by independent service providers (see, to that effect, Case C-398/95 *SETTG* [1997] ECR I-3091, paragraph 7)”.

²⁰ This point was supported by J. Ringelheim, *op. cit.*, 14.

(the majority of them relating to instances of direct discrimination), and a limited number of cases about indirect discrimination, including language criteria, refusals to grant housing loans or imposing higher interest rates²¹. The wording “inclusion of housing” is of special interest as this aspect falls outside of the EU remit.

One key element of Directive 2000/43/EC is the reference to the rights of third-country nationals, an aspect which is closely related to discrimination. Art. 3.2 establishes that:

This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

This exclusion is of great importance considering the proximity between nationality and racial discrimination.

However, the individual scope of the directive does not exclude non-EU nationals. They are also safeguarded against discrimination on the grounds of racial or ethnic origin. Yet they can experience more disadvantages and mistreatment in comparison to EU nationals. The differences between these two fields – total coverage for racial discrimination and the lack of substantive equality when it comes to nationality issues – are difficult to explain.

In this respect, the language of the directive is not as straightforward as that employed in the International Convention on the Elimination of all Forms of Racial Discrimination (ICEFRD). Art. 1(2) of ICEFRD states that “this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”²². Nevertheless, the Committee on the Elimination of Racial Discrimination – a body established pursuant to Art. 8 of ICEFRD – issued General Recommendation No. 30²³, which specifies that:

²¹ For further considerations on this issue, see Boccadoro, n., *op. cit.*, 25 ss.

²² In addition, Art. 1.3 determines that “nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality”.

²³ Discrimination against non-citizens, 1 October 2004.

4. under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of Article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory; 5. States parties are under an obligation to report fully upon legislation on non-citizens and its implementation. Furthermore, States parties should include in their periodic reports, in an appropriate form, socio-economic data on the non-citizen population within their jurisdiction, including data disaggregated by gender and national or ethnic origin [...].

Accordingly, under the coverage of ICEFRD, a different treatment reserved to non-nationals can be considered discrimination, if not justified by objective reasons²⁴.

Moreover – and following the interpretation provided by the European Court of Human Rights of Art. 14 of the European Convention of Human Rights, (ECHR)²⁵ – relevant case law seems to include non-national residents in its scope of application. Along similar lines, it has been argued that a different treatment based on one's immigration status is tantamount to a breach of the prohibition of discrimination²⁶. Unfortunately, the ECJ is not bound by this doctrine, although two considerations can be made. First, all EU Member States have signed the ECHR. Second, Art. 6.3 of the Treaty on European Union establishes that the fundamental rights recognized by the ECHR shall constitute the general principles of EU Law.

Undoubtedly, Directive 2000/43/EC places a particular focus on third-country nationals. Art. 19 of TFEU does not mention nationality as a ground of discrimination, yet this choice appears to be intentional. Ideally, they are protected by this article, as considered racial or ethnic minorities.

²⁴ Howards, E., *op. cit.*, 252.

²⁵ Prohibition of discrimination: “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

²⁶ For example, *Bah v The United Kingdom* (app. n° 56328/07) Judgment of 27 September 2011. Of relevance is the following sentence: “The Court finds therefore, in line with its previous conclusions, that the fact that immigration status is a status conferred by law, rather than one which is inherent to the individual, does not preclude it from amounting to an ‘other status’ for the purposes of Article 14. In the present case, and in many other possible factual scenarios, a wide range of legal and other effects flow from a person’s immigration status”.

In contrast, Art. 18 prohibits discrimination based on nationality but only when involving EU nationals, consequently excluding third-country nationals²⁷. Moreover, the majority of racial and ethnic minorities are third-country nationals, however the number of EU nationals belonging to these minorities is concurrently on the rise. For all these reasons, it is sensible to review the interpretation of the wording “any treatment” contained in Art. 3.2 of Directive 2000/43/EC, taking into consideration aspects like legal residence and border control. A broader interpretation would result in the ineffectiveness of the directive, if related to third-country nationals²⁸. As will be seen later, the ECJ has dealt with third-country nationals without taking into consideration the anti-discrimination directive.

One glaring fault in the EU anti-discrimination directives lies in the consideration of religion, which is regarded as a ground for discrimination in Directive 2000/78/EC, while the same is not true of Directive 2000/43/EC, since here it is distinct from racial and ethnic discrimination. This circumstance would be irrelevant, but the varied degree of protection ensured in both directives is peculiar.

As already stated, the priority given to discrimination based on race, ethnicity and other grounds – except gender – places religion in a subordinate position. This aspect seems to overlook the deep relation existing between race, ethnicity, origin and religion. These grounds for discrimination are frequently intertwined, and it is very difficult to distinguish one from the others²⁹. Although religion usually rests on one’s choice, it is not always a personal decision. Sometimes, it is linked to ethnicity as an inherent part of the individual human being. From this point of view, it is not a matter of belief but rather a substantive dimension of membership to a community identified as an ethnic collectivity³⁰.

In comparison to other anti-discrimination directives, Directive 2000/43/EC is innovative in that it narrows down the set of criteria used to justify discriminatory practices. Art. 4 lays down the main requirements to justify a different treatment. Without considering the broader scope of direct discrimination allowed by Directive 2000/78/EC – above all concerning churches or other public or private organizations on which the ethos of religion or belief is based – a clear limitation emerges on racial

²⁷ See S. Benedí Lahuerta, *op. cit.*, 741.

²⁸ *Ibid.*, 742.

²⁹ E. Howard, *op. cit.*, p. 241. Also, S. Benedí Lahuerta, *p. cit.*, 739.

³⁰ S. Benedí Lahuerta, *p. cit.*, 748.

discrimination as opposed to Directive 2004/113/EC. This is because Directive 2000/43/CE only regards as valid those requirements within the scope of employment and occupation. Consequently, there is no provision like Art. 4.5 of Directive 2004/113/EC permitting such different treatment in the provision of goods and services³¹.

The wider implementation of the anti-discrimination directive can be seen as a positive outcome. Yet it is not easy to predict the latitude granted by the ECJ regarding these measures.

Taking gender equality into account, it is expected that the ECJ will take a stricter approach, outlawing any measure which penalize less represented and victimized communities. It is worth remembering that Directive 2002/73/EC derogated Art. 2(4) of Directive 76/207/CEE, which was considered the main barrier to furthering positive discrimination³². Notwithstanding this, the major shortcoming of the directive is that it allows, but not imposes, affirmative action. If one were to compare EU legislation with Art. 2 of ICEFRD³³, the former would certainly prevail in terms of safeguards. Furthermore, a duty is placed on Member States to appoint a body or bodies for the promotion of equal treatment, similarly to the obligation laid down in Directive 2006/54/EC in relation to sex discrimination. Once again, this points to the higher consideration given to sex and race compared to other grounds of discrimination.

Apart from the characteristics described above, there are many other interesting aspects in the anti-discrimination directive that should be highlighted. Although some shortcomings, the reading given by the ECJ is very interesting, and can offer new developments in the path to tackling all forms of discrimination. Significantly, it has been argued³⁴ that the directive has a more result-oriented approach than those concerning other forms of discrimination. Apart from a conclusion by the Advocate General, which has not been taken into account by the Court due to a

³¹ J. Ringelheim, *op.cit.*, 17.

³² In this respect, E. Howard, *op. cit.*, 249.

³³ “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

³⁴ E. Howard, *op. cit.*, 250.

procedural flaw, a limited number of judgments have been delivered on racial discrimination.

3. Case Law of the European Court of Justice

a) Case C-54/04. Judgment of the Court, 10 July 2008: Discriminatory Criteria for Selecting Staff

Apparently, this is a simple case, yet some interesting considerations can be made. The Belgian body for the promotion of equal treatment appealed to the court alleging that a company specialized in the sale and installation of up-and-over and sectional doors, adopted a discriminatory recruitment policy. The company was looking for fitters, but the director made a public statement saying that they could not employ immigrants because customers were reluctant to give them access to their houses to perform their work. The courts rejected the claims for lack of evidence, adding that the presumption that a person would apply for a job and would not be employed due to his ethnic origin was ill-founded. Having appealed this decision, the court of appeal sent a preliminary ruling to the ECJ. One question was primarily whether the fact that the employer had challenged the allegedly discriminatory selection criteria from the very beginning amounted to direct discrimination. For the purposes of the ruling, another question was whether the recruitment of indigenous workers on an exclusive basis can be considered as a form of direct discrimination. Finally, the national court enquired about the burden of proof and the dividing line between direct and indirect discrimination.

The ECJ answered this preliminary ruling providing a relatively few arguments. The first aspect to ascertain was whether a public statement constitutes enough evidence for establishing direct discrimination, or whether a formal complaint from the victim of the discriminatory practice is a necessary pre-condition. Contrary to what happens in some Member States, the court concluded that the lack of an identifiable complainant does not lead to the conclusion that no direct discrimination has occurred. The need to foster the conditions for a socially inclusive labour market determines that a system in which there must be an unsuccessful candidate for a job does not fit.

Clearly, a public statement like the one made in this case can dissuade candidates with certain ethnic or racial characteristics from applying, and consequently, entering the labour market. Accordingly, the decision of the ECJ draws on the meaning of Directive 2000/43/EC, according to which

discrimination is not dependent on the identification of a complainant who claims to have been treated differently on grounds of race.

The possibility for the Belgian body to initiate legal proceedings in cases of racial discrimination without the existence of an individual or a group of people treated differently is not imposed by the directive, although Member States can amend this provision, which accordingly, cannot be deemed contrary to Art. 13³⁵. The ECJ concludes that the fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination.

This interpretation represents an important step forward in the theorization of direct discrimination within the European Union doctrine. In its decision, the ECJ has argued that a public body, as contemplated in Art. 13 of the directive, can file a complaint against an employer, although there are no actual victims. So, the damage arising from racial discrimination must not be accredited in current terms, but it is possible to hypothesize that potential victims will not take part in a selective process where a job advertisement excludes them *a priori*.

The final considerations provided by the ECJ in *Feryn* leave us with some doubts. In line with Art. 8 of Directive 2000/43/EC, the ECJ holds that statements like the one published in this case give rise to the presumption of a discriminatory recruitment process. This interpretation has given rise to criticism because apparently, and as pointed out in the first part of the judgment, the statement signifies more than a presumption of direct discrimination. It constitutes a direct discrimination in itself³⁶.

This aspect is problematic as placing the burden of proof on the defendant, who should give evidence that there has not been a breach of the principle of equal treatment and that his practice does not correspond to that described in the “suspicious statement”. Yet again, the only way to justify a direct discrimination practice is determining either occupational requirements or positive action. Obviously, the justification allowed in this case cannot include both. It must be concluded then that the weakest aspect of this judgment is the dubious difference between presumption and discrimination.

Finally, the Belgian Court that delivered the preliminary ruling asked about the possible sanctions faced by the employer. In this respect, the ECJ refers to the principles laid down in Art. 15: effectiveness, proportionality and dissuasive character, apart from enough compensation

³⁵ Stressing this point, M. Ambrus, M. Busstra, K. Henrard, *op. cit.*, 168.

³⁶ *Ibid.*, 171.

to the victim, adding that a specific sanction is not provided. Rather, each Member State can choose the most appropriate solution. When no specific victims exist, the public body can seek a declaration of the discrimination with an adequate level of publicity in which the cost might be borne by the defendant, or alternatively it may ask for a prohibitory injunction ordering the employer to cease the discriminatory practice. Also, it is possible to obtain compensation for damages from the public body and compensation for the expenses or the imposition of a penalty to the sued entity.

b) Case C-415/10. Judgment of the Court, 19 April 2012: Access to Information and Privacy

This is a more complex case of discrimination called “multiple discrimination”, as involving discrimination on several grounds (sex, age and race). It is a special case concerning the recruitment process. The complainant is Russian-born Mrs. Meister, 45 years old, who holds a Russian degree recognized as equivalent to a German one. The defendant company commenced a selection procedure and Mrs. Meister sent in her application, subsequently receiving a rejection letter without an invitation to sit an interview. Not long afterwards a new advertisement with the same content was published and again Mrs. Meister put forward her candidature, but she was turned down without any reason for this. Mrs. Meister considered that she was being treated less favorably on the grounds of her sex, age, and ethnic origin and made a formal complaint against the employer. The complaint being rejected, she appealed to the higher Court, which dismissed the appeal. But the complainant challenged this second decision, turning to the Federal Labor Court. The Federal Labour Court made reference to a preliminary ruling about the information rights that Mrs. Meister could claim in furtherance of Directive 2000/43/EC.

Concerning the information rights of a person who considers himself or herself having been victim of disparate treatment, he/she can stake a claim, based on provisions on the burden of proof, included in Directives 2000/43/EC, 2000/78/EC and 2006/54/EC, the three pieces of legislation being almost identical. All of them draw on Council Directive 97/80/EC of 15 December 1997 on the burden of proof in the event of discrimination based on sex. Currently, this Directive has been transposed

in Directive 2006/54/EC. At all events, the foregoing provisions have been interpreted in *Kelly*³⁷, in which the court held that the assessment of facts from which the existence of direct or indirect discrimination can be presumed is a matter for national judges. Consequently, the directives do not specifically entitle those who consider themselves being victims of any sort of discrimination to information in order to establish the facts from which discrimination can be presumed to satisfy the plaintiff's burden of proof. However, the court recognizes that a refusal of disclosure on the part of the defendant is not possible, and it would be a circumstance that can be taken into consideration in the context of the process to establish the facts. Otherwise, the targets of the directives could be defeated. Accordingly, it must be ensured that a refusal of disclosure by the defendant is not liable to compromise the achievement of the objectives pursued by the directives. National courts must ensure that the refusal to disclose information by the employer in the context of the facts and circumstances would not be liable to compromise the achievement of those objectives.

In this context, upon remembering the relevance that these cases can have in terms of statistical evidence, the ECJ recognizes that, in the case submitted to a preliminary ruling, the employer seemed to have refused Mrs. Meister any access to information that she asked for. This refusal of disclosure – jointly with the fact that the company had not discussed with Mrs. Meister her level of expertise and abilities, nor had she met the requirements of the job advertisement, is of considerable importance taking into account that the defendant was not offered a job interview.

Following this reasoning, the ECJ ruled that the directives must be interpreted as they do not guarantee access to information, including if the employer has selected other applicants at the end of the recruitment process and irrespective of a worker's plausible claims that he meets the requirements listed in a job advertisement but his application had been rejected. Nevertheless, it cannot be ruled out that a company's refusal to give access to that information may be taken into account while establishing the facts from which the direct or indirect discrimination can be presumed. But this weighing is for the Referring Courts.

It must be concluded that the ECJ reached an eclectic and uncompromising decision that places all responsibility on the Referring Court. That behavior constitutes a repeated trend in cases concerning discrimination issues. In the case referred for preliminary ruling, it might

³⁷ Case C-104/10, Judgment of the Court 21st July 2011.

be recognized that Mrs. Meister had done her best to discover the facts because she requested all the relevant information to the company. Clearly, she could not accede to a third party due to the negligent conduct of the employer. In this situation, it would be possible to presume that discrimination had taken place or to have a hypothetical third party, not belonging to one of the protected groups –women, elderly workers, or racial minorities. Otherwise, it would be highly unfair to dismiss Mrs. Meister’s claim. So the ECJ decided, without reasoning enough, to suggest to the Referring Court that, in view of the circumstances, the lack of information fulfills the presumption of discrimination and satisfies the burden of proof attributed to Mrs. Meister. It is not necessary to remark that this is a mere suggestion of the ECJ because the main ruling consists in rejecting that the directives grant access to information.

This reluctant reasoning does not contribute much to consolidating a sound ECJ doctrine on some very controversial questions, such as the burden of proof or the way to define the hypothetical third party. About this last question, Mrs. Meister had not been able to select any actual comparator, but it would be possible, for instance, to look for previous recruitment processes to ascertain the treatment given to young male or majority ethnic applicants or to construct the hypothesis on the behavior expected from a reasonable employer who examines the application from an older woman and pertaining to a racial minority³⁸.

Of course, the disclosure of information encounters problems in the context of discrimination proceedings. Granting information about certain aspects may violate data protection and privacy rights from third persons involved in the facts. Consequently, the rights of persons who allegedly have been victims of disparate treatment must be limited in terms compatible with these privacy rights. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free dissemination of such data constitutes the main piece of legislation in this aspect, without prejudice to national developments. However, to balance information rights and data protection rights does not mean that the latter must be privileged. Rather, the problem must be focused on how the information must be disclosed in a manner respectful of privacy. Unfortunately, the Meister ruling does not offer any clues in this respect.

³⁸ Suggesting both possibilities, L. Farkas, *Getting it Right the Wrong Way? The Consequences of a Summary Judgment: the Meister Case*, in *European Anti-Discrimination Law Review*, 2012, n. 15, 26 ff.

b) Case C-394/11. Judgment of the Court, 31 January 2013: Roma Communities and Access to Services

The judgment of the ECJ in this case does not have any relevance on discrimination issues. This is because the competence of the Bulgarian administrative body to deliver preliminary rulings is discussed and the ECJ concluded that it lacks the authority required to perform this task. Consequently, the Court rules that it does not have jurisdiction to answer the questions referred by that body. Notwithstanding this, the opinion of the advocate general, Mrs. Kokott, delivered on 20 September 2012 is very useful. First and foremost, it is important to provide an overview of the discussion on the supply of services: in two neighborhoods of Sofia which were inhabited mainly by members of Roma communities, the electricity meters were placed higher than in other parts of the city where this ethnic minority was not prevalent. The reason afforded to this practice by the municipality resided in keeping the meters inaccessible for customers in districts where there had been numerous cases of illegal interference with electricity infrastructure and manipulation and illegal electricity extraction. So, the measure was an attempt to avoid future fraud and abuse in order to assure the quality and a financially reasonable service.

The Advocate General argued that the controversy fell within the scope of Directive 2000/43/EC. The electricity meters are clearly part of the general conditions under which customers receive the electricity service. Accordingly, the scope of Art. 3(1)(h) in its reference to “access to and supply of goods and services which are available to the public” clearly covers the placement of these meters.

Following this statement, the reasoning moved to an apparently clear question. Undoubtedly, it is not necessary to identify an entitlement or a right to access the service on the part of the claimant. The existence of a discriminatory practice does not require an infringement of rights or interest legally safeguarded. A national rule which makes discrimination dependent on these sorts of infringements is totally contrary to Directive 2000/43/EC.

After these considerations, the conclusions lead to questions about the burden of proof. The referring body had asked if the fact that the different placement of electricity meters was in itself enough to fulfill the requirements on the person or institution that alleges discrimination. The matter is related to how high the degree of certainty must be before drawing the conclusion that discrimination has occurred. In this respect, the Advocate General, after reviewing several versions of the Directive in

different languages, came to the conclusion that the same criteria established in sex discrimination cases must be applied to this field. One must remember that the reversal of the burden of proof has been introduced to improve the situation of the potential victims of discrimination. For this reasoning, the Advocate General has expressed that it is enough to produce this reversion under Art. 8.1 of the Directive 200/43/EC that persons who consider themselves wronged because the principle of equal treatment has not been applied should establish facts which substantiate a *prima facie* case of discrimination.

It can be concluded that when determining the difference between direct and indirect discrimination, this case refers to the latter. Actually, there were no indicators of direct discrimination based on ethnic origin. Apparently, the municipality did not have the purpose of violating the dignity of the members of Roma community or creating a humiliating living environment for them. Having established this, it becomes necessary to discuss the legal justifications. In this respect, the necessity to prevent future fraud and abuse and the convenience to ensure the quality of electricity supply were the two main reasons expressed by the municipality. Obviously, according to the Advocate General, the measure of placing the meters higher in more problematic neighborhoods does not guarantee that there would be fewer incidences. But such a measure must be regarded as suitable for achieving a legitimate aim and as contributing to an appreciable reduction in the number of cases of illegal interference with the electricity supply, and apparently other systems obtaining similar results would be considerably more expensive and almost as detrimental to citizens' rights. So, the principle of proportionality was also safeguarded.

Although briefly described, this case is of great interest for developing the doctrine on discrimination issues, mainly, the burden of proof, the difference between direct and indirect discrimination and justification matters. Unfortunately, procedural problems caused the dismissal of the preliminary ruling. So, the ECJ lost a great opportunity to clarify interesting aspects concerning the provision of goods and services, a field in absolute need of case law. Nowadays, there is only one Judgment about gender discrimination in that field³⁹.

³⁹ Case C-236/09, *Test-Achats ASBL*, Judgment of 1 March 2011.

The Legal Aspects of the Deregulation of Professions as a Supporting Measure towards Greater Mobility of Workers

Valentina Franca and Elizabeta Zirnstein *

1. Introduction

The mobility of workers is a topic discussed at almost every labour relations conference, in different professional settings, during political decision-making processes and in the media. The topic usually relates to the right of European citizens to move freely within the European Union (hereinafter the EU). On the other hand, the relation between the *legal regulation of professional performance and the mobility of workers* is rarely discussed in literature. However, the relationship and the topic are extremely important, which is evident in the activities of the EU. The EU aims to design a system providing as simple and free access to professions as possible. The requirements for the pursuit of a certain profession should, thus, no longer be the fulfilment of previously prescribed criteria, e.g. appropriate education, training, professional experience, etc, or at least these requirements (restrictions) should only exist for those professions in which they are justifiable. Namely, where the lessening of these requirements positively affects labour market flexibility as well as facilitating greater mobility of the workforce within the EU.

Because of the effects that the setting of requirements for the pursuit of a certain profession could have on the functioning of the entire European labour market, setting these requirements is no longer only a matter for

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individual Member States, but rather for the entire EU. By regulating professions, i.e. by setting formal requirements for the pursuit of a certain profession (more on the definition of the term *regulation* below), access to professions is restricted, hindering the mobility of the workforce in the single European market and consequently also the liberalisation of the market and free movement of goods, persons, capital and services within the EU. Non-fulfilment of the requirements for the pursuit of an individual profession may exclude (eliminate) an individual worker – a national of an EU Member State – from the single European market¹. Thus, restrictive regulation in this field may have the same “stopping” effect on the mobility of the workforce as discrimination based on nationality.

The rights of EU citizens to work and perform services in another Member State are basic rights in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter “TFEU”)². Thus, it is the duty of the EU, as well as of Member States, to provide legal regulation so that these two rights can be exercised. At first sight it appears that setting requirements for the pursuit of a certain profession (i.e. the regulation of professions) contradicts the free movement of workers and services. However, in general the EU does not object to the regulation of professions, acknowledging the existence of legitimate arguments for certain restrictions in certain professions; especially where there is a strong general interest, usually related to the provision of safety and health. This includes doctors, nurses, the fields of construction, mountain guides and similar professions. A problem arises when the regulation of an individual profession essentially hinders, or even renders (almost) impossible, access to the labour market. This presents a great difficulty for the nationals of EU Member States wishing to be (self) employed in another EU Member State. The regulation may also be restrictive at the national level, especially if many professions are regulated and/or if numerous and demanding requirements for the pursuit of individual professions are set. The EU had already recognised this problem in 1970, when it decided to design a system for the recognition of professional qualifications. EU citizens have the right to work in a Member State regardless of where in the EU they have obtained

¹ European Commission, Commission reports, 2011, http://ec.europa.eu/competition/sectors/professional_services/reports/reports.html (accessed April 20, 2013).

² Treaty on European Union and the Treaty on the Functioning of the European Union, 2010, Official Journal EU, C 83/10.

their professional qualification. On the other hand, every EU Member State has the right to set requirements, which an individual must fulfil in order to pursue a given profession in that Member State. Thus, it might be that the Member State will not recognise qualifications acquired elsewhere in the EU, stating that these qualifications are not adequate (e.g. they do not meet the demands of the national legislation).

The recognition of professional qualifications has a significant role in allowing nationals of one EU Member State to work in another Member State. The purpose of the normative activities of the EU in this field is to ease such recognition and, consequently, the mobility of the workforce. Thereby, the recognition of professional qualifications became a founding stone of the single market, and the first directive in this area was adopted in 1964³. In the past (i.e. before the establishment of a system for the recognition of professional qualifications) every EU citizen wishing to pursue a regulated profession in another Member State (the host Member State), had to prove that they had an appropriate professional qualification, acquired in their home Member State. In the years following this first directive, the EU regulated the recognition of professional qualifications in 15 additional directives⁴, making the system of the recognition of professional qualifications unclear and inefficient. In order to simplify and modernise the entire system of the recognition of professional qualifications, the provisions of these directives were incorporated in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (hereinafter: Directive 2005/36/EC)⁵ in 2007. Since 2007, when Directive 2005/36/EC came into force, there has been a new system of mutual recognition of professional qualifications in place, enabling nationals of EU Member States access to and pursuit of regulated professions and activities in other Member States under the same requirements as those valid for nationals of the host Member State. The fundamental principle of the system of mutual recognition of professional qualifications is: if an EU citizen is trained in their country to

³ Council Directive 64/220/EEC of 25 February 1964 on the Coordination of Special Measures Concerning the Movement and Residence of Foreign Nationals which are Justified on Grounds of Public Policy, Public Security or Public Health, Official Journal of the EU, 56/845.

⁴ These three directives set up a general system of recognition of qualifications and the other 12 were sector directives.

⁵ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Official Journal of the EU, L 255/05.

pursue an individual profession, they are also trained to pursue the same profession in any other EU Member State.

The recognition of professional qualifications is in theory an auxiliary instrument supporting the right of EU citizens to work and perform services in another Member State. However, the practical experiences of Member States' nationals as well as statistical data show a discrepancy between theory and practice. Namely, despite the system of mutual recognition of professional qualifications, an individual wishing to pursue their profession in another Member State faces numerous obstacles during the procedure for the recognition of their professional qualifications⁶. From the legal point of view, it should be stressed that difficulties arise from the possibility of national interpretations of the provisions of Directive 2005/36/EC⁷, due to which the entire system of mutual recognition does not operate uniformly. Therefore, it is not surprising that in the past 13 years only approximately 200,000 EU residents requested the recognition of professional qualifications in another Member State.⁸ Specifically because of these difficulties, the European Commission has already prepared a proposal of amendments to Directive 2005/36/EC.⁹ Despite the efforts to achieve the fastest

⁶ The host Member States usually require submission of different documents, certificates, school reports, etc., with court certified translations or as originals during the procedures for the recognition of professional qualifications. The complex and lengthy procedures (in some Member States recognition is issued after more than a year of waiting), often require a disproportionate amount of documentation to be presented, and the applicants can also find it difficult to even establish which state body is competent, as well as other similar difficulties.

⁷ For the reason the protection of public interest, a Member State may require from the applicants for the recognition of professional qualifications fulfilment of conditions, which are (additionally) specified in the national legislation, due to which the entire system of the mutual recognition of professional qualifications does not operate in a uniform manner. This ambiguity of the directive for the national interpretation is also mentioned in the EFTA court judgment, case No. E-1/11, foremost in Points 72 to 75.

⁸ European Commission, 2011, *op. cit.* Considering that there are 415.7 Million persons active in the EU: M. Wozowczyk, N. Massarelli, *European Union Labour Force Survey – Annual Results 2010*, 2010,

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-030/EN/KS-SF-11-030-EN.PDF (accessed March 2, 2012,) the 200,000 applications for the recognition of professional qualifications in the past 13 years is a distinctively low number.

⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the Recognition of Professional Qualifications and Regulation on Administrative Cooperation through the Internal Market Information System*, 2011,

http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf (accessed May 4, 2013).

possible mutual recognition, the European Commission is aware that the end effect of such recognition in a system with approximately 800 regulated professions¹⁰ is questionable. Thus the Commission started to emphasise the deregulation of professions as an important tool, which is also aimed at boosting the greater mobility of the workforce within the EU.

Moreover, it has to be assumed that the expectations of the labour market go towards *greater demand for highly qualified workers*. According to the forecasts of the European Centre for Development of Vocational Training¹¹ the demand for highly qualified workers will increase by 16 million working positions by 2020, meaning that the share of highly qualified workers in the labour market will increase from its current level of 29 per cent to 35 per cent in 2020, while the demand for low-qualified workers or those without any qualifications will continue to decrease - supposedly falling by approximately 12 million working positions during the same time. Taking into account the forecasted trends, an even greater desire and need for the mobility and free flow of the workforce may be expected. In the EU strategy for smart, sustainable and inclusive growth, the European Commission stresses the need for the encouragement of mobility within the EU and the more efficient matching of the supply and demand of the workforce¹². A similar opinion is also expressed in other documents of the European Commission¹³. In addition to this, the

¹⁰ DG Internal Market and Services, *Study to Provide an Inventory of Reserves of Activities linked to Professional Qualifications Requirements in 13 EU Member States & Assessing their Economic Impact (Final Report)*, 2012, http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf (accessed February 18, 2013), 1.

¹¹ European Centre for Development of Vocational Training, *Skills Supply and Demand in Europe. Medium term forecast up to 2020*, Publication Office of the European Union, Luxembourg, 2011, http://www.cedefop.europa.eu/en/Files/3052_en.pdf (accessed February 3, 2012), 13.

¹² European Commission, *Europe 2020*, 2010, http://ec.europa.eu/europe2020/index_en.htm (accessed April 25, 2011).

¹³ For example, the document of the European Commission, *Agenda for New Skills and Jobs*, 2010, <http://ec.europa.eu/social/main.jsp?langId=en&catId=958> (accessed April 25, 2011), warns that there is an imbalance in the European labour market and that the potential mobility of the workforce is not sufficiently taken advantage of. Similarly, in the document of the European Commission, *Towards a Single Market Act For a Highly Competitive Social Market Economy, 50 Proposals for Improving our Work, Business and Exchanges with Another*, 2010, http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf (accessed April 25, 2011), foresees 50 measures for the encouragement of work, business and cooperation in the EU.

forecasted demographic trends should also not be overlooked. By 2050, the workforce in the EU is expected to decrease by 68 million workers (under the presumption of the same inclusion of workers in the labour market and the same immigration trends)¹⁴.

Based on the forecasted trends, the EU already began focussing on the modernisation of the system of the recognition of professional qualifications in 2010, when a *public consultation on Directive 2005/36/EC* was launched. A special report based on the 370 contributions received was issued in July 2011¹⁵. The main problems, which arose during the evaluation process of Directive 2005/36/EC, are the availability of the information on recognition procedures, the efficiency of recognition procedures, the operation of the systems of automatic recognition and the areas to which Directive 2005/36/EC applies.

As we can see, the system of recognition of professional qualifications by itself is not enough to ensure the proper mobility of workers within the EU. This is somehow obvious: in a system with approximately 800 regulated professions¹⁶, the results of recognition procedures are indeed questionable. Therefore, the deregulation of professions is becoming more and more important. Especially in the present economic crisis, the deregulation of professions is often seen as a tool to boost national competitiveness and as a supporting measure in the process of the economic recovery of EU States. Indeed, the deregulation of professions was one of the conditions for Greece to receive EU and IMF loans¹⁷, and a similar situation was seen in Spain. The liberalisation of closed professions has also in general been one of key suggestions from international creditors since 2010.

¹⁴ Reflection Group, *Project Europe 2030: Challenges and Opportunities*, 2010, <http://www.reflectiongroup.eu/2010/05/08/project-europe-2030-challenges-and-opportunities/> (accessed April 22, 2013), 24.

¹⁵ European Commission, *Evaluation of the Professional Qualifications Directive*, 2011, http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf (accessed March 3, 2012).

¹⁶ DG Internal Market and Services, *Study to Provide an Inventory of Reserves of Activities linked to Professional Qualifications Requirements in 13 EU Member States & Assessing their Economic Impact (Final Report)*, 2012, http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf (accessed February 18, 2013), 1.

¹⁷ E. Achtsioglou, *Greece 2010-2012, Labor in the maelstrom of deregulation*, in *European Review of Labour and Research*, 2013, vol. 19, n. 1, 125-127.

The connection between the recognition of professional qualifications and the deregulation of professions is obvious. The deregulation of professions aims to lessen the requirements for the access to certain (regulated) working positions and positively affects the mobility of workers. The benefits of both the recognition of professional qualifications and deregulation of professions are the releasing of a rigid institutional structure, which impedes the EU economy on its way towards recovery. In this sense, we could also speak about the appropriate balance between the regulation and deregulation of professions. Government intervention in the form of requirements set up for the pursuit of a certain profession are sometimes necessary to protect the general interest, while on the other hand the purpose of the regulation of professions can also be non-economic, i.e. it can pursue wider social aims. Through the regulation of professions national authorities can try to develop and strengthen certain values, such as trust and honesty.

The recognition of professional qualifications and the deregulation of professions can be analysed from several perspectives: legal, economic, business, psychological, social and similar areas. In this paper we focus on the legal aspects, while further touching on some social and other implications. Thus, the purpose of this paper is to present and analyse the fundamental issues related to the process of the deregulation of professions. As this process is closely related to the recognition of professional qualifications, the paper also gives an overview regarding the fundamental legal issues in this field. As countries should approach the deregulation of professions systematically, the core of this paper are the recommendations for an appropriate approach to this process.

After the introduction of the basic premises (Point 1), we first present and deal with different approaches to defining the phrase “(de)regulation of profession” itself (Point 2). In Point 3, we present and analyse international legislation based on legal documents, which deal (directly or indirectly) with the (de)regulation of professions. Furthermore, a comparative review of the implementation of Directive 2005/36/EC in selected member states is also presented. The relation between the (de)regulation of professions and the economic environment, stressing the influence of the Services Directive, is dealt with in Point 4. The paper ends with conclusions and recommendations for the potential deregulation of professions.

