

RULE OF LAW PRINCIPLES, HUMAN RIGHTS, AND LABOUR RIGHTS: UNDERPINNING A TRIANGULAR RELATIONSHIP

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Abstract: *This paper proceeds on the hypothesis that labour rights and human rights in the workplace embody an expression of the rule of law. Accordingly, it first seeks to examine and underpin the triangular relationship between the substantive conception of rule of law principles, human rights, and labour rights, with paying special attention to the discourse framing the latter as human rights. It then turns to the ways in which the rule of law manifests itself in ensuring the implementation, effective protection and enjoyment of human rights in the workplace. Beyond substantiating the hypothesised connection, the paper argues that the integrated approach to interpretation adopted by the European Court of Human Rights plays an essential and multifaceted role in indirectly bringing labour law within the umbrella principle – conceptual and normative framework – of the rule of law.*

Keywords: *rule of law, labour rights, human rights, ECtHR, integrated interpretative approach, Article 6 ECHR, Article 8 ECHR, employment relationship*

INTRODUCTORY REMARKS

According to Virginia A. Leary, “[t]he status of workers’ rights in a country is a bellwether for the status of human rights in general.”¹ One might venture to further contend that the condition of labour rights likewise serves, in some sense, as an indicator of the extent to which certain fundamental principles of the rule of law are upheld. This paper proceeds on the hypothesis that such an interrelationship exists – namely, that labour rights and human rights in the workplace embody an expression of the rule of law. Accordingly, it first seeks to examine and underpin the triangular relationship between the substantive conception of rule of law principles, human rights, and labour rights, as introduced here and further defined in the following subsections, paying special attention to the discourse framing the latter as human rights. It then turns to the ways in which the rule of law manifests itself in ensuring the implementation, effective protection and enjoyment of human rights at the workplace. Beyond substantiating the hypothesised connection, the paper argues that the integrated approach to interpretation adopted by the European Court of Human Rights (hereinafter: ECtHR) plays an essential and multifaceted role in indirectly bringing labour law within the principle – conceptual and normative framework – of the rule of law.

I. RULE OF LAW AND FUNDAMENTAL RIGHTS

While the rule of law is often conceptualised “as a primary principle of judicial interpretation and a source from which standards of judicial review may be

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¹ A. LEARY, V. The Paradox of Workers’ Rights as Human Rights. In: Lance A. Compa – Stephen F. Diamond (eds.). *Human Rights, Labor Rights, and International Trade*. Philadelphia: University of Pennsylvania Press, 2003, p. 22.

derived”,² there exists – both in legal scholarship and in international legal instruments – a broad consensus that the rule of law, as a multi-dimensional umbrella principle, is intrinsically linked to, and mutually reinforcing with, the protection of fundamental rights. The latter is considered to form part of the broad, substantive, and holistic understanding – the so-called “*thick*” conception³ – of the rule of law. Promoted by the interpretations of both the European Union and the Council of Europe, this understanding takes its bearing from a framework of values situated at a meta-level above formal legality and the adoption and qualities of law, which constitute the “*thin*” dimension of the principle. Going beyond this, the substantive conception primarily focuses on and links the rule of law inextricably to democracy and rights.⁴ Without denying its contribution to the fine-tuning of the concept in focus, a certain degree of scepticism may nevertheless be expressed regarding the somewhat artificial character of this differentiation, given the interrelatedness and interdependence of the two dimensions encapsulated by the rule of law, which should, in any event, not be regarded merely as an end in itself with a purely formal character, devoid of legitimacy or substantive values.⁵

Be that as it may, returning from this brief but necessary conceptual detour to the link between the rule of law and fundamental rights, numerous sources may be cited to substantiate this understanding. By way of illustration only, beginning with the European Union (hereinafter: EU) *acquis*,⁶ the Conclusions adopted by the Council of the European Union on fundamental rights and rule of law explicitly reflect this approach, “*considering that respecting the rule of law is a pre-requisite for the protection of fundamental rights.*”⁷ Likewise, paragraph 6 of the Regulation (EU) 2020/2092 states that “*[r]espect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.*”⁸

Turning to the Council of Europe, within this framework the European Commission for Democracy through Law (the Venice Commission) has had the most significant im-

² PECH, L. The Rule of Law as a Well-Established and Well-Defined Principle of EU Law. *Hague Journal on the Rule of Law*. 2022, Vol. 14, p. 107.

