Labour Law Beyond National Borders: Major Debates in 2018-2019-2020*

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Abstract: *The article presents an overview on the main topics analyzed in the journals belonging to the International Association of Labour Law Journals (IALLJ) throughout 2018, 2019 and 2020. As regards the subjects selected for consideration, the authors decided to focus on five topic groups that reflect the major interests shown by IALLJ scholars in the large number of articles under review. This overview is thus divided into five sections: labour law's boundaries; responsibilities along global supply chains; challenges of trade unions in guaranteeing a minimum wage and working conditions; prohibition of discrimination and decent working conditions for women.*

Keywords: *labour law, labour law's boundaries, global supply chains, trade unions, minimum wage, working conditions, discriminations*

Delovno pravo preko nacionalnih meja: glavne razprave v letih 2018-2019-2020

Povzetek: *Članek predstavlja pregled glavnih tem, analiziranih v revijah Mednarodnega združenja revij delovnega prava (IALLJ) v letih 2018, 2019 in 2020. Avtorici sta se glede vsebin, izbranih za obravnavo, odločili, da se osredotočita na pet tematskih skupin, ki odražajo glavne interese*

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znanstvenikov IALLJ v velikem številu pregledanih člankov. Ta pregled je tako razdeljen na pet razdelkov: meje delovnega prava; odgovornosti vzdolž globalnih dobavnih verig; izzivi sindikatov pri zagotavljanju minimalne plače in delovnih pogojev; prepoved diskriminacije in dostojne delovne pogoje za ženske.

***Ključne besede**: delovno pravo, meje delovnega prava, globalne dobavne verige, sindikati, minimalna plača, delovni pogoji, diskriminacija*

1. INTRODUCTION. BEYOND DEREGULATION. REBUILDING THE PILLARS OF LABOUR LAW

The present overview aims for a selection of the major topics appeared in the last three years' issues (2018-2020) of the IALLJ's members journals. The International Association of Labour Law Journals is an increasingly expanding international consortium that now consists of thirty-one journals from all over the world[1]. Since 2012 a group of editors have periodically collaborated to provide (usually annual) overviews of the most relevant scientific trends in the publication appeared on the IALLJ's member journals[2].

[1] More information on this is available on the website: https://www.labourlawjournals.com/.

[2] The authors were assisted by a team of colleagues, who guided their work and helped them listing and sorting all articles into categories. The members of this team were Mariapaola Aimo,

Since the present overview will consider three years, the choice of the articles addressed is particularly selective and leaves inevitably more topics aside than usual. All in all, the articles reviewed – more than 700 per year – concern a huge variety of subjects, ranging from the most typically theoretical labour law issues to the recent challenges or country-specific ones.

Once classified into categories, the choice of the articles followed a twofold logic. On the one hand, topics that appeared more frequently have been preferred. On the other hand, the selection has been narrowed to the articles that could help drawing a piercing and coherent picture of the doctrinal trends as well as of the challenges currently faced by the labour law legal frameworks.

Another clarification is required before introducing the topics in more detail. The matters related to the Covid-19 pandemic have been cast aside, because most of the literature on this appeared in 2021. Also, all clearly linked topics – for instance remote work, health and safety, unemployment – have been left out from the present article.

If compared to the previous years, the labour law scholarship between 2018 and 2020 seems less concerned than before with the controversial couple composed by reforming labour law, on the one hand, and overcoming the economic crisis, on the other. Differently, a huge amount of material focuses on the identity and tools that characterize labour law institutions in themselves (also in a philosophical perspective: Paz-Fuchs 2019).

Ultimately, the main concern of the literature seems the ability of the national and international labour law frameworks to face several structural challenges to the world of work, produced by the increasing digitalization and globalization of the economy. The question is to what extent they can guarantee decent, fair, and non-discriminatory working conditions (Méda 2019).

It is worth noticing that this statement does not imply that the scientific debate ceased analyzing the consequences of the last economic crisis in terms of statutory reforms and collective bargaining dynamics. To this respect, quite a few authors highlight the negative outcomes of the last neo-liberal turn in the regulation of labour relations. They mostly observe that, beyond preserving

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Gian Guido Balandi, Milena Bogoni, Silvia Borelli, Matteo Borzaga, Nunzia Castelli, Isabelle Daugareilh, Sebastián de Soto Rioja, Manuel Antonio García-Muñoz Alhambra, Eva Maria Hohnerlein, Daniela Izzi, Eri Kasagi, Barbara Kresal.

economic stability, austerity policies caused the degradation of individual and collective guarantees of labor law (Baylos Grau 2019).

However, it clearly appears that, despite the great impact of the so-called austerity policies and their persistence over time, the concern of the doctrinal voices that are reflected in the journals that integrate the IALLJ has partially changed its gravity center, which shifted from the contingency of the austerity measures to more structural challenges in terms of labour law's goals, scope of application, and effectiveness.

The present overview will focus in the first place on the notion of worker in the digitalized era (par. 2) and on the issues related to the de-territorialization of the enterprise (par. 3). In both cases, the problem addressed by most authors is the ability of the business organization to bypass the respect of labour law standards.

Moreover, the present contribution also aims at testifying the ongoing debate on the role destined to be played, in order to address the current challenges, both by labour law collective institutions – the oldest core of the working conditions' regulation – (par. 4) as well as by newer fields of the legal framework, such as anti-discrimination law (par. 5).

2. LABOUR LAW'S BOUNDARIES

2.1. The qualification of the employment relationship facing the digitalization

Whereas the last overview (Aimon, Buschmann, Izzi 2017) highlighted that in 2017 many contributions on dependent employment focused on precariousness and atypical work, in the following three years a significant share of essays on this subject shifted to challenges of more general nature.

Most authors retain that this sort of move back, towards fundamental questions, is triggered by the current success of an entrepreneurial model which dismantles the Fordist foundations of labour law (Cherry 2020; even though this simplification can be contested or at least problematized: Deakin, Markou 2018). With statements of this kind – on the crisis of the traditional paradigm of the current labour law model – Cherry mainly intends to highlight the «limited commitment and extreme flexibility» (Cherry 2020, p. 4) required by employers in the contest

of the so-called platform economy. The latter consists of a variety of online and anonymous matches between workers and tasks, the economic model of which is based on a two-sided pattern: on-demand business organization and digitalized workforce management. Combined, they make the classical «steady 40-hour work week, hierarchical structure, advancement and benefits» no more a main feature of the working relationship (Cherry 2020, p. 4)[3].

