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THE IMPACT OF DIGITALIZATION ON THE ENTERPRISE SYSTEM: RUSSIA AND ITALY AND THE DISCIPLINE OF SMART WORKING BETWEEN CONSTRAINTS AND OPPORTUNITIES

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Abstract The article is dedicated to the impact of digitalization on the enterprise system from the point of view of Italian and Russian legal regimes. The increasing impact of technological innovation in everyday life is leading to important changes, also in the context of the employment relationship, in many perspectives. The authors analyze the transformation of legal regulation of Italy and Russia in the sphere of labor relations, paying special attention to the challenges that occurred during the COVID-19 pandemic.

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1 Introduction: the changes imposed by digitalization in the regulation of employment relations

The increasing impact of technological innovation in everyday life is leading to important changes, also in the context of the employment relationship, in many perspectives.

The main effects concern organizational aspects, the way work is carried out, and working hours. This can, on the one hand, favor better reconciliation between life needs and working time, facilitating the implementation of personal projects and family commitments; on the other hand, it can have a profound impact on the orderly and balanced development of working relationships, facilitating invasive forms of employer control, going beyond the limits of working time (Tullini, 2010: 120).

Moreover, irrespective of the recognition of adequate remuneration, the constant commitment of the worker, consisting, for example, of telephone availability or solicitation from faculty through the use of electronic devices, such as e-mail, implies an inevitable violation of their right to detachment from the work context, which must be protected.

This situation, as well as inevitably causing a violation of the worker's right to privacy and peace of mind, also affects the right to health and safety, encouraging insomnia, irritability, low morale, demotivation, mental fatigue, lack of energy and reduced performance, work-related stress or, in the most serious cases, burn-out syndrome, which consists of a psychological deficit caused by work-related stress.

New technologies, therefore, represent an opportunity to simplify work by promoting productivity and efficiency, but they also affect the traditional parameters of working time, allowing not only greater organizational autonomy but also the ability to work at any time (Lyon, 2020: 110).

Therefore, an intervention by the legislator is necessary to regulate its use and avoid that the use of technological tools alters employment relations and negatively affects the personality of the worker.

As a result of the health crisis due to the explosion of the COVID-19 contagion, since the early months of 2020, the use of remote working, especially in the public sector as well as in private industry, has spread significantly.

What was previously a mere possibility has become a very frequent way of using workers, dictated by the need to adapt the organization of work to the changing needs of daily life.[1]

All this, however, within an extremely approximate and uncertain regulatory framework (Ichino, 2017: 525).

2 Telework in the Italian system

In the Italian legal system, long-distance work has taken two forms, both of which are now inadequate with respect to the new reality, as we shall see later.

The first is **telework**.

The discipline of telework was dictated, for public administrations, by law 191/98 and then concretely implemented through d.p.r. n. 70/1999.
Subsequently, on March 23rd 2000, the »*national framework agreement for the application of telework to the employment relations of public administration employees*« was stipulated.

For private employment relations, no legal regulations have ever existed. However, the legislator has limited itself to providing incentives, for example, to favor the reconciliation of private life with work, the integration of the disabled into the labor market, or the reintegration of workers made redundant by companies in crisis.

[1] On these aspects, we suggest reading the interesting research of Cipriani, A-G., Alessio- Mari, G. (2018). Work 4.0. The Fourth Industrial Revolution and the transformation of work activities (Firenze University Press). On the transformations of production and the dignity of work in the digital age, see Perulli, A., Treu, T. (2020). The Future of Work. Labour Law and Labour Market Regulation in the Digital Era (Milano: Wolters Kluwer).

The recourse to the use of telework as an alternative way of managing human resources within the company - which is being accompanied by the progressive spread of the outsourcing phenomena - is one of the most immediately perceptible aspects of the current trend towards the segmentation of production processes (Calafà, 1998: 34; Gaeta, 1999: 311).

By introducing forms of work that are increasingly oriented towards the application of mechanisms for outsourcing company functions, or the outsourcing of entire phases of production, organizational destructuring and the overcoming of traditional criteria for the assignment of tasks and duties are advancing in great strides.

If the process described above is only partly attributable to the often abused image of the indispensability of internationalization processes in business activities, technological and IT developments are undoubtedly a particularly important driving force in the emergence of new employment methods, encouraging the adoption of alternative negotiating solutions to the traditional ones.

The latter, in fact, are characterized by the simplification of procedures and the overall reorganization of business development models that affect both the spatial and temporal dimension of the performance of the service and its very content.

