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ALESSIA CONSIGLIO
Università Ca' Foscari Venezia

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ALESSIA CONSIGLIO
Università Ca' Foscari Venezia
Dottoranda in Diritto, Mercato e Persona
alessia.consiglio@unive.it

ABSTRACT

The aim of the present study is to analyse what role will the traditional and Italian-Constitutionally oriented principle of private property, freedom of enterprise, labour and health protection play in the climate change just transition. In a context characterised by a growing concern of public opinion and thus - and consequently - of European and international political agendas on environmental protection issues, an opportunity will be sought to promote a renewed reflection on the well-known case-law of Ilva in Taranto. An interesting means to achieve the objective of this research analysis will be to try to reopen the debate on the perimeter of the social functionalisation of property.

Keywords: climate change; corporate sustainability; industrial relations.

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1. Introduction

Environmental law researchers have spent years studying how climate change will affect the future of human relations: climate change will impose radical changes on society and law will need to adapt in equally radical ways(1).

However, the current approach is mostly based on mapping existing legal taxonomies in order to provide new insights and analysis of the role of law, but still with a traditional approach to climate change. The legal (and labour law), ecological and environmental discourse, in fact, have for years moved on non-communicative levels. The idea of harmonising policies to implement the ecological transition and policies to support employment transitions has indeed only garnered initial attention over the past few years(2).

Indeed, there is a certain aporia in labour law studies related to climate change, as if a strong sense of agnosticism still exists on the organic connection between environmental impact and industrial relations: yet climate change will have, and is already having, drastic effects on labour and labour markets worldwide. The close link between *green* transition and socio-economic transition is unquestionable: promoting actions to reduce dependence on fossil fuels and incentivising climate-neutral activities means reformulating the perimeter of the notion of business and entrepreneurial activity in a sustainable way(3). But it also means identifying appropriate instruments to protect workers, and in particular vulnerable groups, in the transition era, providing them with the necessary tools to retrain their job skills and competence to adapt them to the new imperatives of the *green* economy, as well as the

(1) C. Lipsig-Mumme, *Climate at work*, Fernwood Publishing, 2013.

(2) On this topic, A. Perulli – A. Lyon-Caen, *Vers un droit du travail écologique*, in *Revue de droit du travail*, vol. Juillet-Août 2022, 91-95; F. Martelloni, *I benefici condizionati come tecniche promozionali nel Green New Deal*, *LD*, 2, 2022; S. Buoso - A. Lassandari - F. Martelloni, *Presentazione*, *Il tema. Lavoro e ambiente nell'Antropocene: il problema e il sistema*, *LD*, 2, 2022, 3-6; A. Lassandari, *Il lavoro nella crisi ambientale*, in *Lavoro e diritto*, 2, 2022; G. Centamore, *Una just transition per il diritto del lavoro*, *LD*, 2, 2022; J. Doorey, *Just Transitions Law : Putting Labour Law to Work on Climate change*, *Journal of Environment Law and Practice*, 2017, 30, 201; F. Hendrickx, *Climate change and labour law: a methological warming-up*, in *Regulating for Globalizarion,* Workers Kluwer, 2019; P. Tomassetti, *Diritto del lavoro e ambiente*, Adapt University Press.

(3) On this important topic see C. Mio, *L'azienda sostenibile*, Milano, 2022; P. Tullini, *La responsabilità dell'impresa*, *LD*, 2, 2022.

necessary safeguards and remedies for those who will be impacted by the various environmental disasters taking place.

All labour relations will in fact, none excluded, undergo a realignment according to the different consequences that climate and pollution are bringing to society, this time understood as «any set of individuals (humans or animals) connected by relations of various kinds and in which forms of cooperation, collaboration, and division of tasks are established, which ensure the survival and reproduction of the whole and its members»([4]).

First questions arise: these effects are likely to be unequally distributed globally. Developing countries, which have contributed the least to global warming, are likely to suffer the heaviest consequences. But even among the richest and most developed countries, the effects of climate change on labour will be perceived unequally, among the poorest categories of workers, or among racial and gender minorities within the same social class.

Moreover, what role will the traditional and Italian-Constitutionally oriented principle of private property, freedom of enterprise, labour and health protection play in this new economic paradigm? How does the new social enterprise fit in this crisis of law?

Whether labour law should deal with climate impact and thus with the socio-ecological issue, and how it can do so, is a question rarely explored in the literature on the normative basis of labour law, its boundaries and objectives. On the other hand, nature has always been considered outside the domain of labour law.

Not only that, but they are also beginning to feature as major themes in several important policy proposals on how to deal with this crisis and its unequal impacts on the environment as well as on people and the relations - including industrial relations - that they build.

In this paper, therefore, I will try to dwell on the effects of this transition with respect to the reference themes of labour law: the freedom of enterprise understood as a correlation to private property, and the protection of employment levels. In a context characterised by a growing concern of public opinion and thus - and consequently - of European and international political agendas on environmental protection issues, an opportunity will be sought to promote a renewed reflection on the well-known case-law of Ilva in Taranto([5]).

The profiles of a transition capable of cushioning the social and employment consequences by projecting towards a climate-neutral and ethical development model, are issues that will have to be reflected in the case law which has so far shown a social and climatically poorly involuted balance. A balance, in other words, strongly skewed towards the protection of freedom to engage in economic activity tout court, as opposed to the promotion of human health (before that of workers) and environmental impact.

([4]) *Treccani* definition under the rubric "*Società*".

([5]) On the reason why the definition of 'case' is adopted, see S. Laforgia, *Se Taranto è l'Italia: il caso Ilva*, *LD*, 2022, 1.

The well-known *Just Transition*(6) is expected to contaminate the traditional legal institutes (including private ones) of our legal system, but how?

The law of the future is ambitiously required to respond to this challenge by exploring new factual and normative boundaries. It is hoped, therefore, to enhance this intersection between property law and the freedom to carry out an economic activity and the right to health by exploring the interaction that this paradigm generates in labour law and its systematics through the emblematic case of Ilva, the steel plant in Taranto. The ultimate aim will be to outline an area of harmonisation of the traditional institutes of the Italian law system which is necessary to provide answers to the climate crisis. An interesting means to achieve the objective of this research analysis will be to try to reopen the debate on the perimeter of the social functionalisation of property.

The intention is to characterise the peculiarities, but also the problematic nature, of the impact of the climate change on the ontology of private and labour law by proposing what, in a paradigm of overcoming the contrapositive perspective between climate and labour, could be a cue for a new morphology of industrial relations and the protagonists of this immanent renewal.

2. *Anthropocene*, a reflection on the climate crisis

Before tackling any kind of labour law reflection on the climate crisis and its impact on contemporary industrial relations, it is necessary, as a preliminary step, to carry out an interdisciplinary reflection on the philosophical-theoretical lines of the topic of the environment. This, in addition to its articulation, as will be seen, 'multi-disciplinary' and 'interdisciplinary', presents a relevant profile of 'transdisciplinarity', resulting from a variety of scientific and socio-humanistic knowledge and 'transculturality' and concerning a diversity of worldviews(7).