It has been argued that these changes not only interplay with employers' request of work flexibility but, also, have a relevant impact on labour law's basic features (Bellace 2018; Menegatti 2020; Dosi, Virgillito 2019).[4] One above all, the most common but also radical question addressed in the literature is whether the dichotomy between dependent and self-employment as well as their requirements are radically outmoded (Yun 2018)[5] or should be merely adjusted to the new forms of employment (Delfino 2018), through a better regulation of intermediary categories[6].

Lately the concept of dependent employment has been re-analyzed with a view to renew the theory behind the labour law's scope of application, its collective dimension, and the thereby attached core standards (Doherty, Franca 2020; De Stefano 2020). Looking at the European countries (the articles reviewed

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[3] The author focuses broadly on the relationship between technology and labour, especially when it comes to the impact of automation and platform economy on working activities. The article highlights that the concerns about new waves of technology-driven unemployment date back to the sixties as well as the ILO's early work on automation. Even though most policies suggested at the time but never adopted in practice seem particularly adequate to the currently emerging issues of work and technology, they need a renewal. In fact, the ILO did not predict neither trade unions' decline nor the international crowdwork platforms and their global workforce; both of them raise new concerns and require a new theorisation to be addressed.

[4] Despite acknowledging that the fourth industrial revolution (which involves the rise of platforms, AI and machine learning) challenges the application of the legal framework, Deakin and Markou (2018) point out that the current model actually originates from the early stage of the industrialization, since then the law would have been both responding and creating the premises for its further development at once.

[5] According to this author, labour law should extend its boundaries outside the realm of standard-employment «understood as a full-time, indefinite, subordinate and bilateral employment relationship» (p. 435). Workers and employers should be identified looking at the entire value chain, and labour rights, especially collective ones, should be extended beyond the boundaries of standard employment.

[6] To this respect, the paper of Freeland and Dhorajiwala (2019) collects the answers to the questionnaire circulated among academics to the purpose of the ETUC publication 'New trade union strategies for new forms of Employment'. A particular interest is showed towards intermediate forms of employment (pp. 285 ff.) while describing work relationships in English law.

cover at least Italy, France, Spain, Belgium, Austria and the UK), the national and comparative analysis show a steady tendency to pierce the dichotomy between self-employment and dependent employment to ensure protection to all forms of work: both national courts' efforts to broaden the notion of dependent work and the legislative creation of intermediate categories[7] aim at providing all forms of work with some labour law protections (Perulli 2020; Brameshuber 2019; Wouters 2019; Courcol-Bouchard 2018; Vincente 2018). The focus on the EU legal system and on the case-law of the ECJ confirms the trend towards an extended notion of worker when it comes to the interpretation of the EU directives, even though the EU legal framework is lacking an overall definition to this respect (Countouris 2018).[8]

The articles examined display some agreement upon the need, on the one hand, to enlarge traditional labour laws' protections to all forms of employment, irrespective of their qualification in terms of self-employment (Cabeza Pereiro 20119), and, on the other, to soften the requirements of subordinate employment (Cruz Villalòn 2018). According to Cruz Villalòn, qualifying different forms of employment both implies rethinking the main features of subordination in a more flexible manner and reshaping the ones that allow the application of legal protections to economically dependent self-employed worker.

Even though the issue can be generalized to the whole world of work, the problem is particularly acute, as already mentioned, in case the working environment is hit by the process of digitalization. When gig- or crowd-workers employed by[9]

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[7] Which can vary from the concept of employee-like workers or almost-subordinate employment to the focus on self-employees' economic dependency.

[8] Once addressed the incomplete EU legal framework to this respect, Countouris (2018) conceptualizes a broader notion of worker, taking the fundamental rights perspective into account, with reference to the Social Charter, the European Convention on Human Rights and the International Labour Organization. The article suggests the possibility to establish a broad and autonomous concept of worker within the EU labour law. Several authors focused on the *Matzak* decision on the notion of worker under the Working Time Directive and the position of volunteers to this respect, C-518/15: Sagan 2020; García-Muñoz Alhambra, Hiessl 2019; Risak 2019.

[9] Generally, platforms have been framing similar sentences using a different grammar, according to which workers would be employed *through* and not *by* them. This way of picturing the platform economy is mostly contested both in the literature and by the case-law of national courts all over Europe. On this, with respect to the Italian and French system: Bini 2018. On the unbalance of power between platforms, on the one hand, and workers or consumers, on the other hand: Smorto 2018. The problem qualifying workers and platforms is also addressed by McGaughey (2019), where the author theorises to what extent platforms have a duty not to

digital platforms are concerned, working arrangements range from zero-hours contracts to different "shades of self-employment" (real, dependent, or bogus own-account work). This variety casts serious doubt on the adequacy of the traditional labour law institutions to capture the reality of employment relationships (Gorelli Hernández 2019; Esteve Segarra 2018[10]) and, also, leads some authors to analyse whether at least some ancillary protections might be applied to these workers, regardless of the fact that the formal qualification puts them outside the boundaries of dependent employment.[11]

An impressive number of articles concerned with the protections for platform workers highlights that their vulnerability may not ever be solved with the mere instrument of the statutory legislation, first and foremost because – assuming the availability of labour law protections for them – workers are typically too precarious to access and vindicate their legal rights. Thus, several authors analyse whether the collective dimension can be a suitable tool to foster their employment conditions. Most articles on this across Europe (in particular, with respect to France, Spain, Italy, the UK, Sweden and the so-called "Nordic" countries) focus on trade unions' strategies as well as on the legal availability of the freedom of association and the right to strike for non-standard dependent workers, looking both at the national and international legal framework, with an eye to the human right perspective and to the boundaries between collective rights and EU competition law (De Stefano 2020; Dockès 2019; Doherty, Franca 2020; Westregård 2020; Engblom, Lundberg 2019; Gramano, Gaudio 2019; Schlachter 2019; Vincente 2019; Smorto 2018; Recchia 2018).

2.2. Invisible workers in developing countries

The same debate on labour law's scope of application, means and purposes that concerns platform and other precarious workers in the so-called Global North is also the one that concerns the workers employed in the so-called informal

misrepresent the reality of the working relationship. From a different perspective, with reference to the possibility to consider platform work in the light of temporary agency work: Rosin 2020.

