RETROSPECTIVE OVERVIEW OF 2020-2022

COMPARATIVE LABOUR LAW LITERATURE

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WORK, SPACE, AND LAW. THE EMERGENCE OF A LEGAL GEOGRAPHY OF LABOUR. OVERVIEW 2020-2022

I. SPATIAL-LEGAL ANALYSIS OF LABOUR: AN APPRAISAL

This paper provides an overview of the articles published in the years 2020-2022 by journals affiliated to the *International Association of Labour Law Journals* (IALLJ)[1]. It aims to identify trends, movements, and developments in the scientific debate, which may be worth highlighting and mentioning to the wider community of labour law scholars. In this respect, the first thing we noted is that, in recent years, labour law journals have shown growing interest in articles and research papers in which the element of space or spatiality plays a major role.

A good example of this is volume 42, issue 1, Spring 2021, of the *Comparative labor law & policy journal*. The issue focuses on « Nationalism, populism & labor market reform today ». The terms nationalism and populism have, of course, a broad meaning and can refer to a variety of political, institutional, and legal experiences[2]. They have in common, though, an opposition (or separation) between what is considered internal and belonging to a certain territory or area or place and what is instead perceived as external and, in

1 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. Since 2012 a group of editors have collaborated to provide (usually annual) overviews of the most relevant scientific trends in publications in IALLJ journals. The authors were assisted by a team of colleagues, who guided their work and helped them listing and sorting all articles into categories. The member of this team are: Mariapaola Aimo, Gian Guido Balandi, Milena Bogoni, Silvia Borelli, Matteo Borzaga, Antonio Baylos, Nunzia Castelli, Isabelle Daugareilh, Sebastián de Soto Rioja, Manuel Antonio García-Muñoz Alhambra, Eva Maria Hohnerlein, Daniela Izzi, Eri Kasagi, Barbara Kresal, Gratiela-Florentina Moraru, Venera Protopapa. We owe many thanks to Silvia Borelli and Marco Rocca for their comments. The usual disclaimer applies. The article is the product of a shared reflection and elaboration; Giulio Centamore has drafted sections 1 and 3; Catharina Lopes Scodro has drafted sections 2 and 4.

2 J. L. Campbell, « Nationalism, Populism, & Labor Market Reform Today », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 7.

some respects, different from it. Through a series of national contributions from Hungary[3], Austria[4], Italy[5], Brazil[6], Poland[7], Russia[8], and Czech Republic[9], the journal's issue touches upon the connections between the rise of nationalisms and populisms around the globe and recent labour market reforms. It is worth mentioning that in 2020 the journal *Diritti lavori mercati* had already dealt with the related theme of protectionism in labour law in one of its *Quaderni*[10], connecting it to several subjects, such as EU law[11], globalisation and the ILO[12] and more.

These and other similar publications contribute, from the point of view of labour law, to the discussion on the crisis of globalisation (or deglobalisation, slowbalisation, and so on). In the 1990s and 2000s, globalisation had contributed to weakening labour law systems, for reasons that include the increased capacity of multinational enterprises (MNEs) to circumvent the application of national employment protection legislations, somehow evading the *territoriality* of labour law[13]. Therefore, today, it is worth trying to understand how the recent transformations occurred in the global scenario will affect labour law and, on the other hand, how labour law will impact on the former. A second example, thus, comes from the Issue 3 of 2022 of the *Rivista giuridica del lavoro e della previdenza sociale*. The issue deals with the topic of relocations and offshoring. The theme is different, but the organising principle, in the background, is again that of space and territory. The central question is what can labour law do to prevent MNEs from moving their factories from one place to another because of mere profit logic, without taking into enough consideration the social costs of their relocations[14]. In the golden age of globalisation, such corporate

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3 C. Kollonay Lehoczky and B. Majtenyi, « Social Rights, Social Policy, and Labor Law in the Hungarian Populist-Nationalist System », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 13.

4 P. Rathgeb and M. Gruber Risak, « Deserving Austrian First: the Impact of the Radical Right on the Austrian Welfare State », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 43.

5 L. Calcaterra, « New nationalism and labor law: an overview of the Italian Labor and Social Security policy of the Last Years », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 61.

6 R. Filho and J. Davila, « Quo Vadis Labor Law? Labor Regulatory Trends in Bolsonaro's Kakistocracy », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 89.

7 P. Grzebyk, « Neo-Nationalism in Poland and Its Impact on Labor Law and Social Policy », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 115.

8 E. Sychenko and V. Sidorov, « New Nationalism in Russia: the Policy of a Mighty State in the Field of Labor », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 137.

9 K. Koldinská, « To Flog a Dead Horse », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 163.

10 U. Gargiulo and M. Ranieri (*a cura di*), *Protezionismo e diritto del lavoro. Spunti di riflessione*, Editoriale Scientifica, 2020.

11 D. Izzi, « L'Europa sociale fra protezionismi e aspirazioni solidaristiche », *in* U. Gargiulo and M. Ranieri (*a cura di*), *Protezionismo e diritto del lavoro. Spunti di riflessione*, Editoriale Scientifica, 2020, p. 165.

12 M. Borzaga, « Protezionismo e standard giuslavoristici internazionali: per una "difesa" del ruolo dell'OIL nell'economia globalizzata », *in* U. Gargiulo and M. Ranieri, *a cura di*, *Protezionismo e diritto del lavoro. Spunti di riflessione*, Editoriale Scientifica, 2020, p. 99.

13 B. Hepple, *Labour laws and global trade*, Hart Publishing, 2005; G. Mundlak, « De-Territorializing Labor Law », *Law and Ethics of Human Rights*, vol. 3, no. 2, 2009, p. 188; M. Falsone, « Voce Contratto di lavoro e territorialità », *in* R. Del Punta, R. Romei and F. Scarpelli (*a cura di*), *Enciclopedia del diritto. I tematici. Il contratto di lavoro*, Giu.rè, 2023, p. 430.

14 V. Brino, P. Loy and G. Orlandini, « Introduzione », *Rivista giuridica del lavoro e della previdenza sociale*, 3, I, 2022, p. 367.

decisions would have been based on purely economic calculation. The mantra was: the company goes where overall costs are lower, based on a rational construction of the global value chain. Today things look different[15], and the journal's issue helps understand how. National legal systems are starting to hinder MNEs from relocating their factories abroad, at least without paying a certain social or economic cost. In Europe this is the case, for example, of Italy[16] or France[17], although, in practice, such legislations did not prove particularly sharp. European work councils[18] and Transnational company agreements[19] may have a say, too, vis-à-vis this type of entrepreneurial decisions.

The topic is on the agenda beyond labour law. On Friday 14 July 2023, the *Financial Times* addressed the German Government's new approach about companies investing in China. Although China is Germany's largest trading partner, the Government's recommendation consists, now, in starting to consider alternative business locations, especially when it comes to the most important economic sectors, such as those linked to the ecological and digital transition. Quoting from a recent keynote speech at the Bund Summit in Shanghai of Executive Vice President of the EU Commission, Valdis Dombrovskis: «In almost every sector, arena and debate forum, we are seeing - and reading - what seems to be a whole new vocabulary: onshoring, re-shoring, near-shoring, friend-shoring, decoupling, de-globalization […] ». The USA are moving in the same direction. In 2022, after intense rounds of Congress negotiations, the IRA (Inflation reduction act) became law. Despite its name, the IRA is the most important piece of legislation in American history trying to foster the transition to a greener economy[20]. It has been described as a landmark of the Biden presidency, too. However, the massive economic resources addressing the green transition are mostly intended for companies that set up their factories in American territory or in States that have been labelled as *friends*. If one looks at the other side of the coin of the green transition, that is the climate crisis, the discourse, though, turns out to be again intrinsically geographic, in the sense of the physical environment and social spaces alike. In this respect, Barbera[21] observes that, when it comes to the environmental issue, inequalities concern, in the first place, the difference between the Global South and the Global North. For geographical and historical reasons, the Countries of the Global South have contributed less but are the most affected by the effects of climate change. Besides, they have less resources, than those of the Global North, to adapt themselves to the new risks. Hence, long-established geographical inequalities may grow even further. Likewise, the climate crisis exacerbates existing disparities not only among different societies but

15 G. Ottaviano, *Riglobalizzazione. Dall'interdipendenza tra paesi a nuove coalizioni economiche*, Egea, 2022.

16 S. Borelli and R. Tonelli, « Delocalizzazioni e aiuti di stato. Riflessioni su una normativa "slogan" », *Rivista giuridica del lavoro e della previdenza sociale*, 3, I, 2022, p. 410.

17 G. Centamore, « L'obbligo di cercare un acquirente in caso di dismissione di grandi siti produttivi, ovvero: l'arma spuntata della Loi Florange », *Rivista giuridica del lavoro e della previdenza sociale*, 3, I, 2022, p. 423.