On closer examination, however, it must be observed that the reasons for the spread of telework (in the various forms that it may concretely assume: individual, group, subordinate or autonomous) are to be sought in a variety of ways, which are in any case favored by the entry into the daily life of ever more modern technologies.

3 The so-called agile work

More recently, with law 81/2017, the Italian legislator introduced the so-called »***agile work***« into the legal system.

According to the provisions of Art. 18, c. 1 of the law, the legislation establishes that this mode of performance has the purpose of »*increasing competitiveness and facilitating the reconciliation of life and work*« and therefore to promote «*agile work as a mode of execution of the employment relationship established by agreement between the parties, also with forms of*

organization by phases, cycles and objectives and without precise constraints of time or place of work, with the possible use of technological tools for the performance of work«.

The fundamental characteristics of agile work, therefore, consist of:

- voluntariness;
- individual bargaining as the primary source of discipline;
- the alternation between work carried out on company premises and work carried out at a distance, which does not necessarily coincide with the worker's place of residence;
- its purposes (Casillo, 2018: 115; Spinelli, 2018: 127).

4 The new long-distance work

The new long-distance work emerging from the 2020 crisis is profoundly different from the legal regulation of agile work (Lamberti, 2020: 615).

First of all, the aims of using smart working have changed, since the use of distance working is no longer that of »*increasing competitiveness and facilitating the reconciliation of life and work*«, but rather that of reducing the opportunities for COVID-19 contagion. Moreover, not only does the principle of »*voluntariness*« disappear, but also the way in which the performance is carried out is changed, as it is now regularly and continuously carried out at a distance.

This also implies the need to understand what the future regulation of long-distance work will be and whether the legislator will prefer to choose a *soft* model, such as that of law 81 of 2017, which seems rather outdated, or a *hard* model, *i.e.*, to provide that long-distance work can be imposed by the employer or requested by the worker themselves in the presence of certain conditions that justify it and therefore without individual agreement.

This situation, besides inevitably causing a violation of the worker's right to privacy and peace of mind, also affects the right to health and safety, favoring insomnia, irritability, bad mood, demotivation, mental fatigue, lack of energy and reduced performance, work-related stress or, in the most serious cases, burn-out syndrome, which consists of a psychological deficit caused by work stress.

New technologies, therefore, represent an opportunity to simplify work by promoting productivity and efficiency. However, as underlined by my predecessor, in the perspective of regulation at the European level of human rights, they also affect traditional working time parameters, allowing, in addition to greater organizational autonomy, to work at any time.

5 Working hours in the Italian legal system

A different regulation of distance working also requires the legislator to intervene on working time and on the worker's right to disconnection, in order to prevent the use of computer instrumentation from damaging the worker's freedom and, at the same time, in the exercise of invasive forms of control legislative decree 66/2003, implementing EU Directives 93/104/EC[2] and 2000/34/EC[3], introduced a framework regulation on the subject (Bavaro, 2009: 28).

According to which working time can be defined as the period during which the worker is at work and at the employer's disposal, with the obligation to carry out their activity or duties, and any period that does not fall within working time is defined as a rest period. Normal working time is set at 40 hours per week, although the law has introduced a number of exceptions to this general rule.

[2] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, Official Journal L 307, of 13 December 1993.
[3] Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive, Official Journal L 195, of 01 August 2000.

6 The so-called availability of the worker

Distance working also poses a problem in terms of the worker's availability both, in the most serious cases, in terms of ordinary connections, and in terms of exceptional situations, which are normally already subject to regulation. The availability consists of the obligation of the worker to be reached by the employer even outside the contractual working hours, in order to put their energies at their disposal, both to reach the place of work, and to carry out certain activities in the interest of the company but outside the office. This can normally be due to urgent and unavoidable reasons or due to the content of peculiar and specific tasks that have been disengaged, such as to make the availability of a specific worker indispensable.

In the first case, it is an accessory and extraordinary service, while in the other case, it consists of a further way of making the service connected to the type of tasks assigned, but in both cases, it must be compensated with a surcharge which, if it is not regulated by the collective agreement of reference, must be the subject of an individual agreement.

What has been observed inevitably entails the growing need to recognize the right of the employee to make use of »*disconnection*«, without this being in any way prejudicial to the performance of the service or entailing any change in remuneration or being a source of any violation attributable to the employee with the consequent exclusion of any form of disciplinary sanction.

Moreover, the right to »*disconnection*« is one of the ways of applying the principles of social dialogue codified at the European level.