It is not possible to neglect in this context an exegetical path of the theme that also addresses the man-nature relationship as a problematic core, organised and mediated through different and sometimes opposing worldviews. Worldviews that are often in competition with each other because they are marked by mirror-image scale of values (think of the different anthropocentric or biocentric approaches) and declined in a series of causal connections that place the environment (human and natural) in balance or opposition with science, economics, ethics, culture, and law. This, obviously, with regard to the underlying requirement to create a common mindset for the protection of the environment itself. In

(6) E. Morena, D. Krause, D. Stevis, *Just Transitions: Social Justice in the Shift Towards a Low-Carbon World*, *in London: Pluto Press*, 2020, 9 ss.; B. Galgóczi, *Just transition on the ground: Lessons for social dialogue*, *EIR*, 2020, 4, 26.

(7) L. Moccia, *Comparazione giuridica come modo di studio e conoscenza del diritto: l'esempio della tutela ambientale*, *RTDPC*, 2020, 1.

particular: ecosystems, the Earth system, sustainable development, environmental justice, intergenerational solidarity, limits to growth, food security, quality of life, human rights are themes that are necessarily affected by the (subjective) plane of investigation from which they are read and analysed. A plane of analysis that deserves to be paced and that would not allow, in the absence of in-depth analysis, to propose an effective reflection on the impact of climate change on (especially) labour law.

In order to focus on a discourse of this kind, it is necessary to start from certain premises, in a broad sense, which are predominantly cultural, and which constitutes the meta-legal basis of the consideration that will be advanced with this paper.

The researcher of climate change and its effects on and in the labour market starts from the assumption that the concept expressed by the term "environment" represents, rather than a specific reality, the need to give a certain order to the complex and articulated reality of human-nature relations. This implies a series of consequences, including a diversity of connotations that, in terms of legal meaning, can be assigned to this term in the course of time and currents of thought, technical-scientific developments and, more generally, socio-economic transformations. Specifically: the term 'environment' has etymologically presented, for years, a so-called adjectival meaning (as the present participle of the Latin '*ambire*': '*to go around, surround*'), to indicate everything that is around something (or someone). A definition, therefore, so generic that it has been used as a term to designate a surrounding space, a space within which to place 'nature' itself([8]). The environment has been generically understood as a figurative set of things: nature and materials, spirit and culture, in a spectrum that inevitably refers to the figure of man. In fact, over the years, there has been a tendency to include other living beings, including human beings, within the spatial concept of the environment, according to a concept of humanisation (or so-called *anthropomorphisation*) of nature([9]).

Actually, the aforementioned definition suffers from a very specific point of view: it has historically been expressed from the anthropocentric point of view, that of man, protagonist and subject, at the centre of all the things around him, including, precisely, the environment. In this perspective, the environment has traditionally been defined as a means: the means by which and through which the subject-man is in the environment. He makes use of the latter by shaping and modifying it according to his own needs and utilitarian requirements, as if the environment were ex se existing and immanent, but above all immutable.

Since the 1960s, however, the term environment has taken on a so-called noun meaning, thus identifying a reality that exists in itself and is self-evident: the "Earth system". This has come to mean the total and complete interdependence inherent in the natural world, of which man himself is a part. A notion, therefore, that has shifted its point of view to better

([8]) P. Warde-Robin-Sörlin, *The Environment. A History of the Idea*, Baltimora, 2018.

([9]) C. Frugoni, *Uomini e animali nel medioevo. Storie fantastiche e feroci,* Bologna, 2018.

observe and understand the extent of the human ecological trace on nature. From a concept of an "outskirt" conceived and idealised as a mere human offshoot, therefore, the notion of environment was thus conceived and defined (for the first time) in so-called self-centred terms. A new perspective, therefore, based on nature (including the human species, on a par with other living species) as the centre of the world (the so-called biocentrism current).

This dialectical and philosophical evolution did not, however, appear to be decisive. The way of understanding the environmental issue as essentially centred on the human factor, whose influence becomes dominant in a world where man, society and nature interact and mutually condition each other, has only found a more satisfactory definition through the theoretical and scientific deepening of the anthropocene theory.

The term 'anthropocene' first appeared in 2000 in the pages of a scientific paper (the newsletter Global Change') of the International Geosphere and Biosphere Research Programme (IGBP) in a short note that defined it([10]). The two authors, with the explicit intention of drawing attention from both a geological and ecological point of view to the 'central role of humanity' proposed «to use the term 'anthropocene' for the current geological epoch»([11]). The proposal, argued on the basis of a list of phenomena and data relating to the environmental impact of human activity, had the tones of a manifesto-appeal addressed not only to the international scientific community, but also to policy-makers and the general public. The reference context of the anthropocene became, for the first time, that of "*global change*"([12]). This also included the 'Earth system' understood as: a 'closed system', delimited in terms of available resources, consisting of a dynamic and unitary complex of elements given by the «interaction between physical, chemical and biological cycles on a global scale (often called biogeochemical cycles) and energy flows that provide the necessary conditions for life on the planet»([13]). The actions and repercussions generated within the system are as important to its functioning as the external forces. Conversely, ecological processes are also an integral part of the system's functioning and do not passively undergo changes in its physico-chemical component; thus «human beings, their societies and activities are an integral component of the Earth system, and not an external force capable of disrupting an otherwise natural system»([14]). The choice of the term Anthropocene, then, drawn on geological language to emphasise its meaning in an 'epochal' order of magnitude, represents and describes a phase in the Earth's history marked by human dominance over nature. It has been debated by the scientific community, where it

([10]) P. J. Crutzen - E. F. Stoermer, T*he Anthropocene*, in *The International Geosphere–Biosphere Programme (IGBP): A Study of Global Change of the International Council for Science (ICSU*), 2000.

([11]) P.J. Crutzen – E.F. Stoermer, *op. cit.*

([12]) P.J. Crutzen, *Geology of mankind-The Anthropocene, Nature,* 2002, 23, 415 ss.; See P. J. Crutzen: *A Pioneer on Atmospheric Chemistry and Climate Change in the Anthropocene,* Nobel Laureates 50, 2016; AA.VV. *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature*?, *Ambio*, 36, 8, 2007, 614 ss.

([13]) P. J. Crutzen - E. F. Stoermer, *op. cit.*

([14]) W. Steffen - A. Sanderson, *Global Change and the Earth System A Planet Under Pressure*, Springer, Berlin, Heidelberg 2005.

has met and still meets with resistance([15]), the expression has, over the years, established itself in popular literature and in the opinion presse([16]) gaining support, but also attracting criticism([17]).

If the most superficial layer of its meaning is directly connected to the industrialisation-induced climate change, the underlying issues concern various problematic nodes on which the attitude of Western thought (including juridical) has been built and continues to propagate: the opposition between nature and culture and, consequently, anthropocentrism, ethnocentrism, androcentrism, etc. is nothing but another way of talking about the opposition between industrialist and Fordist input, and the demands for greater ethicality from workers' representatives.