18 F. Guarriello and M. Zito, « Il ruolo dei CAE nelle delocalizzazioni internazionali », *Rivista giuridica del lavoro e della previdenza sociale*, 3, I, 2022, p. 466.

19 M. Schmitt, « Gli accordi transnazionali di gruppo di fronte alle delocalizzazioni », *Rivista giuridica del lavoro e della previdenza sociale*, 4, I, 2022, p. 695.

20 D. Wallace-Wells, « America's "Neoliberal" Consensus Might Finally be Dead », *The New York Times*, 25 May 2023.

21 M. Barbera, « Giusta transizione ecologica e disuguaglianze: il ruolo del diritto », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 175, no. 3, 2022, p. 339.

also within them. It impacts primarily the most vulnerable groups, not least when it comes to extreme meteorological events, as was the case with the black communities of the old town when Hurricane Katrina hit New Orleans.

At this point, it should be noted that in the last two or three years several labour law journals have published articles in which a juridical or sociological approach to the world of work and the labour market goes hand in hand with analysis of space and methodologies that are typical of geography. Johnston[22], for example, addresses the theme *Labour geographies of the platform economy*, from the point of view of collective organising strategies. She observes that «In each instance [of the organizational management of work], expressions of workers solidarity – be they trade unions, worker centres, guilds, or others – have had a geography» and that «The emergence of digital platforms presents distinctive geographic features to which workers' collective organizing efforts must respond». Furthermore, the author articulates, «A spatial analysis also sheds light on the appropriate scale and scope of regulation to ensure the decency of platform-based work. In examining the spatial expressions of workers' collective organizing, it is evident that workers' efforts often mirror the geographical organization of the platform work they are engaged in »[23]. Writing about investments and working activities in urban areas, Grazzini draws attention to the role of cities in tackling climate change, regarding both mitigation and adaptation measures[24]. He recalls that more than half of the world population now lives in cities and that, today, urban areas around the world are key to the objective of phasing out fossil fuels and reduce consumptions and energy use[25]. The problem, or the elephant in the room, he notes, is that this entails the need to rethink entire investments models in urban areas and, more generally, the organisation of work, including when it comes to its legal rules and arrangements. In this respect, labour law journals offer valuable examples. The first one comes from the *Revista de derecho social*. Miñarro Yanini focuses on remote work as a potential climate mitigation measure to curb greenhouse gas emissions[26]. Working from home or, however, not going to the office, should reduce the use of cars and the overall impact of private transport. The paper encourages labour law scholars to take into consideration this kind of research questions, when it comes to address major societal problems, such as the climate crisis. The second one is Corazza's article for *Lavoro e diritto*'s issue on « Work in the Anthropocene »[27]. In the aftermath of the pandemic, the author says, encouraging the use of remote work might have an impact on people's housing choices and foster the development of smaller cities instead of bigger ones. If well-regulated, thus, working from home might help tackling the climate crisis, on the one hand, and nurture a more balanced urbanistic development, on the other hand. In this respect, it is noteworthy that Corazza combines the methodology typical of legal analysis with that of human geography.

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22 H. Johnston, « Labour geographies of the platform economy: Understanding collective organizing strategies in the context of digitally mediated work », *International Labour Review*, vol. 159, no.1, 2020, p. 25.

23 *Ibid*.

24 F. Grazzini, « Investimenti e lavoro nella città dei cambiamenti climatici », *Lavoro e diritto*, no. 2, 2022, p. 411.

25 *Ibid*., p. 414.

26 M. Miñarro Yanini, « Cambio climático y nuevas formas de empleo: el régimen del teletrabajo en clave de gestión ecológica », *Revista de derecho social*, 2021, p. 57.

27 L. Corazza, « Il lavoro senza mobilità: smart working e geografia sociale nel post-pandemia », *Lavoro e diritto*, no. 2, 2022, p. 431.

Comparative labour law literature

Bringing up, now *openly*, the intersections between labour law and geography, the work of Iossa and Persdotter[28], Iossa[29], and Persdotter and Iossa[30] must be mentioned. In their 2021 article, Iossa and Persdotter address the issue of cross-border labour mobility in the EU internal market. They draw both on critical analysis on social dumping in the EU and the conceptual tools of critical legal geography. The article proposes a « complex understanding of the relationship between law and space »[31], which would characterise what they call *legal geography of labour relations*, a new and promising area of research and debate both for trade unionists and labour law scholars.

They write: « In our view, cross-border social dumping is the product on an ongoing "game of jurisdiction" stemming from the multi-scalar dynamics that inform the functioning of the EU internal market. In particular, we have explained how the simultaneously legal and territorial constitution of the EU internal market sets the conditions for social dumping to occur. Social dumping is commonly discussed in terms of its effects on national labour law and industrial relations regimes. In this context, EU integration is often taken as a (if not the) primary example of this dynamic, and it is frequently characterized by both its critics and proponents as a one-directional process through which powers are shifted "upwards" from the Member States to the EU, rendering the former relatively "powerless". In contrast, a legal geographic perspective reveals that the project of EU integration relies as much on the *scalar differentiation* of powers as it does on the "upward", unilinear shift of powers from the national to the supra-national level. Drawing on the analytical resources of critical legal geography, we have argued that multi-scalar dynamics forge a cross-border jurisdiction where labour law is re-territorialized and labour relations re-spatialized. Social dumping thus appears as a practise that is continually constituted and re-constituted through a game of jurisdiction, involving EU institutions, national governments, private companies and trade unions. In an integrated internal market, where economic rules are uniform and enable companies to move and re-locate, but labour law regimes are not, labour relations come to encompass cross-border logics »[32].

Iossa offers a critical reading of the *Dobersberger* case of the CJEU[33]. The paper further articulates on how the *old*, and essentially national, territoriality of labour law struggles to cope with the *new* territoriality of the EU internal market and of globalisation. He aims to « demonstrate that geography is an element of crucial relevance in determining the working conditions of highly mobile posted workers »[34] and, from this perspective, some critical elements of the judgement are disentangled.

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28 A. Iossa and M. Persdotter, « Cross-Border Social Dumping as a "Game of Jurisdiction" - Towards a Legal Geography of Labour Relations in the EU Internal Market », *Journal of Common Market Studies*, vol. 59, no. 5, 2021, p. 1086.

29 A. Iossa, « Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work - A Critical Reading of Dobersberger », *Industrial Law Journal*, vol. 51, no. 1, 2022, p. 138.

30 M. Persdotter and A. Iossa, « On legal geography as an analytical toolbox for EU legal studies », *European Law Open*, no. 1, 2022, p. 126.

31 A. Iossa and M. Persdotter, « Cross-Border Social Dumping as a "Game of Jurisdiction" - Towards a Legal Geography of Labour Relations in the EU Internal Market», *op. cit.*, p. 1097.

32 *Ibid*.

33 A. Iossa, « Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work - A Critical Reading of Dobersberger », *Industrial Law Journal*, *op. cit.*, p. 138.

34 *Ibid*., p. 140.

It is time, though, to delve a little more into this relatively new area of study, which is the legal geography, and to illustrate why and how we decided to use it as the main analytical tool for our overview of the works that have been published, in the last three years, by journals affiliated to the IALLJ.

The first thing to do is make clear that legal geography is not innovative per se in studying the relations between law and space. « The association of law and place is as old as law itself », as Sarat, Douglas, and Merril Umphrey put it[35]. The law has, by definition, a scope of application, which is mainly identified in connection with a territory or a place or a space, such as a nation state or a federation of states, a region or a small city, or, thinking about labour law, an economic sector. Although certain rules are considered universal or stemming from some kind of basic principle of human society, laws are often a manifestation of a certain territory. Italy and Brazil or Australia and France, for instance, may face similar socioeconomic issues, but still address them with different legal instruments: of course, this is one of the starting points of comparative law[36]. Drawing on these and other traditions in the study of law, such as law and society, and in that of the study of geography (human geography and others), legal geographers aim to deepen and expand the comprehension of the relationships between law and space. « If we walk through a newly constructed neighbourhood, lawyers might think of traffic rules, public procurement or terms in mortgage contracts. Legal geographers see how regulations on noise pollution affected the shape of the houses, how municipal decisions on public transport determine the socio-economic composition of the population, or how the proximity to a forest might lead to a de facto disapplication of municipal rules for waste disposal by the inhabitants »[37].

Or, when engaging with geography, labour law scholars may see how regulations on home working impact on the emission of greenhouse gas in urban areas or encourage the development of towns instead of bigger cities, to name but two examples that we have already mentioned. In essence, legal geography « is a stream of scholarship that makes the interconnections between law and spatiality, and especially their reciprocal construction, into core objects of inquiry »[38]. It is worth noting that the concepts of law and space are mainly intended in broad sense. The word law may refer to constitutions, international law treaties, pieces of legislation, court decisions, local authorities' decisions, local practices, collective agreements as for labour law, and so on. In a similar fashion, the idea of spatiality may allude to an area of the physical world in which humans, non-humans, and objects are positioned, but also to a legal space, such as a national border, or a social space like a workplace. It should also be noted that legal scholars would be supposed to integrate their methodologies with those used by geographers, especially when it comes to ethnographic research - hence, primarily, through observation and interviews.