2. Definition of the (De)regulation of Professions

When discussing the (de)regulation of professions, the following terms must to be succinctly defined: *profession*, *regulated profession*, *professional qualification*, *regulation* and *deregulation*. Firstly, “profession” is work, pursued by someone and for which special know-how, partially or entirely acquired through intellectual work (study), is required; based on this, one provides services with a high degree of integrity and establishes direct or trust-worthy relationships with customers or clients.¹⁸ The term “regulated profession” should be explained in more detail: in theory, authors from different disciplines define it differently, as there is neither general consensus as to what exactly a “regulated profession” or “regulation” is. Den Hertog¹⁹ proposes “regulation” to be “the application of legal instruments in order to implement social-economic goals”. The author differentiates two fundamental forms of regulation – economic and social. According to Hertog, economic regulation incorporates two sub-types of regulation, i.e. structural regulation and regulation of behaviour²⁰. Structural regulation applies to regulation of the market structure. Examples of structural regulation are restrictions with regard to access to the market or exit from it, and according to Hertog this also includes the regulation of professions. Regulation of behaviour establishes rules of behaviour in the market. Price control, marketing prohibitions and standards of quality are examples of this type of regulation. According to Hertog, social regulation is found in the fields of environmental protection, working conditions, user protection and similar areas. Overall, the author understands general interest, i.e. the best possible allocation of limited resources for individual and collective goods, as one of the best reasons and goals of regulation.

The definition of a “regulated profession” in Article 3 of Directive 2005/36/EC provides that a regulated profession is *a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes*

¹⁸ N. Garoupa, *Regulation of Legal and Medical Professions in the US and Europe: A Comparative Analysis*, Working Paper 2006-2011, 2006, <http://www.fedea.es/pub/papers/2006/dt2006-11.pdf> (accessed March 6, 2012).

¹⁹ J. Den Hertog, *General Theories of Regulation*, in B. Bouckaert, G. De Geest (ed.), *Encyclopedia of Law and Economics*, Edward Elgar, Cheltenham, Northampton, 1999, 223–270.

²⁰ J. Kay, J. Vickers, *Regulatory Reform: An Appraisal*, in G. Majone (ed.), *Deregulation or re-regulation*, Pinter Publishers, London, 1990, 223 - 251.

of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. The definition is meant only for the purpose of Directive 2005/36/EC; this being its main deficiency. Thus, it can neither be applied as generally valid nor be referred to from the legal perspective in other cases, i.e. outside of the regulative scope of Directive 2005/36/EC. The definition of a “professional qualification” is also defined in the Professional Qualifications Directive 2005/36/EC. Article 3 (1b) states that a professional qualification is “*attested by evidence of formal qualifications, an attestation of competence referred to in article 11, point (a) (i) and/or professional experience.*”

Finally, the terms “regulation” and “deregulation” should be explained. When defining the regulation of professions, generally, (a) regulation with regard to entrance requirements and (b) regulation with regard to the requirements for the pursuit of the profession are distinct.

Regulation of entrance requirements means setting requirements, under which one can enter into an individual profession. This takes several forms such as registration, licensing, negative licensing, certification and accreditation²¹. The entrance requirements may be additionally restrictive. The typical example is the legal profession of a notary public, in which case the state limits the number of notaries public in a certain geographical area in addition to the requirements of achieving certain standards of the profession and professional competence. These can be defined either by the state or by professional associations (e.g. the notary public chamber).

In addition to entrance requirements, requirements for the pursuit or provision of certain professions may be established. These may include restrictions such as fixed prices, prohibitions on certain forms of marketing or promotion, and the definition of professional and ethical standards. The persons breaching them are subject to penalties.

Before asking how to regulate (in which legal acts, what legislative technique is to be applied, etc.), there is the question of whether a certain profession should be regulated at all. Even though this is not a legal question, it has a direct effect on the legal regulation. In our opinion, the nature of an individual profession is relevant for the decision whether or

²¹ A. Fells, *Regulation, Competition and the Profession, Proceedings of the Industry Economics Conference*, 2011, <http://www.accc.gov.au/content/index.phtml/itemId/255463> (accessed April 28, 2011).

not to regulate it. There is, foremost, the dilemma whether the nature of an individual profession requires a unique, special and separate approach. The seriousness of the consequences arising from an inappropriate action, as well as the degree of probability of the successful implementation of the regulation, are both important. It is essential, in light of the EU's desire to deregulate professions, that an individual Member State is able to explain and support the establishment of the access restrictions of a (regulated) profession. This, of course, is not only crucial from the point of view of the EU, but also for the purpose of designing a coherent strategy and communicating with social partners and the (professional) public.

Generally, there are different reasons that justify the regulation of certain professions. Firstly, there is the consumer protection argument. Formal requirements for the pursuit of a certain profession can be aimed at ensuring the high quality of products and services or preventing underqualified professionals from providing services. Another reason is the overcoming of information asymmetries, (i.e. some professional services require a high level of technical knowledge and consumers may find it difficult to judge the quality of services being provided). Secondly, for services (or even service sectors), which are very important from the perspective of national interest, there is a need to protect the independent exercise of a given activity. Thirdly, formal requirements for the pursuit of a certain profession can be aimed at ensuring the health and safety of users (buyers or service recipients) and occupational health and safety for workers who provide those products/services²².

Provided there are justifiable reasons for the regulation of a certain profession, then a second fundamental question follows: how should the profession be regulated and who should set the rules. In general, two approaches answer this question: *state regulation* through mandatory legal rules²³ or *autonomous regulation* by industry or professional associations²⁴. Both approaches enable the setting of access requirements, operational rules and other protective provisions for the products' or services' users. Professional and other associations are usually much more acquainted with the operation of professions, and it is thus recommendable that they at least participate in the process of rule formation. During the process,

²² DG Internal Market and Services, *op. cit.*

²³ J. Den Hertog, *op. cit.*

²⁴ Analysed in detail by A. Ogus, *Self-regulation*, in B. Bouckaert, G. De Geest (ed.), *Encyclopedia of Law and Economics*, Edward Elgar, Cheltenham, Northampton, 1999, 587-602.

one should always take notice whether or not too extensive protection of the “guild” is being imposed. Existing members of an individual group wishing to (overly) protect their position in the market may try to impose restrictive and/or disproportionate requirements for the access and/or pursuit of the profession for new members. In such cases, the state should respond appropriately and prevent the unjustified obstacles to the access and pursuit of a certain profession.

In general, we believe that the regulation of professions should be defined as the *activity of a state to set requirements for the access and/or pursuit of a certain profession in its legal regulations*. Since the deregulation of professions is the opposite process, it can be defined as the *“lessen” of regulation (for pursuit) of a certain profession*. Considering this, deregulation involves *“free pursuit”* in the sense of execution or pursuit of (formerly) regulated professions. Thus, it may be generally said, that *deregulation is the lessen of formal requirements for the pursuit of a profession*, which formerly required the fulfilment of certain conditions, such as acknowledged and required education, work experience, etc.

3. Legal Documents Regarding the (De)regulation of Professions: a Comparative Analysis

On the international level, neither the International Labour Organization (ILO) nor the Council of Europe has issued legally binding documents for dealing with the deregulation of professions. The ILO, in certain recommendations, regulates only the recognition of professional qualifications, mostly in the sense that member states should develop a system of professional qualifications and a system for their recognition. On the other hand, the recognition of professional qualifications has been an important issue in the EU for the last twenty years. The EU regulates the system of such recognition in Directive 2005/36/EC, which will be presented in Point 3.2. The directive has been fully transposed into the legal codes of all 27 EU Member States²⁵. A comparative review of the transposition in selected member states will follow in Point 3.3. We conclude this section with critiques of the system of the recognition of professional qualifications in the EU.

²⁵ At the time of writing Croatia was not a EU member yet.

3.1. International Labour Organisation Recommendations

The first recommendation that mentioned the importance of professional qualifications and the development of a national framework for their recognition was Human Resources Development Recommendation No. 150 adopted in 1975. In 2004, this recommendation was replaced by ILO Recommendation No. 195 Human Resources Development: education, training and lifelong learning (No. 195). According to ILO Recommendation 195, “*Members should develop a national qualifications framework to facilitate lifelong learning, assist enterprises and employment agencies to match skills demand with supply, guide individuals in their choice of training and career and facilitate the recognition of prior learning and previously acquired skills.*” (Art. 5, e). In ILO Recommendation 195 “*qualifications*” are defined as “*the formal expression of vocational skills of the worker, recognised at the international, national or sector levels.*” (Art. 2 c). ILO Recommendation 195 also states that special provisions should be designed to ensure the recognition and certification of skills and qualifications for migrant workers (Art. 12).

Contrary to the ILO and other international organisations that do not deal with the deregulation of professions (or at least not very directly), this field arouses much interest in the professional and professional public in the EU. As already stated, the EU recognises that the deregulation of professions is a supporting measure to ensure the four freedoms in the EU, foremost the free movement of workers in relation to the system of the mutual recognition of professional qualifications. The *fundamental legal framework in this field is Directive 2005/36/EC*. Through this directive the EU reformed the system of the recognition of professional qualifications with the purpose of contributing to greater flexibility in the labour markets, additionally liberalising the provisions of services, encouraging automatic recognition of professional qualifications and simplifying the related administrative procedures.

3.2. Directive 2005/36/EC

Directive 2005/36/EC regulates the system of the recognition of qualifications and enables nationals of Member States access to and pursuit of regulated professions or activities in other Member States under the same conditions as those that apply to nationals of the host Member

State. According to currently available data, there are approximately 800²⁶ regulated professions in the EU (all Member States).

A citizen of the EU being fully qualified to pursue a profession in one Member State and wishing to pursue this profession in another Member State, in which the profession is regulated, must first apply for the recognition of their professional qualifications. The rules of Directive 2005/36/EC are not unified for all professions. There are three major groups of professions, to which different rules apply.

The first group includes professions for which the minimum training conditions (professional qualifications) are coordinated at the EU level. The automatic recognition of professional qualifications applies to these professions, which include doctors, nurses of general health care, dental practitioners, veterinarians, midwives, pharmacists and architects. Annex V to Directive 2005/36 lists all professional titles, the holder of which has the right to the automatic recognition of professional qualification anywhere in the EU.

The second group of professions includes handicraft, industrial and trade professions (the professions in Annex IV to Directive 2005/36/EC), for which automatic recognition of “professional experience” applies.

The third group consists of professions for which the professional qualifications could not be unified because of the great differences existing among the Member States. Thus, a general system of mutual recognition of professional qualifications applies. The system of mutual recognition means that the training of a candidate for the pursuit of a regulated profession in a certain Member State is subject to the supervision of competent bodies in that Member State. The fundamental principle of this system is that if one is trained for the pursuit of a certain profession in their home Member State, they are trained for the pursuit of the same profession in any EU Member State. According to the general system, recognition means that the competent body in the host Member State verifies the proof of the competency or professional qualifications acquired in another Member State. This involves, foremost, the verification whether there are considerable differences between the training that the applicant completed (usually in their home state) and the training required by the host state. In cases where such differences are found to exist, the competent body must allow the applicant for the recognition of professional qualifications to reconcile these differences by

²⁶ DG Internal Market and Services, *op. cit.*

some additional measures. The applicant can either take an exam of professional competence or be granted an adaptation period of a maximum of three years. If the competent body establishes that the professional qualifications acquired in the another EU Member State correspond to the professional qualifications set forth in the national legislation, or if the applicant submits proof of having successfully completed the designated adaptation period or the exam of professional competence, this body issues a decision recognising the professional qualifications for the pursuit of a specific regulated profession in the host Member State.

Directive 2005/36/EC does not apply in cases where a degree does not prove special professional training (i.e. training that is intended for a certain profession). In such cases Article 45 of the Treaty on European Union (stating that the level of education, but not the content of training, is assessed for the pursuit of a profession) applies.

Special requirements apply for access to working positions in the public sector. The EU Member States may only limit access to such working positions if they directly or indirectly involve participation in the execution of legal public powers and duties, or the protection of special interests of the state or other public bodies. At this point, it should be mentioned that access to working positions in the public sector is also directly related to the question of language knowledge²⁷.

3.3. A Comparative Review of the Implementation of Directive 2005/36/EC in Selected Member States

Directive 2005/36/EC was fully and timely transposed into the legal codes of all 27 EU Member States between 2007 and 2010²⁸. Member States transposed it in one of two ways, i.e. either **vertically** by changing

²⁷ This paper does not deal with this question in detail, as it is a broad issue requiring a separate discussion. Nevertheless, in short, requirements related to language knowledge are permitted, so long as they are reasonable and necessary for the pursuit of the profession. Systematic standardised language tests are contrary to the principle of proportionality and requirement of a high degree of language knowledge is justified only in certain cases and only for certain working positions (Article 53 of Directive 2005/36/EC). The language requirements with regard to the free flow of workers are regulated in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, Official Journal, L 257.

²⁸ European Commission, *Evaluation of the Professional Qualifications Directive*, 2011, http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf (accessed March 3, 2012).

every regulation related to an individual profession, or **horizontally** with the adoption of one law, covering all professions.

In the following section, a comparative review of the Directive's transposition in six EU Member States, i.e. Slovenia, Austria, Germany, Italy, Denmark and Finland, is presented. We start with a short description of the recognition procedure, and then present a comparative review of the transposition of Directive 2005/36/EU from the aspect of (a) the legislative approach to the transposition, (b) the competent bodies and procedure of recognition, and (c) the formal requirements for recognition.

The starting point of the presented analysis was Slovene legislation, as this is our home country. The first criterion for the inclusion of the other five countries into the comparative analysis was the extent to which professions are regulated in the selected countries, whereby Slovenia and Austria belong to the group of countries with a very high amount of regulation (247 regulated professions in Slovenia and 214 in Austria). The second group of countries includes Germany, Italy and Denmark, which have an average amount of regulation (153 regulated professions in Germany and 155 in both Italy and Denmark), whilst Finland belongs to the group of countries with a very low amount of regulation (at the time of writing, there were less than 100 regulated professions in Finland).

The second criterion was the legal families upon which the countries' legal code is founded, namely German, Roman, Nordic and Slavic. To have a balanced comparative analysis, we considered Slovenia as a member of the Slavic legal family, Italy the Roman, Germany and Austria the German, and Denmark and Finland the Nordic.

3.3.1. A General Description of the Recognition Procedure

In the procedure for the recognition of professional qualifications, the competent body (in a host Member State) compares the written documentation of an applicant's professional qualifications with the professional qualifications required by the regulations for the pursuit of a regulated profession or activity in that Member State. If the competent body, based on this comparison, establishes that the applicant's professional qualifications meet the professional qualifications required by the regulations of the host Member State, it issues a decision on the recognition of the applicant's professional qualifications. If, however, the competent body establishes that the applicant's professional qualifications are not in accordance with the national regulations of that Member State,

it invites the applicant to either pass an exam of professional qualification or to complete an adaptation period, during which time the outstanding requirements for the recognition of the professional qualifications will be fulfilled. When the applicant submits the proof of a successfully completed adaptation period or of an exam of professional qualification, the competent body issues a decision on the recognition of professional qualifications.

The rules prescribed by Directive 2005/36/EC are different in cases where the profession is only pursued in the host Member State temporarily. In these cases, in accordance with Directive 2005/36/EC, verification of the qualifications of a worker is not permitted, unless the profession influences health and safety. However, Directive 2005/36/EC stipulates that the host Member State may demand an annual report, whereby the provider of services has to present a written statement to the competent body on a prescribed form before providing services in the host Member State for the first time. A written statement is also necessary if, after commencing the pursuit of certain activities related to that service in the host Member State, the circumstances fundamentally change. The prescribed form usually includes personal data of the service provider and data on insurance coverage or other modes of personal or collective insurance with regard to professional liability. The competent body is obliged to either inform the service provider that their professional qualifications will not be verified, issue a decision on the recognition of professional qualifications, or notify the candidate of the reason for the delay within a month of receiving the registration and all enclosed documents.

If the applicant wishes to pursue a profession that is regulated in the host Member State, but is not regulated in the Member State of the applicant (or in the Member State of the applicant's residence), they must have been providing that service in their Member State for at least two consecutive years within the last ten years.

3.3.2. Countries' Approaches to Transposition

In this section, we present a comparative review of the transposition of Directive 2005/36/EU from the aspect of (a) the legislative approach to the transposition, (b) the competent bodies and procedure of recognition, and (c) the formal requirements for recognition (as the existing formal requirements that are imposed in the recognition procedures may have a negative effect on the recognition procedure).

Italy was the first country to transpose Directive 2005/36 EC into its legal code. Considering the recommendations of European experts, Italy took the horizontal approach and implemented Directive 2005/36/EC with only one legal act, i.e. Law No. 206 of 9 November 2007, replacing the national legislation on the recognition of professional qualifications. Italy was also the first to establish a National Contact Point for the Recognition of Professional Qualifications as a part of the Italian Department for the Coordination of Communitarian Policies.

Directive 2005/36/EC was transposed into the *Slovene* legal code through a vertical approach with 17 regulations²⁹. The only exception to the approach was with respect to the regulation of the procedure for the recognition of qualifications, which is regulated in a uniform manner for all professions in one single law.

In *Finland* the horizontal approach was taken with sectoral (profession specific) laws and regulations on the national level (a total of 17 notifications)³⁰. The transposition was completed in November 2008.

In both Denmark and Austria, Directive 2005/36 was transposed through a horizontal approach, namely into the *Danish* legal system with the law (Assessment of Foreign Qualifications Act of April 2013) and into the *Austrian* legal system by amending the existing Commercial Code.

Germany recently modernised its system for the recognition of professional qualifications by adopting the Professional Qualifications Assessment Act, which came into effect on 1 April 2012. It regulates the procedures and criteria for assessing the equivalence of foreign professional qualifications with those of the relevant profession in Germany. It has extended, simplified and improved procedures for evaluating foreign vocational qualifications, which come under the responsibility of the Federal Government³¹.

Regardless of the fact that the analysed countries approached the transposition in different ways, the outcome in all of them has in fact been the same: a recognition procedure was established. Each of these

²⁹ European Parliament, EU, EP, DG for Internal Policies. *Study on Transposition of the Directive on the Recognition of Personal Qualifications*, IP/A/IMCO/ST/2009-05, 2009, <http://www.europarl.europa.eu/.../20101025ATT89911EN>. (accessed February 20, 2011).

³⁰ European Commission, *Commission Staff Working Document on the Transposition and Implementation of the Professional Qualifications Directive* (Directive 2005/36/EC), 2010, http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf (accessed April 20, 2012).

³¹ German Federal Ministry of Education and Research, *op. cit.*

countries has a competent body which verifies the proof of the competency, or verifies professional qualifications acquired in other Member States, and all of them established national contact points.

3.3.3. Competent Bodies in the Recognition Procedure

In Slovenia, the Ministry of Labour, Family and Social Affairs is competent for conducting qualification recognition procedures and coordinating the mutual recognition of qualifications in accordance with national legislation; and all ministries that are competent for the regulation of certain professions actively participate in the recognition procedure. In Italy, the competent authorities in the recognition process are different ministries, which are in general also competent for the regulation of certain professions. In Austria, different authorities are competent for the recognition of professional qualifications, such as regional state authorities, chambers of federal departments or state agencies. The Federal Ministry of Economy, Family and Youth coordinates the administrative procedures regarding the recognition of professional qualifications. In Finland, decisions on the recognition of qualifications are primarily made by the Finnish National Board of Education, field-specific state authorities or higher education institutions. The Finnish National Board of Education decides on the recognition of professional qualifications for civil service posts in Finland. Educational institutions decide on eligibility for further studies in Finland and, more importantly, recognition of studies completed in other EU Member States towards a qualification to be obtained in Finland (academic recognition). Lastly, different field-specific state authorities decide on granting professional practice rights. On the other hand, private sector employers decide by themselves on the competence conferred by a foreign qualification. In Denmark, the competent body in the system for the recognition of professional qualifications is the Danish Agency for International Education, which assesses a candidate's qualifications based on the required information. In Germany, the competent body in the system of recognition of professional qualifications is the Central Authority in the Field of Industry and Commerce (IHK FOSA).

3.3.4. The Procedures and Formal Requirements for Recognition

In the following, we give a short description of the recognition procedure in the selected countries with emphasis on formal requirements for recognition. In general, the applicants have to fill in an application and

enclose various documents that support the application, i.e. confirm the existence of professional qualifications. However, the requirements regarding those documents differ from country to country.

In *Slovenia*, the ministries, professional associations or chambers establish whether the person wishing to pursue a certain profession or professional activity fulfils the requirements prescribed by the laws for that profession or activity. They do so based on the request of an applicant for the recognition of professional qualifications, lodged on the prescribed form. The application must contain proof of citizenship, degree(s), school transcripts and other proof of education and professional experience, as well as proof of other qualifications. As a rule, the documents must be submitted with a certified translation, enclosed with a copy of the originals. In the procedure, the competent ministry may request that the applicant also submits other proof in addition to the ones stated above.

An EU citizen wishing to obtain recognition of their professional qualifications in *Italy*, needs to apply for such recognition on the prescribed form. The applicant must enclose copies of personal documents, copies of degrees or other documents that confirm the existence of professional qualification, as well as a statement from the Italian embassy or Italian consulate in the country of origin or country where the qualification was obtained, regarding the reliability of those documents (degrees). The embassy in the applicant's home country or an authorized public organisation must certify all the documents that support the application for the recognition of professional qualifications. Usually the applicant must also enclose a confirmation of impunity or non-existence of prohibition against performing a certain profession, and a certificate with a detailed description of knowledge and competencies regarding the profession. All the listed documents must be translated into Italian.

In *Austria*, the application for the recognition of professional qualifications must be accompanied by the following documents (originals or certified copies, and certified translations): proof of citizenship of an EU Member State, the European Economic Area or Switzerland; a report from the judicial record or document (not older than three months) providing information on all criminal convictions, issued by a competent judicial or administrative authority in the country of origin; a certificate of professional competence specified in Annex VII of Directive 2005/36/EC, issued by the competent authority in the applicant's home country or country of origin; other proof of qualifications (evidence of formal education and training, business licenses, certificates of professional trainings and apprenticeships, etc.).

An EU citizen wishing to obtain the recognition of professional qualifications in *Denmark*, is required to file an application with the competent Danish body. Along with the application the applicant must submit certain written documentation supporting their professional qualifications. Every regulated profession in Denmark requires different documentation. Usually, an applicant is required to provide the competent authority with an application for the access to pursue a regulated profession, which includes proof of nationality, documents supporting the qualifications, a list of subjects the applicant has studied (certified transcripts) and certificate of experience for that particular profession. In addition, the applicant may be requested by the authorized agency to provide other details, such as a character certificate or a document proving the non-existence of a criminal record. Generally, only certified copies of credentials are required, although sometimes the originals are also requested. All documents should be presented in their original languages, if not in their original languages, then in Danish or English translation. The embassy in the applicant's home country or authorized public organization must certify all the documents that support the application. Two copies of every document must be submitted.

If it is not possible to obtain the required documentation supporting the application for the recognition of professional qualifications, the applicant may apply for a "background report" (issued by the Danish Agency for International Education). The background report indicates how the Danish authorities usually proceed if all the required documents are submitted. This should help the applicant in finding a working position or acquiring further education.

In *Finland*, an applicant for the recognition has to submit a completed and signed application form, accompanied by the necessary appendices, to the Finnish National Board of Education. Applications must always be accompanied by proof of nationality, officially certified copies of the qualification certificates and transcripts of records, and translations of the qualification certificates and transcripts of records must be made by an authorised translator in Finland if the original document is issued in a language other than Swedish, Norwegian, Danish, Icelandic or English (officially certified copies of the translations). The Finnish National Board of Education does not accept original documents. Once the application has been processed, the documents are filed with the Finnish National Board of Education's.

In *Germany*, the applicant for the recognition has to submit a completed and signed application form, accompanied by the necessary appendices, to the responsible Chamber of Commerce or to the Central Authority in the

Field of Industry and Commerce. An application can be submitted irrespective of the person's nationality and residence status, however, access to the procedure may vary depending on the specific regulations of the individual regulated professions. Responsibility in the field of regulated professions is determined by the specific laws and regulations of the Länder. Along with an application, the applicant must submit certain written documentation supporting their professional qualifications: a table with an overview (in German) of training and any employment to date, proof of identity, proof of vocational qualifications, proof of relevant work experience, other certificates of competence (e.g. continuing vocational training), a declaration that no application for the determination of equivalence has been made in the past and proof that the applicant intends to work in Germany (although the latter does not apply for citizens of the EU, the European Economic area or Switzerland, or persons with residence in those countries). Usually, uncertified copies of documents are needed, however, in some cases the responsible authority can demand certified copies or original documents. The documents should be translated into German by publicly appointed and sworn interpreters/translators in Germany or abroad, although the responsible authority may waive the need for translations³².

In conclusion, based on the the description of the procedures and formal requirements for recognition in selected countries above, we can establish that the procedures for recognition are very similar and the differences refer mainly to the competent bodies issuing a recognition decision. On the other hand, the requirements regarding the documents that must be enclosed with the application differ importantly from country to country. Those requirements can represent an important administrative obstacle to the applicants for the recognition. In cases where documents must be translated or certified, the process of acquiring these documents can be both timely and costly. Therefore, a simplification of these formal requirements would be a step towards a more effective and user-friendly recognition procedure

³² German Federal Ministry of Education and Research, *Federal Recognition Act*, 2013, <http://www.anerkennung-in-deutschland.de/html/en/73.php> (accessed February 19, 2013).

3.4. The Deficiencies of Directive 2005/36/EC and Critiques of the System for the Recognition of Professional Qualifications

Based on the regulations in individual Member States, the system for the recognition of professional qualifications has been the subject of much criticism by both migrants with professional qualifications and experts. It is labelled as being too complex and often too slow in its processing, and in some cases not sufficiently adapted to the demands of individual professions; this is also confirmed by statistical data³³. Thus, the European Commission began *public consultation on Directive 2005/36/EC* in 2010 and issued a special report in July 2011 based on the 370 contributions that were received.³⁴ The main problems, which were discussed during the evaluation process of Directive 2005/36/EC, are the availability of information about recognition procedures, the efficiency of recognition procedures, the operation of systems of automatic recognition and determining the applicable areas of Directive 2005/36/EC. The majority of Member States supported the simplification of the procedures for the recognition of professional qualifications in their reports, while the representatives of the healthcare sector also stressed the need to protect the quality of services. Most of the interested parties expressed a positive opinion of the idea of a European Professional Card³⁵ in all categories. In the future, it will be necessary to modernise the regulation in the field of the recognition of professional qualifications. The system of automatic recognition, which currently only applies to seven professions, will also need to be extended to other professions and sectors, foremost to professions in the green and IT industries³⁶. The European Commission proposes the simplification of procedures with the assistance of the European Professional Card; either the re-drafting of general rules on establishment in another Member State or reforming the rules for the provision of services in another Member State; and the modernisation of the system for the automatic recognition of qualifications for healthcare

³³ European Commission, *Commission Reports, 2011*, http://ec.europa.eu/competition/sectors/professional_services/reports/reports.html (accessed April 20, 2013), 13.

³⁴ European Commission, *Evaluation of the Professional Qualifications Directive, 2011*, http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf (accessed March 3, 2012).

³⁵ *Ibid.*, 86.

³⁶ European Commission, *Agenda for New Skills and Jobs, 2010*, <http://ec.europa.eu/social/main.jsp?langId=en&catId=958> (accessed April 25, 2013).

professions and forming of a legal framework for partially qualified experts. Another important idea is the introduction of the systematic review and mutual evaluation of all regulated professions in Member States.

When considering the EU legislation in the field of regulated professions and recognition of professional qualifications, it should be mentioned that the regulation of professions not only influences the right to work in any Member State, but also the freedom of establishment and freedom to provide services. The common aim of the rights to the free provision of services, free establishment and free flow of workers is, foremost, free access and non-discriminatory treatment and the lessening of all other obstacles, which directly or indirectly, and perhaps even indiscriminately, restrict these freedoms or cause them to be less attractive. The regulation of professions can represent such an obstacle, especially when such regulation is very restrictive and if the system of recognition of professional qualifications does not work properly. On the other hand, the deregulation of professions means the elimination of such obstacles. This paper does not deal with this question in detail, as it is a broad issue requiring a separate discussion.

4. Conclusion – How to Approach the Successful Deregulation of Professions

The first step in the deregulation of professions is determining its definition, which, in theory, is currently not uniform. Since the regulation of professions is implemented mainly through the adoption of legislation, we suggest that the definition of the deregulation of professions also be defined in law, based on the theoretical findings and definitions presented under Point 2 of this paper. At this point, it should be stressed that the definition of the deregulation of professions is, foremost, a political decision in choosing the manner, purpose and goals of deregulation. From the technical perspective, the *horizontal approach* makes the most sense, meaning the definition of deregulation should be uniformly regulated and stated in one single legal act. This act (*lex generalis*) should define what the regulation of a profession means in general terms. Then regulative acts in different fields (*lex specialis*) should determine a specific approach to deregulation for each individual profession. In this manner, a *uniform application of the definition of regulated and deregulated professions would be guaranteed* in all areas, i.e. for all professions.

The decision whether or not to deregulate significantly depends on the appropriate balance between the benefits of regulation and benefits of deregulation of professions. Starting from this point of view, superfluous rules should either be changed or omitted. The rules justified by the general interest should be kept, provided that they are proportional and necessary for the proper performance of the regulated profession. The rules justified by the general interest, but not achieving the desired effect, should be changed accordingly. For every profession and for every requirement that the state sets in order to restrict access to or pursuit of the profession, it should be stated (i) what exactly such a requirement ensures, and (ii) in what way the requirement ensures it. If there are no arguments for the regulation of the profession from the point of view of general interest (thus, there are no justified reasons for the regulation) or even if such arguments exists, but the regulation does not operate in the desired (planned) direction, a *different model of regulation should be considered*, meaning better or more efficient regulation, and in certain cases even deregulation. From this perspective, the term *re-regulation* of professions seems more appropriate than the term *deregulation*. The focal point of the lessening of requirements for the pursuit of certain professions is more extensive deregulation, meaning mainly re-regulation in the sense of different, i.e. better and more efficient, regulation. In addition, deregulation can present greater opportunities for employment. However, it also results in an increased number of potential candidates for a certain profession (competition), which lowers the chances of any given individual obtaining a working position. Furthermore, in light of the fact that deregulation inherently creates downward pressure on the prices of services and/or products that are being regulated, it can be expected that existing providers of currently regulated professions will resist the deregulation. Negative responses are very characteristic in this process; like the protests of taxi drivers in summer 2011 in Greece, or the protests in Italy in autumn 2011 and again in spring 2012, which also took place during the process of the deregulation of taxi services and other professions.

Reform in the field of the regulation of professions must also necessarily be economically evaluated, so that the costs of deregulation are compared to its benefits. It logically follows that every cost of regulation may also be presented as a benefit of deregulation and *vice-versa* – a positive effect of deregulation means that on the other side there is some negative effect related to the regulation. Weighing between one and the other should be done in a manner so that consideration is given to the *net effect of*

deregulation compared to the net effect of regulation, whereby it comprises the effects in their broadest sense.

Professions not regulated by the state are subject to non-consistent conditions in respect to professional knowledge and the acquisition of skills (including of very difficult ones), which is a negative consequence of deregulation. From the outside, deregulation may be seen as undermining a profession or may lead to a lower valuation of a deregulated profession. Another consequence may be the loss of professional abilities, when the acquisition of highly qualified knowledge is left to chance. Deregulation is a process of changes with regard to the position of the profession within society, which could lead to distrust and resistance from the members of professions, often being the consequence of a fear of the unknown and feeling of personal endangerment³⁷. Deregulation may also influence identification with the profession, which is an important factor of work success, and, as a key element of satisfaction at work, it may also influence the work success of individuals. Work success is closely related to the appropriate competence of an individual in the labour market. Arising from this, there is a certain probability that products in deregulated professions will have less quality or that services will be provided less professionally, because individuals with less expertise will participate in the profession. Furthermore, the social cost of deregulation may be reflected in a *low level of public trust* in a profession and in the *undermining* of a profession, which can be neutralized by self-regulation. Also, non-regulated professions may enjoy a positive reputation, provided that their products and services are of high quality. In this case, professional associations may play an important role, especially if they implement professional ethical norms and high standards. On the other side, it needs to be noted that state regulation of a profession does not bring trustworthiness into the profession by itself; efficient supervision is necessary for the trustworthiness of a profession to be built or kept.