What the anthropocene refers to is the possibility/need to rethink the future as such. Taking this aspect into consideration is fundamental to reconstructing the reflective aspects of this essay: the Anthropocene requires, first of all, thinking (and rethinking a society) starting from the possible (and likely) end of human life on Earth caused by the actions of man himself. The radical problematic nature of a teleology, of an essentially human end, inscribed on the horizon of humanity, as well as the inescapable question of entropy and its connection to capitalist industrialisation are issues that the anthropocene theory places, for the first time, not only before the eyes of the scientific researcher, but also before the eyes of the jurist. And it is precisely this that makes the Anthropocene a problematic and at the same time fundamental concept: the anthropocene reveals the fallacy of anthropocentrism, but at the same time as it attributes a direction to man towards the Earth (and its climate crisis), it makes them more aware of how humanity and its existence depend essentially on non-human entities, such as atmospheric agents, technologies and the geological stratum itself, but also on the political, economic and legal directions it can take.

If the causes of the impending catastrophe lie in a particular set of human activities, it is evident that scholars cannot simply point to *anthropos* as the general 'guilty part' for contaminating and poisoning the Earth. It is not just a question of ethnocentrism, albeit a necessary correlate of anthropocentrism, and of exploitation and oppression of the living -

([15]) G. Visconti, *Anthropocene: another academic invention?*, *Rendiconti Lincei. Scienze Fisiche e Naturali*, 2014, 25, 3, 381 ss.

([16]) See the contribution made to the spread of the term, and its avowedly environmentalist content, in the media and public opinion by the weekly magazine The Economist, which dedicated its cover story to the subject in March 2011, with the headline: "*Welcome to the Anthropocene*".

([17]) Among the critics of the Anthropocene-notion are those who, while appreciating its provocative intent of highlighting the perverse effects of the idea of progress pursued solely in function of and for the benefit of man (subject) as opposed to nature (object), in the belief that there are no limits to the exploitation of natural resources, let alone the capacity of humans to use them, believe, however, that such a concept can create a distortion and misrepresentation for a state of affairs that is attributable not to man and humanity in general and equally, but to a part of humanity that, by its model of development, type of civilisation, and desire for domination implemented through forms of colonisation and exploitation of large regional areas of the world, bears the greatest responsibility. So much so as to evoke the notion of 'Capitalocene', much more explicit than this intention of denunciation and at the same time of ecological alarm, for a certain state of affairs linked, precisely, to the capitalist model of socio-economic development. V. Moore (ed.), *Anthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism*, 2016 (ed. it.: *Antropocene o Capitalocene. Scenari di ecologia-mondo nella crisi planetaria*, 2017).

which is why the (perhaps more convincing) term '*capitalocene'*([18]) - has also been proposed - but of redesigning the legal discourse, even before labour law, in the name of the new acquisitions brought about by the new studies on the relationship between man, planet, environment and climate.

Such assessment leads to a discourse on human ends, and not only as a compensation (i.e. the construction of an ecological and economic future that surpasses capitalism as a social and geopolitical relationship) with respect to the defect of finality that *anthropos* has always shown, but also on the need for human beings and Western reason to cease to feel that they are the sole protagonists of planet Earth, endowed with unlimited resources.

The need, in other and different words, that we begin to construct an ongoing process of defining our own identity through our othernesses and that, above all, we balance ourselves with the environmental changes taking place, and that we put in place useful and functional actions to cope with these changes is the basis for a new reflection on labour law.

3. Relations between human health and climate change: what role does labour law play?

A further argument for rethinking what has so far held the balance of power between freedom of enterprise and labour protection is the relationship between human health and climate change. That climate change due to human-caused environmental disasters have already had and will continue to have negative effects on human health, occupational safety, and working conditions is a fact on which both the medical-scientific and scientific-legal communities now converge. What, on the other hand, is still missing is a common and shared strategy on how immediate action should be reflected in practice; on how, in short, to avoid the negative and dangerous impact on the physical health of workers, and to protect them inside and outside the workplace.

Therefore, highlighting how human impact on the ecosystem has already affected the working relationship and especially the environment and workplace, demonstrating the already huge repercussions on workers' health, can be useful to provide a precise focus to interpret the transition towards an ecological transition. An ecological and just transition in which human health is not only protected *tout court* but marked and protected according to climate change.

([18]) Among the critics of the *antropocene* concept see J. W. Moore, A*nthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism*, in *Sociology Faculty Scholarship.,* 1, 2016. https://orb.binghamton.edu/sociology_fac/1

Already in 2007 with the Second Working Group on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)([19]) it was explicitly stated that human health is intensely exposed to climate change through changing climate patterns (pollution, temperature, precipitation, rising sea levels and more frequent extreme events) and indirectly through alterations in ecosystems and changes in water, air and food quality([20]). Climate change has deeply altered the distribution of certain vectors of infectious diseases([21]) and the seasonal distribution of certain allergenic pollen species, leading to an increase in heatwave-related deaths([22]). Moreover, it was theorized as early as 2007, that the impacts of climate change would affect the increase in malnutrition and related disorders, including those related to child growth and development([23]); the increase in the number of deaths and illnesses related to heat waves, floods, storms, fires and droughts([24]); on changing certain vectors of infectious diseases([25]).

To analyse even more closely the clinical consequences of climate change on people's physical health, the classification proposed by the scientific community([26]) with reference to primary, secondary or tertiary areas, depending on the causal pathway through which it occurs([27]) is also of interest.

The primary impact is often associated with direct exposure to excessive heat or risk of injury in extreme weather conditions. Acute health effects from heat exposure stress can lead to heat exhaustion, heat rashes (tingling), heat fatigue, heat fainting. If the body temperature rises above 39°C the worker is at serious risk of heat stroke or collapse([28]), such as the onset of chronic illness. The scientific community has long maintained that high temperatures and humidity can affect the body's physiological responses to environmental toxicants. Warm wet skin, for example, favours the absorption of chemicals.

While these are the primary effects, no less intrusive are the so-called secondary effects on workers' health. These stem from alterations in the surrounding ecosystems that, in turn, lead to a change in biological risks, such as the development of infectious, immune-allergic and toxic diseases. Climate change and environmental disasters, for example, are expanding

([19]) IPCC Fourth Assessment Report (AR4), Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, "*Climate Change 2007: Impacts, Adaptation and Vulnerability*", Cambridge, 2007.

([20]) *Ibidem*, 407.

([21]) *Ibidem*, 403.

([22]) *Ibidem,* 396.

([23]) *Ibidem*, 396 - 407.

([24]) *Ibidem*, 407.

([25]) *Ibidem.*

([26]) *Una Guida Per I Sindacati Adattamento ai cambiamenti climatici e mondo del lavoro*, Project co-ordinated by the ETUC.

([27]) The Climate Jobs Campaign at www.globalclimatejobs.org/wp-content/uploads/2017/10/Empregos-para-o-Clima-relatório-completo.pdf

([28]) In this regard, it is worth noting the recent case of Syracuse, where in the summer of 2021 an unusual heat record was recorded with 48.8 degrees, a temperature never reached in Europe and two-tenths of a degree higher than the previous record of Catenanuova in the province of Enna set in 1999 with 48.5 degrees.

the range of disease vectors (think ticks and mosquitoes) as well as increasing allergy factors([29]). With regard to tertiary effects, these result from the disruption of social, political and economic systems, which in turn lead to disorder or even violence.