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35 A. Sarat, L. Douglas and M. Merrill Umphrey, « Where (or What) is the Place of Law? An introduction », *in Id.* (ed.), *The Place of Law*, University of Michigan Press, 2006, p. 1.

36 N. Blomley and J. Labove, « Law and Geography », *International Encyclopedia of the Social & Behavioral Sciences*, II ed., 2015, p. 13.

37 F. De Witte, « Here be Dragons: Legal geography and EU law », *European Law Open*, no. 1, 2022, p. 114.

38 I. Braverman *et al.*, « Introduction. Expanding the Spaces of Law », *in* I. Braverman *et al.* (ed.), *The Expanding Spaces of Law: A Timely Legal Geography*, Stanford Law Books, 2014, p. 1.

Legal geography, in other words, aims to investigate how the law impact on the physical and social world and how the latter, in turn, affect the construction of the law: « In the world of lived social relations and experience, aspects of the social that are analytically identified as either legal or spatial are conjoined and co-constituted. Legal geographers note that nearly every aspect of law is located, takes place, is in motion, or has some spatial frame of reference. In other words, law is always "worlded" in some way. Likewise, social spaces, lived places, and landscapes are inscribed with legal significance. Distinctively legal forms of meaning are projected onto every segment of the physical world. These meanings are open to interpretation and may become caught up in a range of legal practices. Such fragments of a socially segmented world - the *where* of law - are not simply the inert sites of law but are inextricably implicated in how law *happens* »[39].

Drawing on the excellent work of legal scholars that have already started to integrate and consider the use of human geography, labour geography, or legal geography itself, in their publications on the labour market, we aim to offer an overview, from this promising perspective, of some of the debates carried on in labour law journals in the last three years. Needless to say, the articles that we will take into consideration in the following sections are not (and were not meant to be) *papers in* legal geography. In many cases, they do not even engage with the concept of space or spatiality, at least not openly or directly. Nonetheless, by using this analytical toolbox, our hope is to offer cross-cutting views on some of the major themes that researchers are investigating in recent years, but also push labour law scholars to talk about *law spatially* and about *space legally*[40], exploring how (and *when*, as Valverde suggests)[41] law *happens*, or is *worlded*, as well as the other way around: how society and its space dynamics continually contribute shaping the law.

The overview is organised around three kinds of physical/social/legal spaces: the house, the city, and the border – three different settings, in which the relationship between labour law and space or spatiality unfolds in ways that, it seems to us, it would be worth considering for labour law scholars. In particular, section 2 focuses on the house as a work-*place* and as a space of law, reviewing recent legal analysis on work-life balance (2.1.) and domestic work (2.2.). Section 3 deals with the regulation of work in urban areas, which is a scenario that is hardly examined by labour law scholars, whilst geographers, sociologists, anthropologists, and now ecologists too, among others, are much more used to deal with it. Section 4 reviews articles that address one way or another the issue of borders, labour mobility, and migrations. Section 5 concludes.

II. THE HOUSE AS A WORK-PLACE AND A SPACE OF LAW

The first space or scenario that is worth considering is the house, as it cumulates a variety of different interactions on law, space, and work. We will focus on discussions related to work-life balance **(A)** and domestic work **(B)**, including, for example, the family, the caring responsibilities, and the work performed in or for a house.

39 *Ibid*.

40 D. Manderson, « Interstices: New Work on Legal Spaces », *Law Text Culture*, vol. 9, no. 1, 2005, p. 1.

41 M. Valverde, « *Time Thickens, Takes on Flesh », Spatiotemporal Dynamics in Law*, *in* I. Braverman *et al.* (ed.), *The Expanding Spaces of Law: A Timely Legal Geography*, *op. cit.*, p. 53.

A - Work-life balance

The issues on the work-life balance were debated in the literature in different countries. We identified several publications from the context of the European Union, due to the approval and publication of the Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers. The subject is not new per se, since the policies to promote « reconciliation between work and family » first appeared in the 1970s[42]. These policies resulted from a context of pressure for changing care responsibilities that must be reconciled with paid work. This pressure affected mainly women, due to the increasing female participation in the paid economy, raising of dual-earner families, demographic changes, and globalisation issues.

The policies to promote « reconciliation between work and family » were gradually renamed to « work-life balance » (WLB) in the 1990s. For Chieregato, the changing of the use of the terms « family » for « life » was related to popularize « a gender-neutral language » in order «to look beyond the initial focus on workers with family responsibilities - most often, working mothers with small children - and to consider various aspects of life other than care, such as community life, training and education, leisure and personal care, and other activities »[43].

The idea of using the « work-life balance » policies to change the traditional division of caring roles of men and women was one of the concerns of the Directive (EU) 2019/1158. The instrument resulted from several legislative instruments, case-law interpretations, and political initiatives[44]. A decisive instrument in the process was the European Pillar of Social Rights (EPSR) (2017), which consolidated the commitment to promote gender equality (Principle 2) and work-life balance (Principle 9) in Europe. In this sense, the Work-Life Balance Directive was one of the first measures adopted to implement the principles of the EPSR.

The Directive reinforced the commitment to the achievement of gender equality, by supporting WLB policies for « promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay » (Preamble, [6]). The chief rights innovation within the Directive were parental leave, paternity leave, carers' leave, and the right to ask for flexible working arrangements.

These provisions challenge care roles that were traditionally designated for women, which gave rise to questions related to the EU approach to the work-family typology classification model. Weldon-Johns recognized the significance of the enactment of Directive (EU) 2019/1158 towards shared parental roles typology[45]. However, it was warned that the maintenance of gendered assumptions of care roles can frustrate the move towards a new typology.

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42 E. Chieregato, « A Work-Life Balance For All? Assessing The Inclusiveness of EU Directive 2019/1158 », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 36, no.1, 2020, p. 59.

43 *Ibid*., p. 62.

44 E. C. Di Torella, « La directive de 2019 sur l'équilibre entre vie professionnelle et vie privée : une nouvelle étape franchie », *Revue de droit comparé du travail et de la sécurité sociale*, no. 3, 2020, p. 8.

45 M. Weldon-Johns, « EU work-family policies revisited: Finally challenging caring roles? », *European Labour Law Journal*, vol. 12, no. 3, 2021, p. 301.

Comparative labour law literature

Chieregato investigated a different dimension of gendered assumption in « work-life balance », for which a « variety of workers across gender, race, and class have been overlooked » in WLB literature. By questioning which workers and carers could benefit from Directive (EU) 2019/1158, she concluded that workers in non-standard employment may be excluded from WLB measures what « (...) may reflect, and exacerbate, existing inequalities along gender, sexuality, education, nationality, and age lines »[46]. This paper was published in a Special Section on « Work-Life Balance » in the *International Journal of Comparative Labour Law and Industrial Relations* (vol. 36, issue 1, 2020), edited by Christina Hiessl. Hiessl stressed that the nature of WLB demands a perspective beyond labour law, including, for example, policy design[47].

Another thematic issue was on « Directive 2019/1158 of 20 June 2019 concerning the balance between the personal and private life of parents and carers » (vol. 03, 2020), at *Revue de droit comparé du travail et de la sécurité sociale*, edited by Pascale Lorber and Guillaume Santoro. The issue reunited papers on work-life balance in the scope of the European Union (EU) and beyond: Italy[48], France[49], Germany[50], the Netherlands[51], Slovenia[52], Portugal[53], Poland[54], Romania[55], Czechia[56], United Kingdom[57], Switzerland[58], and South Africa[59].

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46 E. Chieregato, « A Work-Life Balance For All? Assessing The Inclusiveness of EU Directive 2019/1158 », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 36, no. 1, 2020, p. 74.

47 C. Hiessl, « Work-Life Balance. Introduction », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 36, no. 1, 2020, p. 55.

48 *Revue de droit comparé du travail et de la sécurité sociale*, no. 2020-3, L. Calafà, « La transposition de la Directive 2019/1158 en Italie : Problèmes en suspens et solutions complexes », p. 20.

49 *Ibid.*, G. Santoro, « L'équilibre entre vie professionnelle et vie privée des parents et des aidants en droit français au regard de la directive 2019/1158 du 20 juin 2019 », p. 34.

50 *Ibid.*, L. Krüger, « La directive 2019/1158 du 20 juin 2019 concernant l'équilibre entre vie professionnelle et vie privée des parents et des aidants dans une perspective allemande », p. 46.

51 *Ibid.*, S. Burri, « L'impact de la directive 2019/1158 sur l'équilibre entre vie professionnelle et vie privée en droit néerlandais », p. 58.