[10] The author provides an account of the zero-hours contracts' use and regulation in the UK and sheds also some light on the issues faced by their qualification by the means of the case-law analysis.

[11] Some essays focus on specific fields of the legal framework, such as equality law (Blackham 2018).

economy of the so-called Global South. The latest issues of the IALLJ's members journals show a spreading interest on the problem of informal work, understood as «work that is not regulated» (Marshall 2018, p. 282), mostly referring to developing countries (Villamsl Prieto 2019). The purpose of these studies is to shed some light on the lacking regulatory framework for those who are formally placed outside the horizon of labour law and thus *invisible* to any legal protection.

Broadly speaking, most literature on informal work in developing countries tends to examine concrete examples of formalization instead of striving to achieve general statements about the nature of the employment relationships (as it is the case, on the contrary, for the literature about workers of the digitalized economy). The need to focus on each contest-inherent complexity is indeed unsurprising, given the huge diversity among countries, sectors, political and legal frameworks that are often roughly put together under the umbrella of the expression 'Global South'. For instance, Osiki (2018) addresses the problem of street vendors in Nigeria[12]; Bamu (2018) focuses on organizing migrant domestic workers in the Zimbabwe-South Africa Global Care Chain[13]; Lorente Campos and Guamán Hernández (2018) examined the labour formalisation in Ecuador in the last decade.[14]

Offering some insights for a unitary theory on informal work, Marshall (2018) points out that the problem of the absence or inadequate coverage of labour law protections is a global one: according to the ILO's estimates, it concerns over half of the working population all over the world. If one includes not only the so-called informal economy but also the use of non-standard contracts and the poor enforcement of the law in case precarious workers are concerned, the withdraw of labour law protections affects «both richer, industrialized nations as well as poorer ones» (Marshall 2018, p. 281). However, the same author also points out that in the EU, Central and South-Eastern Europe and the Commonwealth of Independent States «around eight in ten workers are employees» (Marshall 2018, p. 282), whereas in South Asia and Sub-Saharan Africa, three workers out of four are formally own-account workers or figure as merely contributing to

[12] The study stresses that not only they are not formally recognized as workers but also criminalized.

[13] The article considers the difficulty to implement the ILO Conventions on decent work (No. 189) and the following ILO programme on decent work for migrant domestic workers, for the weakness of trade unions in this area.

[14] The authors focus on the issue of providing self-employed workers and unpaid home workers with social security rights.

the activities of the household. The author then presents some national examples focusing on head load workers in India, immigrant industrial clothing outworkers in Australia, garment workers in Cambodia, and Bulgarian workers performing several homebased activities. This article exemplifies the trend in the IALLJ's publications on informal work: instead of suggesting how an ideal labour law framework should be fashioned, the analysis highlights that the success of the regulating experiments occurred in some developing countries – in other words, the attempts to make workers *visible* to the legal system – depends on complex local, national, and international political dynamics which deserve close examination.

3. INVISIBLE RESPONSIBILITIES ALONG GLOBAL SUPPLY CHAINS?

3.1. The major challenges to labour law raised by global businesses

Several articles published by the IALLJ's member journals show to what extent the fundamental features of labour law are challenged by the increasing globalization of the economy.

In particular, many studies focus on global supply chains and multinational corporations' ability to bypass the application of labour standards. These analyses highlight the constant violations of the ILO core labour standards (Borzaga, Mazzetti 2019; Weiss 2018) concerning workers who are not directly employed by multinational corporations – nor employed within the countries where these corporations are registered – but still work to some extent the interest of the multinational's holding. Notoriously these workers represent the workforce on the 'cheap' labour of which these international businesses can count[15] without

[15] Kizu, Kühn, Viegelahn (2019) focus on the global-supply-chain-related jobs. Their work points out that the way in which the production is organized in the global economy is constantly more and more fragmentated into activities that are performed along global supply chain, due to reduced transport and information costs. The impact on the labour market is huge and implies both direct and indirect commercial relationships that link labour markets of different countries. In this scenario, the relevance of the Chinese economy as a demand generator is increasing. Kühn, Viegelahn (2019) complete the picture by analysing the impact of barriers to trades of goods and services that impact on the labour market of other countries or sectors, showing how deeply they are interconnected through global supply chains. Anner (2019) highlights how predatory purchasing practices can severely worsen working conditions in developing countries, taking the Indian garment export industry into account. Other essays focus on

having any responsibility thereby attached. In fact, even though the production of goods and services in the *Export Processing Zones* (Brino, Gragnoli 2018, p. 215) is necessary to the economic purposes of multinational corporations[16], working conditions around the globe and corporations' responsibility appear as drifted apart. The duties on the employers' side[17] are indeed hidden through complex chains of sub-contracting across national borders (Ferrarese 2018).

Finding a suitable solution to this problem might reveal that the contractual backbone of the labour law traditional model will always have a hard time dealing with the globalised economy. As Langille (2018) points out, despite the fact that the expression *global supply chain* «has entered common discourse (…) we have very little understanding of the pervasive complexity of the actual processes and mechanisms involved» (p. 212). According to the author, in most cases labour lawyers witness the violation of workers' rights but have a barely sketchy idea

national or regional cases. For instance, some authors refer to the 'localized global economy' of Morocco (Trinidad Requena, Soriano Miras, Barros Rodríguez 2018), studying the power exerted my multinational enterprises and their impact on the worsening working conditions. In this case the adoption of the 2004 Labour Code did not lead to a generalized amelioration of working conditions in the country (in a political perspective, a general enforcement of these rights would have resulted in a loss of competitiveness of the country), but rather to a jeopardization of them depending on different multinationals' policies, which might have even reinforced their relevance as social actors in the country. Another study concerns the Southern Cone, addressing the relationship between supply chains and their supposed effects in terms of economic or economic and social upgrading of working and living conditions in developing countries, finding that this is generally the case when lead firms are part of the chain but not for suppliers of inputs and intermediary goods based in developing countries (Reinecke, Posthuma 2019).