³ Id. p. 125.

⁴ For a detailed overview of these rule of law dimensions, see RAMONA, C. *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*. Cham: Palgrave Macmillan, 2022, pp. 44–47.

⁵ Id. pp. 46–47.

⁶ Generally speaking, within the European Union, several mechanisms have been adopted to assess and uphold the rule of law, including the Rule of Law Review Cycle, the procedure under Article 7 TEU, the European Semester, the conditionality mechanism linking EU funds to respect for rule of law principles, and, previously, the Cooperation and Verification Mechanism (CVM) applied to Romania and Bulgaria. These evaluation instruments incorporate human rights considerations, either explicitly or implicitly.

⁷ Council of the European Union. *Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union*. Justice and Home Affairs Council Meeting, Luxembourg, 6–7 June 2013. In: *COUNCIL OF THE EUROPEAN UNION* [online]. 3. 9. 2025 [2026-03-31]. Available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf, para 9.

⁸ European Parliament and the Council of the European Union. *Regulation 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union Budget*. OJEU L 433 I/1. In: *EUR-Lex* [online]. [2026-03-31]. Available at: <http://data.europa.eu/eli/reg/2020/2092/oj>, para 6.

pact through its Rule of Law Checklist, which will be discussed in greater detail below. In a similar vein, the 2020 resolution of the Parliamentary Assembly concerning Poland is noteworthy, as it echoed the understanding outlined above by reiterating that “*democracy, the rule of law and respect for human rights are interlinked and cannot exist without one another.*”⁹

This conception, however, extends beyond the European legal space. The United Nations (hereinafter: UN) has also embraced a vision of the rule of law inseparable from human rights protection. In a 2004 Report, the Secretary-General described the rule of law as a principle of governance in which laws are “*consistent with international human rights norms and standards.*”¹⁰ Similarly, in its 2012 Resolution, the General Assembly reaffirmed that “*human rights, the rule of law and democracy are interlinked and mutually reinforcing.*”¹¹

Against this background, one can conclude that the respect for fundamental rights forms part of the “*thick*”, substantive conception of the rule of law. Having established the interrelationship between this concept and fundamental rights, it is now legitimate to ask and construe how labour law and labour rights relate to these principles.

II. RULE OF LAW AND LABOUR RIGHTS AS HUMAN RIGHTS

The question of whether labour rights can be regarded as human rights has generated sustained scholarly debate – both supportive and sceptical – in recent decades and continues, as a matter of controversy, to attract considerable attention in contemporary labour law scholarship.¹² National constitutions and international human rights catalogues, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and, in particular, the conventions adopted by the International Labour Organization (ILO), recognise a wide range of rights relating to work. This treaty-crossing character of labour-related rights reflects the understanding of labour not merely as a means for economic survival but also as a vehicle for self-realisation and the development of the human personality,¹³ thereby affirming the central role of work in both individual and collective human experience.

Against this backdrop, until relatively recently, many have regarded labour law alone as governing work relationships, without considering the human rights dimension of the

⁹ Parliamentary Assembly of the Council of Europe. *The functioning of democratic institutions in Poland*. Resolution No. 2316. In: *Council of Europe* [online]. [2026-03-31]. Available at: <https://pace.coe.int/en/files/28504/html>, para 1.

¹⁰ United Nations Security Council. *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*. S/2004/616. In: *United Nations Digital Library* [online]. [2026-03-31]. Available at: <https://digitallibrary.un.org/record/527647?v=pdf#files>, para 6.

¹¹ United Nations General Assembly. *Resolution adopted by the General Assembly on 24 September 2012*. A/RES/67/1 In: *United Nations General Assembly* [online]. [2026-03-31]. Available at: <https://docs.un.org/en/A/Res/67/1>, para 5.

¹² MANTOUVALOU, V. Are Labour Rights Human Rights? *European Labour Law Journal*. 2012, Vol. 3, Issue 2, p. 151.