52 *Ibid.*, S. Bagari, « L'équilibre entre vie professionnelle et vie privée en Slovénie à la lumière de la nouvelle directive européenne 2019/1158 », p. 70..

53 *Ibid.*, C. O. Carvalho, « Concilier vie professionnelle et vie familiale pour promouvoir l'égalité entre les femmes et les hommes au Portugal : considérations et perspectives à la lumière de la directive 2019/1158 sur l'équilibre entre vie professionnelle et vie privée des parents et des aidants », p. 82.

54 *Ibid.*, A. Musiała, « Mise en oeuvre en Pologne de la Directive (UE) 2019/1158 du Parlement européen et du Conseil du 20 juin 2019 concernant l'équilibre entre la vie professionnelle et la vie privée des parents et des aidants », p. 94. .

55 *Ibid.*, F. Roșioru, « L'équilibre entre vie professionnelle et vie privée en Roumanie dans le contexte de la Directive (UE) 2019/1158 du Parlement Européen et du Conseil du 20 juin 2019 », p. 100.

56 *Ibid.*, V. Stangova, « Transposition de la directive (UE) 2019/1158 du Parlement européen et du Conseil du 20 juin 2019 concernant l'équilibre entre vie professionnelle et vie privée des parents et des aidants dans le droit du travail tchèque », p. 112.

57 *Ibid.*, O. Golynker and P. Lorber, « La directive 2019/1158 concernant l'équilibre entre vie professionnelle et vie privée des parents et des aidants au Royaume-Uni : l'effet Brexit », p. 118.

58 *Ibid.*, S. Perrenoud, « La situation des parents et des proches aidants en droit suisse à la lumière de la Directive (UE) 2019/1158 du Parlement européen et du Conseil du 20 juin 2019 concernant l'équilibre entre vie professionnelle et vie privée des parents et des aidants », p. 132.

59 *Ibid.*, K. Malherbe, « L'équilibre entre vie professionnelle et vie privée en Afrique du Sud : un objectif irréalisable ? », p. 144.

The discussions highlighted the urgency to reflect on the Directive and, mainly, on its implementation and potential outcomes. Rights regarding work-life balance have been regulated in domestic legal orders in various ways, impacting in the content of the Directive (EU) 2019/1158 needed to be transposed. Even so, different authors pointed out potential improvements in WLB rights supported by the Directive, like the parental leave in the Netherlands[60], the extension of paternity leave in France[61], the increase in the situation of carers in Romania[62], and the challenges of work-life balance for the aging population and of caring for elderly family members in Slovenia[63].

B - Domestic work

Several articles discuss the impacts of the designation of caring responsibilities. The space of the house has been historically affected by the sexual division of labour, which is framed in different concepts: (i) the different distribution of men and women in the labour market, with the presence of occupations performed mainly by woman; and (ii) the discrepancy of division between (unpaid) domestic work and caring responsibilities between both man and woman[64].

The concepts overlap and must be understood as « formed and modulated historically and socially », resulting in a division between the productive sphere for men and the reproductive one, for women[65]. The historically designation of the reproductive sphere for the woman resulted in a context of the house as a gendered place, that reflects both in unpaid and paid work. Regarding the unpaid, we identify how the caring responsibilities were divided, leading to the emergence of the work-life balance as a « women's issue » related to their roles in the families. Paid work, on the other hand, is mainly developed by racialised/ethnicised women (in some contexts, with a migrant background), in a context of exclusions from labour law provisions. These exclusions indicate that the payment for caring services did not imply immediate recognition of the domestic/care worker as a worker. This situation was surrounded by discourses on their treatment « like one of the family » and the exclusion - partial or integral - of labour law regulations worldwide.

After several decades of mobilisation for recognition, the Convention (C189) and Recommendation (R201) on Domestic Workers of the International Labour Organization (ILO) were adopted in 2011. The instrument entered in force on 5 September 2013, after twelve months of the second ratification. The first ratifications were from Uruguay and the Philippines. In August 2023, C189 had been ratified by 36 ILO Member States (ILO [n/d]).

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60 *Ibid.*, S. Burri, « L'impact de la directive 2019/1158 sur l'équilibre entre vie professionnelle et vie privée en droit néerlandais », p. 58.

61 *Ibid.*, G. Santoro, « L'équilibre entre vie professionnelle et vie privée des parents et des aidants en droit français au regard de la directive 2019/1158 du 20 juin 2019 », *op. cit*.

62 *Ibid.*, F. Roșioru, « L'équilibre entre vie professionnelle et vie privée en Roumanie dans le contexte de la Directive (UE) 2019/1158 du Parlement Européen et du Conseil du 20 juin 2019 », p. 100.

63 *Ibid.*, F. Roșioru, « L'équilibre entre vie professionnelle et vie privée en Roumanie dans le contexte de la Directive (UE) 2019/1158 du Parlement Européen et du Conseil du 20 juin 2019 », *op. cit.* ; S. Bagari, « Direktiva o usklajevanju poklicnega in zasebnega življenja ter pravica do zahteve za prožne ureditve dela », *Employers & Employees*, no. 2-3, 2022, p. 231.

64 H. Hirata and D. Kergoat, « Novas configurações da divisão sexual do trabalho », *Cadernos de Pesquisa*, vol. 37, no. 132, 2007, p. 595.

65 *Ibid*, p. 599 (our translation).

For Blackett, these instruments marked the international validation of «their status [of domestic workers] as workers, like any other workers», with a specific standard setting for «workers like no other»[66]. The instruments – beyond the ratification of ILO C189 – institutionalised the urgency to promote decent work for domestic workers around the world. Five years after the instrument entered into force, the *International Journal of Comparative Labour Law and Industrial Relations* published the special issue « Regulatory Innovation on Decent Work for Domestic Workers in the Light of International Labour Organization Convention No. 189 » (vol. 34, issue 2, 2018), edited by Adelle Blackett and Anne Trebilcock. The issue brought together examples of regulatory innovation for promoting decent work for domestic workers from Germany[67], South Africa[68], Argentina, Chile and Paraguay[69]. Additionally, decent work for domestic workers was investigated in the context of Nigeria[70] and Côte d'Ivoire[71].

As a regulatory innovation, Blackett and Tiemeni presented the Commission for Conciliation, Mediation, and Arbitration (CCMA), which promotes the resolution of labour conflicts for low-wage workers in South Africa, including domestic workers. The institution promotes access to justice through a mediating approach, that is « part of the aspiration of decent work for domestic workers »[72] based on ILO C189 and R201. In this sense, CCMA is a legal actor engaged with the applicability of state law in the household, recognising it as a workplace.

The special issue takes into consideration a variety of issues regarding the implementation of the legal instrument, such as the role of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR requested information from the German Government in 2017 in order to follow up on the implementation of ILO C189 in the country. Trebilcock presents the gaps between German law and C189 rights, based on the Government's responses, like the exclusion of domestic workers from OSH legislation (Protection of Workers Act)[73]. The employer has only a « duty of care to the domestic worker »

66 A. Blackett, « Introduction », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 143.

67 A. Trebilcock, « Challenges in Germany's Implementation of the ILO Decent Work for Domestic Workers Convention », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 149.

68 A. Blackett, T. G. Tiemeni, « The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 177.

69 L. Poblete, « The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 177.

70 A. Osiki, « Facilitating Decent Work: The Case of Domestic Workers in Nigeria», *Industrial Law Journal*, vol. 43, no. 2, 2022, p. 726.

71 A. Blackett and A. Koné-Silué, « Innovative Approaches to Regulating Decent Work for Domestic Workers in Côte d'Ivoire: Labour Administration and the Judiciary Under a General Labour Code », *Industrial Law Journal*, vol. 158, no.1, 2019, p. 37.

72 A. Blackett, T. G. Tiemeni, « The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 228.

73 A. Trebilcock, « Challenges in Germany's Implementation of the ILO Decent Work for Domestic Workers Convention », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 34, no. 2, 2018, p. 149.

on work areas, tools, and work schedules, based on the Civil Code, which is extended to living and sleeping areas for live-in domestic workers[74]. Additionally, Trebilcock illustrates the gaps in relation to fair terms and conditions of employment (ILO C189) and wages for domestic workers. The German Government declared that « payment of the mandatory minimum wage is often circumvented in practice », based on different strategies (e.g. fictitious self-employment and working undeclared hours).

However, strategies to avoid the payment of minimum wage for domestic workers are institutionalized in different legal orders. Sedacca (2022) introduces the reality of the UK, based on the « Family Worker Exemption from Minimum Wage »[75]. Since 1999 in force, the National Minimum Wage (NMW) excluded workers who lived in the employer's family household and were « treated as a member of the family in relation to accommodation, meals, tasks and leisure ». This Exemption included live-in domestic workers and au pairs and was applied until 2020, with the *Puthenveettil* judgment. According to Sedacca, the exclusion of labour law provisions incites the devaluation of (paid) domestic work - as a consequence, work in the private sphere, is perceived as « unskilled work or even not work at all »[76].