16 With reference to the Rana Plaza tragedy (see further in the text of this very paragraph), it has been observed that even though «the factories in the Rana Plaza complex were manufacturing clothes for many western corporations» (Salahuddin 2018, p. 52) and thus economically important to the success of multinational corporations, the workers employed there were with no doubt formally engaged solely by local employees, under the Bangladesh legislation. Given the lacking enforcement of labour protection in developing countries, chains of sub-contracting around the globe clearly obstacle the promotion of decent working conditions as a matter of fact (Borzaga, Mazzetti 2019).

17 The reference here is to the internationally recognized ILO core labour standards. The spreading mention to them by social clauses included within free trade agreements (for instance: NAFRA, UMSCA, CETA) is seen by Pantano and Salomone (2019) as the necessary route towards a better compromise between social justice and globalisation (even though they do not consider globalisation as the primary cause of social injustice, referring to the work of Elhanan Helpman). According to the authors, this would be an alternative to protectionist approaches (the reference is to the moderate protectionism suggested of Dani Rodrik) based on the idea that this compromise is in essence not possible.

of how these processes can be legally tackled. National labour law systems are indeed used to link the rights and duties of the parties to the contract and thus can be totally bypassed by global businesses, for the ability of the latter to pulverise their traces around the globe. The author moves from the unfortunately famous example of the Rana Plaza tragedy, occurred in Bangladesh – on the 24th of April 2013 the collapse of several garment factories killed at least 1,132 workers and injured more than 2,500 – in order to display the difficulty of identifying 'who is to blame' in such cases (see also: Salahuddin 2018; on the following Bangladesh Accord on Fire and Building Safety: Croucher, Houssart, Miles, James 2019)[18]. The thesis suggested is that is necessary abandoning the usually contractual labour law perspective; a non-contractual but rather functional manner to conceptualize multinational corporations' liability would be more suited to solve the problems at stake.[19]

As Lyon-Caen (2018) observes, the inadequacy of labour law institutions occurs for at least two reasons, clearly outlined by the publications on the IALLJ's member journals.

First, as already said, the difficult reconstruction multinational corporations' liability for violations of workers' rights along the global supply chains, inasmuch workers are employed by sub-contractors of transnational corporations. To this

[18] The dynamics of the Rana Plaza accident are indeed clear enough: the building was so unsafe that thousands of workers refused to enter but were forced to do so through beatings and threatening (Salahuddin 2018-2019). Rather, it can be agreed that the comprehension of global supply chains' contractual and economic connections is often unclear, both with reference to specific chains and in theoretical terms. To this latter respect, aware of the lacking taxonomy to describe similar concepts (global production networks, global value chains and global supply chains) Langille (2018, p. 214) wisely uses the ILO definition, according to which «the term "global supply chains" refers to the cross-border organization of the activities required to produce goods or services and bring them to consumers through inputs and various phases of development, production and delivery. This definition includes foreign direct investment (FDI) by multinational enterprises (MNEs) in wholly owned subsidiaries or in joint ventures in which the MNE has direct responsibility for the employment relationship. It also includes the increasingly predominant model of international sourcing where the engagement of lead firms is defined by the terms and conditions of contractual or sometimes tacit arrangements with their suppliers and subcontracted firms for specific goods, inputs and services» (ILO, Report IV, *Decent work in global supply chains*, 2016).

[19] On damages asked by the victims before national courts for severe violation of their fundamental rights as workers (respectively, on corporations' liability for workers health and on the duty of France to respect the prohibition of forced labour): Jault-Seseke 2018; Lavaud Legendre, Martin 2019. On the possibility to bring a claim against multinational corporations before national High Courts: Nivard 2019.

respect, other than the literature focused on the limits of the legal framework, it is worth considering publications that aim at reconstructing the economy that lies underneath the problem as well. Several articles reviewed aim at understanding concretely how the economic pressures are passed on workers employed around the globe (Trinidad, Miras, Rodrìguez 2018; Reinecke, Posthuma 2019).

Second, one has to consider the territorial nature of the law and the global dimension of these corporations (Brino 2019; Perulli 2019; Weiss 2018; Mattei, Salomone 2018). On the one hand, State' limited power to their territory generally impedes to bring actions against corporations for employment relationships placed outside the territory of the State[20]. On the other, States' sovereignty cannot be easily overcome by other States to pretend the enforcement of labour rights.[21] It is not by chance that States' responsibility for the respect of internationally recognized human rights is the first pillar of the United Nations Guiding Principles on Business and Human Rights (Weiss 2018, p. 698; Gragnoli, Brino 2018, p. 216).

This limitation might be overtaken in case international instruments are used to this purpose, such as the ILO Declaration on Fundamental Principles and Rights at Work of 1998, which requires to all ILO Member States to abide by the core labour standards thereby internationally recognized (Pantano, Salomone 2019). Despite being a necessary route, the ILO attempts to promote decent working conditions around the globe[22] face several difficulties in terms of enforcement (Minet, Guamàn Hernández 2020; Weiss 2018).[23]

[20] Which raises obviously difficult questions about law that can be applied to the case, for the discrepancy between the country where multinational corporations are based and the ones where workers' rights violations take place (Brino 2019).

[21] In the sense that States might prefer not enforcing international labour law standards in order to be competitive and attract foreign investors, as already pointed out with reference to the study on working conditions in Morocco (Trinidad Requena, Soriano Miras, Barros Rodríguez 2018).

[22] Since the Rana Plaza tragedy has been mentioned above, is worth also mentioning that afterwards, on 15 May 2013 global brands, trade unions and the ILO signed the Accord on Fire and Building Safety in Bangladesh to build a safe ready-made garment (RMG) industry in the country. The agreement addressed only this specific sector and country with respect to workers' health and aimed at ensuring independent inspections and corrective plans. More than 200 companies adhered to the agreement, which expired in 2018 (Weiss 2018).

[23] More generally, one article focuses on the features and difficulties of the ILO monitoring systems (Borelli, Cappuccio 2019).

3.2. Legal tools improving the respect of core labour standards along the supply value chains

As legal instruments are concerned, the examined literature often focuses on the framework elaborated by international bodies. Above all, the already mentioned ILO Declarations on decent work or on social justice and fair globalization (respectively, of 1998 and 2008, the latter revised in 2017) and the United Nations Guiding Principles on Business and Human Rights, endorsed unanimously in 2011 by the United Nations Human Rights Council (among others, Perulli 2019; Brino 2019; Perulli 2018; Weiss 2018).