In terms of process, the deregulation of professions should be dealt with separately in each and every industry so that the reasons for, consequences and effects of the deregulation can be studied for each industry separately (of course this is only after the adoption of a general law, regulating the deregulation on the horizontal level and foremost establishing its definition). In this process, regulations regarding a

³⁷ A. Arzensek, *Perceived Factors and Obstacles to Cognitive Schema Change During Economic Crisis*, in *Organizacija*, 2011, vol. 44, n 4., 137-144.

profession in a certain industry should first be collected and analysed from the perspective of set requirements, arguments for the regulation and effects of the regulation (why are certain requirements set and how are they implemented in practice). Next, the proposals for deregulation should be formed, i.e. which requirements should be done away with and why. In this phase, it is recommendable to also include the professional public and social partners to the widest possible extent. Such cooperation is important not only for determining the appropriate content of the deregulation or for keeping records of arguments for and against the deregulation, but also for the purpose of decreasing the *a priori* opposition. The possibilities of an organised negative response against or resistance to deregulation in the form of strikes, protests and similar actions should be prevented or at least mitigated as much as possible. Thus, it is very important that the state already begins building a social dialogue during the preparations for deregulation; the social dialogue should include, besides the employers or employers' associations, workers associations and other members of professions, as well as customers and clients, to whom it should be explained what benefits society as a whole can expect from the deregulation. Additionally, when communicating with the stakeholders of the deregulation (employers, workers' associations, members of professions, professional groups, profession, users and public to the widest possible extent) the term deregulation should be replaced by the term re-regulation.

The New Challenges to Individual Working Conditions in European Public Services: A Comparative Study of Global Restructuring and Customization

Peter Hasle, Pernille Hohnen, Hans Torvatn, Daniele Di Nunzio *

1. The Impact of Globalisation on European Public Services: Some Introductory Remarks

Over the past three decades, advanced capitalist countries have experienced profound economic and social changes, the result of economic globalization and technological development¹. Many authors have pointed out the increasing distance between economic activities organized on a global scale, and political and social institutions that operate on a more limited scope (local, national or macro-regional)². At

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¹ Castells, M. *The Information Age: Economy, Society and Culture*, Bd. 1: *The Rise of the Network Society*, Malden, 1996. Burawoy, M. *Introduction. Reaching for the Global, Global Ethnography – Forces, Connections, and Imaginations in a Postmodern World*, Berkeley, California University Press, 2000, 1-40. Giddens, A. *Runaway World: How Globalization is Reshaping Our Lives*. London, Profile, 1999. Roland, G. *Privatization: successes and failures*. New York, Columbia University Press, 2008. Bortolotti, B. & V. Milella. *Privatization in Western Europe: Stylized Facts, Outcomes and Open Issues*. G. Roland (ed): *Privatization: Successes and failures*. 2008, 32-75.

² Beck, U. *The Cosmopolitan Vision*. Cambridge: Polity Press, 2006. Castells, M., 1999, *op. cit.* Giddens, A. *Europe in the Global Age*. Cambridge, Polity Press, 2007. Sassen S. *A Sociology of Globalization*, New York: WW Norton, 2007. Touraine, A. *Une nouveau paradigme. Pour comprendre le monde d'aujourd'hui*, Paris: Fayard, 2005.

present, globalization itself can be considered as a form of capitalism where the economy is governed by impersonal market drivers rather than by political and social choices, with many individuals who feel they have lost control on their lives as well as of the processes of collective organization³. Global processes of marketization – alongside the increased fragmentation and regulation vacuum – are transmitted to public services with serious effects for public authority and public responsibility⁴.

One consequence of this state of play is higher flexibility in the production of goods and services, mainly due to the need for firms to adjust to increasing global competitiveness, the changing needs of consumers, and the recourse to new technology, altogether resulting in a preference for ‘on demand’ and ‘just in time’ work processes. Accordingly, the organization of work is increasingly oriented towards lean production, where flexibility and outsourcing are constitutive of a new modular business model organized as a network of different companies. The new model reshapes the boundaries between institutions and increases the centralization of power while de-centralising risks⁵.

Research into the impact of globalization on European labour markets has prioritised the outsourcing of jobs to low-wage countries. The initial focus was on production jobs, yet recently service jobs have also been analysed in the context of globalization – for example, the relocation of front office work such as call centres, as well as knowledge work such as IT development⁶. However, globalization has also had an effect on the core activities, which have remained behind, with new technologies and

³ Touraine 2005, *op. cit.*

⁴ Clarke, J. Public Management or Managing the Public? The Frank Stacey Memorial Lecture 2009, Presented at the Public Administration Committee Conference, University of Glamorgan, 8 September 2009, *Public Policy and Administration* 25, 4, 2010, 416–433.

⁵ Castells, 1996, *op. cit.* Sennett R. *The Corrosion of Character. The Personal Consequences of Work in the New Capitalism*, London, UK, W. W. Norton & Company, 1998. Beck U., Giddens A., Lash S. *Reflexive modernization: Politics, Tradition and Aesthetics in the Modern Social Order*, Cambridge, Polity Press, 1994.

⁶ Huws, U. Fixed, Footloose or Fractured: Work, Identity and the Spatial Division of Labour. *Monthly Review*, 57(10), 2006. Flecker, J., Holtgrewe, U. *Restructuring Across Value Chains – Changes in Work and Employment. Case Study Evidence from the Clothing, Food, IT and Public Sector*, Deliverable 10.1, WP 10 Organisational Case Studies – Synthesis Report, 2007. <http://www.worksproject.be/documents/D10.1.pdf>. Batt, R., Holman, D., Holtgrewe, U. The Globalization of Service Work: Comparative Institutional Perspectives on Call Centers; Introduction to the ILRR special issue; *Industrial & Labor Relations Review* 62, 4, 2009, 453-488.

working processes being developed in response to intensifying global competition⁷.

Even though organizational changes in the public sector are mostly played out within national borders, the question in this paper is to examine how public services are likewise subject to processes of large scale reorganization prompted by globalization, which directly and indirectly renew pressure on individuals' working conditions and working life⁸. The influence of globalization on public services is here understood as arising from new forms of global competition between national models and institutions promoting an innovative modular organization of public services through the restructuring of value chains (outsourcing, subcontracting or internal externalization) as well as an increasing national acknowledgment of the prevalence of global competition⁹.

At the core of the present investigation are the impacts of global restructuring in the public services on people's working life and conditions in Europe. The article draws on the results of the WORKS European research project¹⁰. The survey analyses the relationship between global processes of change and changes in one's working life and working conditions at the workplace. In both private and public companies activities are viewed as links within value chains, so that the tasks distributed on different units contribute to specific tangible or intangible services. Globalization within public service can be seen as closely linked to the specific fragmentation processes taking place in connection with the establishment of new public companies and the impacts on one's

⁷ Flecker, J., Meil, P. 'Organisational Restructuring and Emerging Service Value Chains – Implications for Work and Employment'; in: *Work, Employment and Society*, 24 (4), 2010, 1 – 19. Di Nunzio, D., Hohnen, P., Hasle, P., Torvatn, H., Øyum, L. *Impact of Restructuring on Health and Safety and Quality of Work Life. Psychosocial Risks*, Works Project, Leuven, HIVA http://www.worksproject.be/Works_pdf/WP12/D12.10%20Thematic%20Report_HealthSafety.pdf, 2009.

⁸ Huws, U. *The Globalisation Glossary: a Researcher's Guide to Understanding Work Organisation Restructuring in a Knowledge-based Society*, Works Project, Higher Institute of Labour Studies, K.U.Leuven, 2008.

⁹ Pedersen, O.K. *Institutional Competitiveness: How Nations Came to Compete* in Morgan, G., Campbell, J. L.; Crouch, C., Pedersen, O. K., & Whitley, R. (eds.). *The Oxford Handbook of Comparative Institutional Analysis*. Oxford: Oxford University Press, 2010a, 625-58. Pedersen, O.K. *The Ethical Moment; Ethics and Economy in Public Administration* in Rendtorff, J. D., (ed.) *Power and Principle in the Market Place. On Ethics and Economics*. Burlington: Ashgate Publishing Company, 2010, 205-30.

¹⁰ Flecker & Holtgrewe 2007, *op. cit.* See also www.worksproject.be. The References of Works used in this article can also be downloaded from the website.

working conditions, for example in terms of greater work intensity, standardization, supervision and greater demands. The restructuring of value chains thereby places emphasis on the interplay between the inside and the outside of public companies.

The work starts by presenting a theoretical framework, focusing on the conceptualisation of globalization and value chains in relation to the public sector. An analysis is then provided of empirical cases from different European countries in which we conceptualise the changes in public service in Europe in the form of value chain restructuring. A discussion follows of the impacts of the restructuring processes on work, employment conditions, work identity and job security. The last section of the paper highlights the common characteristics of the new public customer-oriented companies, along with how these characteristics can help us understand the changes taking place in working conditions and working life.

2. Theoretical Framework

2.1 Globalization: The Fragmentation of Public Responsibility and Governance

The perspective adopted in this paper is based on Bauman's¹¹ perception of globalization as 'glocalisation' and 'deregulation'. In line with the arguments made by Robertson¹² and others, Bauman considers globalization as a kind of "compression of the world" understood as an "intensification of consciousness of the world as a whole"¹³. Globalization is characterised by the establishment of social processes which create greater mutual supranational dependence, whereby individual and national factors relate to a global context. Globalization thus refers to closer and faster social relationships and processes, which increasingly create awareness of a supranational level and make this level fundamental for the local social reality¹⁴. For example, in the Danish debate on the public

¹¹ Bauman, Z. *Globalization: The Human Consequences*, New York: Columbia University Press, 1998a.

¹² Robertson, R. *Globalization: Social Theory and Global Culture*. London: Sage, 1992.

¹³ Davis, M. *Bauman on Globalisation – The Human Consequences of a Liquid World*, Hviid Jacobsen, M. & Poder, P. (eds.) *The Sociology of Zygmunt Bauman – Challenges and Critique*, Aldershot, Ashgate, 2008, 137-155.

¹⁴ Davis 2008, *op. cit.*

sector, reference is often made to the impact of the Danish tax burden and the size of the public sector in competing with other countries¹⁵.

Bauman makes two particularly relevant points in this regard. First, he focuses on global “restratification” processes. He insists that there is a downside to globalization which means that core principles such as flexibility, mobility and free movement only characterise globality for some, while leading to stability, rigidity and lack of mobility for others. This downside results in the social polarisation of influence and opportunities, which Bauman terms ‘the mobility/rigidity dichotomy for glocalisation’.

Second, Bauman suggests that a fundamental shift takes place in the distribution of power and responsibility between local and national actors on the one hand, and the “totality of global affairs” on the other hand:

To put it in a nutshell: no one seems to be now in control. Worse still, it is not clear what ‘being in control’ could, under the circumstances, be like. As before, all ordering is local and issue-oriented, but there is no locality that could pronounce for humankind as a whole, or an issue that could stand up for the totality of global affairs.¹⁶

The analytical framework begins with the foregoing downside mechanisms of globalization, where a focus on flexibility and mobility is combined with an emphasis on new social polarisation and the regulation vacuum which become particularly significant in the public sector, where the citizen’s equal rights is challenged by increasing fragmentation¹⁷. Thus globalization in public service viewed in terms of increasing organizational fragmentation makes it difficult to identify who is responsible for regulating both working conditions and the work environment, and what such regulation and control look like.

2.2 Global Marketization and Consumer Orientation

Consumer orientation is a key development, both in terms of the global slide from a work regime to a consumer regime¹⁸, and the change within

¹⁵ Pedersen 2010a, *op.cit.* Pedersen 2010b, *op. cit.*

¹⁶ Bauman quoted in Davis 2008: 139, *op. cit.*

¹⁷ Clarke 2010, *op.cit.*

¹⁸ Bauman, Z. *Work, Consumerism and the New Poor*, Buckingham: Open University Press, 1998b. Du Gay, P. *Consumption and Identity at Work*, London, Sage, 1996. Sturdy, A. *Servicing Societies? - Colonization, Control, Contradiction and Contestation*, in Sturdy, A., Grugulis,

the welfare state, where citizens are increasingly assigned the role of consumers¹⁹.

Specifically for service work, Sturdy²⁰ highlights how consumer discourse tends to colonise working life. This development raises questions regarding the definition of the service content and boundaries (consumers, employees or management), the conditions for service work, and the impact on society and individuals. According to Sturdy, the development of a more consumer-oriented welfare and service regime has far-reaching implications for working and social life. This is due to new and enhanced forms of control which lead to fundamental changes to the conditions for social relationships and work content. These changes have both positive and negative elements. They increase the strain on employees, but they can also inspire the development of greater communication and social contact with consumers²¹. Korczynski²² applies the same critical perspective to consumer-oriented service work, and positions himself between two divergent research traditions.

The first tradition, which Korczynski terms a “win-win-win” perspective, is basically a human resource management perspective where user satisfaction is linked to employee involvement. Within this perspective, employee satisfaction can be improved by delegating greater responsibility and a move away from Taylorism. Employee satisfaction is considered a precondition for consumer satisfaction and hence for retaining customers²³.

The second perspective provides a more pessimistic picture and considers the demand for service work in the new consumer regime as pushing employees beyond their limits. Two problems are identified. The first concerns new emotional labour requirements where employees are

I., Willmott, H. (eds.): *Customer Service: Empowerment and Entrapment*, Basingstoke, Palgrave, 2001.

¹⁹ Needham, C. *Citizen-consumers. New Labour's Marketplace Democracy*. London, Catalyst working paper, 2003. Hohnen, P., Hjort, T. Citizens-as-consumers. A Discussion of New Emergent Forms of Marginalisation in the Nordic Welfare states, *European Journal of Social Security*, 11, 3, 2009, 271-291. Clarke, J., Newman, J., Smith, N., Vilder, E., Westmarland, L. *Creating Citizen-Consumers – Changing Publics and Changing Public Services*, London, Sage Publications, 2007.

²⁰ Sturdy, 2001, *op.cit.*

²¹ *Ibid.*: 2.

²² Korczynski, M. *The Contradictions of Service Work: Call Centre as Customer-oriented Bureaucracy*, Sturdy, A., Grugulis, I., Willmott, H. (eds.) (2001) *Customer Service: Empowerment and Entrapment*, Basingstoke, Palgrave, 2001.

²³ *Ibid.*: 80.

increasingly forced to have particular emotions²⁴. The second refers to new organizational forms which cause a re-establishment of a rigid rationalisation logic with direct or indirect forms of standardization, resulting in what Ritzer²⁵ has dubbed ‘McJobs’ where service jobs are being Taylorized. Korczynski attempts to develop a perspective which takes into account Ritzer and Hochschild’s critique of the rationality logic and increased demands on personal performance, as well as HRM discourse which maintains that consideration for the consumer also encourages recognition and the transfer of responsibility to employees. , However, the point is that these are competing discourses, and hence the inherent dilemmas in what he calls “consumer bureaucracy” cannot be addressed.

Building on Korczynski²⁶, a number of characteristics appear particularly relevant in order to understand the impact of globalization in service work:

- Intangibility (production takes place in the context of and cannot be separated from the meeting between the service provider and the service recipient);
- Transience (the service is integrated into a social relationship between the supplier and the recipient of the service resulting in a temporary product);
- Variability (consumer’s wishes and actions cannot be predicted, and the relationship between the service supplier and recipient involves an element of unpredictability);
- Inseparability (the production of the service is transient and linked to the social interaction between the supplier and consumer of the service. This means that the consumer acts as a co-producer);

These special characteristics of service work limit the possibilities for the restructuring of public service. The consequence is that a part of the service work will remain local, because it is necessary to have a close connection with local citizens. Citizens, as co-producers of the service, become part of the value chain and must therefore be involved in close cooperation. Traditional outsourcing to China is difficult or impossible, however outsourcing to a local unit of an international service provider

²⁴ Hochschild, A. R. *The Managed Heart*, Berkeley, CA: University of California Press, 1983.

²⁵ Ritzer, G. *The McDonaldisation of Society*. SAGE Publications, Inc. Thousand Oaks, 1993.

²⁶ Korczynski, M. *Human Resource Management in Service Work*, Palgrave, Basingstoke, 2002.

like ISS or Siemens Business Service is certainly possible, and some back office functions could also be prone for outsourcing across borders. However, restructuring in the public sector is also influenced by political interests and the responsibility of public authorities which may constrain such possibilities.

2.3 Globalization of Work through a Focus on Restructuring Value Chains

Bauman's theoretical perception of globalization and Korczynski's observations about consumer orientation entail that the development and regulation of working conditions will be influenced by supranational conditions. Working conditions at individual workplaces in the public sector must therefore be analysed taking account of external factors, such as the position of the company in relation to other companies and actors, and the control imposed by globalized markets and discourses (de facto and imaginary). Our analysis therefore focuses on public sector value chains in the light of global structural changes in order to develop an understanding of the influence of relationships and supranational factors. We build on Huws' definition of value chains²⁷:

The Value chain describes each step in the process required to produce a final product or service. The word 'value' in the phrase 'value chain' refers to added value. Each step in the value chain involves receiving inputs, processing them, and then passing them on to the next unit in the chain, with value being added in the process. Separate units of the value chain may be within the same company (in-house) or in different ones (outsourced). Similarly they may be on the same site, or in another location. The term 'value chain' was originally coined to describe the increasingly complex division of labour in the manufacture of goods but it is now increasingly applicable to services, both public and private.

This notion of value chains is relevant for the public sector as it can be used to highlight some of the characteristics of restructuring. In Public Administration it could, for example, separate citizen services into an independent unit with its own budget and management, which provides services to a government authority and can independently enter into other types of contractual working arrangements, for example with IT departments and other expert units. Restructuring can be carried out across regions (and occasionally countries) and/or more locally across administrative units. This perspective identifies structural processes, either

²⁷ Huws 2008, *op. cit.*: 68-69.

spatial, contractual or administrative, which are involved in such changes and it sheds light on how globalization, in the form of changed relational contexts, has direct and indirect impacts on the working conditions for public employees.

3. Restructuring in the Public Sector: Case Studies

The data pool used here has been drawn from the European research project “Work Organization and Restructuring in the Knowledge Society”, *WORKS*, which has collected and analysed the material on the restructuring of value chains and the impact on issues such as flexibility, job security, skills development, marginalisation, industrial relations, and the working environment²⁸.

A total of 58 case studies of value chain restructuring were carried out under the *WORKS* project in 2006-2007, spread across 14 different countries (Austria, Belgium, Bulgaria, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Portugal, Sweden and Denmark). They covered a number of selected work functions in the manufacturing industry and services. The case studies were selected in order to identify typical examples of restructuring in the countries – and care was taken to select countries representative of the various types of welfare states in Europe²⁹. The case studies are based on qualitative interviews with key actors (management, union representatives, HR practitioners, etc.) and rank-and-file employees. They were carried out using joint interview guides and insurance of comparability across countries through a number of international workshops³⁰.

This article draws on empirical data from 12 case studies, all focusing on the restructuring of public service. In this context, public service covers basic and general social services to citizens for which the welfare state has traditionally been responsible, including security (e.g. the police), infrastructure (e.g. roads and railway operations), communication (e.g.

²⁸ Flecker & Holtgrewe, 2007, *op. cit.* Valenduc, G., Vendramin, P., Krings, B., Nierling, L. *How Restructuring is Changing Occupations. Case Study Evidence from Knowledge-intensive, Manufacturing and Service Occupations*, Works final report WP 11, <http://www.ftu-namur.org/fichiers/WORKS-D11-final.pdf>, 2007.

²⁹ Esping-Andersen, G. *Welfare States in Transition. Social Security in the New Global Economy*, London: Sage, 1996. Esping-Andersen, G. *The Three Worlds of Welfare Capitalism*, Polity Press: Cambridge, 1990.

³⁰ A further description of methods and results is available at www.worksproject.be.

postal services and telecommunications) and Public Administration (e.g. social centres and housing). Other elements of public service, such as health and education, have not been covered by the study.

The analysis consisted of two steps. The first step covered a broad presentation of the key characteristics of the restructuring of public sector value chains, based on empirical data from all 12 case studies. The second step afforded a detailed examination of the seven cases related to restructuring of Public Administration and the impact on working conditions. These case studies in Public Administration cover public housing (Austria), driver's licence applications and renewals (Italy), regional administration (Belgium), police (Sweden), two local authorities (Great Britain) and unemployment administration (Bulgaria and Hungary).

3.1 Restructuring Value Chains in Public Service

Restructuring can take a variety of forms, although some common characteristics can be identified. Among the most important ones is the outsourcing of services to new operators. A typical example can be seen in the box below summarising the restructuring of the Swedish postal service.

The Restructuring of the Swedish Postal Service

The distribution of mail has been provided by the Swedish postal service, as a government monopoly, for several centuries. In the 1990s, the Swedish postal market was opened to competition in mail distribution. The postal service was also transformed into a government owned limited company which could operate under market conditions, rather than being regulated by the rules applying to government owned institutions. The result was increased pressure on costs and efficiency and major reductions in the number of staff and post offices. The pressure to provide cheaper service resulted in outsourcing to grocery stores and petrol stations, where customer contact is mostly provided by low skilled labour. There are now approximately 3,000 'one-stop shops in grocery stores', petrol stations and convenience stores. The postal sector has also been impacted by developments in IT technology, such as e-trade and associated shipment. The restructuring of the Swedish

postal service has led to greater competition and a change in focus within the organizations from service to sales³¹.

The change in the Swedish postal service is a good example of the restructuring processes within general public service which have taken place across EU countries. There are similar examples from railway operations (Greece and Germany), the police (Sweden), driver's licence and passport administration (Italy), employment opportunities (Bulgaria and Hungary), telecommunications (the Netherlands), as well as direct citizen contact (administration of public housing in Austria and municipal/regional citizen service in Great Britain).

One common feature of the changes affecting the public services – reflected in postal services as well as in other areas of Public Administration such as housing, police work or citizens' services – has been that the restructuring of value chains has taken place to streamline the welfare state. This streamlining has looked after rationalisation possibilities but also after possibilities for improved services to citizens³²:

The choice on the part of the ministry to outsource part of the customer care service to a call centre, reachable through a toll free number, was not exclusively due, as in other Public Administrations, to cost saving, but was, above all, dictated by the need to streamline procedures so as to lift the quality of the service offered, in view of the fact that relations to citizens represent a value that must be handled carefully with professional skill as well as attention and quality. Thus outsourcing has borne a deeper impact on efficiency rather than costs³³.

The restructuring of public service has also been characterised by a fragmentation process, whereby a number of smaller separate units are created which provide services to one another. Due to the special nature of service work, there are also limits to the geographical scope of the value chains in this area:

[...] the restructuring of the value chain did not lead to instances of long-distance- or telework. Several factors have prevented the multiplication of this form of work: the additional cost of redirecting calls to the teleworker, the predominantly face-to-face monitoring/control of workers, the difficulty in

³¹ Tengblad, P. & Sternälv, P. *Swedish Case Study on Services of General Interest. Strategies for Working with Customers in the Swedish Post Ltd. Organisational Case Study on Customer Service in the Services of General Interest – Sweden*, Internal Working Paper, WORKS-Project, (2007).

³² Di Nunzio et al. 2009, *op. cit.*

³³ Piersanti, M. 'DVL-A'. *Organisational Case Study on Customer Service in the Public Sector – Italia*, Internal Working Paper, WORKS-project, 2007.

managing the complex network of relations that is generated between the parent company and workers and between workers themselves.”³⁴

New technology is a significant driver in the restructuring of public services. This applies particularly to the establishment of Web-based information and communication channels. They offer new options for interacting with citizens involving them in the provision of services through the direct collection and submission of information. The development of IT-based solutions in restructuring is thereby also supporting a more general move towards consumer orientation and participation in public service³⁵.

Even though these common characteristics dominate the development of new public service units and value chains across European countries, there are differences in the specific solutions employed. There are examples of outsourcing of customer service to private operators, as in the Swedish postal service, but there are also examples of public-private partnerships, including various models for supervising outsourced in-house subsidiaries/departments. The Greek postal service and the German railway system have introduced subsidiaries which are still owned by the parent company, and there are other examples of restructuring which have not involved outsourcing to private enterprises, but rather the creation of various forms of internal externalised units. For example, the establishment of employment opportunity offices in Hungary and Bulgaria, and regional/local citizen information centres in Belgium. However, the overall trend within public service is that the restructuring processes are closely tied to marketization, even though this can take place without necessarily involving privatization. An example is represented by those organizations moving from general supply companies to several individual, delimited, government-owned companies, with each one taking care of specific elements of the value chain. Irrespective of which model is used, the overall trend is therefore towards a general extension of the value chains³⁶.

³⁴ *Ibid.*: 7

³⁵ Flecker, J. ‘Introduction’ in Flecker, Jürgen., Holtgrewe, Ursula. *Restructuring Across Value Chains – Changes in Work and Employment Case Study Evidence from the Clothing, Food, IT and Public Sector*. Deliverable 10.1, WP 10 Organisational Case Studies – Synthesis Report, 2007.

³⁶ Dunkel, W., Shönauer, A. *Reorganising the Front Line. Customer Service in the Public Sector*, Flecker & Holtgrewe, *Restructuring Across Value Chains – Changes in Work and Employment. Case Study Evidence from the Clothing, Food, IT and Public Sector*. Deliverable 10.1, WP 10 Organisational Case Studies – Synthesis Report, 2009.

In order to present a more precise picture of the impact of restructuring on the regulation of one's working conditions and working life, we will look in more detail at changes within a selected area: citizen service within Public Administration.

3.2 The Impact of Restructuring on Working Conditions in Public Administration

Citizen service in connection with Public Administration has been widely subject to restructuring in the European welfare states. The value chains in this area are more specifically related to information:

As far as services to citizens are concerned, value chain practically means information chain, i.e. from designing and formatting information to citizens, making it affordable and usable, organising feedback or dialogue, integrating information flows from front office to back office and vice versa.³⁷

Restructuring in public service has primarily focused on the division between back-office and front-office work – which traditionally makes a distinction between general customer contact and specialised back-office duties. Back-office employees are assigned more technical tasks from front-office personnel. An important reason for this division has been an increasing pressure from citizens and widespread difficulties in providing better service in line with available resources.

The solution has been to organise direct citizen/customer contact in the form of 'one-stop shops'. For example, the Swedish police have established contact centres to receive non-urgent telephone calls which can be handled by staff without police training. The aim has been to free up labour resources with special police training and provide easier access between citizens and the police³⁸. A similar example is the establishment of citizen contact centres for property administration in the Walloon regional administration in Belgium. In order to make information more accessible to citizens and to shield back-office employees, an integrated contact system has been set up based on the Internet, telephone and walk-in contact points³⁹. Front-office personnel have experienced the most

³⁷ Devos, V., Valenduc, G. *EWA – Restructuring of Customer Services in Regional Administration in Belgium. Organisational Case Study on Customer Service in the Public Sector – Belgium*, Internal Working Paper, WORKS-Project, 2007:7.

³⁸ Tengblad, P. *Customer Relations in The Public Sector – The Police Contact Centre. Organisational Case Study on Customer Service in the Public Sector – Sweden*, Internal Working Paper, WORKS-Project, 2007.

³⁹ Devos & Valenduc 2007, *op. cit.*

significant changes in working conditions due to outsourcing and greater strain in their work.

The work of operators at the call centre is very stressful, between a phone call and another there are on an average five seconds... and this rhythm is kept up for eight straight hours. This same operation is repeated hundreds of time a day, every day (with each operator receiving an average of 140 calls)⁴⁰.

Employment has generally become less secure. Greater demands are often placed on the work, including longer and less flexible working hours, and more numerous and demanding tasks, such as increased customer contact with heightened emotional demands. Included in this are higher work pressure and higher performance targets. Standardization and more routine work with a risk of deskilling are widespread phenomena, too. This is followed by greater supervision and performance monitoring. Not surprisingly, the negative consequences are particularly evident where outsourcing has occurred, such as call centres outsourced to private companies. However, the increasing levels of customer contact are not seen as purely negative, as social contact can also lead to meaningful work, and customer contact can permit the use of social skills, therefore offering new career opportunities. Accordingly, as suggested by Korczynski⁴¹ both possible negative and positive consequences of restructuring of service work can be identified. Yet the overall picture is dominated by an increasing number of jobs with an undesirable working context and less job security for front-office personnel who are often women with limited or no formal vocational education⁴².

Furthermore, restructuring involves a more complex organization and a division of responsibility among the units, making the value chain for Public Administration longer and more complex. In all the case studies, the demands on each supplier's task are formulated and enforced by people external to the unit. In the case of outsourced work functions, the requirements are included in service-level agreements concluded between the public parent company and the new private unit. These rarely contain requirements concerning one's working conditions. In the case of internal externalization, requirements can be more diffusely formulated. In both cases, the process can lead to unintended conflicting pressures which

⁴⁰ Piersanti 2007, *op. cit.*: female respondent quoted 12.

⁴¹ Korczynski, 2001, *op. cit.*

⁴² Di Nunzio et al. 2009, *op. cit.*

cannot necessarily be resolved by management within a given unit, as in the Belgian case of external internalization:

The work content is subject to several pressures, from the government and from the “clients” [...] EWA [administrative unit responsible for e-government] has to adjust its work programme to the agenda of policy initiatives, which is not always compatible with the “technical” agenda of project development and implementation. This “mismatch” results in increasing workload for EWA workers [...] The pressure from the “client” does not come from the citizens themselves, but from the various departments that are the users of the applications and services designed by EWA⁴³.

Such inconsistencies in the division of responsibility and influence have both direct and indirect impacts on working conditions. None of the actors focus on how working conditions relate to externally formulated requirements, or which of the respective actors bears ultimate responsibility for conditions of work. In this way, restructuring can embody Bauman’s deregulation concerns where no one is responsible, even though in principle each employer has a legal responsibility with regard to his/her working conditions.

Although the restructuring of value chains share many characteristics, numerous differences might exist, and these differences have a major impact on people’s working conditions. In the following section, two cases are outlined as examples of restructuring producing very different outcomes.

Private Outsourcing of Citizen Services in Vienna

The first case, *Citylife*⁴⁴ is an example of restructuring of the value chain in the administration of public housing in Vienna (the municipality owns 220,000 homes). Residents in these homes require information and contact opportunities. Prior to restructuring, contact with tenants was organized via central administration which took care of all enquiries. A process of decentralization was initiated in 2000 when staff was relocated to nine new walk-in centres. As part of a parallel centralization process, a number of local property administrations were physically relocated to the nine contact centres. Central administration was converted into a

⁴³ Devos & Valenduc, 2007, *op. cit.*:17

⁴⁴ Schönauer A. *Citylife – Property Management for Council Housing. Organisational Case Study on Customer Service in the Public Sector – Austria*, Internal Working Paper, WORKS-Project, 2007.

municipality-owned company (*Citylife Enterprise*) with 630 employees in 2000. Initially, the nine contact centres were responsible for all contact with tenants – by telephone, face-to-face, or via the Internet. In 2002, telephone contact was outsourced to the *Citylife Customer Service Company* due to tenant dissatisfaction. However, the *Citylife Customer Service Company* did not take responsibility for telephone customer contact itself. It called for tenders, and the winner was *Consortium Multicall* – a private company. *Citylife Enterprise* – the original parent company – now manages the quality contract for all suppliers, and thereby has responsibility for the total value chain. *Citylife Customer Service Company* owns the service number and the electronic equipment used by the private employees, and it is this subsidiary which bears practical responsibility for fulfilling the contract with *Citylife Enterprise*. Under the contract, 80% of all calls must be answered within 20 seconds, and the number of lost calls must not exceed 10%. The call centre is required to record the number of calls, the number of messages referred to the service centres, and the most frequently asked questions. Yet it is not *Citylife Customer Service Company* which performs this service, but *Consortium Multicall*.

The restructuring process has had a number of effects on employees. Privately employed call centre workers are hired on temporary contracts. They work long and irregular hours, and each employee's performance is recorded and monitored through electronic traffic lights (red if an enquiry has waited too long) and test calls. Higher workloads have been reported and quality is defined only by user satisfaction. The administrative separation of the call centres from the service centres has meant that call centre employees do not have access to the career paths available in the walk-in centres. Although working conditions are better in the remaining contact centres, it appears that the work patterns, in terms of standardization and control, are rubbing off on the rest of public employees. Through cooperation with the call centres, which refer enquiries to the technical staff in the contact centres, this work is becoming standardised, and employees' supervision in the contact centres is being increased. Due to quality problems, it should be noted that *Citylife Customer Service Company* has been dissatisfied with the poor employment conditions for call centre employees. They have therefore put pressure on the private supplier to begin offering permanent positions in the call centres.

Public/Private Citizen Service Partnerships in Great Britain

This case⁴⁵ concerns the restructuring of the local government citizen services through the establishment of a joint-venture committee (*Customer*) consisting of two local authorities (*County Council* and *Mid District*) and a private multinational IT service provider (*Global*). The aim was to create a single, efficient contact point for citizens, based on the assumption that they do not understand and do not want to have to think about which government authority their given problem relates to. The establishment of an independent and unified contact system was intended to allow citizens to use the same access point for any enquiries to the authorities – both local and regional – across a range of areas. In practice, the restructuring of the citizen service was implemented by amalgamating a number of previously separate departments into a limited number of new centres located in two cities. These new units were intended to serve as one-stop service units through two different types of contact unit – service centres (call centres and Web access), and a number of walk-in contact points for personal contact. A number of HR, accounting and IT functions were also moved to *Customer*.