Scheiwe investigated the exclusion of domestic workers from labour law provisions, focusing on Directive (EU) 2003/88 of the European Parliament and of the Council concerning certain aspects of the organization of working time[77]. The instrument was based on the Framework Health and Safety Directive 89/391/EEC, which explicitly excluded domestic workers from its scope. The author argued on the tolerability of the Commission in relation to exemptions and derogations of different Member States to exclude domestic workers, which has been changing since 2017 with the Implementation Report.

These studies have, as a common goal, the concern to unlock the house to the law, in order to make it concrete for workers. As an illustration, the space plays a relevant role when we consider the risks of occupational safety and health. This context is related to the space itself, to the relationships formed in its scope, and in the ways to promote the enforcement of the law (e.g. inspections inside the house).

We emphasise that the house, beyond the domestic work, is regulated by different labour law instruments, in the context of domestic law, regional law (in the context of the EU, for example), and international law (e.g. ILO C189 and R201). We suggest that law and space must be seen as non-static but interactive components that shape, affect, and construct each other daily[78]. In this sense, the house can host different hierarchies and relationships, in the scope of the family itself or with other subjects, while the law can play a major role in recognising it and in supporting the promotion of a non-gendered space.

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74 *Ibid.*, p. 166.

75 N. Sedacca, « Domestic Workers, the 'Family Worker' Exemption from Minimum Wage, and Gendered Devaluation of Women's Work », *Industrial Law Journal*, vol. 51, no. 4, 2022, p. 771.

76 *Ibid.,* p. 800.

77 K. Scheiwe, « Domestic workers, EU working time law and implementation deficits in national law : change in sight? », *Zeitschrift für ausländisches und internationales Abreits-und Sozialrecht*, vol. 1, no. 35, 2021, p. 1.

78 I. Braverman *et al.*, « Introduction. Expanding the Spaces of Law », *op. cit*.

III - WORK AND THE CITY

Frequently, papers and research in labour law are organised around the concept of state jurisdiction, as employment protections and collective labour relations alike are still mainly set at that level - at least, when the legislative powers are not transferred, more often in part, to supranational institutions, such as federations or unions of states. It makes, thus, perfectly sense, in a journal issue coping with zero-hour contracts, examining how the UK[79], Netherlands[80], and Belgium[81], position themselves regarding the issue. Similarly, investigating wages, atypical employment contracts, and social security systems at the national level is key to the task of defining, measuring, and possibly overcoming in-work poverty in Europe[82]. Besides, important reforms of the employment protection legislation mainly occur at the national level, as was the case with the 2022 *reforma laboral* in Spain[83].

More specific areas for research in labour law may also arise from economic sectors, societal demarcations, or industrial relations systems, in the latter case mainly through the scope of application of collective agreements. Frosecchi, for instance, examines the topic of social dumping in the European road haulage sector, dwelling on the problem of letterbox companies[84]. Hekimler investigates how industrial relations unfold in the textile and garment sector in Turkey[85]. Davies sheds light on the problems experienced by workers in the horticulture sector, casting doubt on the wisdom of temporary visa schemes as a solution to labour shortages[86]. Rodríguez Escanciano argues that overcoming precariousness is key to enhance the construction sector sustainability, and so on and so forth[87].

Global markets are another, fascinating field of research for labour law. A robust stream of scholarship investigates MNEs' global value chains, aiming at preventing those tragedies like Rana Plaza's continuing to happen and, possibly, enhancing working conditions and environmental standards[88]. In this respect, labour law journals take into consideration

79 J. Atkinson, « Zero-hours contracts and English employment law: Developments and possibilities », *European Labour Law Journal*, vol. 13, no. 3, 2022, p. 347.

80 A. Eleveld, « Flexi-insecurity and the regulation of zero-hours work in the Netherlands », *European Labour Law Journal*, vol. 13, no. 3, 2022, p. 375.

81 E. Dermine and A. Mechelynck, « Regulating zero-hour contracts in Belgium: From a defensive to a (too) supportive approach? », *European Labour Law Journal*, vol. 13, no. 3, 2022, p. 400.

82 L. Ratti, A. Garcia-Munoz and V. Vergnant, « The Challenge of Defining, Measuring, and Overcoming In-Work in Europe: An Introduction », *Bulletin of comparative labour law*, no. 111, 2022, p. 1.

83 A. Baylos-Grau, « Un primo approccio alla riforma del lavoro spagnola », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 174, no. 2, 2022, p. 225.

84 G. Frosecchi, « Il dumping sociale nel settore dell'autotrasporto europeo: in viaggio tra di.erenziali di costo e imprese cartiere» , *Giornale di diritto del lavoro e di relazioni industriali*, vol. 167, no. 3, 2020, p. 543.

85 A. Hekimler, « Le relazioni industriali nel settore tessile e dell'abbigliamento in Turchia: un caso di studio: il gruppo Inditex », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 169, no. 1, 2021, p. 1.

86 A. C. L. Davies, « Problems Continue in the Horticulture Sector: the Seasonal Workers Pilot Review 2019 », *Industrial Law Journal*, vol. 51, no. 2, 2022, p. 494.

87 S. Rodríguez Escanciano, « Sostenibilidad laboral en el sector de la construccion: la estabilidad en el empleo como premisa », *Temas laborales*, vol. 152, no. 2, 2020, p. 13.

88 A. Trebilcock, « The Rana Plaza disaster seven years on: Transnational experiments and perhaps a new treaty? », *International Labour Review*, vol. 159, no. 4, 2020, p. 545.

a variety of legal instruments, such as trade conditionality[89], corporate due diligence[90], liability[91], litigation[92], global framework agreements[93], and more.

To come to the point, research in labour law unfolds in a variety of scenarios but has rarely focused on the topic of regulating individual and collective labour relationships in urban areas or local communities. Prima facie this seems reasonable. Cities, either small or big ones, do not usually have legislative powers about employment relationships and, moreover, social partners do not base collective agreements' territorial scope of application on cities, to name but two most evident reasons. However, there are also arguments that could persuade labour law scholars to pursue new research avenues and think about urban spaces as areas of enquiry.

To begin with, social partners are getting used to work in coalition with civil society organisations and other local community actors. When it comes to environmental sustainability issues, for instance, there are several examples of coalition building strategies among trade unions, environmental groups, social movements, and other actors[94]. The very concept of an environmental just transition, after all, is based on the idea that the ecological transition should not weigh only on the shoulders of working people and local communities[95]. On this point, it is also worth mentioning that when, in recent years, trade unions succeeded in organising food delivery workers and uber drivers, this occurred mainly at the local level and, particularly, by exercising collective rights in public, urban spaces, like streets and parking areas[96]. On the other hand, where trade unions have lost importance in the last decades and union density among workers is low, like Australia or the United States,

89 K. Peake and J. Kenner, « "Slaves to Fashion" in Bangladesh and the EU: promoting decent work? », *European Labour Law Journal*, vol. 11, no. 2, 2020, p. 175.

90 I. Daugareilh, « La legge francese sul dovere di vigilanza al vaglio della giurisprudenza », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 170, no. 2, 2021, p. 159; A. Guamán Hernández, «Diligencia debida en derechos humanos: ¿un instrumento idóneo para regular la relación entre derechos humanos y empresas transnacionales? », *Revista de derecho social*, no. 95, 2022, p. 65.

91 S. Borelli and D. Izzi, « L'impresa tra strategie di due diligence e responsabilità », *Rivista giuridica del lavoro e della previdenza sociale*, 4, I, 2021, p. 553.

92 C. F. X. Szymansky, « The Window Closes: Nestle, Inc v. Doe and the Lost Promise of the U.S. Alien Tort Statute as a Means of Enforcing International Labor Law », *DLM International*, no. 1, 2022, p. 29.

93 M. Kaltenborn, C. Neset and J. Norpoth, « Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 36, no. 2, 2020, p. 169.

94 A. Zbyszewska, « Working with and around Voluntarism: Union Engagement with Environmental Sustainability in the UK », *E-Journal of International and Comparative Labour Studies*, vol. 10, no. 1, 2021, p. 66 (focusing on the case of UK).

95 M. Barbera, « Giusta transizione ecologica e disuguaglianze: il ruolo del diritto », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 175, no. 3 2022, p. 339; P. Béguin, V. Pueyo and C. Casse, « Réflexions sur les liens entre le travail humain et le développement durable », *Revue de droit du travail*, no. 5, 2021, p. 307; P. Tomassetti, « Just Transition and Industrial Relations: the Italian Patterns », *E-Journal of International and Comparative Labour Studies*, vol. 10, no. 1, 2021 p. 52.

96 H. Johnston, « Labour geographies of the platform economy: Understanding collective organizing strategies in the context of digitally mediated work », *International Labour Review*, vol. 159, no.1, 2020, p. 25.

new « community » actors may have emerged at the local level competing with trade unions about representing working people and enforcing their individual rights[97].