¹³ KOCH, I. E. *Human Rights as Indivisible Rights. The Protection of Socio-Economic Demands under the European Convention on Human Rights*. Leiden: Martinus Nijhoff Publishers, 2009, p. 209.

employment.¹⁴ This can largely be attributed to the fact that human rights were traditionally conceived as addressing the vertical relationship between the state and individuals. This approach can be traced, for instance, in the European Convention on Human Rights (hereinafter: ECHR), which, given its original focus on safeguarding civil and political rights against state interference, largely excluded social and economic rights from its scope of protection. This exclusion may also be understood in light of the absence of even a minimal European consensus on social rights at that time, as labour law in the Eastern Bloc fundamentally differed from that in Western Europe.

In addition to not considering it at all for the above reasons and structural limitations, emerging scholarship has also questioned the nature of labour rights as human rights.¹⁵ Without denying the potential benefits of engagement with the international human rights movement and the adoption of its discourse, some scholars caution labour lawyers to take heed.¹⁶ Others argue that the legitimacy or success of carving out a human rights-based approach to labour rights “rests on the closeness of fit between the particular labor issue presented and the core of the conception of the human right asserted to resolve it.”¹⁷ Accordingly, framing labour rights as human rights may not be equally straightforward and unequivocal in the case of all such rights, as not all of them exhibit the defining characteristics typically associated with human rights. An *in merito* analysis, presenting arguments both for and against this debate, in terms of the possible assimilation of the former to the latter and in terms of the divergence between the universality of human rights and sectoral nature of labour law, lies far beyond the scope of this paper and has already been thematised several times in contemporary labour law scholarship.¹⁸ In light of this, attention may now only be directed to certain manifestations indirectly demonstrating that some labour rights nonetheless meet such key features as universality, timelessness and moral imperativeness.

Beginning in the 1990s, new instruments and interpretative approaches started to emerge, increasingly recognising the proximity between labour rights and human rights. Reflecting this basic change in optics – shift away from the orthodoxy mirrored in Virginia Leary’s famous observation that labour rights and human rights “run on tracks that are sometimes parallel and rarely meet”¹⁹ – three developments merit particular attention.

To begin with, in 1998, the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, binding for all ILO Member States.

¹⁴ BELLACE, R. J., TER HAAR, B. Perspectives on labour and human rights. In: Janice R. Bellace – Beryl ter Haar (eds.). *Research Handbook on Labour, Business and Human Rights Law*. Cheltenham, Northampton: Edward Elgar Publishing, 2019, p. 2.

¹⁵ MANTOUVALOU, V. Are Labour Rights Human Rights? *European Labour Law Journal*. 2012, Vol. 3, Issue 2, p. 163.

¹⁶ KOLBEN, K. Labour Rights as Human Rights? *Virginia Journal of International Law*. 2010, Vol. 50, Issue 2, p. 484.

¹⁷ W. FINKIN, M. Worker rights as human rights: regenerative reconception or rhetorical refuge? In: Janice R. Bellace – Beryl ter Haar (eds.). *Research Handbook on Labour, Business and Human Rights Law*. Cheltenham, Northampton: Edward Elgar Publishing, 2019, p. 125.

¹⁸ For a rebuttal of counterarguments in the labour rights as human rights debate, see, for example, MANTOUVALOU, V. Are Labour Rights Human Rights? *European Labour Law Journal*. 2012, Vol. 3, Issue 2, p. 159.

¹⁹ LEARY, A. V. The Paradox of Workers’ Rights as Human Rights. In: Lance A. Compa – Stephen F. Diamond (eds.). *Human Rights, Labor Rights, and International Trade*. Philadelphia: University of Pennsylvania Press, 2003, p. 22.

Although the term “*human rights*” appears to be lacking from its text, the Declaration effectively endorses a set of four core labour rights as fundamental human rights: (i) freedom of association and the right to collective bargaining, (ii) the elimination of forced or compulsory labour, (iii) the abolition of child labour and (iv) the elimination of discrimination in employment. A fifth principle – the right to a safe and healthy working environment – was added in 2022.