Finally, it is also worth noting a range of so-called 'further effects' and impacts on human health which, although not a direct and explicit consequence of climate change, are easily associated with and causally attributable to the physical and chemical processes of our economy still predominantly based on fossil fuels([30]). They include increased health risks from higher levels of air pollution (in many cases from the combustion of fossil fuels) and increased exposure to UV radiation caused by ozone depletion.

Furthermore, although it is currently very difficult to assess how many deaths are linked, the impact of climate change on human health is already visible in Europe([31]). According to the 2019 Lancet Countdown report on health and climate change, if international actors do not agree to effectively decrease global warming in a timely manner and take appropriate and adequate measures to do so, some 350 million Europeans could be exposed to extreme weather conditions each year by the end of the century (compared to 25 million in the early 2000s).

All of the above is likely to affect (and, as we shall see below in the Ilva-case, has already affected) working conditions permanently and dramatically. The disruptive effects on labour relations and the repercussions of these years of wicked pollution have decisively highlighted the trend towards an increase in the frequency of various types of accidents at work (think of the potential increase, due to the so-called 'drop in vigilance', of risks of inhalation of harmful substances, of stumbling, bumping or other disturbance of movement, falling from heights; risks related to falling objects, mechanical handling, etc.).

Thus, the assessment of the impact of climate change on labour relations will have to involve an appropriate reorganisation of work in the knowledge that inadequate organisation of work can also escalate the situation.

It goes without saying that the evaluation of possible preventive measures including a different organisation of work cycles, investment in appropriate equipment and technology by the appropriate entrepreneurial force, and compliance with statutory emission and leakage quotas appear to be extremely relevant in the current panorama([32]).

([29]) *Una Guida Per I Sindacati Adattamento ai cambiamenti climatici e mondo del lavoro*, *cit.*

([30]) *Ibidem.*

([31]) In fact, according to experts, the 2003 heat wave killed 70,000 people within the European Union and 20,000 in France only. A trend that only seems destined to get worse in the future.

([32]) Interesting is the response of the main Italian trade unions (CGIL, CISL and UIL) to the ETUC's 2020 questionnaire published at www.etuc.org/en/adaptation-climate-change: «Possible examples are those working exposed to high temperatures at roadwork sites laying asphalt, bricklayers engaged in roof insulation, when pouring concrete or erecting scaffolding. Sectors exposed to heat stress include transport, in addition to agriculture. Here the risk factors, rather than work organization, are related to the obsolescence of cars and brakes. Buses and subways are often not equipped with air conditioning even when the windows are locked. The working conditions of drivers are severely affected, as are those of travelers in these temperatures. In addition, driving a train under thermal stress puts

In the continuation of this paper, then, we will analyse a specific case-law in which environmental degradation has already caused clear negative impacts on employment and labour productivity, with the sad prediction that these impacts will become even more pronounced in the coming years in the absence of any real legal elaboration on the subject. In fact, it is not possible to construct a human health debate, before occupational health, without talking about the effects that climate will have on it, and it is not possible to address climate change without opening a debate on the implications that this will have on human health, and therefore on workers.

But what balance, or 'hierarchy' of values, will have to be found for this environmental review?

Climate change cannot simply be seen as an environmental issue linked only to various forms of development: it necessarily (and increasingly) affects the health and well-being of all populations; hence, the need to place health at the centre of countries' political agenda([33]) as central to the labour law issue of sustainable development and employment protectional.

4. Is there a real separation between working space, 'natural' space and life?

In an attempt to bring the worker as a *person* back at the centre of legal reflection on climate change([34]), further inspiration can come from overcoming the strict distinction between the working space, the natural space and living space.

On several occasions highlighted by the International Labour Organisation, the protection of workers' health and safety and the protection of the natural environment - intrinsically linked - have taken on an emerging role in international and national legislation over the years, especially with a view to sustainable development. Moreover, the call for a systemic reassessment of environmental issues has become even more necessary because in modern, complex and integrated societies, it makes less and less sense to strictly distinguish living spaces from working spaces, and the health of workers from that of citizens([35]).

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the safety of passengers at risk: under such conditions, drivers' attention and concentration thresholds are severely tested».

([33]) It is the WHO itself that makes it clear that, in terms of sustainable development, many individual policies and choices have the potential to reduce greenhouse gas emissions while providing important benefits to human health: «[a]ctions such as shifting to cleaner energy sources, facilitating safe public and active transport, and making more sustainable dietary choices, bring important health gains to communities and individuals» WHO, *Protecting Health from Climate Change. Connecting Science, Policy and People*, Ginevra, 2009, 26.

([34]) P. Perlingieri, *Stagioni del diritto civile. A colloquio con Rino Sica e Pasquale Stanzione*, ESI, 2021.

([35]) P. Pascucci, *La salvaguardia dell'occupazione nel decreto "salva Ilva". Diritto alla salute vs diritto al lavoro?*, *DLM.*, 2013, 3, 671-688, 673; R. Del Punta, *Tutela della sicurezza sul lavoro e questione ambientale*, *DRI*, 1999, 151-160; P. Tullini, *I dilemmi del caso Ilva e i tormenti del giuslavorista*, *Ius17*, 2012, 3, 163-169. On the Ilva-case law in Taranto and the labour-environment conflict, see. S. Laforgia, *Diritti fondamentali dei lavoratori e tecniche di tutela. Discorso sulla dignità sociale*, ESI,

One of the so-called 'meta-principles' derived from Framework EU Directive 89/391 is precisely that of the organic connection between the protection of the external environment and the protection of the internal environment. In this perspective, it becomes necessary to clarify within which perimeter the scholar moves when he speaks of '*working area*', '*natural area*' and living area.

From the *tout court* definition of environment, in fact, we derive a highly general and generalist concept that is difficult to perimeter, but in which everyone - including workers - is strongly concealed. But if we isolate one of the many semantic variants of the general concept of *'enviroment'*, and start speaking about *'natural environment'*, a more circumscribed, and perhaps even more uncontaminated, sphere than the living environment itself begins to appear in our perception. And so the question is: how does the working environment fit into this context? In fact, if we refer to something that has nothing to do with the environment, understood as the natural environment, such as the '*working environment*', then a confusion of definition begins to spread, which is still struggling to be completely resolved.

The hypothesis of a reciprocal unrelatedness between the terms, a hypothesis that will not be pursued here, is visibly based on an almost 'ontological' distinction between the external environment considered and the internal one, represented in the circumstance by the workplace (which almost always, but not necessarily - think of the pandemic experience - is located in the company). What the most recent literature has arrived at is that this distinction where one intends to derive from it a strong thematic delimitation and not a mere descriptive utility([36]), cannot at all appear satisfactory and is certainly not exhaustive.

If, in fact, historically the external environment has been the privileged object of environmental law, overcoming this classification in the field of labour law is useful and effective in the overcoming of this categorisation in the field of labour law is useful and effective in overcoming a sort of hypostatisation of the difference between environments. This is first and foremost a logical-linguistic reason: as mentioned, the word 'environment' is etymologically descended from the Latin word *ambire*, and thus refers to everything that, being external to man, surrounds him and consequently influences his life([37]), it suffers therefore from a decisively anthropocentric defining vision.