Besides, although mayors or city councils cannot stipulate the maximum number of fixed term contracts or dictate the amount of unfair dismissals' compensation, they do have other tools to promote adequate employment standards at the local level, e.g., by increasing the use of social clauses[98] in public procurements' tenders. One may question, at least in the EU, whether such social clauses are compatible with the case law of the Court of justice, but we are not going to deal with the issue. Furthermore, policies and institutional frameworks implemented by local authorities are key to improving living and working conditions alike, as essential urban services can definitively reinforce employment protection legislations. To illustrate, we consider the legislation on work-life balance and the distribution of caring responsibilities (see section 2, *supra*). These laws aim to (and can actually) change the traditional division of caring roles between men and women. Though, they might be of little worth, if, at the end of the day, cities do not take charge of crèches, childhood initiatives, kindergartens, and so on. Legal geographers, perhaps, would point out that these laws, when *are located*, or *take place*, or *are in motion*[99] (see *supra* section 1), result in a variety of outcomes and contexts, depending on how different cities organise their services at the local level. In this case, the «interconnections between law and spatiality, and especially their reciprocal construction »[100] become apparent. In this respect, one may come out with several examples. Public transport, for instance, is key to ensure social justice and equality in urban spaces, by allowing, among other things, working people to accept job offers even if they do not live in proximity to the workplace and do not own a car.

It should be noted that the idea of illuminating the link between labour law and essential urban services, like healthcare, education, housing, transportation, childcare, and so on, might be consistent with Romagnoli's thought about the need to rethink the relationship between work and citizenship in the XXI century, after decades of neoliberal disruption[101]. Furthermore, the idea allows us to make reference to the concept of *right to the city*, which has been barely considered by labour law scholars but is a consequential subject matter for geographers at least since the early 2000s. In his article *What* kind *of right is the right to the city?*, Attoh explains that « The concept of the right to the city, to begin, derives from the writing of Henri Lefebvre. At the heart of Lefebvre's conception of the right to the city is his notion of the city as an oeuvre, or as a work produced through the labor and the daily actions of those who live in the city. The right to the city, for Lefebvre, thus, signifies a great deal. It signifies the right to inhabit the city, the right to produce urban life on new terms (unfettered by the demands of exchange value), and the right of inhabitants to remain unalienated from urban life. (…) Lefebvre's conception of the city marks a departure both

97 E. Schofield-Georgeson, « Organisational co-enforcement in Australia: Trade unions, community legal centres and the Fair Work Ombudsman», *Australian Journal of Labour Law*, vol. 35, no. 1, 2022, p. 52.

98 F. Martelloni, « I benefici condizionati come tecniche promozionali nel Green New Deal », *Lavoro e diritto*, no. 2, 2022, p. 293.

99 I. Braverman *et al*., « Introduction. Expanding the Spaces of Law », *op. cit*.

100 *Ibid*.

101 U. Romagnoli, «Il lavoro non è una merce, ma il mercato del lavoro è una realtà», *Diritti lavori mercati*, 1, I, 2019, p. 17.

from more classic sociological studies of urban life and from more traditionally Marxist approaches »[102].

We have mentioned before that Corazza insists that an appropriate use of remote work can trigger a different kind of urban development, in which smaller cities become again attractive to working people, reversing a century-old historical trend[103]. Besides, this would probably help (not achieving but) moving towards the climate targets of the Paris agreement, not least because extended urban agglomerations are one of the causes of the environmental crisis. However, to successfully attract working people and be competitive over big urban agglomerates, small cities need to radically improve their public services, especially when it comes to education, healthcare, transportation, internet connection, to name but a few. On that matter, Di Salvatore argues the importance of building networks and partnerships among companies situated in big cities or industrialised areas and those operating in proximity to natural resources, such as forests[104].

IV - LABOUR LAW ON THE BRINK: BORDERS, MIGRANTS, AND LEGISLATIONS

The space of *borders*, which we would define as the ground of international mobility that challenges the application of labour regulations, is of considerable importance in contemporary labour law. In order to present the debates occurred in labour law journal, we concentrated it on cross-border mobilities **(A)** and arenas of migrants' rights (and contemporary challenges) **(B)**.

A - Cross-border mobilities

In the scope of the European Union, the free movement of goods, persons, services, and capital is established in the Treaty on the Functioning of the European Union (TFEU), to consolidate an internal market without «internal frontiers». Despite the lack of internal frontiers related to the mobilities of EU citizens, the borders remained. In this sense, figures related to crossing it were institutionalised in order to provide adequate juridical answers to current issues (related, for example, to labour rights and social security). Also, it was possible to develop cross-border social dialogue by performing different types of collective agreements[105].

This section aims to investigate the figures surrounding the cross-borders mobilities in the EU, by focusing mainly, on posted workers, intra-corporate transfers, and seasonal workers. Those figures instigate the investigation of the borders in both spatial and temporal

102 K. A. Attoh, « What *kind* of right is the right to the city? », *Progress in Human Geography*, vol. 35, no. 5, 2011, p. 674.

103 L. Corazza, « Il lavoro senza mobilità: smart working e geografia sociale nel post-pandemia», *Lavoro e diritto*, 2, 2022, p. 431.

104 L. Di Salvatore, « La rigenerazione delle aree interne per la realizzazione di una transizione ecologica. Reti di imprese, foreste e green jobs », *Diritto delle relazioni industriali*, no. 4, 2022, p. 1049.

105 R. Hornung-Draus, « Cross-border social dialogue from the perspective of employers », *European Labour Law Journal*, vol. 12, no. 1, 2021, p. 83.

issues. According to Piir[106], two key problems to deal with transnational labour contracts in the scope of the EU are how to determine the habitual workplace? and how temporary is temporary? The author emphasized the posted workers, providing legal solutions based on Rome I Regulation - that regulates transnational individual employment contracts - and on the Posting of Workers Directive 96/71/EC (PWD).

Concerning the habitual workplace, Piir described the meaning of Article 8(2) of Rome I, for which the centre of labour performance is identified by the country where the employee habitually develops his work. Therefore, it depends on where the activities are habitually performed in the extent of the employment contract. Despite the regulation, case law of the Court of Justice of the European Union (CJEU) has stated in different occasions the need to use the «circumstantial method» to identify the habitual place of work, when there is not an established centre of activities. This method is based on where (or from which place) the employee habitually executes his work.

Regarding the temporary duration, Piir emphasised that the temporariness of posting of workers, for which the Rome I does not establish a length of time that must be spent during it. In this sense, the criterion to determine the temporariness derived from the circumstances of each case, as well as from the intention of the parties. The intention can be expressed in the *animus revetendi* of employee, to return to his home country, and the *animus retahendi* of the employer, to keep the employee in the country of work. In respect to its specific regulation, Directive (EU) 2018/957 amended the Directive 96/71/EC on posting of workers and mentioned the « long-term temporary » postings, for which was established the maximum time extension of 12 months (and, exceptionally, 18 months).

Iossa investigated the highly mobile posted workers, based on the case *Michael Dobersberger v Magistrat der Stadt Wien* (2019), of the Court of Justice of the EU (CJEU)[107]. This case illustrated a dispute regarding the application of obligations from the social security legislation of Austria for posted workers on logistics, from Hungary. The dispute was mainly related to territorial application of labour regulations in the cross-border posting of workers. The author emphasized different aspects of the case through the lens of legal geography, « first, the ruling tends to reinforce the principle of nation-based territoriality in labour law; second, it seems to constitute a legal endorsement of cross-border subcontracting and outsourcing in highly mobile services »[108]. At the end, he expressed the relevance of geography in determining working conditions.

Different dimensions of posting of workers were explored in other papers, like intra-European labour mobility[109], legislative changes and forms of interpretation of the legal instruments[110].

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106 R. Piir, « Safeguarding the posted worker. A private international law perspective », *European Labour Law Journal*, vol. 10, no. 2, 2019, p. 101.

107 A. Iossa, « Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work - A Critical Reading of Dobersberger », *Industrial Law Journal*, *op. cit.*, p. 138.

108 *Ibid*., p. 163

109 F. De Wispelaere, « Mappatura della mobilità lavorativa intraeuropea attraverso il distacco transnazionale di lavoro », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 176, no. 4, 2022, p. 667.

110 M. Lasek-Markey, « No Turning Back from Social Europe: A New Interpretation of the Refurbished Posted Workers Directive in Hungary and Poland », *Industrial Law Journal*, vol. 51, no. 1, 2022,

Connected to the figure of posted workers in the scope of temporary migration, Verschueren (2020) examined the intra-corporate transferees, defined as « temporary secondment for occupational or training purposes of a third-country national [key personnel and trainees] who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State (…) » by the Directive (EU) 2014/66[111]. For the author, the Intra-Corporate Transfer Directive (ICT Directive) and the Posted Workers Directive (PWD) interact in different ways: for employment rights, « (…) the intra-corporate transferees are, in principle, considered as posted workers, and can only claim rights comparable to those of posted workers within the EU and as laid down in the Posting of Workers Directive ». Nonetheless, for remuneration and for the possibility of application of more favourable provisions (Article 4, ICT Directive), the Intra-Corporate Transfer Directive derogates the status of intra-corporate transferees as posted workers.