The need to ensure a more complete and precise regulation of digital work, in the different articulations in which it may develop, and the significant differences between the legislations of EU countries in chosing regulatory systems for platform work, make it necessary to rethink the traditional models of organization and management of the employment relationship of these categories of workers or those who work with its equipment.

7 Regulation of working relations in Russia during the COVID crisis – the road to digitalization

The economic and social shock caused by the COVID-19 pandemic has changed the perception of workers and employers about work and professions and led to large-scale forced measures that have brought about micro and macro changes in the world of work. Economic measures aimed at combating the virus pandemic have changed the usual life of society and the traditional understanding of labor relations, which turned out to be extremely sensitive to the influence of socio-economic factors (Duguzheva, 2020: 423-426).

One of these factors is the digitalization of social relations, including employment ones. The term "digitalization" is interpreted as a process of converting information into a digital format, leading to cost savings, increasing new opportunities for using information. The Global Commission report on the future of working relations, prepared for the anniversary session of the International Labor Organization in 2019, noted: » Thanks to technological achievements - artificial intelligence, automation and robotics - new jobs will be created, but those who lose their jobs during this transition may be the least prepared to take advantage of the new opportunities. Professional skills in demand today will not fit tomorrow's jobs, and newly acquired skills can quickly become obsolete. «[4]. We can unconditionally agree with this statement.

The technological revolution has a powerful impact not only on the quantitative but also on the qualitative characteristics of employment. From this point of view, it is important not only that certain professions are becoming a thing of the past, and new ones are emerging, but also that traditional approaches to labor relations are becoming less applicable (Lyutov, 2019: 98-105). The development of labor relations in the digital economy leads to the replacement of permanent staff with temporary workers. At the same time, many types of work can be performed thousands of kilometers from the office and even beyond national borders (Goloventchik, 2018: 27-43).

[4] International Labor Office (2019), p. 10

General principles for the regulation of social and labor relations are formed at the international level and are manifested in the documents of the International Labor Organization, enshrining fundamental human rights and principles in the fields of employment, social protection, rights of workers and social dialogue. The fundamental principle is social cooperation. Moreover, in part social protection of the population, the principle of paternalism is important. The creation of conditions for the active participation of the part of the population in creative activities is associated with the principle of subsidiarity involving the transfer of responsibility for the social well-being of society from the community to the employees themselves, while creating the necessary conditions for this. Along with general principles, specific ones are also important, such as the principle of social justice, social responsibility, socio-economic security (Fedchenko, 2018: 91-95).

In 2020 labor legislation was not ready for the massive transfer of workers to remote work. Employers and employees used different methods to notify the transition to "remote work" - e-mails, verbal messages, orders from company management, less often - familiarizing employees with the order on a new work schedule, and extremely rarely - the method recommended by most labor lawyers: an employment contract establishing the remote work and the location of the remote workplace. However, even such an additional agreement cannot be concluded in electronic form since this is also not provided for by the current legislation (Andreev, Loktiukhina, 2020).

Until 2020 the provisions of the labor legislation did not allow the employee to work temporarily remotely: The Labor Code provides for the possibility of concluding either a traditional employment contract or an employment contract for remote work, which does not imply finding a workplace in an office.

Before the pandemic, temporary remote work was widely used, based mainly on verbal agreements between the manager and his subordinate that the latter worked for some time outside the office. The reasons may be various: the employee needs to stay with their child so as not to get sick, due to the nature of production tasks, when it is more efficient to solve them at home, etc. There are situations when an unscrupulous employer comes into conflict. The situation recorded temporary "remote work" as absenteeism, and unscrupulous employees, in turn, tried to

convince the court that they worked from home with the knowledge of the employer, although there was no such agreement.

On December 8th 2020 the new law on remote work in the form of amendments to the Labor Code of the Russian Federation (hereinafter: the Labor Code) was signed. It provides for the availability of remote work and the possibility of combining it with office work. The corresponding document was published on the Internet portal of legal information.

The law should have come into force on January 1st 2021. It introduces three key concepts:

- **remote (distant) work** - performing work "outside the location of the employer", representative offices of the organization, "outside the stationary workplace", *etc.*;
- **temporary remote (distant) work** - provides for the temporary performance of the labor function of an employee who works under an employment contract, outside a stationary workplace under the control of the employer;
- **combined remote (distant) work** - stationary employment at the workplace and remote (distant) work.