Yet, the internal environment appears as a portion of the external environment. A portion within which man, as a worker, is subjected to a *spatio-temporal* concentration of potential harmful effects that would generally be more widespread in the external

Napoli, 2018, 114 ss.; A. Vallebona, *L'Ilva e la Cina*, *MGL*, 2012 10, 740; ID., *Contro l'incertezza diabolica: l'Ilva e Carl Schmitt*, *MGL*, 2013, 1-2, 20; ID., *Per l'Ilva non basta neppure la Corte costituzionale*, *MGL*, 2013, 7, 495.

([36]) R. Del Punta, *Tutela della sicurezza sul lavoro e questione ambientale*, *DRI*, 1999, 2, 151.

([37]) M. Cappello, *Spunti linguistici su ambiente interno ed esterno nel Trattato Ce*, in L.S. Olschki (a cura di), *Ambiente e diritto*, 1999.

environment. Hence, the relationship between the work environment and the general environment appears rather as one of continence.

The enviromental right as a fundamental human right, assumes the connection between protecting the quality of the environment and the quality of life, with the individual (and the worker) as the focus of legal protection. From these bases([38]), we will try to analyse the reasoning already developed by literature according to which it is necessary to enhance the cognitive and ethical foundations of the disciplines we are trying to place in a unitary vision, to enhance the vision of the natural environment as the only human environment, inclusive and uniquely understood with the working environment, and the living environment. These environments are under severe stress nowadays, as far as will be discussed, based on climate change.

In this perspective, Italian labour law has seen workers subject to differentiated protection(n, which has allowed the law of the working environment to begin to develop, albeit with difficulty, much earlier than in other areas([39]).

It is no coincidence that the concept of protection of the working environment as a unitary referent of protection is the result of an extension of the more traditional protection of the worker's health and safety: if on the one hand the employee represents a socially defined subject, it «entered as a party to an anomalous and unbalanced contract such as the work lease contract (...) but left (...) as a person, i.e. as the holder of absolute rights that escape the logic of the balancing of interests proper to negotiated exchange»([40]).

From this perspective, the right to health under Article 32 of the Italian Constitution acquires a certain value in the interpretative construction of a right to the environment([41]).

Hence, it is necessary to reconstitute the rift between freedom of enterprise and ecological culture, with a view to overcoming the anthropocentric vision, towards a more all-encompassing protection of industrial relations with respect to climate change, where the consideration of the relationship between the protection of the working environment and the protection of the environment *tout court* can be overcome in the light of a single environment, namely that of human 'life', today strongly endangered by entrepreneurial action not always attentive to sustainable development.

While this limitation of perspective was once facilitated by legislation, the field of which was mostly delimited, in pure Fordist style, by the physical boundaries of the enterprise, the

([38]) R. Del Punta, *Tutela della sicurezza sul lavoro e questione ambientale*, *cit.*

([39]) M. Franco, *Diritto alla salute e responsabilità civile del datore di lavoro*, Milano, 1995; L. Galantino, *La sicurezza del lavoro*, Milano, II, 1996; G. Loy (a cura di), *La tutela della salute negli ambienti di lavoro*, Milano, 1988; A. Maresca, *Ambiente di lavoro e protezione comunitaria*, Milano, 1997; L. Montuschi, *Diritto alla salute ed organizzazione del lavoro*, Milano, 1986, III ed.

([40]) R. Del Punta, *op. cit.*

([41]) M. Cappello, *op. cit*.

complex balancing act between right to work, right to health/environment([42]) and freedom of enterprise can only lead to the unitary conception of a single environment in which life, work, and nature must be analysed as a whole in order to be protected.

In this regard, the Ilva-case, for Italy, has raised many emblematic aspects of such methodological inconsistency due to the dramatic events of the steel plants in question. This is because of the difficulty of reconciling a community's expectation of a dignified and free existence through work, with that, no less important, of living in a healthy environment and, therefore, the very existence of its members. The juxtaposition between work and the environment, felt especially in terms of the right to health, and due, in large part, to the lack of adequate investment in infrastructure that could have limited pollution levels, has raised a series of delicate legal questions, which have been the subject of rulings not only by the Italian ordinary courts, but also by the Italian Constitutional Court and the European Court of Human Rights([43]).

5. Introduction to the Ilva case-law

The Ilva case-law is particularly significant because it represents one of the first cases that challenged the Italian Constitutional Court on the perimeter of social rights in the event of a conflict between the exercise of those rights and other rights of equal standing, such as health and freedom of enterprise. It is interesting, moreover, for the opinion that was given of this balancing act by the European Court of Human Rights. This concerned the strategic production of steel by Europe's most important steel plant, posing a major problem over the years with regard to environmental pollution: Ilva has caused a clear corrosion in the health of the city's inhabitants.

The (criticised and not permanent) resolution of this case-law took into account the coexistence of three distinct rights: the right to work, exercised by the employees of the steelworks; the right to health, which concerns all the citizens of Taranto; and the freedom of public and private economic activity. In this context, as will be seen below, stricter limits were required in order to protect the right to health, without, however, causing the economic freedom of enterprise to be affected.

To resolve the case, the Court thus compared Article 32 of the Italian Constitution, which defines the right to fundamental health, and Article 41 of the Italian Constitution, which provides that economic initiative may be exercised in compliance with fundamental rights. On the basis of this comparison, the Court affirmed that the censured discipline had to be analysed by means of a so-called reasonable balance between the right to health and

([42]) The Constitutional Court has ruled on this issue in Judgment No. 85/2013; European Court of Human Rights, Section One, *Cordella and Others v Italy* Judgment, 24 January 2019.

([43]) S. Buoso, *Principio di prevenzione e sicurezza sul lavoro*, Torino, 2020.

the right to work. As a result, all the fundamental rights protected by the Italian Constitution had to be in a mutually complementary relationship and, therefore, there can be no cases in which one prevails over another.

The exercise of rights, an expression of a person's dignity, cannot be subject to any hierarchical or overriding relationship, the Italia Constitutional Court concluded. This is because the Italian Constitution requires a continuous and reciprocal balancing of principles and fundamental rights: the balance must be assessed according to criteria of proportionality and reasonableness such that none of the fundamental rights can be sacrificed or diminished.

6. The Ilva case-law from an Italian perspective

The Ilva case-law is undoubtedly the most plastic example of what happens when the case-law configures the relationship between the right to property (and the freedom of economic initiative correlated to it) without taking into account the reflections that have been made so far and that, instead, following this essay, hopefully appear to be highly topical.

At the same time, it also suggests a possible new argument: the giving of a new meaning to the social function and general interest associated with the right to property, which should constitute both its purpose and its limit. This, as we have seen, in a panorama that strongly adds a new variable: the environmental and ecological impact that the balancing act between property, enterprise, and the general interest, has on the individual.

The Ilva story has its origins in the industrialisation process of Italy in the last century, of which the steel plant was a protagonist for years. Born from the 'merger' of the main companies operating in the Italian steel sector in the early 20th century, Ilva established itself over the years as one of the steel companies with the largest production potential in Europe, but also as «the single-core model of economic development, conceived exclusively in function of the steel industry, which ignores the territory, wild urbanisation and social implosion, urban planning, the potential of agriculture and the high potential for economic development, the interests of small and medium-sized enterprises, the fate of thousands of construction workers involved in the expansion work and who would have to suffer, once construction was finished, the phenomenon of back unemployment»([44]).