In relation to the workplace - based on the implications on the law applied during the secondment - and the temporariness of intra-corporate transfers, Verschueren argued on the applicability of the employment law of the country of origin, at least in principle[112]. So, we verify that, despite the mobility, the country of origin will remain the habitual place of work. The author highlighted a different situation, where the employee's *animus revetendi* has changed, so the intra-corporate transferee does not want to proceed working in the country of origin after the secondment. In this case, the host Member State will become the habitual workplace, with its domestic law being applicable. The ICT Directive defines three years of time-limit of transfer for managers and specialists and one year for trainees.

Bregiannis investigated the Seasonal Workers Directive (EU) 2014/36 (SWD) in comparison to two Temporary Migration Programmes worldwide: the Canadian Temporary Foreign Workers Programme and the New Zealander Registered Seasonal Employer programme[113]. The author focused on the inequalities regulated (and institutionalised) for seasonal workers, which were mainly before the employer; compared to the local workforce; and with other categories of migrant workers. In relation to the former, it was emphasized that seasonal workers are mainly low-skilled, so they are not entitled to the same « citizenship rights » reserved for high-skilled migrant workers (like right to re-enter the territory, to apply for permanent residence and to family reunification). Bregiannis identified the inequality of rights as a « prioritisation of national economy needs over a rights-based approach (…) », for which the SWD resulted of a fragmented approach on migration regulation by EU[114].

Concerning the regulatory paths for posted workers, seasonal workers, and intra-corporate transferees, we observed how the law and the space are interconnected. For instance, the definition on the habitual workplace impacts on the law that must be applied

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p. 194; G. Orlandini, « Il distacco transnazionale dopo il d.lgs. 22/2020 », *Giornale di diritto del lavoro e di relazioni industriali*, vol. 168, no. 4, 2020, p. 749.

111 H. Verschueren, « The Labyrinth of Employment and Social Rights in the EU Intra-Corporate Transfer Directive », *European Labour Law Journal*, vol. 12, no. 3, 2020, p. 280.

112 *Ibid*.

113 F. Bregiannis, « An analysis of the EU Seasonal Workers Directive in the light of two similar regimes: Three dimensions of regulated inequality », *European Labour Law Journal*, vol. 12, no. 3, 2020, p. 266.

114 *Ibid*.

and, in case on non-enforcement, to define where would be the competent place to claim for it. We highlight that the situation can challenge the competent authorities in relation to the inspection of the habitual workplace, especially for intra-corporate transferees. With the applicability of the law of the country of origin, it is relevant to reflect on the ways to ensure it and provide it, in a scenario of a conflict of jurisdiction.

Additionally, we identified different dimensions of the impacts of time in the temporary labour migration. In the scope of cross-border mobilities, the papers presented the temporariness of the figures was a common denominator, despite its differences on the institutionalization (the legal mention to time-limit) and length. Regardless of the differences, the central point of temporariness is mainly related to the *animus revetendi* of the employee and the *animus retahendi* of employer. Ironically, the *animus revetendi* is expected to be permanent - regardless of the period of settlement (months, years…).

B - Arenas of migrants' rights (contemporary challenges)

Among the articles published, we identified studies on different dimensions of migration and work, such as law-making and legal instruments; enforcement of rights; and dynamics in/of labour markets. These goals were framed like the arenas of migrants' rights, which we explored through programs, instruments, and contexts of different countries.

The current movement of migrant workers is based mainly in the temporary labour migration. After the Second World War, this form of migration replaced the programs of «guest workers» in Europe and of permanent settlement in Canada and Australia. Discussions on temporary labour migration present different positions: the supporters justify it on the supply of labour force demand; while the critics advertise the regimes of rights' restriction of temporary migrant workers.

Despite the different positions, temporary labour migration programs experienced an increase in different countries. The papers focused on a variety of frameworks worldwide, mainly in North America[115], Oceania[116], and EU, which was explored above. Those frameworks have institutionalised differences of legal treatments between the local workforce and the temporary migrant workers presented like a common denominator. This phenomenon shed light on different dimensions of inequality experienced by temporary migrant workers (in case of low-skilled) for Bregiannis.

Tham and Fudge differentiate the institutionalised (« dedicated ») temporary labour migration programs - like the Australian 457 - visa scheme - and the de facto temporary labour migration programs (in Australia, it would be the international student

115 F. Bregiannis, « An analysis of the EU Seasonal Workers Directive in the light of two similar regimes: Three dimensions of regulated inequality », *European Labour Law Journal*, vol. 12, no.3, 2020, p. 266 ; L. F. Vosko, E. Tucker and R. Casey, « Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 35, no. 2, 2019, p. 227.

116 F. Bregiannis, « An analysis of the EU Seasonal Workers Directive in the light of two similar regimes: Three dimensions of regulated inequality », *European Labour Law Journal*, *op. cit.* ; J. C. Tham and J. Fudge, « Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector », *International Journal of Comparative Labour Law and Industrial Relations,* vol. 35, no. 1, 2019, p. 31.

program, the working holiday program, and the New Zealand citizens)[117]. For them, the first has the « primary purpose » to promote (and facilitate) the temporary labour migration, while the former has « a range of purposes » - including to allow the participation in the labour market of the country of arrival. Those purposes reflect on the differences of legal treatment between the migrant workers and the others (that are also migrant workers, but not primarily recognized as such). The lack of recognition of de facto temporary labour migration programs as such impacts in the migrants' rights, highlighting a gap in the legislation.

Gaps in the law can also be identified based on the investigations focused on the (presence or lack of) enforcement of rights. Vosko, Tecker, and Casey examined the enforcing of Ontario's employment standards - with provision for wages, working time, vacations and leaves - for migrant agricultural workers in Canada, based on the concept of layered vulnerability[118]. The concept includes the security of presence in Canada, the factors that arise out of the global system within which migration occurs (e.g., the racialized labour markets)[119], and the receiving country conditions (like the formal exempt of some employment standards). To highlight the gaps in the law, the authors focused on the various aspects of Ontario's compliance enforcement regime, which are the proactive inspections and the « preference for compliance measures over deterrence »[120]. Nonetheless, the results indicated that the migrant agricultural workers face problems in relation to their rights, leading to a voluminous quantity of claims (the more commons were unpaid wages, termination pay, vacation pay). Additionally, Vosko, Tecker, and Casey pointed out to the rareness of proactive inspections of farms and, specifically, of farms that employs migrant agricultural workers.

Contributing to the debate on enforcement of rights, Murphy, Doyle, and Murphy investigated how migrant workers - non-EU nationals identified as potential or suspected victims of labour severe and routine exploitation - experienced Irish labour law in practice[121]. Based on interviews with migrant workers mainly from domestic work and fishing sectors, the results indicated violations of labour law related to terms of employment, working time, minimum wage, paid annual leave, equality, and protection against dismissal, as well as the threating of deportation as a mean of control. Migrant workers faced barriers to report the labour exploitation experienced and to access the mechanisms of the Irish anti-trafficking regime. For the authors, the « Irish labour law is currently ineffective to address vulnerability to labour exploitation and provide satisfactory remedies »[122].

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117 J. C. Tham and J. Fudge, « Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector », *op. cit*.

118 L. F. Vosko, E. Tucker and R. Casey, « Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability », *International Journal of Comparative Labour Law and Industrial Relations*, *op. cit.*, p. 22.

119 D. Ashiagbor, « Race and Colonialism in the Construction of Labour Markets and Precarity », *Industrial Law Journal*, vol. 50, no. 4, 2021, p. 506.

120 L. F. Vosko, E. Tucker and R. Casey, « Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability », *International Journal of Comparative Labour Law and Industrial Relations*, *op. cit.*, p. 227.

121 C. Murphy, D. M. Doyle and M. Murphy, « "Still Waiting" for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland », *Industrial Law Journal*, vol. 49, no. 3, 2020, p. 318.

122 *Ibid*.

Comparative labour law literature

The last area to be explored is the one focusing on the dynamics between labour regulation and labour market. Referring to labour mobility, Tham and Fudge went beyond the clustering of migrant workers in particular sectors of « dirty, dangerous and demeaning » jobs, which would be supposedly refused by national workers[123]. The authors highlighted how this perspective neglects the quality of jobs, the differentiation between workers, and the impacts of labour migration. In this sense, they emphasised the labour regulation « in both shaping the quality and conditions of work in these sectors and constituting both "supply" of workers and "demand" on the part of employers », based on the conditionalities faced by migrant workers and the social norms and institutions in the labour market.