Confirming the relevance of the ILO attempts[24] to challenge a merely economic view of labour relations in the neo-liberal era (Perulli 2019), several articles point out the increasing relevance of social clauses referring to the ILO core labour standards within Free Trade Agreements (Pantano, Salomone 2019 mention NAFTA, UMSCA and CETA; on the latter, see also Rivera Sánchez 2018; on the one between US and Peru: Rodriguez-Florez 2020) as well as the inclusion of these standards in Transnational Company Agreements or Global Framework Agreements (Perulli 2019 describes the increasing relevance of ILO core labour standards within these instruments and notices the lack of enforcement measures; Kaltenborn M., Neset C., Norpoth J. 2020 examine the case of the GFA of the global fashion brand H&M in Cambodia).

Beyond these agreements – which are bilateral forms of regulation but have no binding force[25] – a clearer example of self-regulation is represented by multinational corporations' codes of conduct imposing the respect of decent working conditions all along the value chain. The main problem outlined by the literature is that, once settled a better image of the business in ethical terms, their implementation seems quite disappointing. Even in case the latter were effective, these codes would not apply to informal workers[26] employed along the supply chain (Scarponi 2018).

With reference to the Guiding Principles, some of the literature reviewed addresses the second pillar too, on 'corporate responsibility to respect' – in

[24] On the difficulties and challenges faced by this institution: Supiot 2020; Borelli, Cappuccio 2019; Weiss 2018.

[25] They must not be confused with collective agreements. About the challenge of organizing workers collectively in a global economy, Grappi 2020, who considers Amazon as case-study.

[26] About informal workers and supply chains see also Von Broembsen 2018.

other terms, acting with due diligence. One author (Brino 2018) deals in depth with the meaning of due diligence, pointing out its limits in case it is left to privates' implementation and suggesting the necessary intervention of national governments and international institutions. Another interesting perspective (Kun 2020) contributes to the general theory of law, reconstructing due diligence as 'open norm'. The thesis is that the 'essence' of open norms elaborated by soft-transnational legislation depend on the effective overall impact, regardless of their legal form.

The literature overviewed also focuses on the hard law instruments provided to tackle the violations of workers' rights along the global supply chain. The main reference is made to the French law no. 399/2017 on the duty of supervision of the parent holding and client companies. This law aimes at curtailing the absence of multinational holdings' responsibility in case workers fundamental rights and freedoms are infringed as a result of their business organization (Lyon-Caen 2018). The core feature of the law is the holding's duty to provide a plan in order to foresee all risks to the violation of workers' rights resulting from their business. The law also imposes a duty of supervision to sub-contractors in order to ensure some effectiveness.

Other articles published by the IALLJ's member journals about working conditions along the global value chains focus on a variety of contests in which their violation is particularly severe, such as the extremely exploitative working conditions in the Bangladeshi garment industry (for instance, on the need to regulate the freedom of association in Bangladesh: Rahim, Islam 2020; on the Minimum Wage policy drafted by the Bangladesh Labor Act, 2006 and in comparison with other countries: Robayet Syed 2020) or the problem of migrant workers in the global value chains (on the Zimbabwe-South Africa global care chain[27]: Bamu 2018).[28]

[27] On the care chain in Canada: Routh 2019.

[28] More generally on the problem of regulating working conditions for a global migrant workforce: Fudge, Tham 2019; Bada, Gleeson 2019; Ekman, Engblom 2019.

4. THE CHALLENGE OF TRADE UNIONS IN GUARANTEEING A MINIMUM WAGE AND WORKING CONDITIONS

The bilaterality of labor relations implies a constant process of consultations and exchange of proposals and, in this sense, social dialogue plays a fundamental role. Collective subjects represent the collective interests of workers and employers and communication between them can adopt many forms of expression (Engler 2020). In this vein, the authors of this overview have considered it necessary to include in the theme of this analysis the prominent role of trade unions in the space of regulation of working conditions and the achievement of collective bargaining (Aimo, Buschman, Izzi 2019). The articles reviewed have focused on the contemplation of collective bargaining as a source for the delimitation of the interprofessional minimum wage (Zwinger 2018). In this sense, the authors reviewed have tried to highlight the relevance of the different mechanisms for determining the minimum wage, making special reference to collective agreements as an instrument for setting minimum wage standards. The authors show in their studies the direct connection between precariousness (Pascucci 2019) and the need for a "fair" salary. The implications of collective agreements in determining working conditions are evident in the different studies analyzed (Kolbe 2020).

Another issue that has received special attention has been the right to strike and its connection with freedom of association (Novitz 2020). The right to strike is approached by the various journals as an instrument to conduct the collective conflict (Palomeque López 2018), with several aspects being addressed by the authors.

4.1. Determination of the minimum wage and collective bargaining

One of the most controversial issues is undoubtedly represented by the determination of a minimum wage and its importance for economic and social development in an egalitarian society. We must not lose sight of the fact that the years marked by the economic and financial crisis have imposed a rule of budgetary balance and reduction of public spending implemented by many Member States of the European Union, an aspect that has paralyzed the rise in minimum wages (Bellomo 2018). From Spain, Baylos Grau appreciates, in this sense, that the principle of budgetary stability weakens political and social

pluralism and forgets the political nature of citizen rights contemplated from the guiding principles of social and economic policy, promoting a legal configuration of the same arbitrary and reductive (Baylos Grau 2018). The centrality of this issue for the social partners derives from the need to adopt annualy a minimum wage, a wage that responds to the social changes of each moment. Social dialogue constitutes one of the main channels for the regulation of the minimum wage. However, it is not always an easy task to harmonize the different positions of the social partners.

Authors such as Bobovnik, point out the position of economists who have argued since time immemorial that raising the minimum wage has a negative impact on the employment rate and on the creation of new jobs, a trend that has impeded progress towards a wage dignified and equitable (Bobovnik 2019). To the above, it must be added that the period of economic crisis has had a negative influence on the unionization rate, an aspect that translates into a weakening of the power of collective bargaining, leading to a decrease in the coverage of collective bargaining in many Member States of the European Union.