In the 2000s, EU legislation, inspired by a logic of 'sustainable development', and the growing public awareness of environmental issues brought about a change in the balance within and around the problem of the harmfulness of dioxin and benzo(a)pyrene emissions into the atmosphere from the factories specially in Taranto. But with the order of July 26, 2012 that the situation arises forcefully in the Italian legal landscape: the company founder,

([44]) S. Laforgia, *Se Taranto è l'Italia: il caso Ilva*, *cit.*

the plant manager and an area manager were investigated by the Taranto Public Prosecutor's Office on charges of culpable and intentional disaster, poisoning of foodstuffs, intentional failure to take precautions against accidents at work, aggravated damage to public property etc.

The injunction, however, did not stop the activity under dispute and from July 27, 2012 Ilva continued his production in disregard of the orders contained in the injunction which, moreover, was confirmed by a further measure of November 26, 2012, ordering the seizure of six of Ilva's premises. In particular, Judge Todisco grounded her sentence with the observation that Ilva's situation «requires the immediate application, for the due protection of goods of a constitutional rank that do not allow for any compromise, settlement or compression of any kind, such as health and human life, of preventive seizure". Not only "the impressive dispersion of noxious substances in the urbanised and non-urbanised environment has caused and continues to cause not only a serious danger to (public) health", but "even a very serious damage to the same, damage that resulted illness and death". "This is an environmental disaster clearly understood as an event of damage and danger to public safety capable of affecting an indeterminate number of persons». Thus, the Judge, set up a realistic hypothesis of the closure of the steelworks with the consequent loss of a large number of jobs. The complexity of the situation led to the Government's intervention, which a few months later issued Law Decree no. 207/2012 (converted into Law no. 231/2012) providing that in plants recognised as being of national strategic interest with more than 200 employees (as was the case with Ilva), business activities could continue for a period not exceeding 36 months, when indispensable to safeguard employment and production, even in the event of judicial seizure of the plants. The response was not long in coming: the judge for preliminary investigations in Taranto raised the issue of the constitutionality of the provisions of Law Decree no. 207/2012 (Articles 1 and Articles 3) containing such measures, claiming that they were constitutionally unlawful in many respects and in particular with reference to Article 32 of the Italian Constitution (protection of health as the right to a healthy environment).

The outcome of this referral, however, is so far known: the Italian Constitutional Court, however, in its decision no. 85 of 2013, deemed the question partly inadmissible and partly unfounded, denying the existence of an unlawful compression of the right to health, on the basis of the argument that there can be no hierarchy between fundamental rights, but rather a balancing of them. In particular, the Italian Constitutional Court held that Law Decree no. 207/2012 had carried out a reasonable balancing act, guaranteeing the protection of employment in the sense of maintaining employment levels and freedom of economic initiative and subordinating (with a view to the realisation of the right to health as the right to a healthy environment) the steel mill's industrial activity to the stricter limits contained in the last environmental authorisation issued to it.

This, however, turned out to be one of many chapters in the Ilva case-law([45]) which certainly did not end here([46]). Today, ten years later, it is still the subject of copious case-law. However, the aforementioned Constitutional ruling is emblematic in many respects: on the one hand, it effectively demonstrates the dynamism between the industrial context, the economic crisis and the freedom of private economic initiative, with respect to the protection of labour (understood as the maintenance of employment levels) in a perspective of balancing other rights such as, for example, the right to health in a scenario that, however, reflects the problematic nature of climate change (in this case, clearly unbalanced towards the protection of the freedom of enterprise with respect to the right to health).

On the other hand, it is emblematic because in the entire case-law lies the debate on the boundary and limits of the so-called 'social role' and 'functional scope' of notion of Italian property and the general interest and the peculiar shaping it has received in this judgment. This must put in relation to objective needs of an economic nature that in a specific historical-economic context have been assumed as priorities. In addition, and in particular, it opens up deep considerations concerning what peculiar elastic modelling scholars will be willing to give in the light of the climate change we are witnessing, to the protection of the

([45]) As of November 2018, the steel plant was acquired by the ArcelorMittal Group and ArcelorMittal Italia; however, for simplification, the name Ilva is still used to refer to the company, and the expression "Salva-Ilva" provisions is used below.

([46]) A few years later the issue returned to the Constitutional Court: Judgment No. 182/2017 rejected the question of constitutional lawfulness concerning Article 1(1)(b) of Decree-Law No. 98 of June 9, 2016, converted, with amendments, by Law No. 151 of August 1, 2016.

In the applicant's view, that choice would lead to the infringement of Article 117(3) and (4) and Article 118(1) and (2) of the Italian Constitution, as well as the principle of loyal cooperation: in particular, the competing regional competence in the field of health protection, the regional competence in the field of productive activity and the principle of subsidiarity would be infringed. Moreover, there would be unreasonable discrimination between the Plan concerning the Ilva Taranto plant and the procedure provided for in Article 1, paragraph 7, of Law Decree no. 61/2013 for all the other Plans. Reconstructing the regulatory framework of reference, the Court observes that the legislative interventions concerning Ilva are united by the same ratio, consisting in the pursuit of a balance between the national interest in the continuation of the activity of an industrial plant of a strategic nature, the maintenance of employment levels and the interest in ensuring that the production activity continues in respect of the surrounding environment and the health of individuals. The purpose of the censured provision is to accelerate the transfer to third parties of the business activities of the Ilva group under extraordinary administration. In spite of this overriding purpose, Article 1(1) of Law Decree no. 98/2016 is concerned with preparing various instruments for the involvement of the affected Region, in compliance with the principle of loyal cooperation: the new procedure for identifying the successful bidder provides that the evaluation of requests for amendments or additions to the Plan is entrusted to a committee of experts, which may avail itself of the 'other administrations concerned'; the application for authorization submitted by the successful bidder is made available on the website of the Ministry for the Environment and the Protection of Land and Sea, for the purpose of acquiring any observations, submitted, if necessary, by the Region itself the amendments and additions must in any event ensure standards of environmental protection consistent with the provisions of the 2014 Plan, which had been adopted after obtaining the opinion of the Region; at the Presidency of the Council of Ministers, a coordination between the Region of Apulia, the competent Ministries and the Municipalities concerned is established, charged with facilitating the exchange of information in relation to the implementation of the Plan. With regard to the discrimination - denounced as unreasonable - between the Ilva Plan and other similar Plans, the Court starts from the premise that laws-measures, per se, are not incompatible with the constitutional order. In this case, the difference in treatment does not appear to be unreasonably contradictory or constitutionally unlawful in view of Ilva's nature as a company of strategic national interest, of the repercussions of the events that have affected the Taranto plant on the employment, environmental, health and economic levels and of the need to finalize «the procedures for the transfer to third parties of the business activities of the Ilva group under extraordinary administration»; «all elements that denote the need to intervene urgently in matters of public interest, with ad hoc measures».

environment and human health in the balancing act with private property. This balancing act has so far seen the perimeter of environmental impact and health far too sacrificed.