Contributing to this debate, Dias-Abey investigated the relationship between migration to the UK from 1945 to 2020 and labour markets, through the lens of legal institutionalism[124]. He considered the variety of impacts of migration in the labour markets, emphasising to the mediating role developed by legal institutions in this relationship - such as the incorporation of a particular mode of migrant labour and the confinement of migrant workforce in some sectors.

With different lens, Currie examined how migrants have experienced working and living in the UK, in the contexts of enlargement (EU8 and EU2) and exits (Brexit) of European Union[125]. Her study was based on the idea of « confined labour market citizenship », for which the confinement refers to the extent of access to labour markets and to forms of support and protection (social security entitlement). Her results indicated that EU8 and EU2 migrants come across the confined labour market citizenship: they served as « scapegoats » for the result of the Brexit referendum and as « guinea pigs » for a restricted version of the EU citizenship.

Having looked at all these articles, we identified authors that focused on the dynamics between time and titularity of rights, like the changes on the purposes of programs for labour migration and the transformations of the European Union since its formation[126]. Regarding the EU context, the articles presented how the enlargement (EU8 and EU2, for example) and its reduction (with the Brexit) affected the mobility of workers in different moments, both in intra and inter-EU contexts. This scenario reflects how the borders of the Single Market of EU

123 J. C. Tham and J. Fudge, « Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector », *International Journal of Comparative Labour Law and Industrial Relations, op. cit.*, p. 31.

124 M. Dias-Abey, « Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions », *Industrial Law Journal*, vol. 50, no. 4, 2021, p. 532.

125 S. Currie, « Scapegoats and Guinea Pigs: Free Movement as a Pathway to Confined Labour Market Citizenship for European Union Accession Migrants in the UK », *Industrial Law Journal*, vol. 51, no. 2, 2022, p. 277.

126 J. C. Tham and J. Fudge, «Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector », *International Journal of Comparative Labour Law and Industrial Relations, op. cit.*, p. 3; S. Currie, « Scapegoats and Guinea Pigs: Free Movement as a Pathway to Confined Labour Market Citizenship for European Union Accession Migrants in the UK », *Industrial Law Journal*, vol. 51, no. 2, 2022, p. 277; M. Dias-Abey, « Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions », *Industrial Law Journal*, vol. 50, no. 4, 2021, p. 532.

were shaped to be supposedly excluded (by entering the EU) and replaced (by exiting the EU), impacting on the movement of goods, persons, services and capital.

The titularity of rights is also connected with the space regarding the relevance given to the birthplace, for the citizenship rights and for the mobility of workers. This dynamic is connected with the differences of legal treatments between the local workforce and the temporary migrant workers, issue that have been explored in the scope of programs for temporary labour migration[127]. This space (of birth) is thus positioned as a border that can define where the worker can go, under which conditions/rights, and for how long.

Beyond the entitlement of rights, space affects their enforcement. The inspections in loco are relevant to support the application of law, to make it produce effects. Despite it, the lack of it can contribute to a scenario of non-enforcement of rights, which is potentialised by the differences of legal treatment faced by migrant workers. Those differences can place them in a position of vulnerability, for which we can identify how the dynamics of space can be used as means of control (e.g. threating of deportation). In this sense, we exposed different situations were space and time are simultaneously interconnected with law - by shaping, affecting, and constructing each other daily.

Conclusion

After reviewing articles published by labour law journals within our scope in the years 2020 to 2022, we believe that the integration between labour law and geography may produce intriguing and innovative results. There are good reasons, it seems to us, to encourage labour law scholars to take an interest in geography and spend some of their precious time investigating the *where* of labour law, or, in other words, how it « is shaped by the geographic dimensions of social and political life, and the ways in which the geography of social life is in turn structured by [labour] l aw »[128].

There are already encouraging signs. To begin with, articles published in the last three years by prominent journals, and in some cases whole journal issues, indicate a propensity to take into account the element of space or spatiality within the scope of labour law research. We have noticed it repeatedly, in relation to very diverse topics, such as domestic work, labour mobility and migrations, platform workers' organizing efforts, corporations' offshoring strategies, the regulation of remote work, even the rise of nationalisms and protectionisms, to name a few examples. Moreover, some of the articles mentioned in this overview were particularly useful and interesting to us, since they explicitly combine legal

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127 J. C. Tham and J. Fudge, « Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector », *International Journal of Comparative Labour Law and Industrial Relations, op. cit.*, p. 31; S. Currie, « Scapegoats and Guinea Pigs: Free Movement as a Pathway to Confined Labour Market Citizenship for European Union Accession Migrants in the UK », *Industrial Law Journal*, *op. cit.*, p. 277; M. Dias-Abey, « Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions », *Industrial Law Journal*, vol. 50, no. 4, 2021, p. 532; L. F. Vosko, E. Tucker and R. Casey, « Enforcing Employment Standards for Temporary Migrant Agricultural Workers in Ontario, Canada: Exposing Underexplored Layers of Vulnerability », *International Journal of Comparative Labour Law and Industrial Relations*, *op. cit.*, p. 227; F. Bregiannis, « An analysis of the EU Seasonal Workers Directive in the light of two similar regimes: Three dimensions of regulated inequality », *European Labour Law Journal*, *op. cit.*0, p. 266.

128 N. Blomley and J. Labove, « Law and Geography », *op. cit.*, p. 13.

research and geography[129]. All in all, we maintain that labour law scholars are beginning to get involved in what we could label a *legal geography of labour*, or, following Iossa and Persdotter, a *legal geography of labour relations*. The enquiry, of course, did not intend to superimpose a legal geography approach over different strands of scholarships, projects, and research, but to look at them from different angles and through a different organising principle (that of space and spatiality), suggesting a distinctive understanding of the same issues and phenomena. In this regard, we aimed to contribute to this promising intellectual project basically in two ways. The first thing to do was to bring together a quite diverse range of papers and research that were comparable, from our standpoint, due to an interaction, or link, between *law* and *space*. Secondly, we wanted to point out and suggest three *spaces* (but there could be many others), in which law and geography may conveniently cooperate, to unpack the complicated ways in which labour law *happens* in different geographic dimensions of social and political life and, in turn, is shaped by these dimensions.

Regarding the house, we identified discussions on work-life balance and (paid) domestic work, for which the sexual division of labour played a relevant role. This division historically designated the reproductive sphere for the woman, resulting in the construction of the house as a gendered place. This construction impacted, for example, on the justifications for the emergence of policies to promote « reconciliation between work and family » (renamed to « work-life balance ») and in the invisibility of paid domestic work in many legal orders. A scenario of mobilizations led to the approval of the Convention (C189) and Recommendation (R201) on Domestic Workers of the ILO (2011). These instruments publicized the recognition of the house as a workplace that is not just formally mentioned, but where the law must produce effects and be enforced. In this sense, the recognition is not static, highlighting how the space is impacted by the law and the law by the space. The enforcement of law depends on the understanding of how both influence, affect, and shape each other, once new risks and new attempts to avoid the application of legal instruments can arise.

The second section, on *work and the city*, has dealt with the regulation of labour relations within the space of the city, both from an individual and collective perspective. Urban spaces do not usually coincide with labor laws or collective agreements' scope of application, nor labour law scholars are used to focus on the subject in their research. However, following some recent insightful research and connecting it with the topic of the *right to the city*, we identified several arguments to try and think differently on this point.

Section three has dealt with a very particular kind of sociolegal space (or entity), the *borders*, aiming to reunite discussions on frameworks for labour migration and mobility. These frameworks present the institutionalisation of the differences of legal treatments between the local workforce and the temporary migrant workers as a common denominator. This denominator is the recognition of the position of the space (of birth) – like a border – that can define conditions of mobility of the worker. We highlight how the time – when – also

129 A. Iossa and M. Persdotter, « Cross-Border Social Dumping as a "Game of Jurisdiction" - Towards a Legal Geography of Labour Relations in the EU Internal Market », *op. cit.*, p. 1086; L. Corazza, « Il lavoro senza mobilità: smart working e geografia sociale nel post-pandemia », *Lavoro e diritto*, no. 2, 2022, p. 431; A. Iossa, « Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work - A Critical Reading of Dobersberger », *Industrial Law Journal*, vol. 51, no. 1, 2022, p. 138.

impacts these conditions of mobility. In the EU context, for example, papers explored the impacts of the enlargement and reduction (Brexit) for the mobility of workers in different moments. This context gives prominence to the time, responsible for regarding law and space as like non-static elements[130].

130 M. Valverde, « Time Thickens, Takes on Flesh », Spatiotemporal Dynamics in Law, *in* I. Braverman *et al*. (ed.), *The Expanding Spaces of Law: A Timely Legal Geography*, *op. cit.*, p. 53.

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~ G. Centamore, « Una just transition per il diritto del lavoro », Lavoro e diritto, 2022, no. 1, p. 129.

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