In connection with the above, the case of Greece shows that, under the auspices of austerity, its legal system has undergone negative transformations in collective bargaining with the corresponding weakening of the protection of the labor market. In this vein, sectoral collective bargaining has been severely affected and Greek unions suffered a significant setback in the face of labor reforms imposed by new forms of governance (Kennedy 2018). In Italy, the economic and financial crisis has led to a more centralized collective bargaining carried out by the most representative unions in the country. Notwithstanding the foregoing, the current panorama is evolving in the Italian legal system towards a more decentralized negotiation as a consequence of the current internalization (Magnani 2018). Another interesting case is the Spanish one, where the labor reform has given a prominent role to company collective agreements (Baylos Grau 2018).

We find a reinforced unanimity between the different doctrinal voices on Labor Law when considering that collective bargaining is a fundamental pillar to guarantee fair working conditions and, among them, the delimitation of wages. It should be noted that within the European Union is considered the introduction of a legal minimum wage and the adoption of minimum labor standards through collective bargaining (Zwinger 2018). It should be noted, in this sense, as an example, that the effectiveness of the minimum labor fees in Austria has been subject to the adoption of a "strategic" model adopted by the Ombudsman (Charlesworth,

Howe 2018). Furthermore, in Germany there is a legal minimum wage, while in Scandinavian countries collective bargaining takes on a predominant role in this matter (Zwinger 2018).

In general, collective bargaining is exercised by unions and employers' associations that hold the status of "most representative", a particularity that allows them to operate within the legal framework, being able to negotiate wages and the organization of work in each sector. The current world productive organization invites us to reflect on the role of decentralized negotiation with regard to wage setting, as it could provide wage growth and increased productivity. There are many countries that do not have a legal minimum wage, proposing instead the determination of the proportionality of wages to the quality and quantity of work (D´Amuri, Nizzi 2018).

4.1.1. Minimum wage and dignity

A fundamental axis in the study of the minimum wage is its intense connection with human dignity. Human dignity has often been analyzed in conjunction with other prominent fundamental rights. Other aspects of dignity have been contemplated and in what interests us here, we will focus the following lines on what has been a constant demand from the ILO: wage dignity. Some doctrinal currents have not hesitated to emphasize the direct relationship between salary aspects and human dignity, proposing the study of salary sufficiency in light of human dignity (Choko, Martín 2018). Some authors raise the relevance displayed by the dignity of work and the dignity of the worker observed from the legal and economic system. Attention is focused on the declarations of the ILO and the Charter of Fundamental Rights to determine an effective and concrete recognition of dignity at work. On the contrary, reality reveals the existence of numerous jobs where individual dignity is not recognized, and the salary level does not ensure a free and dignified existence (De Simone 2019).

Most of the Constitutions of the States Parties of the European Union have been concerned with enshrining the right to remuneration that allows "satisfying the needs" of working people. The references to the minimum wage established by the public power do not reflect the true significance of the mandate contained in these constitutional provisions, which requires sufficient remuneration in any case and does not discriminate between women and men. These constitutional

mandates take on special relevance for collective bargaining as the main mechanism for regulating the wage exchange in labor relations, even more so in a context of wage devaluation caused by austerity policies, which have caused an irregular distribution of wages and vulnerability of the most vulnerable categories of the workforce (Baylos Grau 2018). Numerous bills have been formulated throughout the years of crisis with the purpose of achieving a legal shield of "fair remuneration" through the adoption of a legal minimum wage. Modification of the collective bargaining system is also proposed in order to achieve greater participation of the social partners (Martone 2019). In Italy the possibility of adopting a legal minimum wage is being debated, position that clashes with the position of the unions that defend the adoption of a formula that allows combining the presence of collective bargaining in the establishment of the legal minimum wage (Garnero, Lucifora 2020).

The delimitation of the salary is combined together with the Welfare State and with the right to Social Security benefits. The salary base is essential for the determination of benefits and, very importantly, of pensions. In this sense, the nexus between fair contributions and pensions has also been addressed by legal journals (Tursi 2019).

4.1.2. Wage differences and precarious workers

These reflections are especially relevant considering the widespread precariousness of workers globally, as well as the deficient application of labor standards. Informal work, as well as atypical forms of work, constitute realities that reflect the low wages and the increasingly acute poverty of workers (Marshall 2018). Another context in which wage poverty abounds is that of agricultural workers, a labor situation to which must be added another essential parameter represented by immigration. The wage differences between nationals and immigrant workers are evident, revealing the profound inequality that exists in terms of wages on a global scale (Alfarhan, Al-Busaidi 2019).

The observance of working conditions represents an objective in which the social partners can intervene efficiently and effectively to avoid the vulnerability of migrant workers in the agricultural sector. Countries such as Canada annually host a significant flow of immigrant workers for the agricultural sector, which is why greater labor protection is required (Routh 2019) guaranteeing basic rights such as salary, work and rest time, and vacations and permits (Casey, Vosko,

Tucker 2019). It is worth mentioning the pronouncement of the ECHR in the case Unite the Union v. United Kingdom, case in which the legality of the abolition of the minimum wage agreement in the agricultural sector was questioned. It should be remembered that the Unite union alleged that this action represented interference by the government in collective bargaining and the right to freedom of association contemplated in art. 11 ECHR. The ECHR judgement establishes that states are obliged to facilitate collective bargaining between social parties but is limited to recognizing it as a positive right (Rodríguez Rodríguez 2018).

The list of workers affected by wage discrimination continues and domestic workers demand the formality of their employment relationships in order to put an end to exploitation and insecurity. In particular, doctrinal views have stopped on the case of Portugal, where statistics show that the impact of the formality of domestic workers, whether with a temporary or permanent contract, translates into better working conditions and better wages (Suleman, Figueiredo 2018). Regarding this, Sanz Sáez denounces the concurrence of multiple discrimination against domestic workers as a consequence of being subjected to a special employment relationship in Spain. The previous conclusion is reinforced with the existence in the Spanish labor market of a marked occupational segregation, low income, fewer opportunities for professional development and insecurity or future economic insufficiency, since Social Security contributions are lower (Sanz Sáez 2018).

Domestic work is defined by a pronounced decent work deficit as defined by the ILO, such wage earners being victims of exploitation and abuse in the most developed societies of the 21st century, highlighting the north / south antithesis in the globalized world since the vast majority of female employees are immigrants. Therefore, domestic workers suffer worse working conditions in the workforce dedicated to providing care, which makes them especially vulnerable to exploitation (Molero Marañon 2020).