Another important soft law instrument is the UN Guiding Principles on Business and Human Rights (UNGPs), adopted by the United Nations Human Rights Council in 2011. The UNGPs represents a further milestone, constituting the first UN framework explicitly grounded in the responsibility of business enterprises to respect human rights.²⁰ This reflects the growing acknowledgment that human rights obligations extend beyond the state, applying also in private relations, including employment relationships – “*human rights at work*” – where rights can be particularly vulnerable to violations by non-state actors. Moreover, in clarifying what must be understood as “*core internationally recognised human rights*”, the UNGPs incorporated the four principles enshrined in the ILO’s 1998 Declaration. In this way, fundamental labour rights came to be recognised as human rights.²¹

Finally, to conclude this subsection with a hard law international instrument, while the ECHR itself recognises only a few labour rights among the fundamental rights it protects, it remains relevant to this discussion due to the interpretative evolution of the ECtHR.²² A shift in perspective, coupled with the Court’s increasing willingness to afford protection to social rights in the course of Convention implementation, is reflected in the adoption of the so-called “*integrated*” or “*holistic*” interpretative approach,²³ which has bolstered labour law scholars’ confidence in human rights law.²⁴ Guided by the principles of teleological and dynamic (evolutive) interpretation,²⁵ and by the perception of human rights as indivisible,²⁶ the Court has progressively extended the scope of the Convention to cover certain rights – such as aspects of the right to work (Article 8) and the right to

²⁰ BELLACE, R. J. From workers’ rights to human rights at work. In: Janice R. Bellace – Beryl ter Haar (eds.). *Research Handbook on Labour, Business and Human Rights Law*. Cheltenham, Northampton: Edward Elgar Publishing, 2019, p. 402.

²¹ Ibid.

²² On the ECtHR’s evolving approach to the protection of social rights, see MASON, L. Labour law, the industrial constitution and the EU’s accession to the ECHR: The constitutional nature of the market and the limits of rights-based approaches to labour law. In: Kanstantsin Dzehtsiarou – Theodore Konstadinides – Tobias Lock – Noreen O’Meara (eds.). *Human Rights Law in Europe. The Influence, Overlaps and Contradictions of the EU and the ECHR*. London: Routledge, 2014, pp. 137–155.

²³ On this method, see MANTOUVALOU, V. Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation. *Human Rights Law Review*. 2013, Vol. 13, Issue 3, pp. 536–545.

²⁴ MANTOUVALOU, V. The Prohibition of Slavery and Forced Labour. In: Filip Dorsemont – Klaus Lörcher – Isabelle Schömann (eds.). *The European Convention on Human Rights and the Employment Relation*. Bloomsbury Publishing, 2011, p. 155.

²⁵ O’CONNELL, R. The Right to Work in the European Convention on Human Rights. *European Human Rights Law Review*. 2012, Issue 2, p. 178. *Demir and Baykara v. Turkey*, no. 34503/97, Judgment of 12 November 2008, paras 65, 67, 78, and 85–86.

²⁶ SYCHENKO, E., PERULLI, A. *Employment Law and the European Convention on Human Rights: The Research of the Recent Jurisprudence of the ECtHR Related to Employment Law (2017–2021)*. The Netherlands: Kluwer Law International, 2023, pp. 6, 18.

strike and collective bargaining (Article 11) – traditionally regarded as socio-economic.²⁷ This method embodies a contemporary reading of the ECHR as a “*living instrument*”,²⁸ capable of adapting to evolving political and social contexts.

At this juncture, the question may legitimately arise as to whether the Court’s expansive interpretation of the Convention can be understood as encouraging excessive judicial activism. Although the interpretative technique in question has been widely welcomed, it has not escaped criticism, including allegations that the Court goes too far in interpreting the Convention as an instrument of social rights protection, in doing so exceeding its conferred mandate, which is primarily aimed at safeguarding civil and political rights. Accordingly, it is arguable, albeit as a more remote concern, that the overly expansive interpretation and reading of social rights into the existing provisions of the Convention may, in the long run, lead to an inflation of rights, in turn risking the moral weight of human rights claims, and, in that sense, proving counterproductive.