But also, and in particular, it opens up in depth thoughts on what peculiar elastic modelling scholars will be willing to give, in the light of the climate change we are witnessing, to the protection of the environment and human health in the balancing act with private property, a balancing act that has so far seen the perimeter of environmental and health impacts sacrificed far too much.

The Italian legal system has actually developed a property right based on securing benefits for its owner, but it has also aimed at providing benefits to the community as a whole. In other words, the 'social function' (see Article 42 Const.1) owns the *ratio*, therefore, of balancing the interests of the individual with those of the community. This social function, while notoriously never remaining a theoretical statement of principle, has historically been concretized through the compression or extension of the boundaries of the interest, when public and when private, as well as of the obligations borne by the owner even before social rights, such as, moreover, the right to health, declined in its meaning of the right to a healthy environment([47]), albeit in the absence of an *ad hoc* conventional provision([48]). A protection, however, that if so far has proved weak, will certainly in the future be considered insufficient if limited -as it has been so far- to the liberal side of such rights. And finally, the Constitutional Court's ruling is emblematic (and interesting?) multilevel case-law ramifications that have occurred since the ruling involving the Court of the European Union and the European Court of Human Rights.

7. The action of the European Court of Human Rights

Italy's problematic handling of the conflict between social and environmental rights in the Ilva case-law has also been confirmed by the European Court of Human Rights (ECHR) rulings([49]). The Italian State ([50]) has indeed been repeatedly sentenced for its absolute inability to identify and put in place appropriate solutions to guarantee an adequate and effective protection of health and environment, thereby maybe also preserving the

([47]) The ECHR seem to treat the right to a healthy environment as a physiological extension of the right to health, on this topic see M. Luciani, *Salute I) Diritto alla salute – diritto costituzionale*, in *Enciclopedia giuridica*, Rome, 1991, XXVII, which says that «la protezione costituzionale del diritto all'ambiente, allora si ricollega direttamente ed immediatamente alla protezione costituzionale del diritto alla salute come diritto alla propria integrità psico –fisica della quale rappresenta il prolungamento e la naturale evoluzione». In another sense, in favour of classifying the right to a healthy environment as an autonomous right see A. Boyle, *Human Rights and the Environment: Where Next?*, *EJIL*, 2012, III, 626 ss.; G. Escobar Roca, *Nuevos derechos y garantias de los derechos*, Madrid, 2018, 127 ss.

([48]) In particular, on the protection of social rights in the European Court, and contextually on its insufficiency see. A. Guazzarotti, *Giurisprudenza Cedu e giurisprudenza costituzionale sui diritti sociali a confronto*, *Rivista del Gruppo di Pisa*, 2012, III; C. Salazar, *I diritti sociali nel difficile dialogo tra le Corti*, *Nuovo dir. amm.*, 2016, IV, 3 ss.

([49]) *Cordella and others v. Italia*, January 24, 2019, r. nn. 54414/13 and 54264/15.

([50]) ECHR January 24, 2019 (Appeals Nos. 54414/13 and 54264/15): the judgment is available at http://hudoc.echr.coe.int/eng?i=001-192164. For reference, S. Zirulia, *Ambiente e diritti umani nella sentenza della Corte di Strasburgo sul caso Ilva*, *DPContemp*, 2019, 19.

interests of the workers and of the company. In particular, with the *Cordella* case-law, the ECHR intervened in the *Ilva* case-law, recognizing the violation of the right to privacy and the right to an effective remedy of the inhabitants of the areas surrounding the plants of the well-known steel mill. All this, taking into account on the one hand the epidemiological evidence on the health situation of exposed populations, and on the other hand the so-called "salva-Ilva" provisions adopted since 2012.

However, the *Cordella* ruling is not the only ruling of the ECHR. ECHR First Chamber, condemned Italy for violating Articles 8 and 13 of the ECHR with a ruling on May 5, 2022. The appellants, residents of Taranto and employees of the company, complained that the Italian State had allegedly failed to take legal and regulatory measures to protect their health and the environment and failed to provide them with information on pollution and related health risks. Again, the ECHR confirmed the persistence of violations and omissions in terms of health protection and environmental restoration.

In particular, the ECHR found neither new facts nor arguments in relation to the evidence found in the *Cordella* ruling such as to persuade it to change its conclusions. According to ECHR's, the stalemate in which the Italian authorities find themselves in the management of the environmental issue in relation to the production activities of the Taranto steel plant persists, as does the same situation of serious environmental pollution such as to endanger not only the health of the appellants but more generally that of the entire population residing in the risk areas.

The ECHR also stated that the procedure for implementing the above-mentioned *Cordella* ruling is still pending before the Committee of Ministers of the Council of Europe, which, at its 1398th meeting (DH March 9-11, 2021), complained about the lack of information from the Italian Government concerning the implementation of the environmental plan, an element considered essential by the European Court in order for the steel plant to operate without endangering health.

Finally, the Court reiterated the urgency of adopting the remedial measures and implementing the environmental plan approved by the national authorities in order to safeguard the environment and the health of citizens.

8. The opinion of the European Union Court

Also according to the Court of the European Union, Italy has failed to comply with Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC Directive), which requires industrial facilities with a high polluting potential to obtain an

Integrated Environmental Authorization([51]) (so-called "AIA"), Directive 89/391/EC on safety and health at work([52]) and Directive 2004/35/EC on environmental liability, which is based on the 'polluter pays' principle, which provides for a liability presumption for the operator in the event of accidents in certain dangerous activities such as steel production([53]).

Furthermore, according to the EU Court, member states should also have issued the AIAs and provided an updated census of all at-risky plants by October 30, 2007, whereas Italy, with Law Decree no. 180/2007, extended the deadline for bringing existing plants into compliance with the IPPC Directive until March 31, 2008, transmitting the required data not until late October 2009 and, with Law Decree no. 155/2010, postponed the entry into force of the emission limit values until 2012 (i.e. the 'Salva-Ilva' provisions)([54]).

The situation was even strengthened by a note from the Ministry of the Environment dated April 14, 2009, reporting to the EU Commission the lack of data on the authorizations granted on national territory due to the delayed updates by the Regions, whereas, by law, the competence for issuing AIAs pertained exclusively to the Ministry itself([55]).

That resulted once again in the European Union Court's ruling against Italy for non-compliance with the IPPC Directive([56]).

On October 26, 2012, the Italian government, in ordering the commissioner's receivership of Ilva, which was already in distress, granted the resumption of operations and the issuing of the AIA until March 2014. Also acting on the same 'lifeline' was the Decree no. 92/2015, which is now declared unconstitutional([57]), which ordered an *ex lege* suspension of the execution of the seizure of the Taranto plant, making express reference to Law Decree no. 207/2012 (converted into Law no. 231/2012), concerning urgent health/environmental provisions in strategic industrial plants. The same (desperate) initiative also obtained the support of the EU Commission, which approved the financing

([51]) According to the IPPC Directive, AIA authorizations can only be granted if certain environmental conditions are met, such as that the applicant companies are responsible for preventing and reducing pollution and managing waste in accordance with the best available techniques.

([52]) G.U. L 183, May 29, 1989.