We observe, therefore, that the wage issue acquires very unique nuances depending on the group of workers in question, but all wage discrimination must be alleviated through reinforced collective bargaining. Within the framework of the European Union, has been raised the need to guarantee a minimum wage that fosters a decent level of income and avoids social dumping and discrimination in wages and working conditions among the citizens of the European Union. The future of work requires solving the difficulties for collective and union action in the face of new forms of work. The existence of precarious wages has not

translated into a breach of the fundamental collective rights of workers. The current labor paradigm must not entail the annulment of the rights of workers to organize collectively and 'the right to collective bargaining' in accordance with Spanish law (Baylos Grau 2019).

4.2. Working conditions and union action

Among the aspects most addressed by the journals we find the persistence of the damage caused in working conditions by the labor reforms driven by the economic and financial crisis. Most of these reforms have pursued the flexibilization of working conditions, the dismantling of the different systems of collective bargaining, as well as the weakening of the role of the unions (Guarrielo 2019). The influence of company fragmentation on labor conditions and union strategies is also evident.

This aspect prompts the authors of the reviewed journals to affirm and point out the impact of the transformations of business chains on the different union responses, which try to counteract regulatory evasion of working conditions by companies (Dorigatti, Mori 2020). The new production processes expand their consequences, and the authors point out the new challenges for the organization and conflict of workers in value chains (Grappi 2020). There are sectors that predominantly employ immigrant workers, a justified preference for the cost reduction strategy. This minimization of costs together with precarious labor standards for these types of workers leads to a high demand for foreign labor (Fudge, Tham 2019).

Labor relations in the meat industry are portrayed by various authors who manifest the precarious working conditions derived from outsourcing and relocation. The difficulties of union organization and action in the meat sector derive from the low unionization rates (Campanella 2020). The difficulties of negotiating dignified working conditions are also evident in the agri-food sector (Senatori 2019). On the transformations of trade unionism, also pronounce Baylos Grau, Doellgast, Janice, Marinelli (Bylos Grau 2019; Doellgast 2019; Janice 2018; Marinelli 2019).

One of the fundamental axes addressed in the different journals is the need for decent working conditions for immigrant workers in the labor market. A reality that must necessarily have the role of unions in terms of negotiating working conditions

(Koncar 2018). However, illegal practices regarding the working conditions of immigrant workers are linked to false cooperatives as possible spaces for labor breaches. Unions and business associations can play an important role in regulating conflicts and curbing abuse in working conditions (Bologna, Curi 2019). The transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council, of June 20, 2019, on transparent and predictable working conditions in the European Union acquires special relevance (Ticar 2020).

4.3. Social dialogue and collective bargaining as formulas for the articulation of labor relations

The current challenges experienced by labor relations impose a necessary updating of the existing legal regulations. In this environment of constant changes, the role of social dialogue and trade unions is of special relevance (Pocivavsek 2018; Riminucci 2020). The changes that have taken place in the world of work must be seen as an opportunity to advance towards the achievement of equality, and it is very important to prevent poorly managed technological change from generating inequalities of all types. The potential job destruction caused by information technology has been warned for a long time. From the ILO, many current policy proposals have been made, but it is necessary to reopen the dialogue with the social partners in order to address current challenges and achieve the work that we all want for the future (Cherry 2020). A subject in which the intervention of social dialogue is necessarily required is work on digital platforms. The adoption of new regulatory frameworks that enable the collective struggles of workers by creating bonds of solidarity must necessarily lead to better working conditions on the platform (Johnston 2020).

In this sense, it is essential to rethink regulatory frameworks together with social actors since representative institutions and social dialogue are central elements for a just transition (Rani, Grimshaw 2019). In this new employment context, the appearance of many atypical work formulas poses a series of challenges for collective bargaining processes (Bagari 2018). The experience of the economic and financial crisis of 2008 indicates that legislative changes or reforms that affect workers' rights require greater participation from the social partners, which would translate into certainty in the representation of interests and the applicability of collective agreements and conventions (Rusciano 2018).

Global union action has to assume a transcendental role in the absence of a global legal system, in whose formation the union techniques of negotiation and dialogue with multinational companies acquire importance (Boix Lluch 2020). Social dialogue, institutional participation and collective bargaining are basic tools to channel the interaction of social agents with the aim of responding to social problems. Therefore, the interaction of social actors represents the channel to define labor market policies, solve exclusion and precariousness and introduce the gender perspective in collective agreements (Pérez Ortiz, Fernandez Rodríguez, Ibañez Rojo, Ferrer Saís, Enrique Alonso, Ruesga Benito 2018).

4.4. Freedom of association and the right to strike

The period marked by the economic and financial crisis has been highlighted, as has been argued so many times throughout this text, by the austerity policies and by the restrictions on social rights. The international protection of social rights and its impact on national laws have gained special relevance. The different events prosecuted throughout these years have made it possible to conclude that the "multilevel" protection of fundamental rights must be considered as a powerful construction, but whose elements have to work in their entirety for it to be effective. Two interesting cases that support the idea reflected above are represented by the Italian and Belgian cases. In Italy, the well-known FIAT case highlights that the intervention of the Freedom of Association Commission of the International Labor Organization has not led to an improvement in trade union rights in this country as a consequence of procedural difficulties and the uncertain value of the ILO Convention in Italy. On the other hand, in Belgium there is interest in the request made by the national judicial instances for a decision of the European Committee of Social Rights in which the granting of precautionary measures prohibiting picket activities on the occasion of a strike is called into question (Borelli, Rocca 2018). It should be remembered that, although the Convention for the Protection of Human Rights and Fundamental Freedoms does not expressly include this right, the literality of article 11 of the Convention proclaims the right of association and, particularly, the right of association and trade union action (Durán López 2018).

With regard to the right to strike, the different magazines that contribute to the realization of this overview include definitions of this fundamental right of workers. On strike, an evolution in the recognition of this right is observed

in the vast majority of legal systems. The numerous social changes, as well as the successive transformations in the framework of labor relations, make necessary some modifications in the regulation of this right. This is the case of Slovenia, where the implementation of the Strike Law does not fit, according to some doctrinal currents, to the constitutional framework of that country and the postulates contained in the European Social Charter. Each legal system presents its unique characteristics and special regimes for certain groups of workers (Millefort Quenum 2018). There is still a broad debate around the defining elements of the strike, as well as its organization and execution (Debelak 2018) delimiting the right to strike as a channel through which to channel the collective conflict (Palomeque López 2018).

