

The fundamental workers' rights: balancing of interests and protection techniques.

Abstract

The topic of fundamental workers' rights is a broad one that certainly has many implications both theoretical and practical.

The thesis seeks to ascertain the level of implementation and protection of some of the fundamental rights of workers who today being more seriously compromised in their balancing with other interests and rights protected by the legal system.

In this perspective, it has been highlighted that, on the one hand, fundamental rights are conditioned by both internal and European budgetary constraints that limit the services to protect them, and on the other hand, they are often sacrificed in the face of the needs of the company: both situations are then aggravated in periods of both economic and health crises such as the current ones.

In the first chapter, having defined the fundamental rights and identified their essential features, the sources in which they are explicitly recognized were examined.

The centrality of work in the Italian Constitution makes the fundamental rights of workers take on a special relevance and their implementation and protection is the instrument for the social emancipation of the individual and the Republic.

The protection of safety, freedom and human dignity are at the heart of this project: their definition, therefore, is necessary to identify the limits of a proper exercise of private economic activity and the powers of the employer.

Fundamental rights are also widely recognised at European level. The relationship between the different levels of Community and internal protection determines the concrete content of fundamental rights.

The positions of doctrine and jurisprudence on issues of double prejudice have changed over time and recently, after the sentence of the Constitutional Court no. 269 of 2017, they seem to have taken an opposite path to the one taken until then which sees the Italian Constitutional Court regain primacy in the interpretation of supranational law.

However, the relationships between the Constitutional Court and the Court of Justice have not found a definitive arrangement. The subsequent judgments of our Court of 2019 still open up new scenarios.

This is followed by an analysis of international sources and in particular of the ECHR and the case-law of the Edu Court on fundamental rights.

The chapter closes with the distinction between fundamental rights and fundamental principles in the European legal system and their different scope, since only the latter

having a direct effect. For rights, on the other hand, horizontal direct effect is provided only for those recognised by the CFREU.

The second chapter analyses some of the fundamental rights of workers on which the most topical issues have arisen.

Among these, religious freedom, in a country that used to be essentially monotheistic but today increasingly globalized and multiethnic, seems to assume a different importance.

The right to health is then the cornerstone of this second chapter. It is examined, both in its opposition to the right to work of the workers themselves, with particular attention to the Ilva case, and in its configuration as a limit to employers' powers in the context of the principles of prevention and precaution to ensure the performance of the service in a healthy environment.

In this context, the extent of the worker's elective risk and its impact on the employer's liability and the phenomenon of mobbing are examined.

A separate chapter, although the topic is part of the right to health, is dedicated to the problems arising in the workplace from the spread of Covid 19, with attention to the profiles of the vaccination obligation and the blocking of dismissals and possible doubts on their constitutionality.

The work ends with the examination of the instruments identified by the jurisprudence to protect fundamental rights taken from common civil law that remain the last bastion in the absence of specific protections..

Given the distinction between maintenance and demolition remedies, particular attention has been paid to the limits of compensation in specific form versus compensation for equivalent; to nullity, in its comparison with consumer protection nullity and in its connection with unlawful flexible contracts; to the abuse of law, manifested in the unlawful use of fixed-term contracts; to fraud in the law, with particular attention to fixed-term contracts in the maritime sector.

Lastly, brief considerations were made on the canons of fairness and good faith as criteria that must base the legitimate exercise of employers' powers; on the exception of non-fulfillment as a response of the worker to the unjustified claims of the employer and on the effects of the Fornero Reform on the regulation of the prescription of salary credits during the validity of the relationship only for workers covered by the guarantee of job stability.