The relocated staff was transferred to the new units without changing their status as public employees of *County Council* or *Mid district*. The form of employment was therefore unchanged. The opening hours were extended to make contact with citizens more flexible. This involved the abolition of flex time (which employees consider as a step backwards and archaic), as well as occasional Saturday work. The increased flexibility for citizens has therefore led to reduced flexibility for employees. The quality of service is managed through service standard agreements, as in the Austrian case study. Requirements include that employees must spend 80% of their working hours over the phone, that 5½ minutes per call are assigned on average, and that no more than four employees may be away from the phones at any time. *Customer* must pay penalties to *City Councils*, if certain quality goals are not met. Yet in contrast to the employees at *Citylife*, those at *Customer* do not find it difficult to achieve these goals:

I don't stress about it, I think that's something for the senior management. Yeah, I think it's the levels above us who have to worry. We do what we can to answer calls when we can.⁴⁶

⁴⁵ Dahlmann, S. *CUSTOMER – Organisational Case Study on Customer Service in the Public Sector – UK*, Internal Working Paper, WORKS-Project, 2007.

⁴⁶ Dahlmann 2007, *op. cit.*: A Service Centre Employee, *Customer*.

Employees feel they have gained new skills and broadened their knowledge, as they now deal with a wide range of enquiries. They experience a relatively high degree of freedom to meet the needs of customers and take their time to attend to the various cases. Although working hours are formally inflexible, there is a certain degree of flexibility in practice. Employees may choose to work either at the service centres or walk-in centres. There is also some flexibility in choosing working hours. In other words, it has been possible to streamline operations without making the work too routine or depriving employees of influence in their work. Apart from more fixed and inflexible working hours, it appears that employees see restructuring in a relatively positive light. Employment terms have not become less secure, the requirements are not so strict that they are unachievable, and it is the responsibility of leaders to be concerned with performance goals (see the quotation above). However, it should be noted that management at *Customer* do not believe the company will continue after the ten-year period unless a more efficient organization is provided. In other words, this solution has given priority to employees' working life, but may not be economically sustainable in the long term.

Comparison

These two cases illustrate that the impacts on employees can vary, depending on the specific nature of restructuring. In Austria, the value chain has become significantly longer. There has been a transition from single organization to three links: a parent company, a subsidiary, and an outsourced call centre service awarded to the lowest bidder. Supervisory functions have been introduced between the links, with close monitoring in particular of call centre employees who have the closest contact with citizens. One important explanation is the expectation that call centre employees – with low wages and casual employment – have no special motivation to provide good service. In order to deliver the promised public service, the government-owned company has become completely dependent on the private supplier, who has problems ensuring sufficiently high quality. The government-owned company has therefore begun to set working conditions for call centre employees, which is actually in conflict with the original idea of outsourcing. However, it is a trend which has been seen in earlier studies in the area of service. Both private and government-owned service providers are completely dependent on the

service delivered by their suppliers, and therefore begin to meddle in working conditions in order to ensure sufficient service quality⁴⁷. The British case has been organised in a way that has a more positive impact on employees. Three factors in particular are significant. Firstly, a partnership was entered into with a private company. In other words, the work was not simply tendered out to the lowest bidder. Secondly, an organizational solution was chosen based on broad skills among employees, such that they experience greater content in the work. Thirdly, the original government employment status was retained, providing security to employees. This also makes it possible to maintain the high level of skills typically associated with many professional public service jobs. The problem of lack of motivation to provide good service therefore appears to be limited. Conversely, the same degree of cost reduction may not be achieved as in case of direct outsourcing and a contract awarded on price.

4. Discussion

The empirical analysis highlights a number of shared structural changes in European public services. There is a surprisingly high degree of similarity between the private and public services when it comes to the dynamics of globalisation. Outsourcing, marketization and increasing organizational fragmentation are common to both the private and the public sector. The main difference seems to be the lack of freedom for public services to move activities in the supply chain offshore.

One of the most significant developments – when focusing on the working conditions in public services – is the effect of the increase in the length of the value chains. This development is taking place in parallel with extensive marketization, whereby large elements of public infrastructure (such as railways and the postal service) are becoming government-owned companies operating on market conditions. Fragmentation is also occurring as smaller units are established not necessarily with direct administrative, financial or social connections.

⁴⁷ Hasle, P. Outsourcing and Employer Responsibility - A Case Study of Occupational Health and Safety in the Danish Public Transport Sector, *Relations Industrielles-Industrial Relations*, vol. 62, 1, 2007, 96-117. Rubery, J., Earnshaw, J., Marchington, M. *Blurring the Boundaries to the Employment Relationship: From Single to Multi-Employer Relationship*, in *Fragmenting Work - Blurring Organizational Boundaries and Disordering Hierarchies*, M. Marchington et al., eds., Oxford University Press, Oxford, 2005, 63-88.

These extended value chains often involve a mix of government where private, public and semi-public units are formally connected through contractual obligations and not via overlapping ownership. However, this does not mean that individual links do not influence one another. Standardized services and quality goals developed within one unit have a tendency to create the need for similar or matching initiatives in others. Outsourced parts of the value chain which are usually characterized by higher work intensity tend to influence the organization and intensity of work in the remaining parts. This is especially the case when private companies are involved.

In line with Korczynski's⁴⁸ concept of consumer-oriented bureaucracy and the NPM approach, development does not necessarily lead to more relaxed forms of management and greater freedom for employees, but rather to greater flexibility in meeting the needs of citizens. For employees this results in most cases in centralization and Taylorization in the form of increased supervision, standardization and strict, centrally defined performance and quality goals. It should therefore be noted that the increased consumer orientation serves both as a driver for the restructuring process in the public sector (specifically by being the key motive for reorganizing citizen contact) and as a consequence, as the new consumer focused organization places new demands on employees. In both the public and private spheres of the value chain, this is expressed in terms of longer/more irregular working hours, greater supervision and generally increased workloads (volume of work). Finally, the traditional career path in the bureaucratic organization is often diminished or completely blocked because the given unit only performs a single function, as is the case, for example, in isolated call centre units. Career paths in the new value chains are therefore across, rather than within, individual organizations⁴⁹. Especially when involving private companies, there are further deteriorations in terms of employment conditions becoming less secure (often shifting from permanent positions to casual ones). In addition, there is a trend towards standardization and automation which frequently leads to more routine work, and wages are generally reduced.

However, restructuring does not always come along with a deterioration of working conditions. The British example shows that it is possible to secure the existing conditions, and sometimes the restructuring itself may

⁴⁸ Korczynski, 2001, *op. cit.*

⁴⁹ Valenduc et. al, 2007, *op. cit.*

open up new possibilities for the positive development of working conditions. As Korczynski⁵⁰ pointed out greater citizen contact may increase job satisfaction. It may for instance happen in cases where centralization of formerly scattered functions leads to economies of scale and a demand for higher qualifications and more specialized jobs. One example of this was found in the new police contact centres in Sweden where new administrative jobs were being created while relieving police staff from answering telephone calls, which was not considered a core activity in police work.

The data for the article was collected just before the onset of the economic crisis. The problematic consequences in terms of working conditions identified in this analysis could therefore have deteriorated even further. Cuts in public sector budgets have been reported all over Europe, and it is likely that tenders to private operators have been further reduced in price, and that the internal rationalization have continued. This aspect increases performance demands on employees and threatens the possibility of survival for models such as the British 'Customer' one.

Extending public sector value chains by inserting additional separate companies/units can be viewed as the kind of deregulation Bauman⁵¹ regards as a significant problem in globalization. The combination of marketization and value chain extension, results in a regulation vacuum in which each unit only has the goal of fulfilling its part of the contract. Working conditions and working life are areas which receive little or no attention in the service contracts established between the various units. It is therefore difficult to attribute social responsibility in terms of skills development, well-being and avoiding work strain, especially if one considers these areas as more than simply a matter of complying with the minimum legal requirements.

Finally, the restructuring process depends on which part of the labour market is addressed. Public service, which is intangible, transient and inseparable from the consumption of the service, has certain inherent limitations and conditions. Citizen services cannot be relocated away from consumers, and the area also has major political significance as both consumers and producers (employees) are members of the society. This makes the public and private actors in the area closely linked, as the government authority continues to be assigned responsibility for supervising the other actors. Irrespective of the clear trend towards

⁵⁰ Korczynski, 2001, *op. cit.*

⁵¹ Bauman, 1998b, *op. cit.*

deregulation and fragmentation, there continues to be an expectation of governmental responsibility within this area. In several cases, local, regional or national governments have been pressured to intervene in response to poor working conditions and problematic operators. In some cases this has led the government authorities to re-internalise the working tasks – or consider doing so.

5. Working Conditions in the Public Sector: A Globalised Perspective

An analytical focus on the ambiguities that are highlighted in the prevailing concepts of glocalisation and deregulation allows us to investigate possible dislocations between the various links in the value chain and the change in the division of responsibility at the local and global levels. Although one can view globalization as a “compression of the world” by establishing social processes which lead to greater mutual supranational dependence, the various units in the public sector are also increasingly fragmented and isolated under this view. This leads to a lack of transparency in the administrative and leadership responsibilities along the entire chain. The connections between the individual links also make it difficult to base regulation exclusively on local organizations. Globalization in terms of the need for trans-organizational production units operating under market conditions has become widespread within the public sector, while the associated fragmentation means that the individual links in the process are only responsible for themselves. The regulation of the whole chain and of the gaps between the units is therefore open, and there also appears to be a need for such regulation.

The emphasis on globalization thus prioritises the discrepancy between responsibility and influence by highlighting administrative, financial and political inconsistencies between the people who experience problems (at the local level), and the unit or structure which has influence on and responsibility for the organization of social processes which set the working conditions for the individual company in the public sector chain. It is difficult to place responsibility for the global elements in the chain, and even though there are still some expectations on national authorities, it is not certain that this can be achieved in practice, either because the necessary political will is not always present, or because the authorities do not have sufficient influence over intermediate links in the value chain.

This development is creating a legislative black hole. While regulation on working conditions varies in most European countries the general rule is

that the company where a person is hired is legally responsible for health and safety issues. In this new globalised scenario the company in the value chain might bear this responsibility, yet lacking control to do so. There is therefore also a need for more research on the effects of restructuring on public services, while concurrently searching for possibilities to regulate the adverse effects of restructuring.

Domestic Workers: Vulnerable Workers in Precarious Work

Malcolm Sargeant *

1. Introduction

This paper begins by discussing the meaning of precarious work and vulnerable workers in order to place the issue of domestic work within this wider context and its literature. Domestic work can be classified as precarious work because of the nature of the contractual relationships in such employment and domestic workers can meet the definition of vulnerable workers in that there is a high likelihood that they do not have the same levels of employment protection afforded to other workers by law and practice. We then consider issues related to migrant workers and consider domestic work as precarious work and domestic workers as vulnerable workers.

2. Precarious Work

There is much valuable literature on the subject of vulnerable workers in the context of precarious work¹. These two terms are often used interchangeably, so sometimes the term “vulnerable workers” and sometimes “precarious workers” are used but also “vulnerable work” and “precarious work”. There is nothing intrinsically wrong with this except

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¹ See particularly the work of Professor Michael Quinlan and also Professor Felicity Lamm, but also Malcolm Sargeant and Maria Giovannone (eds) *Vulnerable workers: health, safety and well-being* Gower Publishing 2011 and Malcolm Sargeant and Marina Ori (eds) *Vulnerable workers and precarious work* Cambridge Scholars Publishing 2013

that sometimes the distinction can be useful, e.g. in considering occupational health and safety (OHS) matters for example. There are issues associated with various types of work which are distinct from OHS issues arising from the vulnerability of some of the workers who may carry out those tasks. This is true of domestic work where one can identify health and safety issues directly associated with the type of work in contrast to issues related to the vulnerability of, for example, female migrant workers who are often in domestic work. Here we distinguish between the two, although the focus is on vulnerable workers and, in particular, on migrant workers and domestic workers.

Precarious work is a term that has been around a long time and has been used quite regularly for hundreds of years, so, for example, in the nineteenth century, there are references in the UK to the precarious nature of the employment of dockworkers who were employed on a casual daily basis². The features of precarious or contingent work are that it comprises “uncertainty or irregularity with regard to ongoing employment which may include questions of hours of work and income”³. It is likely to be work for more than one employer, it is not “full-time” and is limited in duration⁴. Thus we have employment relationships that may be part time, fixed-term or temporary in nature⁵. It will include “casual, fixed-term contract or temporary workers (including those supplied by temporary employment agencies), own-account self-employed

² M. Quinlan, *The Pre-Invention of Precarious Employment: The Changing World of Work in Context* in *The Economic and Labour Relations Review* vol. 23, n. 4, 1-22.

³ M. Quinlan and P. Bohle, *Contingent Work and Safety* in J. Barling and M. Frone (eds.) *The Psychology of Workplace Safety*, American Psychological Association, Washington, 2004 81-106.

⁴ See D. C. Feldman, *Toward a New Taxonomy for Understanding the Nature and Consequences of Contingent Employment*, in *Career Dev. Int.* 2006, vol. 11, n. 1, 28–47, 2006; cited in P. Bohle, C. Pitts and M. Quinlan, *Time to Call it Quits? The Safety and Health of Older Workers* in *International Journal of Health Services*, 2010, vol. 40, n. 1, 23–41

⁵ Part-time work and work of limited duration may be work selected by the worker as meeting their needs at a particular time, although there is evidence that the current recession has forced many people into this type of work because of the lack of full time alternatives. Figures in the UK show that some 37 per cent of those doing temporary work and some 15 per cent of those doing part time work were doing so because they could not find a full time job. This amounts to about one million people working part time who would like to work full time and some 426,000 people in temporary work because they could not find permanent jobs. See *Flexible Working: Working for Families, working for business* A report by the Family Friendly Working Hours Taskforce; www.dwp.gov.uk/docs/family-friendly-task-force-report.pdf

subcontractors, teleworkers and home-based workers, including those doing homecare”⁶.

There are a number of employment relationships which have been described as coming within the term “precarious work”. Professor Quinlan et al.⁷ categorised them into five groups⁸ and others⁹ have identified as many as twelve categories¹⁰. Quinlan also found an association between precarious employment and negative indicators on occupational health and safety which led them to the view that the “introduction, presence, or growth of precarious employment commonly leads to more pressured work processes and more disorganised work settings”¹¹.

3. Vulnerable Workers

One possible definition of a vulnerable worker¹² is “someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse”. A further alternative is that proposed by the UK Health and Safety Executive¹³, namely “those at risk of having their workplace entitlements denied, and who lack the capacity or means to secure them”.

⁶ M. Quinlan, *The Pre-Invention of Precarious Employment: The Changing World of Work in Context*, in *The Economic and Labour Relations Review* vol. 23, n. 4, 1-22.

⁷ M. Quinlan, C. Mayhew and P. Bohle, *The Global Expansion of Precarious Employment, Work Disorganization and Consequences for Occupational Health: A Review of Recent Research in International Journal of Health Services*, 2001, vol. 31, n. 2, 335-414.

⁸ These were temporary workers; including short fixed-term contracts and casual workers; workers subject to organisational change; including re-structuring, downsizing and privatisation; outsourcing; including home working; part-time working; and workers in small businesses; including self-employment.

⁹ S. Dex and A. McCulloch, *Flexible Employment in Britain: A Statistical Analysis*, Equal Opportunities Commission Research Discussion Series, Manchester, 1995.

¹⁰ Self-employment, part-time work, temporary work, fixed-term contract work, zero hours contracts of employment, seasonal work, home working, teleworking, term time only working, Sunday working and job sharing.

¹¹ Quinlan et al.; supra n. 6

¹² Department for Trade and Industry *Success at Work* (now Department for Business and Innovation) 2006; <http://webarchive.nationalarchives.gov.uk/+/http://www.dti.gov.uk/employment/employment-legislation/success-at-work/index.html>

¹³ Health and Safety Executive <http://www.hse.gov.uk/vulnerable-workers/index.htm>
The HSE has 5 categories of vulnerability, in relation to health and safety; these are race and migrant workers, disabled people, gender, older workers and those new to a job.

The common features of these definitions are that the worker is at risk of exploitation or abuse and that they lack the means to protect themselves from that exploitation and abuse. The link with precarious work is apparent in that such exploitation and abuse is more likely when the type of contractual relationship is a temporary or casual one.

There are a large number of vulnerable workers; one report for the UK Trades Union Congress (TUC) found that some 20 per cent of the work force was vulnerable.¹⁴ The TUC set up a Commission on Vulnerable Employment (CoVE) to carry out a major investigation of the causes of, and solutions to, “vulnerable employment”. The TUC report defined vulnerable employment¹⁵ as being at risk of continuous poverty and injustices resulting in an imbalance of power in the employer-worker relationship. The report quotes a trade union official as saying

Many vulnerable workers suffer because they do not legally count as “employees” with a contract of employment. Those considered simply as “workers” or who have been forced into bogus self-employment not only have few rights, but lack any security, meaning that employers can sack them if they complain. Working through an agency can also create similar uncertainty and precariousness at work. Immigration status is complex and can act to make workers more vulnerable by making them entirely dependent on their employers.

Particular categories of vulnerable workers identified¹⁶ were temporary employees, migrant workers, workers in the informal sector and homeworkers:

- (1) Temporary employees; according to the Labour Force Survey there are 1.2 million temporary employees in the UK of whom 226,000 are agency employees. Around a third of these meet the vulnerable worker definition. This is almost certainly an underestimate as the most vulnerable will not show up in official statistics.
- (2) Migrant workers are clearly subject to exploitation, and are often denied even their legal rights.
- (3) Workers in the informal sector; (working for cash in hand) are unlikely to show in official statistics, precisely because their employers are

¹⁴ Policy Studies Institute, *The Hidden One-in-Five - Winning a Fair Deal for Britain's Vulnerable Workers*, 2006
http://www.psi.org.uk/news/pressrelease.asp?news_item_id=188.

¹⁵ *Hard Work Hidden Lives*
http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf.

¹⁶ <http://www.tuc.org.uk/social/tuc-12380-f0.cfm>.

trying to avoid paying tax, national insurance and legal responsibilities. But the Small Business Council estimates the grey economy is worth £75 billion a year.

- (4) Homeworkers who also do not show up in official statistics, but even these reveal that nearly half a million earn less than one third the median hourly wage. Low paid homeworkers typically do jobs such as packing, component assembly and data entry.

The report's authors stated that

While we expected to find poor treatment, its extent has stunned us all. Worst of all, much of it took place within a legal framework that fails to prevent exploitation. We have met production-line agency staff working long days and nights for less pay than permanent colleagues. Homeworkers have told us about lifetimes of poverty, being paid less than £1 per item of clothing they sewed, and receiving no paid holiday or sickness leave. We have heard from construction workers who had been injured at work but were not entitled to welfare protection or sick pay because of their contractual and immigration status. Office cleaners on casual contracts told us that they had no choice but to keep working when they were ill, as they could neither afford to lose a day's pay nor risk the sack.

This exploitation and abuse takes place within an environment where there is extensive protection against unfair practices in employment¹⁷. It is clear that a significant number of workers fail to be protected by this legislation and there is still the situation where “vulnerable employment also places workers at greater risk of experiencing problems and mistreatment at work, through fear of dismissal by those in low-paid sectors with high levels of temporary work means they are often unable to challenge it”¹⁸.

The report, drawing extensively on other published research and literature, suggests the following reasons for the increase in workers in vulnerable employment: (a) jobs available are changing. While there is still a demand for low skilled jobs, these are increasingly in service work. It has been suggested that there is a polarisation of jobs¹⁹; (b) more workers

¹⁷ In the UK, for example, there are measures to prevent unfair dismissal, provide for equal treatment of temporary agency workers, those on fixed-term contracts and in temporary work. The Equality Act 2010 also provides that direct and indirect sex and race discrimination, amongst other protected characteristics, is unlawful

¹⁸ *Hard Work Hidden Lives* supra.

¹⁹ The report notes: M. Goos and A. Manning, *Lousy and Lovely Jobs; the Rising Polarization of Work in Britain*, in *The Review of Economics and Statistics*, MIP Press, 2007, vol. 89 n. 1, 118-133 and Kaplanis, *The Geography of Employment Polarisation in Britain*, Institute for Public Policy Research, London, 2007.

are employed by small businesses. Over 40% of the workforce is now employed in a business that employs less than 100 workers; (c) the increasing proportion of agency work; as a proportion of all temporary work; agency work comprised 17.1 per cent of all temporary work in autumn 2007 as compared to 13 per cent in 1997²⁰; (d) the informal cash in hand economy; it is suggested this involves billions of pounds²¹; (e) an increased reliance on migrant workers; (f) the employment of women who, on average, are being paid 17.2 per cent less than men²² and about 40 per cent of women are in part time employment²³. Women working part-time earn about 60 per cent of the average hourly earnings of men working full time²⁴; (g) there is a relationship between low income and job insecurity²⁵; (h) working long hours – whilst women may only be part-time in paid employment they often have additional responsibilities as carers. Men tend to work long hours even when they have family responsibilities.

4. Migrant Workers

The migration of workers across national borders in order to find work is not a new phenomenon. It has been happening for centuries²⁶ and “there is no continent, no region of the world, which does not have its contingent of migrant workers”²⁷. It is, therefore, an international phenomenon that has affected many states both as exporters, and as importers, of labour. It is reported that the United Nations (UN) estimates that there are some 200 million international migrant workers

²⁰ Labour Force Survey, *Autumn 2007 and Autumn 1997*.

²¹ HMT, *The Informal Economy: a Report by Lord Grabiner QC*, HMT, London, 2000.

²² Press release, *TUC Response to the ONS Hours and Earnings Survey*, 7th November 2007.

²³ Equal Opportunities Commission, *Facts About Women and Men in Great Britain*. London EOC, London, 2006, 15.

²⁴ S. Fredman, *Women at Work: The Broken Promise of Flexicurity* in *Industrial Law Journal*, 2004, vol. 33 n. 4, 302.

²⁵ A. Evans, A. Rossiter, K. Mueller and V. Menne, *Anglo-Flexicurity: a Safety Net for UK Workers*, Social Market Foundation, London, 2008.

²⁶ C. Hahmovitch, *Creating Perfect Immigrants: Guest Workers of the World in Historical Perspective*, in *Labor History*, 2003, vol. 44 n. 1, 69.

²⁷ United Nations, *Fact Sheet 24 Concerning the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, Adopted by the General Assembly of the United Nations by Resolution 45/158. Office of the High Commissioner for Refugees, New York, 18 December 1990, Available at www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/generalcomments/unfactsheets/No. 24 Rightsofmigrantworkers/.

and their families²⁸. This figure excludes those who are involuntary migrants resulting from fear of persecution or violence. The majority of migrants live in the richer countries of North America and Europe. In Europe one in eight people of working age is a migrant and in North America this figure becomes one in four.

Despite the contribution that they make to their host countries, migrants often face serious labour market disadvantages²⁹. In many countries, migrant workers are more likely to work on fixed-term contracts, and less likely to be retained in employment. Some countries have a policy of issuing short-term work permits: hence, workers can only take jobs of limited duration. Many migrants work in seasonal sectors, and in some countries temporary employment agencies are a key recruiter of migrant workers. The vulnerability of migrant workers needs to be put into a wider context of course. It is linked to factors that are not simply to do with being a migrant worker. “Just because one is a migrant doesn’t mean that one stops being, for instance, young, or female, or black”³⁰

An ILO report³¹ stated that there were two aspects of health issues for migrant workers. The first is related to occupational health and safety at the workplace; and the second concerns the general health condition of the migrant worker and her family. Health is an important issue because, as the report states, migrant workers tend to be employed in high risk occupations; secondly that there are language and cultural barriers to OHS communication, in particular OHS training and instruction; and, thirdly, many of the migrant workers overwork and/or suffer from poor general health, and so are susceptible to occupational injuries and work-related diseases. The report also states that

Occupational accident rates are about twice as high for migrant workers as for native workers in Europe, and there is no reason to believe that the situation is any different in other parts of the world.

²⁸ Figures are for 2010; see <http://UK.oneworld.net/guides/migration>.

²⁹ *Counting the Cost: Working Conditions of Migrants* <http://www.eurofound.europa.eu/pubdocs/2008/893/en/1/EF08893EN.pdf>.

³⁰ H. Jayaweera and B. Anderson, *Migrant Workers and Vulnerable Employment: A Review of Existing Data*, Report for TUC Commission on Vulnerable Employment <http://www.vulnerableworkers.org.uk/wp-content/uploads/2008/08/analysis-of-migrant-worker-data-final.pdf>.

³¹ International Labour Conference, *Towards a Fair Deal for Migrant Workers in the Global Economy*, 92nd Session, 2004; <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>.

One report by the UK Citizens Advice Bureau, *Rooting out the Rogues*, whilst highlighting the problem of bad employers in general terms, emphasised the vulnerability of migrant workers:

Whilst the vast majority of employers try hard to meet their legal obligations to their workforce, there are still far too many unscrupulous or rogue employers (and employment agencies) prepared to flout the law and so profit from exploitation³².

In terms of seeking assistance, temporary workers, and in particular migrants in an irregular status, are often not able to access social security benefits such as those relating to employment injuries and occupational illnesses. They often do not seek medical treatment because “of the cost, inability to take time off work, lack of childcare, and problems of transportation. Many are unfamiliar with the local health-care systems and may have linguistic or cultural difficulties in communicating their problems”.

One report³³, based upon a qualitative analysis of some 200 migrant workers, found amongst other issues, that, firstly, migrant workers often worked mainly with other migrant workers (sometimes of the same nationality, but not always); secondly, that their most likely method of accessing work was through word of mouth; thirdly, that the general pattern of migrant work consisted of long working hours³⁴; fourthly, that more than a third of the migrants interviewed had not received any training in health and safety and for the remaining two-thirds the training that had been offered was generally limited to a short session at induction; fifthly, among those interviewees who were undocumented the fact that they were working without documentation meant that they were at greater risk of dismissal where the employer feared an immigration raid. The effect could drive undocumented workers further into forms of work that presented greater risks to their health and safety; sixthly, that one of the issues migrant workers raised in the course of the interviews was their experience of discriminatory treatment at work, often related to their nationality or status. Many of the workers interviewed believed that they

³² http://www.citizensadvice.org.uk/rooting_out_the_rogues.pdf.

³³ Dr S. McKay, M. Craw, D. Chopra, *Migrant Workers in England and Wales. An assessment of Migrant Worker Health and Safety Risks*, HSE Books, 2006.

³⁴ There were a variety of reasons for this. First, in some of the sectors in which they were employed, for example agriculture, long working hours are routine. Second, migrant workers were more willing to work long hours because in this way they could increase their earnings and their primary aim in coming to the UK was after all to earn money.

and migrant workers generally were often allocated to the worst shifts, were denied concessions that were available to local workers and had less favourable terms and conditions; and, finally, that women were more likely to report that they had not been given any induction training. They were also more likely to believe that their health, both physical and mental was being compromised by the work they were doing and they were more likely to say that they had experienced discrimination at work.

5. Domestic Work

Article 1 of the ILO Convention on Domestic Workers³⁵ defines the term “domestic work” as work performed in or for a household or households and a “domestic worker” as any person engaged in domestic work within an employment relationship. There are clearly a variety of types of domestic work with perhaps varying levels of vulnerability and precariousness. These can range from a person with single or multiple part time domestic cleaning jobs to the full time live in domestic help. Not all domestic workers are migrants of course and there is much variety internationally, e.g. in Latin America, the Caribbean and Asia there is much domestic migration within the region; whilst in other regions, such as the industrialised north and the USA, migrant workers from other parts of the world make up a significant proportion of the domestic work force³⁶. In Europe the biggest employers of migrant domestic workers are Spain, France and Italy. In Spain some 36 per cent of all migrant women workers find work as domestic workers. The figures for France and Italy are 21.1 per cent and 27.9 per cent respectively. In the UK there are some 138,000 domestic workers who worked in private households with a lower proportion of females, at 61 per cent, than many other countries³⁷.

According to the ILO analysis there were (in 2010) some 52.6 million men and women employed in domestic work. This is an increase from 33.2 million just 15 years earlier in 1995. The gendered nature of this work is evident when the analysis shows that, of the 52.6 million, some 43.6 million are female domestic workers, compared to some 8.3 million men. Women’s share of domestic work ranges from some 63 per cent in the

³⁵ ILO, 2011, (No. 189).

³⁶ All this data comes from ILO. *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* ILO, Geneva, 2013.

³⁷ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO, Geneva 2013.

Middle East to some 92 per cent in Latin America. In fact, one in every 13 female wage workers globally is a domestic worker (some 7.5 per cent of the total).

An ILO report states³⁸ that migrant women domestic workers are among the world's most vulnerable workers:

Most are women moving from poorer to richer countries for economic reasons, and most leave their children behind, often in the care of relatives or a hired local maid, creating global care chains. The availability of foreign maids, in turn, allows women with children in destination countries to work for wages, so that many of the world's women between the ages of 15 and 64 years are able to pursue paid employment outside the home.

A more recent ILO report³⁹ stated that

Many domestic workers are still excluded from provisions that other workers take for granted with respect to essential working conditions, such as paid annual leave, working time, minimum wage coverage and maternity protection.

Some domestic workers are treated as members of their employer's family, while others are exploited and subjected to conditions "which in some cases amount to virtual slavery and forced labour".

Domestic workers often have to work long or even excessive hours of work (on average, 15-16 hours per day), with no rest days or compensation for overtime; they generally receive low wages, and have inadequate health insurance coverage. Domestic workers are also exposed to physical and sexual harassment and violence and abuse, and are in some cases trapped in situations in which they are physically or legally restrained from leaving the employer's home by means of threats or actual violence, or by withholding of pay or identity documents. In many countries, labour, safety, and other laws do not cover domestic workers, so that there are no legal norms for their treatment or offices and inspectors to enforce them. Even if they are protected by legislation, it can be very difficult for domestic workers to learn about or benefit from available protections, the result being widespread violations of protective labour laws.

As part of its aim at resolving these problems, the ILO has adopted the Domestic Workers Convention⁴⁰ and an accompanying Domestic

³⁸ ILO. *Towards a Fair Deal for Migrant Workers in the Global Economy*, International Labour Conference, 92nd Session, 2004; <http://www.ilo.org/public/english/standards/reln/ilc/ilc92/pdf/rep-vi.pdf>

³⁹ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO, Geneva 2013.

⁴⁰ ILO, 2011, (No 189),

Workers Recommendation⁴¹ but it is not clear how many countries will eventually ratify these labour protection measures.⁴²

Article 3(1) of the Convention states that

Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

This is to include the elimination of discrimination in respect of employment and occupation.⁴³ Specifically Article 10 provides that

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

The reality is that in many countries, including the UK, domestic workers are excluded from employment protection legislation and there is a reluctance of legislators to intervene in the relationships that exist within the family home. This appears to be the essence of the problem is respect of extending employment protection, received by workers generally, to domestic workers. If domestic workers are part of the family structure, to what extent should the state intervene in this personal relationship.

⁴¹ ILO, 2011, (No. 201)

⁴² The UK did not vote in favour of the convention. The UK government has argued that the convention goes against its Health and Safety law. However, on 22nd January 2013, Italy became the 4th ILO Member State and the first EU member State to ratify the Convention. Notably, the European Commission has also presented a proposal for a Council Decision authorising Member States to ratify the Convention. Gov.UK, *Explanatory Memorandum on European Council Document 7939/13, COM (2013) 152*, Cabinet Office, London, <http://europeanmemorandum.cabinetoffice.gov.uk/files/2013/04/7939-13.pdf>

European Commission, *Proposal for Council Decision, COM(2013) 152 final*, Brussels, 2013.

⁴³ Article 3(2)(d).

6. Domestic Work as Precarious Work

For the purposes of including domestic work within the framework of precariousness and vulnerability, we briefly consider here domestic work as precarious work. Domestic work is, of course, only one aspect of what can be called “household services”. There is a Eurofound study entitled ‘Employment in Household Services’⁴⁴ which is concerned with this sector. Household services, in this context, means child care, eldercare, domestic cleaning, home maintenance and catering. The research addresses concerns about the quality of this employment and the working conditions, as well as highlighting the implications for equal opportunities and social inclusion. In terms of job satisfaction the report found that

work in household services (especially in child care and eldercare) is satisfying and rewarding for the more motivated workers. The most valued aspects are the opportunity to develop meaningful relationships with people, to help those in need and to use one’s creativity.

Those who work in household services, however, are also exposed to the risk of physical and mental stress. Self-employed workers have greater difficulty handling such stress because they are more isolated; however, even those individuals who work in specialist facilities often receive inadequate support. The other issues were, as one would perhaps expect, low pay, long working hours and reconciling work and family life. In particular, the report reveals a division between some relatively well protected workers and those with little social protection. The first were mostly working in the government and third sectors, whilst the latter tended to be self-employed workers across the whole sector. The report also notes that “workers who are forced to work long or atypical hours fill niches left uncovered by the market; and these are the workers most likely to experience a conflict between work and family commitments”.

The ILO Encyclopaedia on Health and Safety⁴⁵ states that the physical hazards arising from domestic work include: ‘long working hours, insufficient rest time and sometimes insufficient food, exposures to hot and cold water, exposure to hot kitchen environments, musculoskeletal problems, especially back and spinal pain, from lifting children and furniture, and kneeling to clean floors. Precautions include limitations of working hours, adequate rest and food breaks, gloves for dishwashing and

⁴⁴ <http://www.eurofound.europa.eu/pubdocs/2001/02/en/1/ef0102en.pdf>.

⁴⁵ http://www.ilo.org/safework_bookshelf/english.

other water immersion, training in proper lifting techniques, mechanised carpet cleaners and floor polishers to minimize the time spent on the knees and provision of knee pads for occasional tasks.