However, while the ECHR may address interferences with specific labour rights on a case-by-case basis, this does not imply that the Court’s interpretative practice is capable of remedying all injustices at work, nor that the Convention and the Court alone constitute the appropriate forum for the comprehensive protection of labour rights. At the same time, the principle of subsidiarity and the doctrine of the margin of appreciation, which generally characterise the system of protection established by the Convention, must be duly taken into account. Ultimately, even setting aside these considerations, such manifestations of “activism” may be understood as attempts to overcome the structural weaknesses of the system of social rights protection.²⁹ In this sense, they may be regarded, to a certain extent, as legitimised by the Court’s intention to ensure a more effective safeguarding of the fundamental rights dimension of labour rights, while also fostering broader convergence in human rights protection.³⁰

Based on this line of reasoning, the inclusion of respect for human rights within the “*thick*” conception of the rule of law implicitly entails, in a certain sense, respect for specific labour rights. In other words, a broad understanding of the rule of law is contingent upon safeguarding such rights. When these rights are violated, the very application of the rule of law is called into question. Nevertheless, characterising labour rights as human rights is not the sole connection linking the rule of law to labour law.

²⁷ BOGG, A. et al. *Human Rights at Work: Reimagining Employment Law*, Bloomsbury Publishing, 2024, pp. 18–19. MANTOUVALOU, V. Are Labour Rights Human Rights? *European Labour Law Journal*. 2012, Vol. 3, Issue 2, p. 159.

²⁸ *Demir and Baykara v. Turkey*, para 68.

²⁹ SYCHENKO, E., PERULLI, A. *Employment Law and the European Convention on Human Rights: The Research of the Recent Jurisprudence of the ECtHR Related to Employment Law (2017–2021)*. The Netherlands: Kluwer Law International, 2023, p. 18.

³⁰ On this convergence, see NAGY, G. Az alapvető emberi jogok védelmének konvergenciája mint a globális alkotmányosság egyik vetülete. [The Convergence of the Protection of Fundamental Human Rights as an Aspect of Global Constitutionalism]. *Erdélyi Jogélet*. 2024, Vol. 1, pp. 59–74. WAYNE, S. The ECtHR, transregional dialogues and global constitutionalism. *Global Constitutionalism*. 2020, Vol. 9, Issue 3, pp. 543–551.

III. RULE OF LAW AND HUMAN RIGHTS AT WORK

The previously outlined tapestry of international soft- and hard-law instruments demonstrates that the rule of law, human rights, and, by extension, labour rights conceived as human rights are intrinsically linked and mutually reinforcing. However, this interrelationship extends beyond a merely declarative or passive form of interdependence.

The understanding of the rule of law as requiring the effective protection of human rights is, at first, exemplified and buttressed by the fact that the principles of equality before the law and non-discrimination are embedded in its substantive conception. According to the above-cited 2004 Report of the UN Secretary-General, the rule of law requires “*measures to ensure adherence to the [...] principle of [...] equality before the law.*”³¹ Similarly, the Venice Commission, in its Rule of Law Checklist identifies “*Equality before the law and non-discrimination*”, as one of the fundamental elements of the rule of law, specifying that “*the principle of non-discrimination requires the prohibition of any unjustified unequal treatment under the law and/or by law, and that all persons have guaranteed equal and effective protection against discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*”³² In line with this, the UN General Assembly in its previously mentioned 2012 Resolution recognised that “*all persons [...] are entitled without any discrimination to equal protection of the law.*”³³ Moreover, “*the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable [...] employment*”³⁴ has also been recognised, supporting the application of equality and non-discrimination principles within employment relationships. These human rights guarantees are of particular importance in the context of employment. Since the employment relationship is characterised by extreme inequality, with the employee being in a position of subordination, discussing human rights at work reveals the so-called “*employment paradox*”: while the employer and employee are equal before the law, the employee is subordinate to the employer by the very nature of the relationship,³⁵ which often undermines this formal or statutory equality.

³¹ United Nations Security Council. *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S/2004/616. In: *United Nations Digital Library* [online]. [2026-03-31]. Available at: <https://digitallibrary.un.org/record/527647?v=pdf#files>, para 6.

³² European Commission for Democracy through Law (Venice Commission). *Rule of Law Checklist*. Study No. 711/2013, CDL-AD(2016)007. In: *Council of Europe – Venice Commission* [online]. 18. 3. 2016 [2026-03-31]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e), p. 18.