As a general rule, the transfer to teleworking (remote, distant work) is carried out by agreement of the parties, for example, by signing an additional agreement to the employment contract. However, during the pandemic, the question arose of how to correctly draw up such a transfer if the employee disagreed with it and refused to sign an agreement to the contract. The amendments to the Labor Code solve this problem.

The employer will be able to transfer employees to remote work without their consent in the following cases:

1) in emergency situations;

2) upon adoption of an appropriate decision by a state authority or local government. Such a translation should be temporary and formalized through the adoption of an internal document, such as an order.

If an employee can carry out their activities only at a stationary workplace and cannot be transferred to "remote work" or if the employer is unable to provide them with the necessary equipment, software and hardware, then the time during which the employee will not be able to perform his job function will be considered downtime for reasons beyond the control of the employer and employee.

It is also worth noting the provided guarantees for remuneration of a remote worker, payment of travel expenses when sending him to another locality to carry out a service assignment, providing it at the expense of the employer with equipment, software and hardware and other means necessary for performing remote work.

The Labor Code stipulates that the performance of a labor function by an employee remotely cannot be the basis for reducing his wages.

The working and rest time for a remote worker are determined by themselves at their discretion unless otherwise provided by the employment contract. The amendments expand the list of documents that can be used to establish the working hours of a remote worker. Nowadays, it is not only an employment contract but also a collective agreement, a local normative act adopted, taking into account the opinion of the elected body of the primary trade union organization. If the working hours are not fixed in these documents, the remote worker will set it at their own discretion. It is important that the time of interaction of a teleworker with an employer is also included in the working time period.

Additional grounds for dismissing a remote worker are established, based on the specifics of remote work. An employer can terminate an employment contract if:

a) the employee, without good reason, does not contact the employer for two consecutive working days on issues related to the performance of the labor function;

b) an employee doing teleworking on a permanent basis has changed their location and is therefore unable to carry out their work on the same terms.

Thus, starting 2021, employers with teleworkers will need to revise the procedure for formalizing this type of work and bring internal documents and processes in line with the requirements of the legislation in force.

Let us introduce some comments on the recent amendments to the Labor Code. The First Deputy Head of the Department of Labor and Social Protection of the Moscow City, Alexandra Alexandrova, reports: »*We consider this bill important and timely. Obviously, this trend has arisen not only during the pandemic. Digitalization has been the main global trend in the labor market over the past three years. It requires certain legislative changes. The pandemic has exacerbated important components that everyone could feel for themselves. Workers and companies were forced to quickly restructure their processes to adapt to telecommuting. This process turned out to be not so easy for both companies and employees. It turned out that many things were not settled.*

Another thing is that the practice of its application will require some changes. It is very important for us to track them, understand the dynamics and hear the opinions of both people and employers who understand the situation very well.« [5]

Chairman of the Moscow Federation of Trade Unions Mikhail Antontsev:

»*This bill will address the gap in labor legislation. Working remotely is already a widespread practice in certain industries. Unfortunately, in such a situation, the employee and the employer practically leave their relationship without the basis of a legal framework. COVID-19 became a catalyst for prompt amendments to the Labor Code of the Russian Federation.* «[6]

To sum it up, we can name three legal trends that characterize the impact of the pandemic on the improvement of legislation in the field of labor relations (Andreev, Loktiukhina, 2020).

[5] URL: Moscow City Duma, Amendments to the Labor Code of the Russian Federation on teleworking will eliminate legal gaps that appeared during the pandemic: https://duma.mos.ru/ru/0/news/novosti/popravki-v-trudovoy-kodeks-rf-o-distantsionnoy-rabote-ustranyat-pravovyie-probelyi-proyavivshiesya-v-period-pandemii?tryMobile=1 (6.10.2021).
[6] *Ibid.*

a) the transformation of the legislative mechanisms of distance work and temporary remote employment. We also note that the ability to flexibly manage working time, a four-day working week by agreement between the employee and the employer, which a few months ago was spoken of as a distant prospect, instantly became a reality for millions of Russians. These circumstances indicate the need to change labor legislation towards greater flexibility.
b) the introduction of electronic document management in labor relations and its simultaneous integration into the electronic services of the government.
c) modernization of legislative methods for regulating remote interaction in the social and labor sphere of authorities and citizens, as well as employers (issuing electronic certificates of incapacity for work, remote registration as an unemployed, submitting documents in electronic format for receiving social benefits, remote interaction with the state labor inspection).