Particular hazards include, firstly, chemical hazards by exposure to a wide variety of acids, alkalis, solvents and other chemicals in household cleaning products which can cause dermatitis. Domestic workers may not know enough about the materials they use or how to use these products safely. Secondly, there are biological hazards arising from responsibility for the care of young children which can result in a greater risk of becoming infected with a variety of illnesses, especially from changing diapers, and from contaminated food and water. Thirdly, there are psychological and stress hazards, including isolation from one's family and community; lack of paid vacation and sick or maternity leave; inadequate protection of wages; rape, physical and mental abuse; over-extended working hours; and general lack of benefits or contracts.

There is a major issue about the recognition that domestic work is 'work' and that the worker should have a contract of employment and the same rights as workers outside the domestic sphere. As it takes place in the domestic sphere there seems to be an assumption that it should be treated differently. An IRENE/IUF conference demanded "recognition that domestic work is 'work' and that those who do it are 'workers' with the rights that all workers have including the right to be heard"⁴⁶. This perhaps should include an appreciation of why people do domestic work⁴⁷:

For me one of the most startling aspects is the complete non-comprehension by the employer that these women are workers first and foremost needing to earn a living wage. The fact that they live in on the job should not detract from that reality. Many of the employers in this survey are business people and professionals themselves who wouldn't dream of treating their business staff in this way.

⁴⁶ Domestic Worker Rights, *Respect and Rights: Protection for Domestic/Household Workers*, 2008, published by IRENE and IUF http://www.domesticworkerrights.org/sites/default/files/report_en.pdf.

⁴⁷ M. Healey, *Exploring the Slavery of Domestic Work in Private Households*, unpublished MA thesis University of Westminster cited in Anderson, 1994, Bridget, *Doing the Dirty Work? The Global Politics of Domestic Labour*, London and New York, Zed Books, 2000.

7. Migrant Domestic Workers as Vulnerable Workers

The fact that domestic work takes place in private households means that “that they are less visible than other workers and are vulnerable to abusive practices”⁴⁸. Migrant domestic workers are especially vulnerable because “their often precarious legal status in the destination country, and their lack of knowledge of the local language and laws, make them especially vulnerable to abusive practices”⁴⁹. The development of domestic work within the home was crucial for its exclusion from labour law and initially governed by family law. Fudge points out “the ideologies of domesticity and privacy have historically combined to provide a justification for exempting these workers from some of the basic legal entitlements available to other workers”⁵⁰. Fudge studied the laws in 60 different countries and found that 19 had enacted specific laws or regulations dealing with domestic work; a further 19 had devoted specific chapters or sections of labour codes or acts concerning contracts of employment; 17 countries had no specific employment legislation with respect to such workers; and 9 countries excluded domestic work from the labour code. Only a small number of the national laws analysed require the conclusion of a written contract of employment for domestic work, and only rarely do national laws on domestic work refer to standards and specifications to be dealt with in those contracts. In addition, some countries either exclude domestic work from the requirement of establishing a written contract, or allow such contracts to be of an oral nature. As a result, this legal situation tends to generate uncertainty and create problems in determining and enforcing the conditions of work agreed upon by the parties. The ILO study points out that “even where domestic workers are covered by labour laws, migrant domestic workers might be excluded from the provisions, or they may lack any realistic means of insisting that their employer respect their rights”⁵¹.

The conflict between domestic work taking place in the home and the need for the law to provide protection at work results in limits on the protection offered to domestic workers. Examples of this include issues

⁴⁸ *Ibid.* Note 33.

⁴⁹ *Supra* Note 33.

⁵⁰ J. Fudge, *Little Victories and Big Defeats: The Rise and Fall of Collective Bargaining Rights for Domestic Workers in Ontario*, in A. B. Bakan and D. Stasiulus (eds.) *Not one of the family: Foreign domestic workers in Canada* University of Toronto Press, 1997.

⁵¹ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* ILO, Geneva, 2013.

related to working time. There seems to be a clear correlation between working hours, night work, shift work and irregular distribution of working time with OHS outcomes⁵². These are especially important for young workers and for women during and after pregnancy. Despite the Domestic Workers Convention requiring equal treatment between domestic workers and others in respect of working hours etc., the “working hours of domestic workers around the world are among the longest and most unpredictable for all groups of workers”, The average hours worked per week range from 65.9 hours in Malaysia and 63.7 hours in Saudi Arabia to 24.5 hours in New Zealand and 19.7 in Australia to as low as 15.1 hours in Austria. Live in domestic workers tended to work longer hours than live out ones and a common practice is for the employer to assume that the domestic worker will be available whenever their services are needed.

A second example concerns pay and the fact that the pay of domestic workers is lower than for other workers. Domestic workers typically earn around 40 per cent of average wages ranging from 63.8 per cent in Honduras and 61 per cent in Vietnam to only 14 per cent in Botswana and 21.2 per cent in Bahrain. This comes from a traditional under valuing of domestic and caring work and is very much a gender issue. Work in the home, usually done by women, is unpaid or underpaid. Sometimes it can be compounded by other factors such as gender and ethnicity. The ILO report gives the example of South Africa where most domestic workers are black and female and these are factors leading to low pay. Another reason is, of course, the weak bargaining position of domestic workers because they tend to be isolated from other workers and often have a total dependency on their employer.

A third issue is related to maternity as some 80 per cent of domestic workers are women and many are of child bearing age, the importance of maternity help and protection cannot be undervalued. Yet more than a third of domestic workers are excluded from important maternity protection provisions, such as maternity leave and an income during pregnancy, so “pregnancy therefore often entails job losses for domestic workers”. The gender bias of the occupation is important and, of course, needs to be placed in the context of discrimination against women

⁵² P. Tucker and S. Folkard, *Working Time, Health and Safety: A Research Synthesis Paper*, ILO, Geneva, 2012.

generally. Women are less likely than men to be in employment and, when employed, working shorter hours than men⁵³, but

Domestic responsibilities are not the only reason for women's lower employment rates. Women have higher unemployment rates than men in many countries, and segregated employment patterns and lack of equal treatment means that once employed they have lower earnings, inferior employment conditions and poorer promotion prospects⁵⁴.

8. Migrant Domestic Workers and Abuse

Domestic workers are especially vulnerable to discrimination, exploitation and abuse, without this necessarily being trafficking or forced labour⁵⁵. There are a number of issues to be dealt with. Firstly, when many domestic workers lose their employment, they sometimes also lose resident status. Examples of tackling this given are Canada, where a "bridge extension" has been introduced whereby a two month interim work permit may be issued during the period when the worker is looking for another job; and Israel where a worker may obtain a 30 day tourist visa to cover this period. In contrast the UK has introduced rules which only grant work visas to live in domestic workers when they stay with the importing employer⁵⁶. Secondly, providing safe houses as temporary accommodation, accompanied by an efficient support network, is crucial. Some countries have done this in other States where their nationals are employed as domestic workers. Thirdly, work permits should not have a

⁵³ C. Fagan, T. Warren and I. McAllister, *Gender, Employment and Working Time Preferences in Europe*, European Foundation for the Improvement of Living and Working Conditions, 2001, <http://www.eurofound.europa.eu/publications/htmlfiles/ef0145.htm>.

⁵⁴ *Ibid.*

⁵⁵ www.kalayaan.org.uk.

⁵⁶ Since April 2012, a change in the UK immigration policy towards domestic workers has led to the deletion of ODW visas previously issued under part 5 of the UK Immigration Rules. Considering that the total number of migration flows to the UK in 2011 is estimated at 566,000, the 16,432 visas issued to ODWs will represent approximately 3% of migration flows to the UK. Given that migrant domestic workers constitute a small fraction of migration flows to the UK, it is not clear how the eradication of ODW visas would assist the government in meaningful migration curtailment. OECD: International Migration and the United Kingdom Report of the United Kingdom SOPEMI Correspondence to the OECD, 2012. Available online <http://www.geog.ucl.ac.uk/research/transnational-spaces/migration-research-unit/pdfs/sopemi-report-2012>.

condition that requires the worker to live in the employer's home. This can be an encouragement to forced labour. Fourthly abuse by some employment agencies need to be controlled.

Approximately 16,000 migrant domestic workers enter the UK each year⁵⁷. They are entering the UK typically accompany wealthy employers including businessmen, diplomats, tourists and expatriates returning from abroad. Information provided by Kalayaan⁵⁸ show some of the abuse of migrant domestic workers in the UK. The percentages are of those clients that registered with Kalayaan.

Control

Not allowed out unaccompanied	60% (n=284)
Passport was withheld	65% (n=290)

Abuse

Psychological abuse	54% (n=285)
Physical abuse/assault	18% (n=283)
Sexual abuse/harassment	3% (n=239)
Did not receive regular/ sufficient food	26% (n=279)
Did not have own room (e.g. sleeping on kitchen or living room floor)	49% (n=281)

Exploitation

Working seven days a week with no time off	67% (n=287)
Had to be available 'on call' 24 hours	58% (n=239)
Worked 16 hours a day or more per day	48% (n=252)
Received a salary of £50 or less per week	56% (n=238)

⁵⁷ M. Lalani, *Ending the Abuse: Policies that Work to Protect Migrant Domestic Workers*, Kalayaan, 2011

<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>.

⁵⁸ Kalayaan is an NGO in the UK working for justice for migrant domestic workers.

The particular issues that seem to have been raised in the various reports considered here, which relate to migrant domestic workers, suggest that the health and safety issues raised are:

- Unsuitable sleeping arrangements
- Long working hours
- Insufficient rest time
- Musculoskeletal problems
- Insufficient nourishment
- Dangerous cleaning products
- Social and cultural isolation
- Lack of, or insufficient, health insurance
- Restricted freedom of movement
- Inability to access medical care

9. Conclusion

In “Making domestic work visible: The case for specific regulation”⁵⁹ the author states that there are three common elements found amongst domestic workers worldwide. These are:

- Domestic workers are usually employed in private households, and also live in with their employer’s family;
- The overwhelming majority of domestic workers are women; the work has traditionally been regarded as ‘women’s work’;
- Most domestic workers have to leave their own families behind, moving from economically poor areas to richer, usually urban, ones.

There needs to be specific regulation dealing with the needs of domestic workers; just to expect domestic workers to fit their work into the regulations concerning employment in general is inadequate.

The ILO report suggests that there are examples of best practice to improve working conditions for migrant workers. These include

⁵⁹ U. Huws and S. Podro, *Employment of Homeworkers: Examples of Good Practice*, ILO, Geneva, 1995. 33, ISBN 92-2-110005-7. Available from the ILO Conditions of Work Branch:

<http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/>.

- Having competent institutions to supervise recruitment and migration;
- Encouraging migrants to sign contracts that have been approved by competent national authorities;
- Including migrant workers in work-related health programmes;
- Use of bridging arrangements
- Establishing agencies to monitor and seek to reduce discrimination.

The example of domestic workers shows the importance of examining the precarious nature of the jobs done as well as the vulnerability of many of the people that carry out this work. The precarious nature of the jobs, as illustrated here, include irregular working hours, low pay and, indeed, the lack of recognition that a “real” job of work is being done. Domestic jobs are often individualised at specific locations so workers do not have the support of collective networks or representation. When added to this is the vulnerability of the people that do the work, then one can see the scope for exploitation and abuse.

Perhaps the most important aspects of vulnerability in this respect are the gendered nature of the work, the migration status of many of the workers and issues related to ethnicity and living in poor conditions in a foreign country alone.

Are Unions Still a Topic for Industrial Relations Research?

Rémi Bourguignon and Heidi Wechtler *

1. Introductory Remarks

In 1993, Bruce E. Kaufman published a convincing and detailed study on the evolution of the discipline of industrial relations. He maintained that in the 1980s the world had undergone a change. To practitioners, unions seemed to play a less relevant role because of the decline of the unionized sector and the adversarial relations resulting from collective bargaining. According to the author, it would be essential for industrial relations scholars to readjust their focus towards human resource management. Otherwise, “an academic field built on the study of unions will perforce have to shrink in tandem”¹. This point is made cogently when he describes the mechanism by which the demand for practitioners affected the field dynamics. HR courses were more and more valued by employers and professional opportunities for scholars moved from IR departments to business schools. In other words, the relevance of a topic is determined by the academic marketplace. This assumption is based on “the idea of a market of concepts competing with each other, where the best concepts will find the widest diffusion”².

Acknowledging the foregoing challenges, Kaufman proposed a strategy to transform IR “from the study of unions and collective bargaining to the

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¹ B. E. Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States*, ILR Press, Ithaca, NY, 1993.

² A. Nicolai and D. Seidl, *That's Relevant! Different Forms of Practical Relevance in Management Science*, in *Organization Studies*, 2010, vol. 31, 1257-85.

study of all the practices, behaviours, and institutions relevant to the employment relationship”³. This strategy is based on three requirements: the name change – to broaden the scope of the field – the repositioning of IR research by adjusting mainstream IR journals’ editorial policy, and strategic decisions made by the Industrial Relations Research Associations to support a broad definition of IR.

On the basis of these considerations, this research note intends to provide an empirical analysis of trade union research evolution throughout IR literature along the last two decades. In the next section, we briefly review both previous discussions about the relevance of unions in IR research and some empirical available works.

2. Previous Discussions about IR Orientation

Kaufman’s historical survey revealed how critical the union topic became to the field. He considered the importance given to unions in academic publications as an indicator of the paradigm orientation of scholars, for example when he calculated “the proportion of articles that pertained to three broad subject areas: unions and collective bargaining, labor economics, and personnel and organizational behavior in order to evaluate the actual place of each paradigm”⁴. However, there was no common consensus on the way forward for repositioning IR research.

In a deliberately provocative manner, Dunn contrasted old and new industrial relations systems. He described the former as narrow, static and pessimistic, turning industrial relations into trench warfare. From this perspective, the relations between labour and management are intrinsically adversarial. Unionization and collective bargaining are presented as fundamental ways to ensure that the workers’ interests are taken into account in managerial decisions. Dunn argued that this vision should be replaced by the new industrial relations, which is more optimistic and oriented towards the promotion of human resource practices meant to reconcile workers and management. His argument was that the world had changed: Unionism was experiencing a secular rather than cyclical decline and was no longer a prospect for the future in post-industrial, post-Fordian and post-modernist times⁵.

³ B. E. Kaufman, *op cit.*

⁴ B. E. Kaufman, *op cit.*

⁵ S. Dunn, *Root Metaphor in the Old and New Industrial Relations*, in *British Journal of Industrial relations*, 1990, vol. 28, 1-31.

In the early 2000s, this economic evolution formed the core of the controversy between Godard and Delaney⁶ on the one hand, and Kochan⁷ on the other hand. Godard and Delaney termed the new industrial relations paradigm the ‘high performance paradigm’ and developed a critical analysis of its intellectual foundations. More specifically, they expressed their scepticism about any post-industrialist economy. Indeed, the concept of post-industrialist economy includes the idea that, starting from the 1980s, the search for competitiveness would have led to the reconciliation of the interests of workers with those of employers. Based on this perspective, a significant challenge for managers should be to adopt new policies and strategies that enhance cooperative employment relations in order to value human capital. In other words, the employers’ interests become the only outcome that matters since they integrate workers’ well-being. This is the reason why “in the new paradigm, the study and promotion of new work and HRM practices replace research on unions and collective bargaining as the field’s core”. According to Godard and Delaney, this ideological swing meant abandoning the pluralist conception as the foundation of industrial relations to rejoin the unitarist ideal. In the following issue of *Industrial and Labor Relations Review*, Kochan challenged this reading. He was of the opinion that the call for a readjustment of the industrial relations paradigm is the consequence of a positive rather than a normative orientation; that is, the emergence of the high performance paradigm would actually be driven by observed changes in the world of work. To support his thesis, he refers to numerous case studies – including the famous book he wrote with Katz and McKersie, *The Transformation of American Industrial Relations* – which showed that changes in workplace practices were largely introduced by management in the early 1980s. These observations indicate that unions were no longer to be considered as the driving force behind innovation in personnel practices.

Finally, while some scholars directly called for reducing the amount of research dedicated to unions, others warned “against an ahistorical and institutionally blind managerial orientation”, advocating for re-establishing

⁶ J. Godard and J. T. Delaney, *Reflections on the “High Performance” Paradigm’s Implications for Industrial Relations as a Field*, in *Industrial and Labor Relations Review*, 2000, vol. 53, 482-502.

J. Godard and J. T. Delaney, *On the Paradigm Guiding Industrial Relations Theory and Research: Reply to Thomas A. Kochan*, *Industrial and Labor Relations Review*, 2001, vol. 55, 542-4.

⁷ T. A. Kochan, *On the Paradigm Guiding Industrial Relations Theory and Research. Comment on John Godard and John T. Delaney, “Reflections on the ‘High Performance’ Paradigm’s Implications for Industrial Relations as a Field*, *Industrial and Labor Relations Review*, 2000, vol. 53, 704-11.

a common intellectual vision and for recognizing differing theoretical assumptions across different schools of thought. In order to generate productive debates, it is necessary to move away from the promotion or discredit of a specific institution⁸. The foregoing discussion shows that there is great uncertainty about the future for union research in the IR field.

3. Empirical Studies on Union Research in the Industrial Relations Literature

The amount of empirical available work draws a blurred picture of union research. For example, Kaufman⁹ has observed nuanced evolutions according to the journals considered. In the *ILR Review*, the proportion of articles dealing with unions decreased dramatically from 68% to 33% between the late fifties and the late seventies. Conversely, in *Industrial Relations* the proportion stood at around 50% between 1961–5 and 1975–9. Counting articles published in three journals (*ILR Review*, *Industrial Relations*, *Journal of Labor Research*), Jarley *et al.* estimated that 58.5% of articles dealt with unions over the period 1986 to 1995¹⁰.

Two contributions by Mitchell¹¹ and Frege¹² directly questioned the tendencies in the 1990s. These studies are based on common methodological principles, and compare the literature between two periods. Each survey considers an extensive range of articles published in academic journals and conducts manual analysis to identify the topics covered, using this method to observe the developments in the field. However, while the methodological principles are alike, there are some discrepancies that limit the comparability of the two studies. First, the periods surveyed are different. Mitchell described the field in the 1960s

⁸ J. Godard, *An Institutional Environments Approach to Industrial Relations* in C. J. Whalen (ed.), *New Directions in the Study of Work and Employment: Revitalizing Industrial Relations as an Academic Enterprise*, Edward Elgar Publishing, 2008. K. Sisson, *Revitalising Industrial Relations: Making the Most of the “Institutional Turn”*, in *Warwick Papers in Industrial Relations*, 2007, n°85.

⁹ B. E. Kaufman, *op cit.*

¹⁰ P. Jarley, T. D. Chandler and L. Faulk, *Maintaining a Scholarly Community: Casual Authorship and the State of IR Research* in *Industrial Relations*, 2001, vol. 40, 338–43.

¹¹ D. J. Mitchell, *IR Journal and Conference Literature from the 1960s to the 1990s*, in *Human Resource Management Review*, 2001, vol. 11, 375–93.

¹² C. Frege, *Varieties of Industrial Relations Research: Take-over, Convergence or Divergence?* in *British Journal of Industrial Relations*, 2005, vol. 43, 179–207.

while Frege considered the 1970s. Second, the scopes vary considerably, too. Frege's objective was to capture variations in the field according to country-specific traditions, so she selected several journals representing the USA, Great Britain and Germany. Mitchell's analysis was limited to the USA and concentrated on two major US journals. However, Frege's presentation 'by journals' allows comparable observations about the US context. Finally, and perhaps most importantly, there are major differences in the authors' coding principles. The *a priori* classification of industrial relations themes is not identical in both studies. Frege attributed a unique theme to each article (the main topic), while Mitchell took account of several themes, contending that topics are not isolated. For these reasons, the two studies are difficult to contrast and deliver contradictory accounts of the interest for unions as an academic domain. Mitchell observed a fall in content about this topic from 66.2% in the 1960s to 43.6% in the 1990s, while Frege reported an increase from 10.8% in the 1970s to 16.6% in the 1990s. More precisely, the degree of evolution noted by Frege is stable in the US context (thus comparable to Mitchell's study) and growing in the British context. A possible explanation to reconcile these divergent outcomes could be the global decline of the topic, along with a change in its analysis. Unionism might well shift from being a trivial aspect to becoming a main concern; yet this might result in speculation, with this comparison that gives us little information about the actual trends.

Finally, it is difficult to appreciate how relevant unions have been in industrial relations publications over the last two decades. The main purpose here is to empirically clarify this aspect. We intend to describe the evolution of the field by means of a computer-aided text analysis applied to abstracts of articles published in eight authoritative journals between 1990 and 2008. The following questions will be dealt with: To what extent has the interest for unionism evolved during this time? Has research on unions changed over time?

Table No. 1. Previous Topical Analysis in the Industrial Relations Literature

	Period	Academic journals	Number of articles	Method	Main observations
Mitchell (2001)	1962–3	<i>Industrial & Labor Relations Review</i>	196	Manual coding	The proportion of articles dealing with unionism decreased from 66.2% in the 1960s to 43.6% in the 1990s
	1997–8	<i>Industrial Relations</i>			
Frege (2005)	1970–3	<i>Industrial & Labor Relations Review</i>	1,309	Manual coding	The proportion of articles dealing with unionism increased from 10.8% in the 1970s to 16.6% in the 1990s
		<i>Industrial Relations</i>			
	1994–2000	<i>British Journal of Industrial Relations</i>			
	<i>Industrial Relations Journal</i>				
	<i>Industrielle Beziehungen</i>				

Source: Authors' Own Elaboration.

4. Methodology

4.1. Journal Selection

Like Mitchell and Frege, we were careful to circumscribe the field of research to ensure a relative disciplinary homogeneity. For example, we excluded journals that are more directly linked to the field of labour economy or history. Consequently, we selected eight renowned journals: *British Journal of Industrial Relations*; *Economic and Industrial Democracy*; *European Journal of Industrial Relations*; *Industrial and Labor Relations Review*; *Industrial Relations: A Journal of Economy and Society*; *Industrial Relations Journal*; *Journal of Industrial Relations*; *Labour: Review of Labour Economics and Industrial Relations*. It should be noted that the Canadian journal *Relations Industrielles/Industrial Relations* could not be integrated into the corpus for technical reasons. The journal is bilingual and does not provide abstracts in English for articles written in French. We assume that it would have been unsatisfactory to introduce only articles produced in English. Despite this shortcoming, the selection is in line with our objective to describe publications falling under the rubric of “industrial relations”. It follows that our sample is not representative of all research on

employment relations since, as the literature revealed, proponents of PM largely publish their works in HRM journals. In addition, our sample does not exhaust research on unionism because such research is also covered by fields like sociology, HRM and law.

Two aspects should be pointed out about the time-frame covered by our sample. First, while the reviewed works compared two distinct time-periods, here we adopted a longitudinal approach, considering an exhaustive collection of articles published over 19 years (between 1990 and 2008). Second, we started our review considering 1990, that is the year regarded as the starting point of the crisis affecting the discipline of industrial relations. In the end, the bibliographic database query based on these two criteria allowed us to collect 3,621 articles. Among this corpus, a sample was singled out corresponding to articles dealing specifically with unionism. An article is thought to deal with unionism when this wording appears at least once in the title or the abstract. Some 1,410 articles fell within this category, that is 39% of the corpus (see Table No. 2).

Table No. 2. Sample of the Study

Journal	Ticker	Origin	First pub.	Total corpus		Articles dealing with union	
				Freq	%	Freq	%
British Journal of Industrial Relations	BJIR	Britain	1963	470	12,98	237	16,81
Economic and Industrial Democracy	EID	Sweden	1980	354	9,78	149	10,57
European Journal of Industrial Relations	EJIR	European	1995	226	6,24	138	9,79
Industrial & Labor Relations Review	ILRR	USA	1948	644	17,79	219	15,53
Industrial Relations Journal	IRJ	Britain	1970	520	14,36	188	13,33
Industrial Relations: A Journal of Economy and Society	IR	USA	1961	470	12,98	236	16,74
Journal of Industrial Relations	JIR	Australia	1959	395	10,91	166	11,77
Labour: Review of Labour Economics & Industrial Relations	LAB	Italy	1987	542	14,97	77	5,46
Total				3621	100	1410	100

Source: Authors' Own Elaboration.

4.2. Computer-aided Text Analysis

We used SPAD software to run a computer-aided text analysis (CATA)¹³ and go through the content of the articles. This methodology has several advantages. First, it enables the handling of significant amounts of text, as in the present case. A manual analysis of 1,410 articles would have needed several codings and faced the risk of coding heterogeneity. Second, this technique reduces bias induced by a manual analysis, an aspect also signalled by Frege: “classifying topics proved difficult. Articles were classified according to their main topic, but frequently articles covered several topics and it was not always easy to decide on the most important one”¹⁴.

In our case, the analysis does not deal with isolated themes but with automatic clusters of meaningful words, representing consistent semantic fields. The statistical analysis of the relationships between words can translate into a text meaning, ensuring the typology of these texts. This is a quantitative statistical method applied to words for which the non-obstructive propriety is specially adapted to longitudinal studies¹⁵ (Iker and Klein, 1974).

We replicated this methodology and applied it to the abstracts of the articles collected. Considering the size of the corpus, the extraction of the full content of every article was extremely difficult and our main objective was to analyse a representative extract. We preferred to analyse abstracts rather than titles or keywords because they seemed rich enough to detail potential thematic diversity and, at the same time, concise enough for authors to identify the significant themes of their research. Titles and keywords were considered too restricting.

On average, the 3,621 abstracts analysed were 113 words long. Our starting dictionary contained 16,646 different words. In order to conduct statistical analysis, it was necessary to reduce the number of words to obtain a satisfactory ratio between the number of individuals (articles) and the number of variables (words). This operation required three steps:

¹³ SPAD has been referred to as powerful content analysis software and other academics in social sciences have already used it to cover research themes. See especially R. Franzosi, *Quantitative Narrative Analysis in Quantitative Applications in the Social Sciences*, Sage Publications: Thousand Oaks - CA, 2010, or D. Spini, G. Elcheroth and D. Figini, D., *Is There Space for Time in Social Psychology Publications? A Content Analysis across Five Journals*, *Journal of Community and Applied Social Psychology*, 2009, vol. 19, 165-81.

¹⁴ C. Frege, *op cit.*

¹⁵ H. P. Iker and R. H. Klein, *Words: A Computer System for the Analysis of Content, Behavior Research Methods and Instrumentation*, 1974, vol. 6, 430-38.

deleting words with non-consistent meaning; regrouping closely related words (e.g. with the same grammatical roots or synonyms); and deleting low frequency words (used fewer than 15 times in the whole corpus). We obtained a consolidated dictionary of 753 root words. The validity of the individuals versus variables ratio is confirmed by a significant chi-squared test ($p < .001$).

5. Results

We present our results by first providing a quantitative description of the development of trade unions as a topic in the field, then supplying an inductive typology to qualitatively describe the contents of the literature.

5.1. *The Global Development of Trade Unions as a Topic in the IR Literature*

Table 3 indicates the proportion of articles dealing with unions in each journal for four sub-periods. It also establishes whether this growing or declining share is statistically significant. Many observations can be made looking at this table.

First, one might note that unions remain an important subject. In total, 40% of the articles in the industrial relations field deal more or less directly with this question. A major indication here is that this proportion has been relatively constant over the last two decades. However, some considerable variations can be seen depending on the journal under investigation. Most recently, only 11% of articles have addressed unionism in *Labour* while some 58% have done so in *European Journal of Industrial Relations* and in *Industrial Relations*.

Noticeable differences exist also in terms of trends. For example, we observed a significant decrease in *Industrial Relations Journal* and *Industrial and Labor Relations Review* in the early 1990s, from 46% and 41% to 35% and 26%, respectively. Conversely, coverage of this topic in *British Industrial Relations Journal* and *Industrial Relations* remained stable. It seems that editorial policy played a key role. The only journal to report a growing interest in unionism is Swedish *Economic and Industrial Democracy*. Since Sweden is well known for its cooperative labour-management relations, we have to recognize the weakness of the sometimes hypothesized link between the adversarial nature of labour relations and the academic interest in unions.

An important point here is that since 1995, the interest towards this field has remained steady, with significant changes reported in the first part of

the 1990s, as a consequence of the debate on the scope of industrial relations originated in the same year. In some journals, the share of articles dealing with unions decreased (ILRR, IRJ, LAB). Others continued to publish a comparable proportion of articles dealing with unions (BJIR, JIR, IR) while only one of them increased the number of these articles. A content analysis of union research is now provided to complement our quantitative investigation.

Table No. 3. *Inter-period Comparison of Union Research's Place in the IR Literature*

Journal	n	Ratios and Percentages				Significant changes between periods			
		Period		Period		Period			
		1990-4	1995-9	2000-4	2005-8	I vs. II	II vs. III	III vs. IV	period
BJIR	470	$\frac{59}{118}$ 50%	$\frac{61}{105}$ 58%	$\frac{66}{133}$ 50%	$\frac{51}{114}$ 45%	ns.	ns.	ns.	ns.
EID	354	$\frac{26}{86}$ 30%	$\frac{42}{89}$ 47%	$\frac{34}{88}$ 39%	$\frac{47}{91}$ 52%	↑**	ns.	↑*	**
EJIR	226	-	$\frac{45}{78}$ 58%	$\frac{53}{79}$ 67%	$\frac{40}{69}$ 58%	-	ns.	ns.	ns.
ILRR	644	$\frac{85}{210}$ 41%	$\frac{52}{158}$ 33%	$\frac{53}{164}$ 32%	$\frac{29}{112}$ 26%	↓*	ns.	ns.	*
IR	470	$\frac{55}{120}$ 46%	$\frac{51}{109}$ 47%	$\frac{63}{125}$ 50%	$\frac{67}{116}$ 58%	ns.	ns.	ns.	ns.
IRJ	520	$\frac{59}{129}$ 46%	$\frac{36}{125}$ 29%	$\frac{51}{146}$ 35%	$\frac{42}{120}$ 35%	↓***	ns.	ns.	**
JIR	395	$\frac{38}{91}$ 42%	$\frac{42}{93}$ 45%	$\frac{36}{93}$ 39%	$\frac{50}{118}$ 42%	ns.	ns.	ns.	ns.
LAB	542	$\frac{26}{119}$ 22%	$\frac{19}{139}$ 14%	$\frac{18}{154}$ 12%	$\frac{14}{130}$ 11%	↓*	ns.	ns.	*
Total	3621	$\frac{348}{873}$ 40%	$\frac{348}{896}$ 39%	$\frac{374}{982}$ 38%	$\frac{340}{870}$ 39%	ns.	ns.	ns.	ns.

Ratio is the number of articles dealing with unions on the total sample

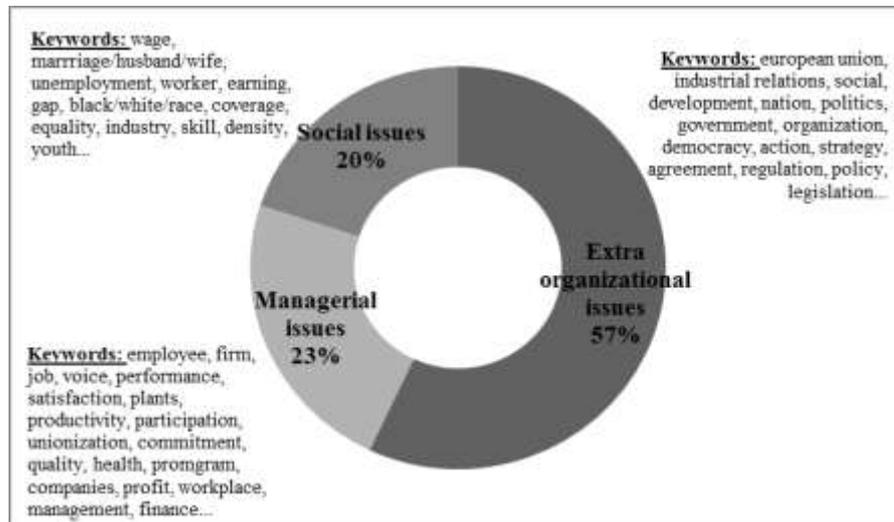
*Statistically significant at the .10 level; **at the .05 level; ***at the .01 level.

Source: Authors' Own Elaboration.

5.2. Union Research: An Inductive Typology

To highlight the diversity of the issues covered in union research, we conducted a hierarchical ascendant clustering analysis on a correspondence factor investigation of a words contingency table. This operation allows for an inductive elaboration of a typology of the main research themes in articles dealing with unions. Each article is placed in a single category, depending on its associations of vocabulary. Three categories emerged from this process (Figure No. 1)¹⁶.

¹⁶ In fact, four clusters emerged but the last one was neglected since it only aggregated nine outliers.

Figure No. 1. Typology of Topics in Articles Dealing with Unions

Source: Authors' Own Elaboration

5.3. First Category: Environmental Issues

The first category includes 57% of the articles published between 1990 and 2008 and questions unions through environmental perspectives (European Union; government; legislation; state; institutionalisation and so forth). Two main issues can be identified. A first set of articles in this category is concerned with union and industrial relations legislation. Since union behaviour is embedded in the legal context, some contributions address the effect of this environment on union decline or union effectiveness. Other articles place unions in the context of economic globalisation, which is viewed as a challenge for unions, managers and policy makers. Recurrent items include the difficulties of multinational companies which are confronted with a diversity of industrial relations systems, and the restructuring of European collective bargaining.