³³ United Nations General Assembly. *Resolution adopted by the General Assembly on 24 September 2012*. A/RES/67/1. In: *United Nations General Assembly* [online]. [2026-03-31]. Available at: <https://docs.un.org/en/A/Res/67/1>, para 2.

³⁴ *Id.* para 8.

³⁵ R. BELLACE, J., TER HAAR, B. Perspectives on labour and human rights. In: Janice R. Bellace – Beryl ter Haar (eds.). *Research Handbook on Labour, Business and Human Rights Law*. Cheltenham, Northampton: Edward Elgar Publishing, 2019, p. 2.

In a way that can, in some sense, be understood as underpinning the abovementioned principles, the Venice Commission asks, under the Rule of Law Checklist's sub-element of "*supremacy of the law*" within the broader category of "*legality*", whether the "*effective legal protection of individual human rights vis-à-vis infringements by private actors [is] guaranteed*."³⁶ In line with this, the Checklist further makes "*compliance with the law*", another component of the "*legality*" element, conditional upon the compliance of "*public authorities [...] with their positive obligations by ensuring implementation and effective protection of human rights*."³⁷ From a scholarly perspective, Lord Bingham, in the fourth of his eight sub-rules delineating the scope of the rule of law principle, similarly argued that "*the law must afford adequate protection of fundamental human rights*."³⁸

Taken together, these dimensions of rule of law imply that public authorities bear positive obligations to secure the protection and effective enjoyment of individual human rights – obligations that extend to situations occurring within private relationships as well. According to Virginia Mantouvalou, positive obligations may arise when there is a power imbalance between private parties and the state knows, or ought to know, that one party is abusing its position of power.³⁹ The employment relationship, with its inherent asymmetries, exemplifies such imbalance, where the risk of oppression and abuse of power is particularly pronounced. To elevate these, at this point purely theoretical, considerations to a practical level, the case-law of the ECtHR – albeit in a non-exhaustive manner – will be examined below.

The *Kyriakides v. Cyprus* case⁴⁰ – illustrative not only of the above-articulated interpretative technique in the context of the right to work, but also of the positive obligations under the ECHR to regulate private conduct – provides a relevant example in this regard. As outlined previously, although, like most other socio-economic rights, the right to work is not explicitly recognised among the rights protected by the ECHR, the Court, through the application of the integrated approach to interpretation, has indirectly brought certain aspects of this right within the scope of the Convention, thus conferring upon it a more socially oriented dimension.⁴¹ Since neither the Convention, nor the Court⁴² define "*private life*" – Article 8 being one of the most open-ended provisions of the Convention –

³⁶ European Commission for Democracy through Law (Venice Commission). *Rule of Law Checklist*. Study No. 711/2013, CDL-AD(2016)007. In: *Council of Europe – Venice Commission* [online]. 18. 3. 2016 [2026-03-31]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e), p. 11.

³⁷ *Ibid.*

³⁸ BINGHAM, L. The rule of law. *Cambridge Law Journal*. 2007, Vol. 66, Issue 1, pp. 74–75.

³⁹ *Ibid.*

⁴⁰ *Kyriakides v. Cyprus*, no. 39058/05, Judgment of 16 January 2009.

⁴¹ LÖRCHER, K. The New Social Dimension in the Jurisprudence of the European Court of Human Rights (ECtHR): The Demir and Baykara Judgment, its Methodology and Follow-up. In: Filip Dorssemont – Klaus Lörcher – Isabelle Schömann (eds.). *The European Convention on Human Rights and the employment relation*. Bloomsbury Publishing, 2011, p. 3.