Countries like Spain analyze the changes produced in the organization of the right to strike after 40 years since the adoption of the 1978 Constitution and after its criminalization during the Franco dictatorship. The successive strikes produced in the year of the Spanish labor reform (2012) have concluded with the imputation of numerous trade unionists for exercising the right to strike showing the resistance in Spain of some old ideas (Ruiz Resa 2019). In other legal systems, such as Burkina Faso, the modalities of collective actions of workers are governed by the regulation contained in its Labor Code and the Public Sector Law of 1960, legal texts that regulate the right to strike and the prohibition of the occupation of the workplace. Faced with the above, international voices denounce the violation of the right to strike and collective action by this country (Traoré 2020).

The incisive changes in our productive reality have highlighted the need to create new forms of protection of the right to strike, which make it possible to continue fulfilling its constitutional role. One of the changes is represented by the loss of hegemony of the traditional model of vertical integration of productive activities and its replacement by horizontal collaboration formulas between formally independent subjects in the different stages of the production process (Sanguineti Raymond 2020).

Another issue that has deserved special attention has been that relating to the ownership of the right to strike debating the theory that empowers unions to declare a strike through the consideration of the collective interest. This thesis acquires its own nuances when it comes to essential public services and the legitimacy for the proclamation of the right to strike (Ballestero 2018). The links between freedom of association and the right to strike (Novitz 2020) have given rise to many debates and it is that the insertion of the union as a natural instance of

the strike has very broad projections both on the requirements of the declaration and calling of the strike as on the objectives pursued by it.

5. PROHIBITION OF DISCRIMINATION AND DECENT WORKING CONDITIONS FOR WOMEN

The current global paradigm aims to rebuild the situation prior to the crisis and establish a new framework for labor relations. A topic widely addressed by journals is the dimension of labor discrimination against women, a discrimination that is projected on access to the labor market, working conditions and many other aspects of the employment relationship. There is a broad consensus among the different authors in denouncing violations of women's rights and demanding the achievement of gender equality in the workplace (Casas Baamonde 2019). Once again, we have to remember the dire consequences of the 2008 economic crisis and, in terms of equality, its effects have been negative. Austerity policies have been projected on participation in the labor market, affecting more women than men.

The spirit of the legislative measures adopted during this period has not taken gender equality into account (Périvier 2018). As has been remarked, the crisis has had a significant effect on the levels of social spending and on the dynamics of public employment, being the group of women the main affected (Kushi, McManus, 2017). There is no doubt that the participation of women in the labor market has increased, but disparities continue to have a woman's face, the gender gap at work being evident through lower wages and precarious working conditions (Castellano, Roca 2017).

Of course, the complexity of adopting tools to reduce women's inequality is illustrated in different articles, but one of the ways to achieve equality and, in this sense, there is agreement among the reviewed authors, is, without any trace of doubt, the participation of social partners and regulation in collective agreements (Lazzeroni 2019).

One of the main pioneering international bodies in the fight for equality of women in employment is the International Labor Organization, which has contributed to the adoption of international standards aimed at promoting gender equality in employment since early times (Draksler 2019).

It should be noted that in recent years there have been several countries that have oriented their policies towards the contemplation of policies that make it possible to reconcile paid work and unpaid care.

Policies must be formulated away from traditional conceptions linked to the home and women, trying to promote more universal models of care and not only supported by women. As an example, Masellot and Russell analyze the employment situation in two major countries: New Zealand and the United Kingdom. Among the legal measures aimed to facilitating conciliation, in the United Kingdom it has been possible for women to transfer care leave to men, while in New Zealand the concept of dependence on gender identities has been decoupled by conferring care leave to whoever is the primary caregiver (Masellot, Russell 2020). The so-called "informal" or family care represents an essential aspect to be able to reconcile personal and work life, the role of social policies being of vital importance. Legislative approaches should not only focus on the care of minors, but also on the care of the elderly and persons with disabilities. All of the above cares fundamentally weigh on women, so it is important to counteract gender inequality (Hiessl 2020). Doctrinal studies on the need to ratify ILO Convention No. 189, as well as the aforementioned advances towards a more egalitarian society that respects the labor rights of women and regulates the care work generally undertaken by women abound in all the journals of Labor and Social Security Law (Poblete 2018; Trebilcock 2018; Blackett 2018; Tiemeni 2018).

It is clear that gender equality and the prohibition of discrimination is a constant concern for the vast majority of labor doctrine. However, it is worth mentioning a common idea that is detected in the articles subject to revision: the future of work must be built by observing all the changes that affect labor relations, reinforcing the protection of workers, always from an egalitarian spirit (Rani, Grimshaw 2019).

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LIST OF JOURNAL ABBREVIATIONS

– Arbeit und Recht (Germany) = AuR
– Australian Journal of Labour Law (Australia) = AJLL
– Bulletin of Comparative Labour Relations (Belgium) = BCLR
– Canadian Labour & Employment Law Journal (Canada) = CLELJ
– Comparative Labor Law & Policy Journal (United States) = CLLPJ
– Derecho de las Relaciones Laborales (Spain) = DRL
– Diritti Lavori Mercati (Italy) = DLM
– Diritto delle Relazioni Industriali (Italy) = DRI
– Employees & Employers: Labour Law & Social Security Review / Delavci in delodajalci: Revija za delovno pravo in pravo socialne varnosti (Slovenia) = E&E
– E-journal of International and Comparative Labour Studies (Italy) = E-JICLS
– Europäische Zeitschrift für Arbeitsrecht (Germany) = EuZA
– European Labour Law Journal (Belgium) = ELLJ
– Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy) = DLRI
– Industrial Law Journal (UK) = ILJ
– International Journal of Comparative Labour Law & Industrial Relations (The Netherlands) = IJCLLIR
– International Labour Review (ILO) = ILR
– Japan Labor Review (Japan) = JLR
– Lavoro e Diritto (Italy) = LD
– Revista de Derecho Social (Spain) = RDS
– Revue de Droit Comparé du Travail et de la Sécurité Sociale (France) = RDCTSS
– Revue de Droit du Travail (France) = RDT
– Rivista Giuridica del Lavoro e della Previdenza Sociale (Italy) = RGL
– Temas Laborales (Spain) = TL
– Zeitschrift für ausländisches und internationales Arbeits und Sozialrecht (Germany) = ZIAS