5.4. Second Category: Managerial Issues

The second category represents 23% of the sample and deals simultaneously with unions, on the one hand, and employees, productivity, performance, and personnel policies, on the other hand (firms; jobs; performance; productivity; management; training, etc.). The

articles in this category see unions and management practices as interrelated. The two regulatory principles, collective bargaining and human resource management, coexist and interact; an important challenge, for both scholars and practitioners, is to understand this interaction. A number of practical cases can be pinpointed. The most intuitive one is that of the unionized firm; some scholars seek to understand the effect of union presence on the economic variables and personnel management policy of unionized firms. Other cases for interaction between collective bargaining and human resource management are studied. For example, the non-recognition of unions challenges wage-setting arrangements and human resource management. Some of these articles also question the reverse link, that is the impact of managerial practices on the demand for union representation. It is significant that these research strands transcend the division between pro and anti-union: some address this problem with the objective of renewing unionism, while others want to guard against the demand for unionization.

5.5. Third Category: Social Issues

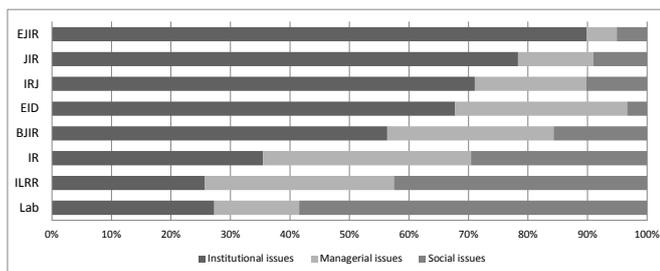
The final category groups 20% of the articles surveyed and emphasizes social questions (wife; race; youth; pension; part-time; discrimination, etc.). The objective here is to examine the willingness and ability of unions to deal with new divisions. Indeed, due to individualization and job segmentation, workers can no longer be considered as a homogeneous group. Several individual and professional issues become critical for unions. Among these are unemployment, age and gender – but also aspects such as part-time versus full-time job and low-skilled versus high-skilled work.

This classification of articles covering unionism indicates that union research is dominated by environmental issues (57% of all articles) questioning their role in terms of governance at a macro level. Other articles are on an individual or organizational level and are characterized by managerial or social outcomes. The distribution of these three types of articles varies considerably according to the journal considered (see Figure 2). For example, 90% of the union-related articles published in *European Journal of Industrial Relations* deal with environmental issues while *Labour* gives special attention to social issues, which represent nearly 60% of union-related publications.

It is interesting to note that journals giving particular relevance to union research – EIJR, JIR, IRJ, EID, BJIR – are precisely those that mainly

relate the topic to environmental issues, while journals in which union research is hardly covered promote managerial and social issues. These observations allow us to imagine a segmentation of journals around two research traditions: internalist and externalist¹⁷. Some journals remain representative of traditional externalist IR by giving priority to union research focused on factors external to the organization. Other journals seem to make a kind of «HRM turn» within industrial relations, with their editorial policy promoting internalist work and, by consequence, limiting union research to that concerned with organizational or individual aspects. Tellingly, some journals take an ambiguous position with regard to this division. The *Industrial Relations Journal* reduced the amount of articles dealing with unions but gave importance to environmental issues. On its part, *Industrial Relations* maintained a stable proportion of articles on unions but balanced the three types of related issues.

Figure No. 2. The Representation of the Three Categories in Each Journal



Source: Authors' Own Elaboration.

6. Conclusion

The thorough investigation of the publications in mainstream IR journals over the last twenty years shows a growing schism within the community and a segmentation of journals. In the early 1990s, union research was homogeneously distributed on IR journals and as a topic concerned from 40% to 50% of articles. In the following twenty years, union research became more variously distributed. While it remained an important topic

¹⁷ B.E. Kaufman, *op cit.*

in some journals, its relevance dwindled in others. Moreover, they seemed to prioritize environmental issues over managerial ones, reflecting the repositioning of IR towards a more internalist perspective.

Obviously, these results should be confirmed by further research since some questions remain to be explored. Interviews could complement the quantitative analysis in order to establish the assumed change in editorial policy of each journal. Did journals explicitly reposition themselves? Did authors differentiate IR journals to submit articles dealing with union issues? Supposedly, we should also broaden our research focus, for instance to include methodology and theory.

Reviewing the Idea of Work and its Regulatory Framework from an Anthropological Perspective. Building on John XXIII's *Pacem in terris* on its 50th Anniversary

Michele Tiraboschi*

All men must realize that [...] Every day provides a more important, a more fitting enterprise to which they must turn their hands—industry, trade unions, professional organizations, insurance, cultural institutions, the law, politics, medical and recreational facilities, and other such activities. The age in which we live needs all these things. It is an age in which men, having discovered the atom and achieved the breakthrough into outer space, are now exploring other avenues, leading to almost limitless horizons

John XXIII, *Pacem in terris*, §156

1. Work and *Pacem in terris*

Experts and practitioners customarily investigate work-related issues drawing on the copious amount of data on the labour market available at a global, national and local level. Authoritative studies and indicators

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abound which report with sufficient reliability the struggle faced at varying degrees by many people worldwide, as a result of work-related problems. Thus in order to cover them extensively, it might appear sufficient to refer to and analyse these statistics in detail, as is frequently the case in the academic and institutional settings.

The 50th anniversary of *Pacem in terris* gives us the occasion for a deep reflection on the idea of work from an anthropological perspective. This investigation looks at work in terms of personal relationships behind different regulations laid down in national and supranational legislation. Considering the future of work and other issues of a great social impact such as unemployment and low quality jobs does not mean to provide a long list of indicators, or analyses and counter analyses on the current state of the labour market. Rather, the attempt should be at reflecting on the uncertainty of our time taking as a point of departure this encyclical that Pope John XXIII left to the world a few months before passing away as a form of spiritual and pastoral legacy.

This attempt seems even more arduous for another reason. Unquestionably, although regarded as a “social” encyclical, *Pacem in terris* places much emphasis on peaceful coexistence and civil harmony among political institutions. In this perspective, the “labour” component might appear to be a marginal one. First, because this theme was already dealt with analytically by John XXIII in his 1961 encyclical, *Mater et Magistra*, to celebrate the seventieth year of *Rerum Novarum*. Second, because on that occasion, the Good Pope’s main preoccupation was with reasserting the teachings of the Church in a time marked by international political instability, with the far from remote possibility of another nuclear war. Yet dialogue, harmony, and the role of political institutions are central questions to cope with work-related issues in a practical and pro-active manner. This implies dealing with current unemployment, new job-creation strategies, and existing job opportunities created without considering one’s dignity and freedom. This should be seen as an indication for international institutions and national governments to ensure the right to decent work and to an inclusive market. In the same spirit, this could also be regarded as a call for social partners, trade unions, and employers’ associations to create, through coordinated action and in accordance with the principle of subsidiarity, fairer and more inclusive working conditions which are centered on the human person and not on the conflict arising from the distribution of wealth.

2. Some Main Arguments

The fact that work is not the main theme of the encyclical – which celebrated its fiftieth anniversary in 2013 – does not mean that the document cannot provide some insight into this issue. For instance, paragraph 5 can be seen as a cornerstone of John XXIII's *Pacem in terris*:

Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: *that each individual man is truly a person. His is a nature that is, endowed with intelligence and free will.* As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable¹.

Individuals are either the starting point or the result of any association, also of that particular form of association which takes place at work. Human intelligence, dignity and free will are the bedrocks of human rights and duties.

Tellingly, one might note that in a time when the labour market is still marked by workplace fatalities and occupational hazards, John XXIII emphasised first and foremost:

...the right to live. He [the human person] has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, *he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood*².

Aside from these rights – which are barely ensured even by those countries which do provide labour laws safeguarding workers, at least in theory – mention is made of the right “to receive a good general education, and a technical or professional training consistent with the degree of educational development in his own country”³.

It is also worth going through the whole Paragraph 18, for it is explicitly devoted to economic rights. *Pacem in terris* maintains that men have “the inherent right not only to be given the opportunity to work, but also to be

¹ *Pacem in terris*, par. 9 (Hereafter P.T. Emphasis added).

² P.T., par. 6 (Emphasis added).

³ P.T., par. 12.

allowed *the exercise of personal initiative in the work he does*⁴. When it comes to work-related issues, this statement should not be taken for granted, for the importance of one's willingness to do business is often overlooked, as are their duties and room to manoeuvre. The provision of safeguards, inclusion, and solidarity is not possible without a free and efficient productive and economic system. Yet the supply of these rights must ensure social benefits and should be centred on the promotion of people's sense of initiative and their capability to risk-taking in business.

The conditions in which a man works form a necessary corollary to these rights. They must not be such as to weaken his physical or moral fibre, or militate against the proper development of adolescents to manhood. Women must be accorded such conditions of work as are consistent with their needs and responsibilities as wives and mothers [...]. A further consequence of man's personal dignity is his right to engage in economic activities suited to his degree of responsibility. The worker is likewise entitled to a wage that is determined in accordance with the precepts of justice. This needs stressing. The amount a worker receives must be sufficient, in proportion to available funds, to allow him and his family a standard of living consistent with human dignity⁵ [...]. Finally, it is opportune to point out that the right to own private property entails a social obligation as well⁶.

John XXIII's *Pacem in terris* is not limited to providing a long list of rights which revolve around individuals on an exclusive basis. Indeed, the pontiff clearly reasserts the reciprocal nature of rights and duties, liberty and responsibility. Individual full development is obtained only if the preoccupation with one's rights entails a concern about others' duties. *Pacem in terris*'s warning is clear in this connection: "Hence, to claim one's rights and ignore one's duties, or only half fulfil them, is like building a house with one hand and tearing it down with the other"⁷.

The main arguments on which the whole document is based – namely the centrality of the individual and his full development – constitutes the vantage point through which interpreting the present times, their challenges, and the growing state of uncertainty which in the field of work translate into mounting inequalities, precariousness and social injustice.

This thorough and dynamic perspective can be immediately appreciated if one looks at the effects on employment pointed out by John XXIII, who referred to the catholic social teachings and some arguments already made

⁴ P.T., par. 18.

⁵ P.T., par. 18.

⁶ P.T., par. 19, 20, 22.

⁷ P.T. par. 30.

in his *Mater et Magistra*, which can also be found in the first paragraphs of the 1963 encyclical.

In fact, *Pacem in terris* is somehow arranged in concentric circles, an aspect which sets the conditions for a more detailed analysis of this main topic. Within this structure, the human person is placed at the centre of the discussion, and a circle of relations is gradually built around him within each political community, among different political communities, the single members of these communities and the communities at a global level.

3. Individuals, Employment and the Economic Crisis

If the individual is considered, it is undisputed that the financial and economic crisis witnessed in the last few years was a major setback for “the full development of human personality” regarded by John XXIII’s *Pacem in terris* as the basis for and the ultimate purpose of a civilized community. In Europe – especially in “Latin” countries – the negative trend which started in 2008 eroded those hard-fought rights acquired thanks to the teachings of the Catholic Church and *Rerum Novarum* in a century marked by social conflict and struggle.

The most vulnerable groups – especially young people and women – bore the heaviest burden from this erosion. On the one hand, most disadvantaged groups experienced increasing difficulty to enter the labour market. On the other hand, workers in open-ended employment contracts soon realised that their job stability was such only on paper in times of economic crisis. Women are situated somewhere between these two extremes. They are frequently called on to choose between their private and working life, two fundamental aspects of one’s existence, rather than being provided with sufficient levels of work-life balance. Compounding the picture are baby boomers, who suffered from skills obsolescence which made it more and more complicated for them to stay in work.

Yet looking at economic struggle as the sole root of today’s evil would be misleading. The ongoing transformation of the world of work dates from the negative business cycle resulting from the 2008 US subprime mortgage crisis. A straightforward analysis of the past reveals that the social conflict arising from the need for a fairer and more balanced set of ideals underlying the pre-established organization of labour reached its

climax with the demise, or better the transformation, of existing working patterns⁸. It was at the end of the 1970s that changes in production and its main practices came about. This change was at first slow and subtle. Then at the end of the “short” twentieth century it came to fruition, following the opening-up of new markets and the availability of a workforce and human capital that until that moment was beyond imagination.

Only a minority took cognizance of the significance of the changes under way. This was due in part to an ideological blinker – which was yet doomed to vanish with the fall of the Berlin wall– and in part to the fact that some were engaged in announcing the “the end of history and the last man”. The Church with its teachings stood out for being neither nostalgic about the recent past nor thrilled with the possible “magnificent and progressive fate”. In this connection, the analysis provided in the *Compendium of the Social Doctrine of the Church* is of particular interest, especially the section titled “*New Things*” of the *World of Work*, which draws on and further extends the themes broached in *Pacem in terris*. The awareness of the profound change under way and its main features are anticipated in just a few paragraphs. It is pointed out that:

The transition currently underway signals the move from dependent work with no prescribed time limit, understood as a stable job, to a series of jobs characterized by many kinds of work activities, from a world of a unified, definite and recognized concept of work to a universe of jobs where there is great variety, fluidity and a wealth of promises. There are also many questions of concern, especially with regard to the growing uncertainty of work, the persistent presence of structural unemployment and the inadequacy of current systems of social security⁹.

Yet subverting these well-established paradigms is not accompanied by reminiscence of past times. The *Compendium* deals with future developments with a different perspective. In this connection, changing historical forms are used to express human work, leaving unscathed “its permanent requirements, which are summed up in the respect of the

⁸ The change affecting work is dealt with in the volume by the Committee overseeing the cultural projects of the Italian Catholic Church, 2013, *Per il lavoro. Rapporto-proposta sulla situazione italiana*, Laterza.

⁹ *Compendium of the Social Doctrine of the Church*, “*New Things*” of the *World of Work*, par. 134, available at http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.

inalienable human rights of workers”¹⁰. This stance results from placing the individual in his entirety and concreteness at the centre of the social question, irrespective of the emptiness of the hypostasis in an empyrean sky, all-encompassing, rigid social and economic theories, or the delusion of individual selfishness which – if taken to extremes – produces widespread social well-being. The argument put forward by the *Compendius* is that the two-fold nature of human work – objective and subjective – allows for a reflection which moves beyond the limited scope of the present and the near future, thus looking at everyday reality through the lens of the past or to adapt it to certain economic theories which would stop functioning otherwise.

Work should be seen as “*actus personae*”, in other words the person is the starting point of any reasoning concerning work and opens up the possibility to provide an alternative reading of the ongoing economic crisis.¹¹ In this passage the vital and innovative nature of *Pacem in terris* and the catholic social teaching, more generally, emerges clearly.

4. Crisis and Hope: The Impossible Pairing?

One of the most recurrent themes which are repeatedly used to justify the current state of play is that workers, especially younger ones, have been deprived of hope, and thus of their future.

It is true that the current economic crisis has had tremendous consequences on people’s dignity and on those inalienable rights and duties on which *Pacem in terris* is built. This aspect is evidenced by the cases of suicide of entrepreneurs forced to close down their companies because of their inability to pay off their debts, the stories of families struggling to make ends meet, or those of unemployed young people who find it difficult to become financially independent.

Pacem in terris, and the catholic social teachings more generally, affords an alternative perspective enabling one to draw a picture which is different from that traditionally supplied by the media. It is difficult to overlook the

¹⁰ *Compendium of the Social Doctrine of the Church*, par. 319, available at http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.

¹¹ Committee overseeing the cultural projects of the Italian Catholic Church, 2013, *Per il lavoro. Rapporto-proposta sulla situazione italiana*, Laterza.

fact that economic struggle does not provide much scope for “the integral development of the human person”.

In the current situation, the dismantling of the Taylorist and Fordist work paradigms is accelerated, as no longer able to meet the new needs of the market and the productive system. This process makes it possible to free the human person of work-related beliefs and organizational practices which are as alienating as oppressive. The end of the “assembly line” and “standardised products”, the essence of which is brilliantly summarised in Ford’s “any customer can have a car painted any color that he wants so long as it is black”, called for the restoration of the individual and his creativity, intelligence and manual skills. Up until 1800 and 1900, these features were the preserve of a few, with the majority of people subjected only to assigned instructions from their principal, according to the legal principle of “subordination” which is based on the logic of power and control. Escaping what Weber calls “the iron cage” of rationalization which is merely intended to generate more profit and entails a re-evaluation of the individual and his skills.

As pointed out at the onset of *Pacem in terris*, individual intelligence and free will are increasingly questioned in a working world which is rapidly abandoning the principles of modernity. This epoch-making transition, as wisely defined by the *Compendius of the Social Doctrine of the Church*, provides room for different perspectives and renewed hope, yet within a particularly negative business cycle. Reviving people’s value and their central role to find a “good job” could be interpreted as an updated version of those “signs of the times” that John XXIII had prophetically made mention of in his *Pacem in terris*.

5. The Individual: A Lifetime Opportunity

The end of modernity is fraught with risks and contradictions¹². On the one hand, it allows for a re-evaluation of the human person. Yet on the other hand, this exercise is full of imponderables and can be seen as a lifetime opportunity which can never be taken for granted. The “epoch-making transition” from the old to the new economy might produce unpredictable results. Consequently, there is a need to examine the present resisting the facile delusion that the “third industrial revolution”

¹² Committee overseeing the cultural projects of the Italian Catholic Church, 2013, *Per il lavoro. Rapporto-proposta sulla situazione italiana*, Laterza.

will necessarily bring about a new heaven on earth. There is also a need on the part of the lay community to distance itself from certain legacies of modernity. An example in this connection is Messianism, which is a recurrent theme in the discussions over the spread of new generation technology and its redeeming power.

This awareness makes it possible for investigating the present and its potential in a prophetic and revelatory way, considering the biblical sense of the term. The first aspect which emerges from such an investigation is that the end of modernity entails a re-evaluation of the human person, his intelligence, independence and will in all the industries. By way of example, in his *Mater et Magistra*, John XXIII regarded agriculture as being in a “depressed state”, showing affection and concern about this sector. The pontiff was fearful that the fast-growing manufacturing sector could drastically reduce the share of workers employed in agriculture, bringing about social inequalities. On the contrary, today the agricultural sector is being re-evaluated. Many young people decide to devote themselves to this occupation because – although extremely demanding – it allows one to utilize their skills to the full and grow products which are the actual manifestation of *actus personae*.

The same reasoning applies to manual labour and handicraft. The crisis affecting the manufacturing sector prompted many to take enterprise risks so that they are involved in their work as human beings. They make use of their intelligence, willpower, manual skills to manufacture original products rather than standardised ones. This aspect, alongside the support of technology, makes them appealing in national and international markets. Quite often young artisans running small businesses succeed in establishing themselves at an international level, by manufacturing items which are the result of their personal commitment. In this respect, recent experience confirms the arguments put forward in the *Compendius of Social Doctrine*:

Work in small and medium-sized businesses, the work of artisans and independent work can represent an occasion to make the actual work experience more human, both in terms of the possibility of establishing positive personal relationships in smaller-sized communities and in terms of the opportunities for greater initiative and industriousness¹³.

¹³ *Compendium of the Social Doctrine of the Church*, par. 315, available at http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.

The diffusion of the cooperative model, which provided a good response in times of crisis, can be seen as one of the “signs of the times” during the shift towards a social model and a market not based on profit but founded on work which is shared within the social enterprise. Arguably, opting for this model is at times linked to external conditions and not to one’s beliefs. Yet cooperative work stands out as the appropriate working pattern for those occupations which can be negatively affected by the rigidities of “subordination” and pre-established work organizational patterns. Let us just think of young designers or freelance journalists who face difficulty finding employment in large-sized enterprises and come together to set up new firms, at times without physical offices and pre-established working hours, without a real principal but with as many colleagues as they can cooperate with to make the whole project function. Cooperative work also allows operators in the third sector to involve those who are finding it difficult to find employment, e.g. people with a disability. They are thus given another opportunity, thanks to their work, to feel like human beings and to express their personality.

On reflection, the new artisan sector, cooperative work and agriculture are just some of the fields benefitting from the innovative features accompanying this current epoch-making transition. The manufacturing sector is a further example of the ongoing changes, as companies embracing Taylorism are gradually disappearing, either in terms of the number of workers or organizational patterns. The assembly line is in itself no longer sufficient. There is need to share ideas and forward thinking which help moving on from the traditional and outmoded dichotomy between decision-makers and those who are assigned instructions, thus breaking the hierarchical and “command-and-control” models. Gradually, notions such as “collaborative intelligence” and “social organisation” are setting in. A “social organisation” is an organisation based on shared knowledge and skills among all members, so it is no longer simply a firm but a community of people working on a common project. Such a community draws the new boundaries of the workplace, which are not limited to the business premises but extend to the outside world.

The change currently underway is particularly visible in the academic settings, for in the past pursuing a career as a researcher was considered a prestigious one. The so-called ivory towers – so far only accessed by few – are being dismantled and replaced by open-access and shared knowledge. Those inner circles which preserve their knowledge and status are giving way to academic communities who are alive to dialogue and the exchange of ideas set to nurture cultural growth.

6. Freeing the Human Person

It seems that during the current recession, or rather as a result of the crisis, new room for the centrality of the human person to regain momentum has been created. This being the case, one might wonder about the role of public institutions in this connection. To answer this question, it might be fitting to go through *Pacem in terris*, the indications of which are still relevant today after fifty years.

Drawing on the teachings of his predecessors, John XXIII takes a clear stance when he argues that “The attainment of the common good is the sole reason for the existence of civil authorities”¹⁴ and that: “the common good ‘must take account of all those social conditions which favor the full development of *human personality*’”¹⁵. In addition:

Today the common good is best safeguarded when personal rights and duties are guaranteed. The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, co-ordinated, defended and promoted, and that each individual is enabled to perform his duties more easily. To safeguard the inviolable rights of the human person, and to facilitate the performance of his duties is the principal duty of every public authority¹⁶.

Pacem in terris is thus unequivocal in asserting that public authorities are under the obligation to set the conditions to ensure the human person’s full development. Likewise unequivocally, the document reasserts that public authority should not act as a substitute of the human person in the fulfilment of his responsibilities, nor should the former overshadow the latter in this role. In this sense, the common good:

further demands that in their efforts to co-ordinate and protect, and their efforts to promote, the rights of citizens, the civil authorities preserve a delicate balance. An excessive concern for the rights of any particular individuals or groups might well result in the principal advantages of the State being in effect monopolized by these citizens. Or again, the absurd situation can arise where the civil authorities, while taking measures to protect the rights of citizens, themselves stand in the way of the full exercise of these rights. “*For this principle must always be retained: that however extensive and far-reaching the influence of the State on the economy may be, it must never be exerted to the extent of depriving the individual citizen of*

¹⁴ P.T., par. 52.

¹⁵ P.T., par. 58 (Emphasis added).

¹⁶ P.T., par. 60.

his freedom of action. It must rather augment his freedom, while effectively guaranteeing the protection of everyone's essential, personal rights"¹⁷.

Adequate public authority should embark on the challenge to free the human person of all the constraints that hamper his expression and development, making sure that this task does not come into conflict with equity and social justice.

Thus one might wonder how public authority can effectively promote the common good in light of the current state of play. The question is a complicated one and involves different disciplines. However, it is possible to determine some preliminary paths of action.

The epoch-making transition which characterizes today's world of work provides some clear indications. First, it suggests that the work pattern established in the aftermath of the second industrial revolution is gradually disappearing, at least in European countries. Second, it hints at the need of highly-qualified jobs. Thus policy-making intended for the common good should become aware of these changes and take coherent steps towards accommodating them. In this sense, initiatives concerning labour legislation and education appear to be a matter of urgency.

Ensuring the "full development of the human person" calls for a set of labour market rules in line with the current state of play. This means venturing into new forms of protection and promotion of the human person within the labour market other than working arrangements in salaried employment. This is especially true if one considers the practices currently in place, which are rapidly becoming outdated and seem to trap individuals rather than provide them with more room to maneuver within the labour market.

Naturally, this does not come along with the de-structuring of labour law – as put forward by some UK liberals – but with its thorough review in line with tradition and founding principles. It is significant that in Italy at the end of the 1990s some catholic fringes particularly sensitive to the social question made some proposals concerning the "Workers' Statute". It is an ambitious project which has not yet been implemented concerning workers' safeguards irrespective of whether they are in temporary or permanent employment. The "Workers' Statute" laid down a set of measures to protect all people in employment, regardless of their contractual arrangements, gradually supplemented with further safeguards and initiatives for social inclusion.

¹⁷ P.T. par. 65 (Emphasis added).

Along with a rethinking of labour law, the pursuit of the common good requires a major investment in individual education and training. In the future, social inclusion and exclusion will increasingly rest upon this aspect, as employment in post-modernism calls for human intelligence and should always be active. Education should be at the top of public policy agenda. Equally in this case, the situation is more serious than it seems. Aside from allocating more resources, there is need of a major overhaul of the education system.

This aspect is straightforward if Italy is taken into account, for education is only provided at school and there seems to be an unawareness of the need of the population to invest in and make use of personal skills to succeed. Some major shortcomings are visible in this connection, as the education system is still based on the patterns in place in 1800 and 1900. A clear distinction still emerges between high schools focusing on theoretical learning to train future management, and vocational bodies to prepare workers to carry out practical tasks.

The mistake lies in the assumption that this distinction will hold today and for the years ahead. Increasingly, there will be a need for one to concurrently fulfill practical tasks and act as a decision-maker, in other words for us to develop an entrepreneurial culture. As it is today, the Italian education system may be unable to generate the long-overdue public good.

A consideration on the need to adequately relate education and world of work is certainly necessary, in order to enable the human person to realize his potential in both areas. The revival of apprenticeships and the alternation of school and work are effective tools to redefine the labour market in order to prioritise the human being and his needs, talent and skills.

7. A Common Path

Enabling the human person to pursue his full development calls for public institutions to move beyond the “modern” approach and its categories also in terms of legislation and education policies. Yet this task cannot be fulfilled only through considering the national dimension, but requires wider levels of coordination. On this point, the European Union and the other international institutions can play a major role. In this sense, following the issuing of the European Employment Strategy in the late 1990s, EU decision-makers made an attempt to place the review of

employment policies at the centre of the EU debate, in line with the 2020 Document.

Due to historical reasons, John XXIII's encyclical does not make reference to European or supranational governance. Yet *Pacem in terris* can provide some useful indications all the same. The underlying principles of the section "*Relations between States*" are more relevant than ever and point to the way in which the European Union should be conceived.

The starting point is the assertion that "even when it regulates the relations between States, authority must be exercised for the promotion of the common good. That is the primary reason for its existence".¹⁸ Four corollaries result from this main principle, for according to *Pacem in terris* the relations between states are governed by truth, justice, liberty and active solidarity.

These words are meaningful and refer to the long-standing tradition of a complex and fascinating theological perspective. In spite of this, some examples made by John XXIII are useful to understand that the cornerstones of *Pacem in terris* can still lead in the making of the EU community.

The principle of truth is to be found in the equality of all individuals so that "there are no differences at all between political communities from the point of view of natural dignity. Each State is like a body, the members of which are human beings"¹⁹. Accordingly, the ongoing globalization process which results in the delocalization to developing countries to exploit a low-paid workforce might become the opportunity to extend to all workers the same rights and safeguards, in line with a new notion of "work" based on individual dignity and freedom.

The second main principle is concerned with justice, which "necessitates both the recognition of their mutual rights, and, at the same time, the fulfilment of their respective duties"²⁰. In other words, this means that "it would be criminal in a State to aim at improving itself by the use of methods which involve other nations in injury and unjust oppression"²¹.

As far as solidarity is concerned, an attempt is made to move beyond the narrow national boundaries and open up to a new dimension, in consideration of the fact that "of its very nature civil authority exists, not to confine men within the frontiers of their own nations, but primarily to

¹⁸ P.T. par. 84.

¹⁹ P.T. par. 36.

²⁰ P.T. par. 91.

²¹ P.T. par. 92.

protect the common good of the State, which certainly cannot be divorced from the common good of the entire human family”²².

The last aspect surveyed is liberty, which is understood as “no country has the right to take any action that would constitute an unjust oppression of other countries, or an unwarranted interference in their affairs. On the contrary, all should help to develop in others an increasing awareness of their duties, an adventurous and enterprising spirit, and the resolution to take the initiative for their own advancement in every field of endeavor”²³.

Undoubtedly, the foregoing principles are seen as the lynchpin of coexistence in *Pacem in terris* and are now shared by the European Union and other supranational communities. Yet it is fundamental to rediscover their value and relevance, especially in the current crisis. This is because a significant number of austerity policies enforced at EU level do not appear to comply with truth, justice, solidarity and liberty mentioned above, which on the contrary should be regarded as guiding principles to pursue the common good, especially when facing work-related issues.

8. Sharing Globally

The European dimension, albeit important and crucial, is not sufficient in itself to pursue a far-reaching transition.

As John XXIII made clear in his encyclical some fifty years ago, the centrality of the human person does not allow for any kind of particularism and a universal approach is necessary. In this sense, *Pacem in terris*' relevance is once again apparent: “No State can fittingly pursue its own interests in isolation from the rest, nor, under such circumstances, can it develop itself as it should. The prosperity and progress of any State is in part consequence, and in part cause, of the prosperity and progress of all other States”²⁴.

John XXIII termed this aspect “interdependence”, which corresponds to today's globalisation and necessitates some reflections on work-related issues which look at the world as a whole. The full development of the human person requires tailor-made solutions which vary on the basis of the initial conditions. Therefore, whereas in Europe the time is ripe for a review of certain safeguards which are inadequate to the current

²² P.T. par. 98.

²³ P.T. par. 120.

²⁴ P.T. par. 131.

developments, elsewhere the provision of protection and essential rights granted to workers is still at its preliminary stage.

With a view of taking on this universal challenge, John XXIII pointed out that problems of this kind “cannot be solved except by a public authority with power, organization and means co-extensive with these problems, and with a world-wide sphere of activity”.²⁵ Previously, *Mater et Magistra* showed its appreciation of the work of the ILO, which “for many years now has been making an effective and valued contribution to the establishment in the world of an economics and social order marked by justice and humanity, an order which recognizes and safeguards the lawful rights of the workingman”²⁶.

One should also be clear when it comes to “the global dimension” of workers’ rights. Over the last fifty years, the employment situation faced tremendous changes, as did the economic geography. Yet the rise of employment opportunities did not come along with the full development of the human person, the recognition of the individual rights and the fulfilment of the duties. Much is still yet to be done on this issue.

9. Fulfilling a Commitment

Far from being exhaustive, the foregoing discussions led to two main conclusions. On the one hand, it points out the relevance of the teachings of *Pacem in terris* with regard to work-related issues, although it is not the main theme of the encyclical. On the other hand, such relevance calls for the promotion of the full development of the human person once and for all, which cannot be taken for granted and requires a sense of responsibility and commitment on the part of all those concerned. Again, the concluding remarks in John XXIII’s encyclical put forward some areas of action and prompt anyone to take the necessary steps towards this. Yet the pontiff points out that²⁷:

it is not enough for our sons to be illumined by the heavenly light of faith and to be fired with enthusiasm for a cause; they must involve themselves in the work of these institutions, and strive to influence them effectively from within. But in a culture and civilization like our own, which is so remarkable for its scientific knowledge and its technical discoveries, clearly no one can insinuate himself into

²⁵ P.T. par. 137.

²⁶ *Mater et Magistra*, par. 103.

²⁷ P.T. par. 148 and 149 (Emphasis added).

public life unless he be *scientifically competent, technically capable, and skilled in the practice of his own profession.*

Thus science and faith must join forces for the promotion of the human person also with regard to employment safeguards. For this reason: “men must conduct themselves in their temporal activity in such a way as to effect a thorough *integration of the principal spiritual values with those of science, technology and the professions*”²⁸.

Performing and fulfilling this integration in everyday challenges does real justice to *Pacem in terris*, which continues to have much to say to the men of “good will”.

²⁸ P.T. par. 150 (Emphasis added).

Industrial PhDs and Higher Apprenticeships: The Experience of ADAPT

Lilli Casano *

1. Introduction

The present paper discusses the experience of the International Doctoral School in Human Capital Formation and Labour Relations at the University of Bergamo (Italy), promoted by the Association of International and Comparative Studies in Labour and Industrial Relations (ADAPT) and the Center for Quality of Teaching and Learning (CQIA). Both organisations have shown commitment to the innovative nature of industrial PhDs, also in light of the newly-issued national provisions. Identifying the scope to conclude agreements with employers to fund industrial PhD programmes based on apprenticeships and doctoral research programmes more generally, the School has been a forerunner in providing such arrangements for four years now; that is well ahead of what was laid down recently in Italian Ministerial Decree No. 45 of 8 February 2013. The approach adopted by the School stood out since its establishment as being similar to that used in other European or non-European countries for a long time. For this reason, the School anticipated the move made by the Legislator and provided some innovative approaches which will be explained in the pages that follow. Some features call to mind those which are typical of professional doctorates, while others are in line with those laid down by the European Union, and then implemented by Italy, concerning the industrial PhDs. The line between the two models is blurred, mainly because of the

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different nature of the academic programmes and the scientific disciplinary sectors at the national level. Yet, the distinctive trait of professional doctorates¹, which generally involve adult professionals, is their emphasis on applied research, in order to contribute to the development of skills in a certain sector. Instead, industrial PhDs target young graduates – yet this is not always the case – and have two distinctive features: the nature of research to be carried out and the way in which activities are planned. For most of their time, Doctoral students work on their research projects while operating at the premises of the funding company. Alternatively, doctoral students are employees working for the employer who funds their scholarship. This is done either to promote employees' career development or to take part in projects along with the university².