⁴² "*The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of 'private life'*." *Niemetz v. Germany*, no. 13710/88, Judgment of 16 December 1992, para 29. "*Private life is a broad term not susceptible to exhaustive definition*." *Peck v. United Kingdom*, no. 44647/98, Judgment of 28 January 2003, para 57.

the Court, taking note of materials, documents, and interpretative guidance issued by other international organisations concerning social rights,⁴³ has interpreted this concept in the broadest possible sense.⁴⁴ As a result, given the importance of work as a means of income⁴⁵ – essential for the enjoyment of a decent private life – and its value for self-realisation⁴⁶ as an aspect of private life in the broader sense of “*private social life*”⁴⁷ – both strongly linked to human dignity⁴⁸ and autonomy⁴⁹ – the possibility to seek employment and the right not to be arbitrarily deprived of employment opportunities has been recognised as falling within the ambit of Article 8.⁵⁰

In the *Kyriakides v. Cyprus* case – where the applicant was dismissed from his post as a senior police officer due to alleged negligence in supervising two subordinates accused of ill-treatment and torture of suspects – the Court held that a dismissal may seriously interfere with an individual’s private life if it causes harm to reputation, moral or psychological integrity.⁵¹ This case, besides illustrating the application of the integrated approach in the context of Article 8 and the right to work – in this instance, its aspect concerning the right not to be unfairly dismissed⁵² – also deserves attention because of its importance for the ECtHR’s positive rights jurisprudence.

By virtue of its indirect horizontal effect, as derived from Article 1, the ECHR imposes a positive obligation on Contracting States to adopt appropriate legislative, enforcement-related, or investigative measures to ensure the effective enjoyment of Convention

⁴³ *Demir and Baykara v. Turkey*, para 85.

⁴⁴ SYCHENKO, E., PERULLI, A. *Employment Law and the European Convention on Human Rights: The Research of the Recent Jurisprudence of the ECtHR Related to Employment Law (2017–2021)*. The Netherlands: Kluwer Law International, 2023, p. 11.

⁴⁵ “[A] threat of dismissal involving loss of livelihood is a most serious form of compulsion.” *Young, James and Webster v. United Kingdom*, nos. 7601/76 and 7806/77, Judgment of 13 August 1981, para 55.

⁴⁶ *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, Judgment of 27 July 2004, para 43. *Campagnano v. Italy*, no. 77955/01, Judgment of 23 March 2006, para 53. *Pretty v. the United Kingdom*, no. 2346/02, Judgment of 29 April 2002, para 61.

⁴⁷ *Bigaeva v. Greece*, no. 26713/05, Judgment of 28 May 2009, para 2. *Bărbulescu v. Romania*, no. 61496/08, Judgment of 5 September 2017, para 71. *Niemetz v. Germany*, para 29. SYCHENKO, E., PERULLI, A. *Employment Law and the European Convention on Human Rights: The Research of the Recent Jurisprudence of the ECtHR Related to Employment Law (2017–2021)*. p. 45. For a more detailed discussion on the protection of private social life, see also: SAJÓ, A. The Social in the Private: A Genealogy of “Private Life”. In: Josep Casadevall et al (eds.). *Essays in honour of Dean Spielmann*. Oisterwijk: Wolf Legal Publishers, 2015, pp. 567–576.

⁴⁸ MANTOUVALOU, V., FRANTZIOU, E. Article 15 – Freedom to Choose an Occupation and Right to Engage in Work’. In: Steve Peers et al (eds.). *The EU Charter of Fundamental Rights: A Commentary*. Bloomsbury Publishing, 2021, p. 451.

⁴⁹ ATKINSON, J. Human Rights as Foundations for Labour Law. In: Hugh Collins – Gillian Lester – Virginia Mantouvalou (eds.). *Philosophical Foundations of Labour Law*. Oxford: Oxford University Press, 2018, p. 122.

⁵⁰ O’CONNELL, R. The Right to Work in the European Convention on Human Rights. *European Human Rights Law Review*. 2012, Issue 2, p. 177. In order not to leave the scope of right-to-work claims under Article 8 ECHR too vague, although it is defensible to speak of a right to work under the Convention, the ECtHR’s case-law does not interpret it as providing comprehensive protection for the entire scope of that right. While the Court may address interferences with professional life on a case-by-case basis, overarching and programmatic protection of the right to work extends well beyond what the Convention – and the Court alone – can appropriately secure.

⁵¹ *Kyriakides v. Cyprus*, paras 50–54.