Digitalization in labor relations is seen as a positive process. Despite the fact that it faces some difficulties in implementation, digital technologies are increasingly used by companies. It is necessary to take into account the peculiarities of the mentality and psychology of the Russian citizen. Therefore, it is worth developing a distinctive technology introducing remote work into the activities of companies, combining both traditional and remote labor.

8 Conclusions: the new perspectives of labor law as a result of the digitalization of the economy

The changes between the increasingly massive use of new technologies will involve a progressive and increasingly fast transformation of the basic coordinates of labor law in all main European countries. This is a process of change which includes, first and foremost, the risk of losing the specificity of labor law rules, which will be involved by the new demands of the production system, so that the main characteristics which form the central elements of the differentiation between labor law and civil law will be less obvious and less identifiable.

A cultural change is necessary, taking into account the fact that the platform worker of today cannot necessarily and always be placed within the usual perimeter of subordination, with all the difficulties that this entails, and that, in order to achieve effective solutions within a revision of the regulation of remote work, it appears to represent a satisfactory and interesting perspective, as the most careful doctrine underlines, the widening of the horizon of the category of the economically dependent self-employed worker, within the model of the French labor law system.

In this context, the question of social rights becomes the crucial one. The European dimension of social rights is impossible in the source system, which needs common social values among the European countries, as already established by the Charter of Nice and the Treaty of Lisbon.

The role of the Commission responds to the need for progressive integration between the different social systems existing in the EU member states.

In comparison between national institutions and EU institutions, a new system of rules is needed which will define the impact of European policies for the protection of fragile workers of the member states and bring improvement to national laws, by adding an indication of the level of information on competitiveness and the level of protection of workers in the international arena, which in the context of digitalization and the changes imposed by the new needs that have arisen and have in many cases been exacerbated by the COVID-19 pandemic, will require new rules and a system of relations that takes into account the need to avoid new social imbalances.

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References

Andreev, P., Loktiukhina N. (2020) Pandemic as a Challenge to Employment. Advokatskaya gazeta. (in Russian) URL: https://www.advgazeta.ru/mneniya/pandemiya-kak-vyzov-traditsionnym-formam-zanyatosti-/ (6.10.2021)

Bavaro, V. (2009) The Legal Dimensions of Work Time (Bari: Cacucci).

Calafà, L. (1998) The Structures of Temporal Flexibility, in: Gaeta, Lorenzo-Pascucci, Paolo (Ed.): Telework and Law, p. 34.

Casillo, R. (2018) Competitiveness and Work-life Balance in »Agile« Work, Riv. Giur. Lav., 1 (I), p. 115.

Cipriani, A-G., Alessio- Mari, G. (2018) Work 4.0. The Fourth Industrial Revolution and the Transformation of Work Activities (Florence: Firenze University Press).

Duguzheva M. (2020) Peculiarities of Labor Relation during Pandemic. Obrazovanie i pravo, 4, p. 423-426.

Fedchenko A. (2018) Transformation of Social and Labor Relations in the Digital Economy. Bulletin of the Voronezh State University. Series: Economics and Management, 3, p. 91-95.

Gaeta, L. (1999) The Regulation of Telework in Public Administrations, Lav. Pubbl. Amm., 2, p. 311.

Goloventchik, G. (2018) Transformation of the Labour Market in the Digital Economy. Tsifrovaia transformatsiia, 4(5), p. 27–43. (in Russian).

Ichino, P. (2017) The Consequences of Technological Innovation on Labour Law. Riv. It. Dir. Lav., 4(I), p. 525.

Lamberti, M. (2020) Remote Working in Times of Sanitary Emergency and the Prospect of Smart Working. Mass. Giur. Lav., 3, p. 615.

Lyon, D. (2020) The Culture of Surveillance (Rome: Luiss University Press).

Lyutov, N. (2019) Adaptation of Labor Law to the Development of Digital Technologies: Challenges and Prospects. Aktual'nye problemy rossiiskogo prava, 6 (103), p. 98–105 (in Russian).

Perulli, A., Treu, T. (2020) The Future of Work. Labour Law and Labour Market Regulation in the Digital Era (Milano: Wolters Kluwer).

Spinelli, C. (2018) Agile Work in Public Administration. Riv. Giur. Lav., 1(I), p. 127.

Tullini, P. (2010) Technology of the Communication and Confidentiality in the Work Relationship. Use of Electronic Means, Power of Control and Processing of Personal Data (Treaty of Commercial Law and Public Law of the Economy directed by Galgano, Francesco, Padova).