There are reasons to support the unique nature of this type of Doctoral research programme – also if compared to that regulated by Ministerial Decree No. 45 of 8 February 2013 – for it is based on the alternation between work and training and the combination of research and work activities. In essence, this scheme draws on features which are common to both Doctoral research programmes discussed earlier.

2. The Experience of ADAPT

The promotion of a Doctoral School featuring a close relationship between universities and employers on the part of ADAPT can be certainly regarded as innovative, for no other experience has been reported in Italy to date, yet a certain analogy emerges with the recent doctoral degree regulated by Italian legislation. The reasons for its establishment lie in the approach characterizing the ADAPT School of Higher Education, which can be summarized by its organisational motto on its [website](#) “Building the future of work together”. ADAPT is committed to building the future of work, fuelling the academic debate and contributing to steering the activity of policy-makers at different institutional levels.

This attempt translates into a willingness to monitor the ongoing changes in the world of work as well as their origins without waiting to read about

¹ I. Lunt, *Professional Doctorates and their Contribution to Professional Development and Careers*, ESRC Full Research Report, 2005.

² F. Kitagawa, *Industrial Doctorates – Employer Engagement in Research and Skills Formation*, LLAKES Research.

such developments in books, through a close look at both the causes and the consequences of such changes. In addition, the groundbreaking approach to this doctoral program arises out of the necessity to satisfy the needs of employers – who are often already partners of ADAPT and are interested in setting up innovative academic programmes in human resource management and labour relations – or to build stable and rewarding career paths for those who have opted to share their expertise and motivation in labour-related fields. A first attempt at this by ADAPT was made at the University of Modena and Reggio Emilia. The Doctoral School in Labour Relations, promoted in collaboration with the Marco Biagi Foundation, comprised of 99 students. ADAPT co-funded the programme and awarded scholarships amounting to €3,942,000. Later on in 2009, ADAPT and CQIA promoted the International Doctoral School in Human Capital Formation and Labour Relations at the University of Bergamo (Italy). The School intends to “move beyond the rigid separation which exists in Italy between education, Labour law and employment”³ either in terms of research and policy, with the view of disseminating an all-encompassing approach which takes account of these different dimensions. To this end and since its very establishment, the School promotes the alternation between school and work and the recourse to internships and apprenticeships which result in a direct involvement of the employers and the main actors of the world of work in the learning process. Pursuant to the School Regulation, it is possible to conclude agreements with employers or other educational or research bodies allowing doctoral students to carry out external internships or work periods of research. It is also possible to make arrangements for the funding of scholarships or research projects on the part of external organizations.

Following the Memorandum of Understanding (MoU) of July 23, 2009 and a further agreement (Accordo di programma) of September 28, 2009 concluded between ADAPT, the University of Bergamo and the Ministry of Education, University and Research, the latter allocated funding for a number of bursaries equivalent to the number funded by external bodies, up to a maximum of 15 scholarships.

Over the years and thanks to the ADAPT partners, the School has established a dense network of employers and representative bodies, which are actively involved and contribute in a number of ways, for

³ Motivazioni per la costituzione della Scuola di Dottorato Internazionale in «Formazione della persona e mercato del lavoro», http://www.unibg.it/struttura/struttura.asp?cerca=DOT-FPDLM_documenti.

instance by providing bursaries so as to participate in the education of doctoral students taking part in internships. In their capacity as funding partners, they enjoy a privileged position within the initiatives set up by the Doctoral School and help bring the labour issues investigated while in class closer to the dynamics of the working world. The involvement of private bodies in accordance with the MoU allowed the funding of 94 bursaries in four years, amounting to €4,306,000. Currently, the International Doctoral School in Human Capital Formation and Labour Relations offers two tracks: one concerning topics related to education and pedagogy, and the other related to legal issues focusing on industrial relations and work regulation. The courses at the School do not differ significantly from those offered by traditional Doctoral research programmes, where students spend most of their time at the university. Yet, the innovative aspect lies in the fact that research is carried out in relation to a given work activity. This aspect is also emphasized in par. 3, Art. 1 of the School Regulation, pursuant to which the aim is to “train young researchers and enable them to operate in national and international firms through professional expertise in legal and pedagogical issues”. This feature is common to both the School and professional PhDs. Many Doctoral candidates are professional adults performing tasks of a predominantly intellectual character – either in the public or the private sector – in the fields of education and training or in the provision of services for people and businesses.

There is also the opportunity to carry out research at the funding partner’s premises. Besides being involved in the tasks traditionally required in Doctoral programmes – e.g. participating in classes, seminars, conferences, and research projects in order to draft dissertations – doctoral students whose bursary is funded by a private body can take part in internships which take place within a company. In this case, credits are assigned over the three-year period in consideration of the activities undertaken at the university and during external internships. This characteristic draws the School closer to the industrial PhDs implemented by the Legislator as the doctoral student is involved in a research project carried out in the funding partner’s establishment. It should be stressed that the training program put forward by the School places great emphasis upon on -the-job learning, envisioning an alternation between school and work and a close interdependence between research, teaching activities, and the fulfilment of special assignments within the company.

The courses offered at the School also include tasks which are particularly suited to university researchers, who join research projects, editorial work, and events organized by those promoting the School. All the activities,

including those supplementing teaching, are assigned a number of credits – e.g. 1 to 120 credits for the internship, 1 to 90 credits for research and editorial activities, and support for the teaching. As a result, doctoral research programmes might vary considerably from one another; they share a common base – that is basic knowledge concerning education and labour market, yet they are tailored to each student and are characterized by high levels of professionalism. Individual training plans are envisaged in agreement with the academic tutor, the company supervisor, the School and the area coordinator, pursuant to the School Regulation, based on an interdisciplinary approach and the progressive specialization of the main activities.

This state of play calls for innovation at the time of planning courses, considering the link between the research topic and the main aspects of the job requirements, an approach which marks a tendency away from the Italian experience concerning doctoral programmes.

In addition, the levels of harmonization between the research project and the goals, practices and the deadlines agreed upon in a company, or a working environment more generally, is remote from the traditional PhDs which predominate in Italy.

Aside from providing a specialization in education, employment, and industrial relations, the School is characterized by a range of teaching methods which go far beyond those offered by traditional doctoral research programmes. Along with teaching and research carried out either individually or through group work, much time is devoted to on-the-job training, and workshops which can be attended online. Students are supported by a tutor and are required to attend seminars and conferences. The management and dissemination of the main activities (publications, seminars, and assessment tests) take place through an online cooperative platform, an approach that is becoming a common practice in academic settings; the School is also experimenting with the use of social media in the working context. The complex organization and the ongoing effort in terms of planning and management of the activities and relations of the School make the ADAPT experience a unique one in the national scenario. This is also true if one looks at the numbers of the School, which are unprecedented, and likewise are the private funds allocated pursuant to the 2009 agreement with the Ministry of Education, for which an equivalent number of public bursaries are provided. In this sense, the School is innovative, considering that a very limited number of positions are available within the doctoral research programmes, particularly those for which a scholarship is assigned. Without financial support, applying for a Doctoral programme translates into prolonged reliance on one's

family in economic terms. Disparities concerning access to doctoral programmes are evident and are further confirmed by a number of relevant studies⁴.

Evidently, this peculiarity affects selection procedures. The call for applications of the School is circulated through the ADAPT publicity materials (newsletters and publications) which reach more than 20,000 people consisting of students, professors, and labour practitioners and is therefore given much visibility. Accordingly, selection procedures are different from traditional ones and involve nationwide high-profile young scholars who apply for positions which have nothing to do with the patronage system which at times stymies academic job opportunities. The large number of bursaries, as well as the credibility of the ADAPT School of Higher Education, which made a reputation in placing well-educated young students, makes the School particularly appealing to candidates in Italy and elsewhere.

3. Doctoral Programs based on Apprenticeships

The close cooperation between the School and external entities – employers and representative bodies – on the one hand and a wide range of young people willing to pursue higher education or high-quality jobs in the field of labour and industrial relations on the other hand allowed for the setting-up of doctoral programmes based on apprenticeships in order to issue a doctoral qualification.

Pursuant to Art. 50 of Legislative Decree No. 276/2003 – as amended by Act. No. 133/2008 and subsequently by par. 3, Art. 5 of Legislative Decree No. 167/2011, this arrangement is possible by virtue of a framework agreement providing higher apprenticeships, which is concluded by the School and the funding company. In the past, young people who passed the selection procedures then concluded higher apprenticeship contracts with employers who were interested in their job profile. Upon conclusion of the contract, doctoral students operate for the company which hired them, and they are entitled to take leave in order to take part in mandatory teaching activities, as laid down in the School Regulation. In addition, the School somewhat anticipated the contents of Art. 11 of Ministerial Decree No. 45 of February 8, 2013, which, in turn,

⁴ G. Argentin, G. Ballarino, S. Colombo, Accessi ed esiti occupazionali a breve del dottorato di ricerca in Italia. Un'analisi dei dati Istat e Stella, in *Sociologia del Lavoro* n. 126/2012.

makes reference to Art 5, of Legislative Decree No. 167 of September 14, 2011 in that it gives the opportunity to set up doctoral research programmes based on apprenticeships with external bodies or institutions. For the purposes of calculating the number of bursaries required by law to set up a Doctoral School, it is also specified that these apprenticeship schemes are to be regarded as equivalent to scholarships. Therefore, the experience of the School can be useful also on this score, particularly if replicated, in order to evaluate possible constraints, as well as opportunities and requirements. Students who enter the School by means of apprenticeship contracts enjoy some benefits in that the amount of work expected of them in terms of attendance of seminars and other events is limited. This is because there is a need to strike a balance between the teaching activities and the tasks they perform at the company, especially because a part of the credits are assigned on the basis of the latter.

In any event, all the activities carried out by the doctoral students at the School are registered in a booklet which is constantly upgraded. Doctoral students on apprenticeship contracts do not distance themselves from those who undertake internships in terms of tutoring, evaluation, and coordination between theoretical and practical learning.

Doctoral students on apprenticeship contracts attend courses which are planned considering a number of factors: their prior educational attainments and work experience, the skills acquired thus far and those required by the employer, the relative job requirements and the School courses, without disregarding the qualification and the employment grade to be obtained at the end of the apprenticeship contract. All this is done in compliance with the Individual Training Plan (*Piano Formativo Individuale*) which is an integral component of the higher apprenticeship contracts, pursuant to par. 3, Art. 5 of Legislative Decree No. 167/2011. Over the following three years, apprentices are involved in training and educational activities which are intended to pursue formal, non-formal, and informal learning, in line with the working activities carried out at the company.

The Individual Training Plan provides a general description of the activities which will help Doctoral students to gain the required skills in accordance with what is laid down in the School regulation on a one-year basis.

A credit-based system is in place for admission purposes. Failure to comply with it will result in exclusion from the School. Doctoral students must collect 60 credits each year, which are awarded by their supervisor on the basis of the different student's activities and certified by the

Doctoral School board. Individual Training Plans also provide for a number of soft skills, which in this case include methodology, research, and planning skills, communication and linguistic abilities, and knowledge of innovative technology for research purposes.

Previous experience points to the need of strengthening the theoretical knowledge in relation to the creation of a language which is common to all Doctoral students. This is irrespective of whether they specialize in Labour Law or Pedagogy under higher apprenticeships, internships, or more traditional PhD programmes. Finally, the different specializations have been planned taking account of the relating job profile. Over the three-year period, Doctoral students' activities are supervised by a company tutor who is in charge of providing the necessary skills to perform a given task and easing the integration between internal and external training. Doctoral students are also assigned an academic supervisor, who is usually a member of the teaching faculty who helps them with their research project, educational, and training activities.

To date, the School hosts 15 Doctoral students on apprenticeship contracts. It would be premature to draw conclusions about their experience. Yet some reflections made earlier to refer to successful industrial PhDs might also apply in this case. A summary of the benefits of both types of Doctoral programmes will be provided in the conclusions.

4. Concluding Remarks

The Industrial PhD has been favourably welcomed, and the same can be said, at least in principle, of higher apprenticeships. However, in order for them to provide opportunities for both young people and employers, some conditions need to be met. Among these conditions are a constructive spirit to foster cooperation between promoting institutions and economic actors in order to promote ad-hoc training plans; the involvement of experts in the planning of innovative and flexible courses which take account of different learning methods and competence; effective placement schemes which bring employers and young people closer striking a fine balance between the needs of the parties involved either in terms of training and career prospects.

To date, and in the absence of a regulatory framework laid down by the relevant authorities, the innovative cooperation between employers and universities is the result of the willingness and capability of certain institutions – which are rare to be found – to involve employers in

ambitious training plans, thus overcoming cultural and bureaucratic constraints. In the context of the industrial PhDs outlined here, the experience of ADAPT in providing job placement services played a decisive role. The experience accrued over the years, which have been also certified by the Ministry of Labour, was then applied in the running of the Doctoral School as a way to guarantee the high-quality of the courses and their suitability with in-company training. As argued before, the establishment of industrial PhDs on a large scale might supply new opportunities and re-shape the boundaries of academic research in Italy. Taking on this new challenge would allow Italian universities to further experiment with additional ways to enhance ties with employers – and the world of work more generally – by means of a close cooperation among those involved. This would translate into new career paths as an alternative to traditional research jobs. In addition, this new approach to research might be useful to fill high-profile positions, by means of a) the traditional doctoral research programme in order to enter the academic career b) the industrial PhDs, which are more tailored to positions in the private sector; c) the doctoral research programme based on apprenticeships or apprenticeships for research purposes, which gives prompt access to positions within companies and private research institutions. In all these cases, students are awarded a doctoral degree at the end of the three-year period. In order to make this approach a practical and a reliable one, there is a need to dispel some ideological resistance on the part of the parties involved, i.e. universities and employers. The outcomes of this innovative approach to research cannot be evaluated yet. Rather, it is the need of some preconditions that need to be stressed here. In this sense, at the ADAPT School the scope for experimenting with new teaching methods is possible thanks to considerable forward planning, expertise, and cooperation with universities and employers that are responsive to innovation. All those involved were willing to invest in the planning of courses and access-to-work programmes, on account of their need to strike a balance between compliance with the university regulation and adaptation to ever-changing organizational issues within the companies. This was a necessary step to provide students with the necessary flexibility to fulfil their duties as students of a fully-fledged higher education system and as interns who cover high-level positions.

As far as employers are concerned, the first aspect that needs to be emphasized is the willingness on their part to cooperate with educational bodies in building-up an organizational strategy. Apart from economic benefits, the choice to allow students to undertake a PhD programme at

their premises arises from the opportunity to innovate and review certain processes, functions, and services. As a lever for business development, the disciplinary domain of Industrial Relations has undergone many changes, being exposed more than other fields to economic instability. Yet, the number of employers who react to external forces by turning to innovative processes is still limited. This move is usually driven by high levels of expertise and qualifications among which are adequate facilities and networking arrangements with the social actors and institutions.

The other precondition is that the company has the necessary skills and latitude to decide over Doctoral students' educational programmes – through constant contact with the universities collaborating with, in order to understand their educational needs – and create forward planning abilities in order to deliver long-term career prospects. These are all qualities which by no means need to be taken for granted and require the help of professionals who possess the competence to promote a virtuous approach and highlight unexpressed needs. It is also worth pointing out the relevance of the students' expectations. They spend most of their time at the company and are trained in applied research. As a result, it is unlikely for them to seek employment in universities, considering the current state of Italian academic research. There are certainly more chances to be hired by the employer who funded their scholarships – since they are seen as a resource that should be retained – or by another company which might seek top candidates with a high-level of specialization. What is important here is to underline that, as likely as not, only young people who are well aware of the different approach used to carry out research will benefit from this Doctoral research programme, for it moves away from a traditional doctoral degree. Whether this longed-for evolution will come about will depend on adequate promotional activities on the part of those in charge and on a move away from ideological resistance allowing for a better integration between training and work in tertiary education. In relation to well-educated young job seekers looking for high-qualified positions, such integration takes place at all levels through the widening and promotion of the grey area between higher education and employment, which consists of innovative actors, in the public and private sector, to be integrated into a local system of lifelong learning.

Musculoskeletal Disorders: Cross-cutting and Critical Issues concerning the Causal Link. A Theoretical and Experimental Investigation in the Retail and Distribution Sector

Malcolm Sargeant, Maria Giovannone and Nicola D'Erario *

1. Introductory Remarks

This is a paper that was presented at the 3rd International Conference on Precarious Work and Vulnerable Workers held in Toulouse Business School in 2013. One of the streams for the conference was concerned with health and safety issues, which included this paper which represents work in progress on an interesting piece of research on musculoskeletal disorders and supermarket cashiers. It is a comparative analysis of the legal, organisational and ergonomic issues concerning those musculoskeletal disorders and pathologies associated with biomechanical overload amongst the active population. The authors conducted a theoretical and wide-ranging investigation in order to assess the correlation between musculoskeletal disorders and the working activity performed by cashiers within the retail and distribution industry in Italy. It is worth noting that the 4th International Conference on Precarious Work and Vulnerable Workers will take place in Mexico in early Autumn 2014. Further information available on the ADAPT website <http://moodle.adaptland.it/course/view.php?id=22>.

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2. Musculoskeletal Disorders: A Comparative Analysis of National Legislation and Relevant Provisions

Musculoskeletal disorders and the pathologies caused by biomechanical overload are occupational diseases which affect the vertebral column, the tendons, the nerves and the muscular as well as the circulatory system. They can be ascribed to incorrect and compulsory postures, prolonged exposure to repeated micro-traumas and functional stress, or to overloads which might occur while working¹. Generally speaking, three types of pathologies can be identified: the pathologies of the vertebral column (acute lumbalgia, disk herniation, spondylolysis), those caused by repetitive movements of the upper limbs (carpal tunnel, jerky finger, syndrome of De Quervain.), and those associated with repetitive movements of the lower limbs (Achilles, tendinitis, lesions of the meniscus, plantar talalgia).

In looking at the definitions provided by the relevant literature at national and international level, one might note that the type and the manifestation of these disorders are ill-defined, an aspect which affects their prevention and the identification of the causal link. In any event, the interest of the academic community towards this topic is a further confirmation of its significance in the work environment.

Indeed, the foregoing ailments are to be found particularly amongst those workers employed in manual labour, e.g. agriculture, fishing, mining, logistics, construction, retail and niation, spondylolysis), those caused by repetitive movements of the upper limbs (carpal tunnel, jerky finger, syndrome of De Quervain.), and those associated with repetitive movements of the lower limbs (Achilles, tendinitis, lesions of the meniscus, plantar talalgia).

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¹ European Agency For Safety And Health At Work, *Work-related neck and upper limb musculoskeletal disorders*, Bilbao, 1999.

logistics, construction, retail and wholesale trade within mass distribution, as well as the hotel industry and the health and catering sectors.

In addition, one might note the importance of the risk factors associated with some younger workers, who are sometimes engaged in precarious employment. Statistically, they are regarded as the most vulnerable category of workers, since they are sometimes employed to perform unsafe tasks. Of relevance is also the high incidence of these illnesses among women, especially with reference to carpal tunnel syndrome, as some authoritative authors have underlined.

Unlike those occupational illnesses for which a direct cause and effect relationship is acknowledged between harmful agents and the illness itself, both the pathologies and musculoskeletal disorders caused by biomechanical overload are defined by the World Health Organization as “*aetiopathogenesis* multi-factorial illnesses”, since they have been reported also within the population that is not exposed to such harmful agents. In addition, according to the medical literature, they are caused by non-work factors, among which are ageing, prior traumas, chronic pathologies (diabetes, arthritis, menopause) and incorrect and repeated movements performed in sports and/or hobbies².

It appears clear that disorders of this kind may have a variety of causes, not strictly related to working activity. For this reason, when considering musculoskeletal disorders and pathologies resulting from biomechanical overload, such as job-related illnesses, the European Agency for Safety and Health at Work (EU-OSHA) has classified specific job-related risks into two categories. Here, the physical risks linked to the way the job is performed (lifting loads, incorrect ergonomic positions, repetitive movements, vibrations and so forth) are distinguished from environmental and organisational factors (job cycles and schedule, remuneration, and microclimate) as contributing causes.

3. Statistical Data and the Economic Scenario: A Comparative Analysis

If statistics are taken into account, the pathologies of the vertebral column and the upper and lower limbs more generally are the most widespread causes of disability and the most frequent underlying reason for sickness

² A. Luttmann, M. Jäger, B. Griefahn, *Preventing Musculoskeletal Disorders in the Workplace, Protecting Workers' Health* Series No. 5, cf. http://www.who.int/occupational_health/publications/muscdisorders/en/.

absence in industrialized countries. In contrast to Europe, this topic has long been investigated in the United States, and musculoskeletal pathologies account for more than 65% of all occupational illnesses reported in the US work environments.

According to the National Institute of Occupational Safety and Health (NIOSH USA) these pathologies rank in first place among the ten most common health disorders in the US manufacturing system, since they account for almost 29 days of sickness absence for every 100 days with those below 45 years being the most affected. They are usually males if they are engaged in the manual handling of heavy loads, and usually females in the case of biomechanical overload. Both groups are primarily affected by occupational pathologies of the vertebral column³. In economic terms, in the USA, these pathologies account for 33% of the total costs of compensation in the event of occupational illnesses, amounting to some 15-20 million dollars and a total cost of over 60 million dollars, if the direct health costs as well as indirect costs associated with absence from work are considered.

As for Europe, these pathologies have only recently been examined; statistics here are difficult to interpret and to compare because of the differences in national legislation, certification and compensation schemes provided for occupational illnesses. Nevertheless, a number of surveys on the working conditions in Europe conducted by the Dublin European Foundation for the Improvement of Living and Working Conditions (Eurofound) and the Bilbao European Agency for Safety and Health at Work (EU-OSHA), make it possible for the evolution of this phenomenon to be traced.

The data collected in a 1996 survey already pointed out that the most widespread health disorders reported by EC workers included back pain (30%), and muscular pain of the upper and lower limbs (17%).

In 2004, a review of the surveys on health conditions pointed to a significant increase in these pathologies reported by almost two-thirds of workers who were exposed to repetitive movements which caused musculoskeletal pathologies. This tendency is also confirmed by most the recent data, published in 2007, according to which these pathologies account for more than 45% of all occupational illnesses, and include back pain (25%), muscular pain (23%), and stress disorder due to repetitive

³ National Institute of Occupational Safety and Health, *Musculoskeletal Disorders and Workplace Factors: A Critical Review of Epidemiologic Evidence for Work Related Musculoskeletal Disorders of the Neck, Upper Extremity, and Low back*, 1997, n. 97, 141.

movements (22%), with percentages that reach 39% if those countries which recently entered the EU-27 are considered separately.

The social relevance of these pathologies is easily understood taking into account the statistics that compare all the occupational illnesses reported in Europe. Tellingly, over 70% of the illnesses reported are caused by physical agents (pathologies due to musculoskeletal disorders and biomechanical overload). By way of example, carpal tunnel syndrome, hand and wrist epicondylitis and tendinopathies are found in more than 50% of all the claims; followed by respiratory distress, skin infection, infectious illnesses, and illnesses caused by chemical agents. From a socio-economic point of view, although exact figures are not available at the Community level, the cost of all job-related illnesses range between 2.6% and 3.8% of GDP, with those linked to musculoskeletal disorders ranging between 0.5% and 2% of GDP⁴. This is due to the loss of over 600 million⁵ working days every year, which in turn determines an increase in the cost of insurance. It also leads to a reduction in production, certain psychological impacts on the quality of work and loss of experience of personnel, to which further costs for the hiring and training of new workers are to be added, if those affected by these illnesses cannot return to work.

4. Community Framework

The EC laid down some guidelines through Framework Directive 89/391/EC and more detailed directives issued afterwards. The first one sets out the general objectives on health and safety at work, whereas the other directives are concerned with some specific aspects. Particularly relevant in this connection are Directive 89/654/EC concerning the minimum safety and health requirements for the workplace, Directive 89/655/EC concerning minimum safety and health requirements for the use of work equipment by workers at work, Directive 89/656/EC concerning minimum safety and health requirements for the use of individual protective equipment, Directive 90/269/EC on minimum health and safety requirements for the manual handling of loads, and Directive 90/270/EC concerning the improvement of safety and health

⁴ European Foundation For The Improvement Of Living And Working Conditions, *Fourth European Survey on Working Conditions*, Dublin, 2005.

⁵ European Agency for Safety and Health at Work, *Work-related Neck and Upper Limb Musculoskeletal Disorders*, Bilbao 1999.

of workers at their working place performing activities on display screen equipment. The last two directives are clearly the most important ones in terms of prevention of the disorders and pathologies surveyed here. More precisely, Directive 90/269/EC has unified existing legislation, simplifying and supplementing the provisions in force on consequential lesions from the manual handling of loads. As a result of this directive, most Member States have applied its principles to all industry sectors, with the obligation to determine and evaluate the risks associated to the manual handling of loads which has been recognised as an innovative feature. As for Directive 90/270/EC, it supplies an important contribution to the ergonomic aspects and risk prevention for employees working with display screens. Among the innovations introduced by national legislation and in line with the directive, special mention should be made of the right to periodic interruption of the daily routine with breaks or changes of activity for workers using display screens, the right to eye examinations, and where necessary, the supply of corrective devices.

With the intention of adopting a global and specific approach on the issue of musculoskeletal disorders, in 2004 the EC started a first round of consultation with the social partners on a proposal for a directive. It pointed out that these pathologies resulted from inadequate ergonomics for both men and women who assume incorrect postures; perform monotonous and repeated assignments; use inadequate working and organisational methods and – more often than commonly held – who lift heavy loads.

A second round of consultation took place in 2007, when the social actors, while recognising the key role of existing legislation, highlighted the difficulty in dealing with musculoskeletal disorders and their causes as a result of the multiple nature of such problems in terms of prevention and risk management. Following these consultations, in 2009, a new directive on all the major risk factors associated with job-related musculoskeletal problems was proposed, which would also replace the two directives currently implemented. Major progress was expected in 2011, but progress is limited.

5. National Case Studies

Following a comparative study on the provisions concerning the prevention of musculoskeletal disorders, it has been assessed that among all the countries surveyed – Spain, France, the United Kingdom, the United States, Finland, Sweden, Denmark, Canada, Norway, Germany,

Switzerland – for which substantial evidence of these disorders has been found, several differences in both legal and definitional terms exist along with other peculiarities for some aspects related to the acknowledgement of the pathologies. This aspect proves the non-existence of a global approach to the problem, all the more so in countries like Spain, Finland and Sweden where a proper definition was difficult to find. On the other hand, in different times and through different methodologies, every single country has adopted specific national legislation concerning risk prevention and, in some cases, also for compensation. Below are some examples.

5.1. United Kingdom

In Great Britain, the main piece of legislation on health and safety at work is the Health and Safety at Work Act of 1974⁶. As a result of this Act and subsequent amendments, the implementation and monitoring of the law falls within the responsibility of the Health and Safety Executive (HSE), and it is up to local inspectors to assess its implementation. Two provisions exist on musculoskeletal disorders: the Manual Handling Operations Regulations and the Health and Safety (Display Screen Equipment) – both issued in 1992. Both regulations are intended to implement Framework Directive 89/391EC.

In the British system, these provisions are accompanied by some guidelines compiled by the HSE, to be considered as an effective and practical support with no legal standing, particularly during judicial proceedings. Substantial differences with other Member States are to be found in matter of compensation for accidents at work and occupational illnesses. Workers – besides the possibility of directly applying to social security for compensation – may legally pursue the right to be compensated by the employer who is found culpable of negligence or other violations that may have contributed to cause the accident. The rules determining the right to compensation draw almost entirely on legal

⁶ The United Kingdom is an EU member state consisting of three jurisdictions, where part of national legislation does not apply to all jurisdictions. Legislation on Health and Safety at Work generally applies in Great Britain (particularly England and Scotland), while Northern Ireland has specific legislation on this subject. Legislation is becoming more and more regional, particularly as a consequence of the establishment of regional Parliaments in Scotland and Wales. By way of example, in 2009 Scotland approved national legislation on pathologies linked to Asbestosis. However, at present no regional legislation has been issued on upper limbs disorders.

precedents and were issued prior to extant legislation on risk prevention and professional illnesses.

5.2. Canada

As a result of Canadian legislation (Occupational Health and Safety Act - OHSA), employers have an obligation to take the necessary steps to protect workers from anything that may cause musculoskeletal injuries. Here, unlike other countries, the definition of the general obligations is assigned to government inspectors and experts on ergonomics, as provided for in the OHSA concerning ergonomics and preventive measures. The Committee on Ergonomics is made up of experts in the field who constitute a special advisory body which examines and defines strategies to tackle job-related musculoskeletal disorders, and develops strategies for the effective re-insertion of those workers who have been affected by these pathologies. To achieve these objectives, the Commission collaborates with the Safety Council of Ontario (OHSCO), consisting of representatives from the Ministry of Labour, the Workplace Safety and Insurance Board (WSIB) and the Health and Safety associations (about twenty sectoral associations for Health and Safety and the Occupational Health Clinics for Ontario Workers). The Commission also works with the Institute for Work and Health-IWH and the Centre of Research Expertise in the Prevention of Musculoskeletal Disorders-CRE-MSD to develop a coordinated strategy.

5.3. Denmark

Danish legislation has adopted an active approach toward the enactment of Directive 90/269/EC on the manual handling of loads and Directive 90/270/EC on the use of display screen equipment. Denmark legislated on this issue starting from 1992, with the last provision on this subject being passed in 2002. The growing interest towards the prevention of musculoskeletal disorders is highlighted by some recent statistics, according to which only 15% of workers seem to be affected by job-related muscular pain to neck, shoulders and upper limbs, a percentage which is lower than the European mean⁷. Furthermore, in considering the

⁷ S. Bevan, R. McGee, T. Quadrello *Fit For Work? Musculoskeletal Disorders and the Danish Labour Market* The Work Foundation
http://www.fitforworkeurope.eu/Downloads/Website-Documents/ffw_Denmak311009.pdf.

period 2003 to 2009, statistics pointed out that men and women are affected by different job-related disorders, and these figures are strictly linked to their occupation, as men are chiefly employed in the building sector, while women usually operate in the retail sector. Further, the National Board Report stated that compensation rates from 2005 to 2009 are 4-5 points higher for men, thus the retail sector is less affected by these job-related disorders.

5.4. Finland

Despite the implementation of the two main European directives (90/269EC and 90/270/EC), Finland has not yet devised any official definitions⁸ for job-related musculoskeletal disorders. These pathologies are referred to in legislation on job-related disorders, which, however, has not been updated since 1989. This may explain the increase of the phenomenon in this country, which appears to be the main cause for temporary incapacity to work and – together with mental disorders – it also explains the rise in the benefits allocated for permanent disability. Compared to previous statistics, some recent estimates point out that direct and indirect costs have reached 0.8% of the country GDP.

5.5. France

In France, musculoskeletal disorders represent the most common occupational illnesses and they constitute a substantial cost for society. First, the French system seeks to offset and upper limbs, a percentage which is lower than the European mean⁹. Furthermore, in considering the period 2003 to 2009, statistics pointed out that men and women are affected by different job-related disorders, and these figures are strictly linked to their occupation, as men are chiefly employed in the building sector, while women usually operate in the retail sector. Further, the National Board Report stated that compensation rates from 2005 to 2009 are 4-5 points higher for men, thus the retail sector is less affected by these job-related disorders.

⁸ European Working Condition Observatory, *Managing Musculoskeletal Disorder – Finland*, Anna-Maija Lehto, ed., Statistics Finland, 2007.

⁹ S. Bevan, R. McGee, T. Quadrello, *Fit For Work? Musculoskeletal Disorders and the Danish Labour Market* The Work Foundation
http://www.fitforworkeurope.eu/Downloads/Website-Documents/ffw_Denmak311009.pdf.

5.6. *Germany*

German legislation on health and safety at work draws to a large extent on the European and international legal standards, making reference to the ILO conventions and to European Council Directive 89/391/EC of 12 June 1989 (Framework Directive). Other important provisions on this subject have given force of law to the subsequent Community directives. In Germany, various government agencies are responsible for health and safety at work, in particular: the BAuA (Federal Institute for Occupational Safety and Health) on health and safety, and the LASI (government committee for health and safety at work), that introduces guidelines to evaluate health and safety performance in manual handling of loads. Over the last years, a great deal of attention has been directed to the prevention of musculoskeletal disorders, also showing the benefits of corrective actions, and indicating procedures for the reinsertion of those workers who have been affected by these diseases.

5.7. *Norway*

Like Finland, Norway does not provide an official definition of job-related musculoskeletal disorders. According to the most recent statistics, these disorders are the cause for one third of all job absences, and they are regarded as the most prevalent occupational illness among workers. In order to change this state of affairs, a new provision was introduced in 2005 concerning the working environment, laying down an obligation to adopt suitable and correct measures to prevent risks for health and safety at work. Apart from these legal measures, other actions have been taken to set up a national network, created by the government with the purpose of increasing flexibility at work and guaranteeing a more inclusive working life to those workers affected by these disorders.