([53]) In particular, Directive 2004/35/EC provides, for the dangerous activities listed in Annex III, including steel production, for a type of strict liability, whereby only proof of a causal link between the activity and the damage is sufficient, without investigation of culpability in each individual case.

([54]) Under pressure from the European Commission, Italy transmitted the data, which reported that as of October 30, 2009, 1,204 out of 5,669 operating plants had AIA procedures underway.

([55]) Other delays were also found in the Ines (National Inventory of Emissions and their Sources) and E-PRTR (European Pollutant Release and Transfer Register) registers, which are required by the IPPC Directive to census pollutant emissions from industrial facilities. Also in this area, Italy was late in its transmission of its data, stalled as of 2006, and in updating the national register, stalled as of 2008.

([56]) For these reasons, the ruling states, «Italy, by failing to take the necessary measures to ensure that the competent authorities monitor, through authorizations issued under the IPPC directive, or through updated review of requirements, that existing installations are operating in accordance with the requirements imposed by the EU, has failed to fulfill its obligations under the directive».

([57]) Constitutional Court, ruling no. 58/2018.

of EUR 400 million by the European Investment Bank (EIB) between 2010 and 2012, trusting, above all, in positive effects on international competitiveness and employment.

9. The EU Commission's view

Since 2013, several claims have been brought before the authorities (judicial and otherwise) by citizens as well as by NGOs about the polluting fumes from the Taranto steel plant. Claims have also been addressed to the EU Commission which, on September 26, 2013, sent Italy a letter of formal notice inviting it to comply with the new Directive 2010/75/EU on industrial emissions and large combustion plants (IED Directive), replacing the IPPC Directive, which should have been transposed by the Member States by January 7, 2013([58]).

Clinical tests, carried out on behalf of the EU Commission, have in fact revealed heavy pollution of the air, water and soil, due to Ilva's activities, affecting both the industrial area of the steel plant and the adjacent residential areas of the city of Taranto and, in particular, the city district of Tamburi([59]). In addition to the failure to transpose the FDI Directive within the prescribed deadlines, the EU Commission also noted the lack of inspection and action by the Italian authorities on the proper functioning of the Ilva plant.

On October 16, 2014 the EU Commission, not having received positive responses to the first warnings, then sent the Italian government a reasoned opinion([60]), with which it reported the following infringements: failure to reduce emission levels generated by steelmaking processes; insufficient monitoring of soil and waste water; inadequate management of by-products and waste; and, above all, failure to comply with the conditions laid down for AIAs by the IED Directive.

10. Final consideration

The social division of labour has experienced seismic restructuring several times in its historical course. It has shown, in other words, that it can still be more than receptive to the material and empirical conditions in which it is placed. Why is this not happening with climate change?

([58]) Directive 2010/75/EU is intended to pursue the process of reducing emissions from industrial installations, and is a recast of 7 Directives, including the IPPC Directive and a number of sectoral Directives, such as the one on large combustion plants, waste incineration, activities using organic solvents, and titanium dioxide production.

([59]) On the recommendation of EU Environment Commissioner Potočnik, the EU Commission noted the failure to reduce the high levels of uninspected emissions generated during the steel production process.

([60]) Official invitation from the EU Commission, addressed to the Member States, to comply with EU law, subject, in the event of failure, to refer the matter to the EU Court.

The relationship between health and climate change, and the (necessary) reformulation of what are work environments as generally understood environments, clearly brings out the "*crisis of values*" in reference to the Ilva case-law. The matter that 'invested' the Italian Constitutional Court with the aforementioned ruling no. 85/2013 seems to suggest the doubt that the right to health, although fundamental, can be balanced with the right to property (and the freedom of economic initiative related to it), thus approaching economic and rational readings of the Italian legal system that are perhaps, in addition to being rigid, extremely anachronistic.

Here then is Prof. Perlingieri's hope «of the need to promote not only adequate levels of economic production, as much as and above all respect for life and the natural environment»([61]).

And from this perspective, the delimitation to be given to the notion of the "*social function of property*" is certainly one of the key issues in accessing a discussion of balancing values marked by the necessary prerogative of sustainable development. The debate around the social function of property arises related to a legal consciousness and a conception of the state/market relationship that are now behind us, and yet the idea that the social function represents today the essential junction in the search for a new eco-sustainable labor law seems rather urgent. In fact, the formula of the social function is far from being a dead letter, its flexible perimeter has all the properties to be used in different contexts to serve different political plans: the vicissitude of the transformation of the social function in contemporary times takes place in a context marked by the profound change in the relationship between state and market, between public and private.

In fact, much literature has noted the malleability and resilience of labor and civil law principles in our, as in other, systems by going to the roots of the subject. However, it is impossible not to notice that the protection of climate and the impact of the climate crisis on labor has always been among the most sacrificed issues in the labor law landscape. This is a paradox, given that labor law was born precisely as a result of concerns for the health and safety of the most vulnerable groups of workers.

The present issue has shown itself on the legal level, until recent times, with purely publicist profiles, such that scholars approach the topic of health, environment and climate with such a generalist or scientific focus that, years later, it is difficult to trace the distance of theoretical depth between the studies that have progressed over the years and labor law, which has remained physiologically behind. Over the years, certainly, the European scholarly community has developed on various guidelines (mostly guaranteeing health, on the workers side, and guaranteeing freedom of economic initiative, on the employers side) that have triggered a certainly positive normative evolution, but what has lagged behind, unfortunately, is the development of a unified private and labor law thought. It is in this and more advanced area that discussions have begun, albeit still from an anthropocentric

([61]) P. Perlingieri, *Stagioni del diritto civile, cit.*

perspective, of a more all-encompassing environmental and labor protection. However, the connection between industrial relations and labor and climate protection tout court (or external, from the view of the enterprise) has been culturally and normatively very weak, if not contradictory.

In recent years, on the other hand, heavy pollution has lit several sparks in the labor law debate that, while still at an early stage, have in fact begun to detect the indissoluble interconnection between climatic agents, *doing* business, and the parts of industrial relations.

It will therefore be required, however problematic, to promote a cross-sectional study of the institutes: whereby the formalization of values such as the elaboration of common standards, rules and principles will take on particular importance when faced with identical or similar problems.

It will be even more required, however problematic, to validate a cross-disciplinary study, in relation to the natural and legal sciences: as a type of law with a high rate of dependence on technological innovations and social transformations, constantly expanding into the future. Not only in terms of prevention, as much as in response to challenges and, in any case, to new needs dictated by changing traditional realities and balances.

«As a consequence of a (near) reversal of the human-nature relationship; as a result of which man, once exposed to risks and dangers from nature, has become, with his Promethean ability to subjugate the planet, a source of increasing risks and dangers to nature»([62]).

The reconnection and convergence between these two elements, can only take place through a new polychromatic view of the change taking place. Climate changing, in fact, will be addressed as an index of the genesis of an unprecedented labour relationship connected to the territory as a dimension of the new geography of industrial relations. Which will make it possible to reach the area of harmonization between the two aspects, sides of the same coin.

Then, it will be possible both to rethink the work environment, no longer solipsistic understood, but set in a scenario where everything is environment, and everything is synergistically affected by climate change.

([62]) L. Moccia, *op. cit.*

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