5.8. *Spain*

Spain is another country where it is not possible to find an official definition of musculoskeletal disorders, although these occupational pathologies are particularly widespread among workers. Some of these disorders – above all those linked to mechanical vibrations – are classified as occupational illnesses by Royal Decree No. 1995/1978 of May 12 and the Spanish Social Security Institute (*Seguridad Social*).

In the current legal system, the task to provide adequate working conditions is assigned to the National Institute of Safety and Health at

Work (INSHT), which operates through preventive measures in order to reduce the occupational risks. There are no official statistics concerning the economic impact of such diseases. However, absence from work due to occupational illnesses represents a fundamental matter for all actors involved, that is workers, employers, the government and the insurance companies.

5.9. Sweden

Sweden, which has promptly implemented the Community directives, also falls within those countries which have been unsuccessful in tackling the issues arising from musculoskeletal disorders. In considering the statistics from 1996 to 2005 one might note that the incidence of these issues reported a significant increase. More specifically, it has been demonstrated that ergonomic factors represent the most common cause of musculoskeletal disorders for both men and women (in 58% of the cases). In addition, musculoskeletal disorders caused by incorrect postures at work have reached 12% in 2003 among women only, even if a significant improvement was reported lately in this connection. As for men, an increase was registered from 1996 to 2003, with a 9.2% peak which was followed by a progressive reduction¹⁰.

5.10. Switzerland

Here, two main provisions have been laid down which regulate health and safety at work, that is Labour Law and Accident Insurance Law for Accidents at Work. The former covers working hours, health protection, ergonomic standards and personal integrity, whereas the latter is concerned with the prevention of occupational accidents and diseases. The cantonal labour inspectorates, SUVA – which is the main accident insurance authority – and the State Secretariat of Economic Affairs (SECO) are in charge of enforcing these provisions. A “coordination” commission (EKAS) oversees and funds the inspection system for accident prevention. About one million people in Switzerland are affected by pathologies causing some sort of disability to work. Among these pathologies, musculoskeletal disorders have been identified as the main cause for health issues at work resulting in high levels of absenteeism. To

¹⁰ Arbetsskador Preliminära uppgifter, *Occupational Accidents and Work-related Disorders 2004*, Swedish Work Environment Authority, 2004.

tackle this problem, in 2003 the Federal Council started a national research program consisting of 53 projects of a duration of 5 years. The objective is to contribute to research on musculoskeletal issues, introducing strategies which operate multi-disciplinarily and improving health care through the development of new therapies.

5.11. USA

On the basis of statistics in 2010 on the number of non-fatal accidents at work and published by the US institutions in 2011, the incidence rate of musculoskeletal disorders increased from 4 to 34 episodes per 10,000 full-time workers.

This data is to be considered along with the peculiar methodology adopted in the US statistic surveys, according to which employers are asked to register and report – except for situations with more than ten employees or for some high-risk sectors – the cases of fatal accidents, illnesses and work-related accidents. The correlation between work experience and the accident or pathology occurred at work must be presumed for those accidents and pathologies resulting from factors linked to the working environment. Therefore, a list of disorders that can take place at work but are not considered job-related is made available. An exception is made for mental disorders and for accidents caused by actions and situations linked to workers' private life. Within this system, the National Institute for Occupational Safety and Health-NIOSH is in charge of carrying out research on health and safety at work, providing information, education and training to promote safe and healthy workplaces for all workers.

6. Italian Legislation and Legal Protection

In Italy, only a few provisions have been laid down to prevent the onset of diseases associated with repeated movements and heavy lifting, all the more so in the retail sector.

Indeed, the evolution of Italian legislation on health and safety issues was anything but smooth, particularly at the time of implementing the EC guidelines. In this connection, three phases can be identified which correspond to three different regulatory approaches. The first phase refers to the period prior to the enactment of Legislative Decree No. 626/1994, when the focus was on the protection of the most vulnerable categories, that is females and working mothers. The decree attempted to

place limitations on certain tasks, such as lifting loads and performing demanding work. The other phase coincides with the enforcement of the foregoing decree, where a whole section was devoted to the regulation of the manual handling of loads. For the first time ever in national legislation, this provision applied to all workers involved in such an activity and was intended to prevent the risks associated with musculoskeletal disorders.

Finally, the last phase is to be identified with the passing of Legislative Decree No. 81/2008, best known as Consolidated Act on Health and Safety at Work, which makes provisions for a sound organization of the workers' safeguards in terms of health and safety. Aside from the definitions of "manual handling of loads" and "biomechanical overload", the Legislator has envisaged the possibility for the employer to adopt specific provisions, good practices or guidelines in order to fulfill his/her obligations.

Another fundamental aspect is the provision of health insurance in case of occupational illnesses. This topic has long been dealt with through a scheme which supplied protection taking into account the legal presumption only for those occupational illnesses included in certain special list. In 1988, thanks to ruling no. 179 of the Constitutional Court, those occupational illnesses which were not included in those lists have also been considered for protection purposes, therefore introducing the so called "mixed system". Basically, all job-related illnesses are covered by health insurance, with the only difference that for those not officially listed, it is up to the worker to prove that the illness was job-related. As for skeletal muscle pathologies, the turning point was the redefinition of the foregoing lists by means of Ministerial Decree of 9 April 2008. In this sense, besides "illnesses caused by mechanical vibrations transmitted to arms and hands" which were already envisaged, "lumbar herniated disc" and "illnesses caused by biomechanical overload of the upper arms" were added. Also, other illnesses have been introduced – yet for the manufacturing sector only – that is those caused by "biomechanical overload of the knees".

7. Technical Provisions on Risks Assessment

The evaluation of those risks linked to the manual handling of loads must necessarily be preceded by a job analysis, to take place in the context of a more general assessment. Manual handling consists of all those operations related to the transport or handling of loads by one or more workers,

including lifting, pushing, throwing, bringing or moving a load. It is necessary to identify the most sensitive tasks and to operate an evaluation in compliance with Italian legislation, that defers to ISO technical procedures of series 11228 (parts 1-2 -3) and to the UNI EN 1005-2 for voluntary adoption of health management, yet not of an exclusive character, opening to the possibility of further validation strategies on this topic. In this connection, other ways exist through which employers can carry out the risk assessments.

Among the different criteria used to evaluate the manual handling of loads¹¹, the NIOSH is surely the most used since it applies to all industrial sectors. It permits determination of the maximum load at the time to lift, taking into consideration important elements such as age and gender. Besides the NIOSH, another method often adopted in terms of risk assessment is the SNOOK & CIRIELLO, which considers the risks associated with pushing and hauling. Both methodologies require, however, high levels of expertise and this complicates their immediate implementation.

Further methodologies include the OWAS, which examines the postures assumed by a worker, yet without determining the maximum limit of load weight, and the TLV ACGIH which, however, doesn't consider all the risk factors. Less widespread are the MCG SUVA which is penalized by its analytical nature, and the MAPO that is applicable to the health sector at the time of handling patients. There are other criteria to evaluate risks arising from biomechanical overload¹² which are linked to a special job procedure (job cycles with movements and/or repeated strain). The most relevant is the OCRA and the relative Check-List, that provides an index that can be easily read and interpreted. The same cannot be said of the ACGIH, which is far more complicated despite its widespread implementation.

Mention should be made of the OSHA Check-List, which represents an easy and quick screening tool to assess the risk either for single or multiple assignments. Less relevant are the OREGÉ French, the RULA and the Job Strain Index, due to the difficulty in applying them to the manufacturing sector and also to the fact that they do not cover all the

¹¹ For a detailed analysis of the evaluation methods adopted for the manual handling of loads, see P. Cinquina, *Movimentazione Manuale dei Carichi: metodi di valutazione*, Ipsoa, Milano, 2009

¹² P. Apostoli, E. Sala, A. Gullino, C. Romano, *Analisi comparata dell'applicazione di quattro metodi per la valutazione del rischio biomeccanico per l'arto superiore*, Giornale Italiano di Medicina del Lavoro e dell'Ergonomia, 2004, vol. 26, 223-241.

risk factors. To sum up, there is no methodology to concurrently assess the risks associated with the manual handling of loads and biomechanical overload. In addition, the technical provisions illustrated here present specific limits due to the difficulty of application to all productive sectors. Furthermore, it is impossible to carry out a balanced evaluation of the risks if within the same productive sector different evaluation criteria are adopted which lead to a likely varied risk assessment.

8. Case Studies: Experimental Investigation on Cashiers in the Retailing and Distribution Sector

8.1. General Considerations

As already said, musculoskeletal pathologies include a wide variety of inflammatory and degenerative conditions affecting muscles, tendons, ligaments, articulations, peripheral nerves and vascular structures. Although not necessarily related to the working activity, they constitute the largest category among those contemplated by the Occupational Medicine in Developed Countries. Consequently, musculoskeletal disorders (MSDs), in particular those affecting the upper limbs, have been investigated extensively recently. Different interpretations have been given on the possible developments of the musculoskeletal pathologies of the upper limbs among manual workers employed as cashiers in supermarkets in comparison to the normal population.

8.2. Purpose of the Study

The study was conducted in 2012 by the Orthopedic Clinic of the University of Milan, at the Orthopedic Institute Galeazzi IRCCS, with the purpose of assessing the existence of osteoarticular lesions of the upper limbs in a group of workers employed as cashiers in the retailing industry, an occupation considered at risk of musculoskeletal pathologies of the upper limbs. The other goal was to gather as many clinical data as possible, in order to set the basis for a prospective observational study on the evolution of the pathologies, if any. In sum, the purpose of the investigation has been to verify the existence of the most frequent musculoskeletal pathologies of the upper limb in a group of workers employed as cashiers in comparison to samples of non-working population. Methodologically, an observational, transversal model has

been employed, based on the observation of a phenomenon or a clinical event in a determined time-period.

8.3. Methodology

The sample has been evaluated between November 2011 and April 2012. 504 evaluations have been carried out, 199 on cashiers (group of study) and 305 on individuals chosen among the general population (group of control). The cashiers (all women) have been recruited among five stores of the retail industry in Lombardy, and concerned all the cashiers of the stores. All those involved had provided their written consent to take part to the survey. The control group and the study group feature the same characteristics in terms of age and gender. Particularly, the selection process has been carried out among the cashiers' family relatives who belong to the group of study. As for the selection criteria:

- The individuals were between 18 and 65 years of age;
- The individuals were not / have never been a cashier;
- The individuals do not perform / have never performed any working activity involving repeated movements of the upper limbs and the manual handling of heavy loads;
- There was an absence of potential modifiers of effect for musculoskeletal disorders of the upper limbs (inflammatory, rheumatic, oncologic, or post-traumatic pathologies, or upper limb surgeries).

Each individual has been evaluated considering three steps:

- a) An anamnestic questionnaire;
- b) Orthopedic evaluation;
- c) Instrumental evaluation.

9. Preliminary Conclusions

One of the main purposes of this study has been to establish if, in case of an anamnestic report - for instance concerning pain, numbness, functional limitations – over a sample of manual workers, there were well-defined organic lesions of the upper limb from the anatomico-pathological point of view, as it was evident from the diagnostic and instrumental tools currently available. Another purpose was to establish the prevalence of these pathologies among a wide population of workers and the non-working population.

Although the results provided data which are meaningful only to some extent, as well as some interesting insights, there are still a significant number of variables which need to be investigated. For instance, data processing and analysis are still ongoing and involve the effective exposure of the cashiers, the annual working activity, the relationships between the symptoms and the perceived stress, the smoking habit, the use of contraceptives and so forth. Therefore, the preliminary nature of the analysis of the significant amount of data collected does not allow to draw definitive conclusions. Nevertheless, it is already possible to identify some interesting aspects which are reported below.

9.1. Shoulder

- There is a high prevalence of shoulder symptoms within the cashiers, while the clinical and functional statistics does not show meaningful differences among the two groups.
- The prevalence of ultrasound alterations is the same in both groups.
- The age distribution of the ultrasound alterations is similar in both groups.
- The higher prevalence of pain reported by the cashiers does not correspond to an increase of objectively detected organic lesions in comparison to the group of control.
- In the light of the results of this preliminary analysis, it seems legitimate to assume that the cashiers' activity does not overload the shoulder more than what happens among the general population.

9.2. Elbow

- There are no meaningful differences in the prevalence of subjective symptoms.
- From a clinical point of view, there are no meaningful differences in the request for an in-depth examination of doubts concerning the diagnosis among the individuals surveyed.
- It appears legitimate to assume that the cashiers' activity does not overload the elbow more than what happens among the general population.

9.3. Wrist / Hand

- The prevalence of wrist /hand subjective symptoms is higher in the cashier group, above all with regard to the non-dominant limb.

- The objective clinical examination has led to a larger – yet irrelevant – number of requests of diagnostic and instrumental examination in the cashier group.
 - The specific clinical tests resulted positive in a limited number of individuals, the majority of whom belonging to the cashier group.
- Although fully aware of the small sample taken into consideration for this study, gathering different data does not seem to allow to effectively assess the possible presence of job-related pathologies in the cashier group. Therefore, an analysis on a larger sample of individuals is necessary, to be conducted also with electro-diagnostic examinations. Further, in consideration of the often spontaneously remittent nature of the most widespread pathology found in this district (tunnel syndrome), an observational study is also advisable.

10. Conclusions

The survey pointed out that despite the well-established views on this subject, the absence of consolidated and systematic legislation, as well as the inaccurate and the contradictory nature of the operational tools for survey and management at the workplaces – certain objective conditions for musculoskeletal pathologies seem to arise from the manual handling of loads and biomechanical overload. Another aspect that has been considered is related to the difficulty of risk assessment, referable to the actual carrying out of the duty, and confirmed by the proliferation of different criteria used in terms of risk evaluation, as well as the recognition of aetiopathogenesis, as pointed out by the relevant literature. It must be added that the numerous provisions issued at different levels to increase protection and prevention are far from being effective evaluation and management tools and are in need of improvement. This is so due to the discrepancies in the implementation and interpretation criteria adopted by the operators and monitoring authorities.

The survey paints a worrisome phenomenological and statistic picture, also showing the uncontrolled tendency to encompass within the labour domain – health, legislation, allocation of benefits – pathologies for which unambiguous data are provided with reference to survey methodology and to the real causes of the onset of these illnesses. This obviously translates into unsteady etiological foundations, and into incomplete law-making processes.

In practical terms, some critical issues emerged when it comes to phenomenological aspects and the etiological determinations from

medical literature, as well as to more tangible protection in search of a causal link to the working activity, as confirmed by the results of the case study discussed here. The survey considered the existence of pathologies comparing those workers particularly exposed – the cashiers employed in the retail and distribution sector – and the less exposed individuals referred to as general population. From a preliminary investigation, no clear evidence links the pathologies under analysis to the cashiers – if different body parts are considered – a category of workers identified as highly exposed to such risks within the employer’s premises.

***The Architecture of Innovative
Apprenticeship*, edited by Ludger Deitmer,
Ursel Hauschildt, Felix Rauner and Helmut
Zelloth. A Review**

Sylvia Hammond*

Two contrary trends have been evident over the last two decades: rapid advances in technology and globalisation with an increasing number of young people choosing tertiary education ostensibly to ensure their futures; and from 2008, that is following the economic and financial crises, an alarming rise in the number of young people failing to find employment – or full-time formal employment. Unemployment levels in EU countries such as Spain, Portugal and Greece now rival those of developing countries such as South Africa, where Akoojee quotes recent research identifying 3 million youth between 18 and 24 years of age who are not in employment, education, or training (NEETs).

This timely publication contributes to the resurgence of interest in technical and vocational education (TVET); employers require ‘work-ready’ graduates rather than pure academic qualifications, and work-based learning potentially meets this requirement. Additionally, the vocational model potentially has application for developing and transitional economies. The classic work-based learning format of apprenticeship that developed from the craft guilds of the Middle Ages has been revisited by the International Network on Innovative Apprenticeship (INAP) and this

* Sylvia Hammond is a Ph.D. Candidate at the University of Cape Town. The present review refers to Ludger Deitmer, Ursel Hauschildt, Felix Rauner and Helmut Zelloth, eds. *The Architecture of Innovative Apprenticeship*, Springer, Heidelberg, New York and London. 2013. 344 pp. ISBN 978-94-007-5397-6.

publication commences with the INAP Commission Memorandum on Standards for Modern Apprenticeships.

Pathways from school to apprenticeship are illustrated with case studies from developed countries like England and Germany: Nielsen describes the spread of influence of the latter and particularly the context of social partnership and high status of skilled workers, as well as the barriers to implementation in transition countries like those in the former Yugoslavia; in contrast to the German social status of skilled workers, Deitmer et al. highlight the obstacle to TVET of Chinese parental preference for academic qualifications, and propose Sloane's model of VET school and company interaction, with effective student workplace integration.

Zelloth examines how perceptions of apprenticeship status and traditional values influence career choice - of particular relevance to developing and transitional countries; proposing integration into education reform of a new career guidance paradigm of "career management". "Apprentices' motivation is not a static factor". As Hauschildt and Heinemann demonstrate, it is not merely competence that the apprentice acquires, but also an occupational identity and individual motivation is enhanced through the experience of actual workplace learning and work. In Australia, Smith contrasts the status of traineeships and tentatively suggests that fostering occupational identity may not be ideal - traineeships may allow further development along diverse pathways. Utilisation of Brown's formulation of occupational identities at the levels of individual, organisation, and society enabled useful insights.

In the concluding section, Rauner and Wittig examine types of regulation, comparing developed European economies with a VET history, and propose modernisation of occupational profiles; Brockmann et al. identify issues of occupational recognition within the European Qualification system (EQF) contrasting the English and Continental models. The EQF has been characterised by Young as a means of creating a European labour market that may promote learner and worker mobility within Europe, through recognition of prior experiential learning towards occupational qualifications.

The Austrian outcome-based qualifications framework (NQF) is comparable to the South African experience; the latter commenced with an NQF and has subsequently evolved into an integrated framework incorporating an Occupational Qualifications Framework (OQF) reflecting occupationally related qualifications from the level 1 to the level 10 - equivalent to an academic Doctorate. Akoojee describes the current Accelerated Artisan Training Programme in South Africa, where skills

development is seen as a crucial response to resolve the twin challenges of poverty and unemployment.

Skills and human capital development are also fundamental to the European Agenda EU2020 to counter the post 2008 economic and financial crises, where apprenticeship is seen as a foundation for lifelong learning but Descy et al. note differential definitions and interpretations of 'knowledge, skills, and competences' between European Member States. Despite these technical obstacles, Grunwald and Becker report that the Mubarak-Kohl Initiative for Dual System (MKI-DS) in Egypt has demonstrated the potential for increased employability and an enhanced school-to-work transition.

This publication admirably demonstrates the technical and bureaucratic obstacles to advancing skills and resolving the current dilemmas of youth school to work transitions – and for those new to the field illustrates the political complexities of seemingly neutral vocational educational systems and framework classifications. This review has only touched on a few chapters, but the breadth of coverage historically and geographically, and the coverage of vocational education theory, career guidance, qualification frameworks, competence assessment, and school-to-work formats provides an essential guide to those entering adult vocational training, and should prove as invaluable to policy makers as to students. The editors have compiled a compelling vision that despite diverse national formulations, innovative apprenticeships have the potential to mitigate the current dramatic levels of international youth unemployment and a template for future research in transitional and developing economies.

***Are Bad Jobs Inevitable?
Trends, Determinants and Responses
to Job Quality in the Twenty-First Century,
edited by Chris Warhurst, Françoise Carré,
Patricia Findlay and Chris Tilly. A Review***

Richard Monypenny *

At an aspirational level job quality does matter, but can it be achieved and, if so, how? This edited volume of separately authored chapters, most of which were presented as papers at the 2010 International Labour Process Conference, makes a significant contribution to the bad jobs debate on some of the issues that can help answer these questions and on some of those that require a solution.

Whether jobs are good or bad does in different contexts matter to individual workers, to working communities, to employers and to governments, because good jobs can increase economic competitiveness, generate social cohesion and provide a sense of personal well-being. Good jobs can contribute to happy and rewarding lives, especially where employees can make choices about their work. It is true that bad jobs can create a sense of community (for example, where workers band together in adversity), but more often they restrict the choices employees can make about their work, although bad jobs are sometimes perceived as less bad than the available alternatives.

* Richard Monypenny is an Adjunct Associate Professor at James Cook University, Australia. The present review refers to Chris Warhurst, Françoise Carré, Patricia Findlay and Chris Tilly eds. *Are Bad Jobs Inevitable? Trends, Determinants and Responses to Job Quality in the Twenty-First Century* Palgrave Macmillan, Houndmills, UK, 2012. 262 pp. ISBN 978 0 230 33691 9.

The rationale of the volume is that job quality does matter because of its contributions to the economy, the society and to the individual. By focusing on bad jobs, it outlines the debates, developments, issues and trends of job quality while asking whether bad jobs are inevitable. Its fifteen chapters define and measure bad jobs, explain variations and changes in job quality, and identify workplace practices and broader non-workplace strategies for making bad jobs better. Its editors (Carre et al.) overview the topic with their “Job Quality: Scenarios, Analysis and Interventions”. There follow contributions on job quality in different nations and a region: Europe (Antón et al.); the US (Osterman); Australia (Pocock and Skinner); Canada (Thomas). Some authors focus on job quality in occupations, sectors or industries in selected countries: Swedish manufacturing (Huzzard); US retail (Lambert and Henley); Mexican call centres (Álvarez-Galván); hospital cleaning in England and Scotland (Munro). Contributions on the international and global dimensions of job quality are the comparative determinants of low wages (Carre and Tilly) and auto workers in the global economy (Rothstein). Other, but related, criteria adopted are: labour standards (Fine and Gordon; Theodore et al.); skills development (Keep and James); frontline (Dill et al.).

Irrespective of its substantive contribution to job quality and the labour process this volume serves an auxiliary function. It provides a good example of the exploration of a new field and for this reason I would strongly recommend it to research students. Indeed, it will serve as a useful companion for honours and postgraduate students in the wider and applied social sciences of Sociology, Labour Relations, Labour Economics, Organization Studies, and Human Resource Management. Substantively, it is useful reading on methodological issues in the study of job quality, on the influence of institutions and social norms in producing and perpetuating low-wage work, and on the incentives that shape employers’ business strategies.

A limitation to this volume, and to the series of which it is part, *The Critical Perspectives on Work and Employment*, available at <http://www.palgrave.com/products/series.aspx?s=CPWE> is that I could find no electronic access to any of its papers. Given that this review is for an electronic journal, I feel bound to comment on the electronic availability of the conference papers and the papers published in this book. To this end I have identified the following links: the book series of the annual International Labour Process Conference (ILPC) at <http://www.ilpc.org.uk/BookSeries.aspx>, the conference books published by Palgrave at <http://www.palgrave.com/products/series.aspx?s=CPWE>, further information on the series at <http://www.ilpc.org.uk/> and at

irena.grugulis@durham.ac.uk, and the special issue of the Journal of
Industrial Relations, 2011, 51(3) on job quality at
<http://jir.sagepub.com/content/53/1.toc> .

I strongly recommend *Are Bad Jobs Inevitable? Trends, Determinants and
Responses to Job Quality in the Twenty-First Century* to all those concerned with
the study, management and the experience of work.

The Committed Workforce: Evidence from the Field by Yannis Markovits. A Review

George Tsogas *

The Committed Workforce: Evidence from the Field examines the relationship between organizational commitment and job satisfaction within the Greek organizational and cultural context, by probing employee attitudes, both in private and public sector organizations. This book is original in three distinctive ways. First, it provides a rare view of the interplay between organizational commitment and job satisfaction, by uniquely examining the role of economic sector and type of employment. Second, it is focused on Greece; a rarity considering the scarcity of literature addressing employment issues in this country. Third, while field research was mostly undertaken during the “prosperity” years, the publication of the book coincides with the worst depression suffered by Greece in the post-war years, with still unfolding consequences. Thus, this book stands at the crossroads of unique historical and cultural contexts.

Written in a rich and concise way, the book – based on the author’s Ph.D. thesis – is divided into seven chapters. Following the typical structure of a doctoral dissertation, chapter one provides the research background, explaining the contribution to existing knowledge. The second, introductory, chapter presents an extensive literature review (including a discussion on how English-language research has investigated the Greek organizational and cultural idiosyncrasies), as well as analyses of the concepts under examination: job satisfaction, organizational commitment, regulatory focus, and organizational citizenship behaviour, as well as the

* George Tsogas is Associate Professor of Management in the Cyprus International Institute of Management (CIIM). The present review refers to Yannis Markovits, *The Committed Workforce: Evidence from the Field*, Cambridge Scholars Publishing, Newcastle upon Tyne, 2012. 217 pp. ISBN 978 1 4438 4084 2.

relations among them. Further, the book uses four studies, each examining the views of both public and private sector employees through statistical analyses of structured questionnaires. Each study is preceded by an in-depth discussion of its conceptual framework, methodology, and theoretical underpinnings. In chapter three, Study 1 examines how the economic sector in Greece moderates the relationship between organizational commitment and job satisfaction. Findings suggest that private sector employees in Greece experience job satisfaction “more conservatively than public sector employees as it only aligns with their initial expectations. The relationship between job satisfaction and organisational commitment for the private sector employees is more cognitive than affective,” whereas it is suggested that the opposite is the case for public sector employees (p 65). In chapter four, Study 2 investigates how commitment profiles relate to job satisfaction in both sectors. Findings “lend support to the contention that commitment needs to be considered as a whole, irrespective of the formulation of commitment being used, and not merely broken down into constituent parts, or, in other words, seeking to develop organizational identification or ‘affective commitment’ is of primarily importance” (p 88). Study 3, in the fifth chapter, introduces regulatory focus theory and the relationship of regulatory focus with organizational commitment. Specifically, regulatory foci characters are developed and their moderation is examined with respect to job satisfaction and organizational commitment in both sectors. Findings suggest that “employees who tend to behave by safeguarding their interests and their job positions and status, are the ones that significantly positively relate satisfaction to commitment” (p 121). Chapter six includes the concluding Study 4, where the mediating role of job satisfaction is examined with respect to the relationship between organizational commitment and organizational citizenship behaviours. Findings confirm the important role that job satisfaction plays on the power of the relationships between commitment and organizational citizenship behaviours. Finally, chapter seven provides some general conclusions derived from the survey, implications for theory, policy and HRM practices, the limitations of this work, and recommendations for further research. The book concludes with a references list, appendices the questionnaires used in field studies, and useful author and subject indexes.

The Committed Workforce: Evidence from the Field is an innovative research monograph – highly technical at points, especially on the statistical research parameters – aimed at a sophisticated audience. It will be essential reading for advanced researchers of work psychology and HRM

and for ambitious doctoral researchers who may wish to follow up on its suggestions for further research, or use it as a reference of a well-executed research project.

Nonetheless, we suggest that some caution should be exercised when contemplating the applicability of its findings. We advise that there is a high cultural and organisational specificity in the outcomes of this research, chiefly as far as the character of the public sector in Greece is concerned. At the outset the author hypothesises that “since employees in the private and public sector experience substantially different employment and organizational conditions, contracts and work environments, the relationship between organizational commitment and job satisfaction should differ substantially, resulting to the development and implementation of tailor-made management practices and policies for human resources.” But, these differences in the public sector of Greece, how they came about, and how they specifically may influence organizational commitment and job satisfaction, are issues that have not been debated in the book. Under different circumstances, recognising such specificities might be a topic for an interesting academic debate. Nowadays, in the years of austerity, the troika, and of severe hardship for millions of Greeks, such omission is indefensible.

What is missing from *The Committed Workforce* is a critical appraisal of the social, cultural, and political background that has coloured the formation of the public sector in Greece. It all comes down to two words: corruption and patronage. Without any exaggeration, public sector employment in Greece is the cancer that has pushed the country to its current deathbed. Based on a client system of political patronage, jobs in the public sector have been typically generously ‘awarded’ across the numerous quangos, state enterprises, and departments (with some employees, nonetheless, entering the system through exams). At the time of carrying out field research for this book, conditions of employment for public sector employees were still very generous, salaries typically much higher than in equivalent positions in the private sector, and for open-ended contracts, employment was guaranteed, regardless of performance (which is still not assessed, across the whole of public sector in Greece) and even regardless of malice. Civil servants, as the author, still have constitutionally-guaranteed life employment. Consequently, people attracted by public sector employment have (also) included the least skilled, those lacking any ambition and the poorly educated.

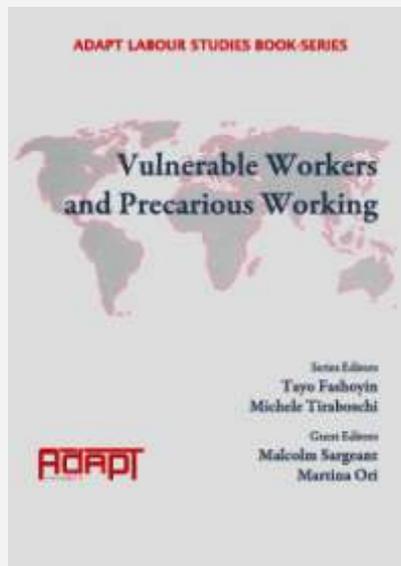
Even after more than three years of austerity, resulting in more than 25% (private sector) unemployment rates, and the catastrophic deterioration of every socio-economic index, public sector jobs are still the ‘sacred cow’ of

the deeply corrupt Greek political system. How do these cultural and political “peculiarities” of Greece account for job satisfaction and commitment of public vs. private sector employees? Nowhere in the book is there any discussion of these issues. Thus, a number of serious questions arise: in general, how valid are the research findings when the historical and cultural specificities, that enabled the employee attitudes which are being probed in the research project, are ignored; and how applicable in a European context – as the survey positions itself – are the derived theory and policy implications? We suggest that the geographical location of Greece is not sufficient for a theoretical and policy treatment along (west) European HRM outlines. Instead, the pervasive nature of corruption, as evidenced by public sector employment based on cronyism, ought to bring about comparisons with developing and neighbouring east-European countries (a taboo comparison for many in Greece). The research question should then have been modified to account for the influences of a multifaceted and overbearing system of corruption and patronage, on the parameters on this research and, through them, to overall job satisfaction and organizational commitment. Such approach would have allowed for a more pragmatic explanation of the findings, historically and culturally specific.

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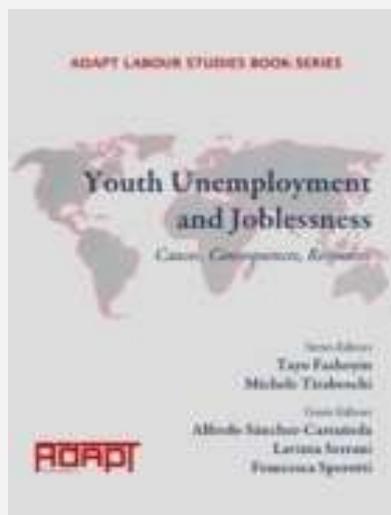
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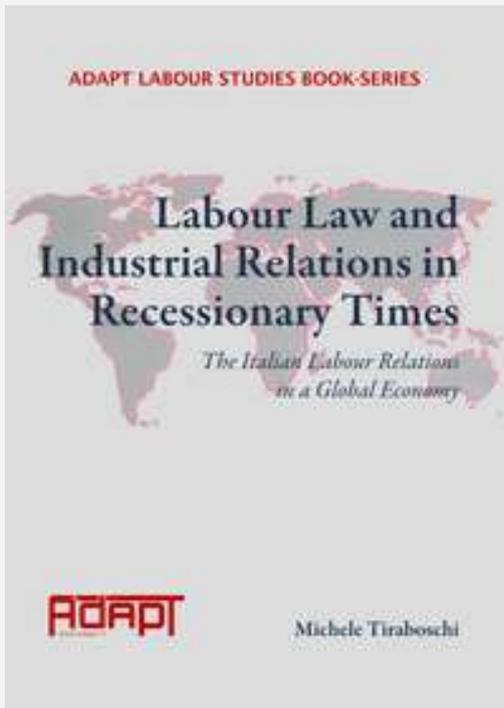


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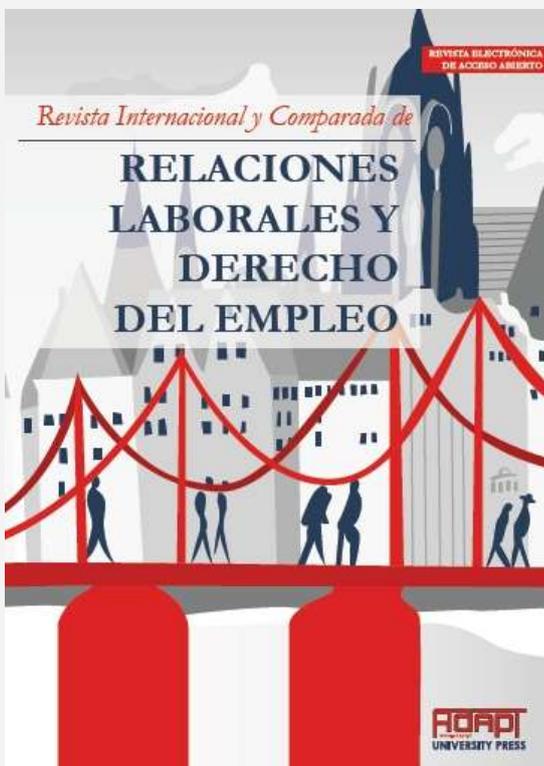
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