⁵² For a detailed explanation of the relevance of Article 8 to dismissal cases and the criteria established by the ECtHR for assessing the severity of alleged violations, see *Denisov v. Ukraine*, no. 76639/11, Judgment of 25 September 2018, paras 100–117.

rights even in relationships between private individuals.⁵³ In *Kyriakides v. Cyprus*, the Court – exemplifying the procedural dimension of Article 8⁵⁴ – held that this provision also generates a positive obligation. Where a dismissal has serious negative consequences for an individual’s private life – by affecting their reputation, and moral and psychological integrity – the State must ensure that a procedure exists to assess the proportionality of the dismissal, thereby providing effective protection of the Convention rights concerned. In other words, Article 8 entails a requirement of procedural fairness before a person’s right to practise an occupation is terminated.⁵⁵ The lack of a proper proportionality analysis makes the dismissal procedurally unreasonable – that is, unreasonable respective of the procedural safeguards not employed – and thus unlawful. Consequently, beyond recognising labour rights as human rights, and, in this way, linking them to the rule of law, the effective protection of human rights in the workplace through positive obligations becomes a matter of rule of law concern.

At the same time, the topic of unfair dismissals is suitable for bringing forth another example of the connection between labour law and the principles of the rule of law. In this instance, however, the focus shifts from positive state obligations and Article 8 to the principles of independence and impartiality, and to fair trial, representing further manifestations of the concept of procedural fairness – this time within the meaning of Article 6 of the ECHR providing for a right to a fair trial. The first paragraph of this provision guarantees the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of their civil rights and obligations.

In order to comprehend and theoretically ground the interconnectedness of Article 6 of the ECHR with the rule of law principles, and subsequently their connection to labour law, one can turn to the assorted documents and pieces of jurisprudence already touched upon. To begin from a more general frame of reference, Lord Bingham’s seventh sub-rule delineating the scope of the rule of law principle emphasises that adjudicative procedures established by the state should be fair, as this represents the minimum standard required by the rule of law itself.⁵⁶ Turning then to the Venice Commission’s Rule of Law Checklist, this document identifies access to justice as one of the five core constituent elements – and an institutional requirement – of the rule of law, consisting, among others, of two indispensable components: independence and impartiality, as well as fair trial.

The case-law of the ECtHR is equally expressive in this regard. As a preliminary consideration, the Court has emphasised the importance of interpreting the preamble to an international treaty as an integral element of its contextual framework, recognising it as “*generally very useful*” for determining the object and purpose of the instrument as a

⁵³ MANTOUVALOU, V. The Right to Non-Exploitative Work. In: Virginia Mantouvalou (ed.). *The right to work: legal and philosophical perspectives*. Oxford: Hart Publishing, 2015, p. 55.

⁵⁴ O’CONNELL, R. The Right to Work in the European Convention on Human Rights. *European Human Rights Law Review*. 2012, Issue 2, p. 184.

⁵⁵ *Ibid.*

⁵⁶ BINGHAM, L. The rule of law. *Cambridge Law Journal*. 2007, Vol. 66, Issue 1, p. 80.

whole.⁵⁷ This acknowledgment signifies the establishment of a legal principle.⁵⁸ In relation to the rule of law, the most notable passage in the Preamble is the one affirming that the Governments of European countries are like-minded and share a common heritage of political traditions, ideals, freedom, and the rule of law.⁵⁹

Going into greater detail, the case-law reveals that where there is no access to an independent and impartial tribunal – the right of access to a court being an inherent aspect of the right to a fair hearing guaranteed by Article 6(1)⁶⁰ – the question of compliance with the rule of law inevitably arises.⁶¹ Moreover, the Court has held that the common thread running through the institutional requirements of “*independence*”, “*impartiality*”, and “*tribunal established by law*” under Article 6(1) is that they are all guided by the overarching aim of upholding the fundamental principles of the rule of law.⁶² In addition to this, the General Court of the European Union has interpreted Article 6(1) of the ECHR as enshrining the principle of the lawful judge,⁶³ the objective of which is to guarantee the independence of judicial power *vis-à-vis* the executive.⁶⁴ The General Court also reiterated that, according to the case-law of the ECtHR, Article 6(1) reflects, in its very essence, the principle of the rule of law.⁶⁵ Accordingly, Article 6 constitutes, arguably, one of the cornerstones of the rule of law. Without discussing *in merito* the general applicability of the provision in question, it is now pertinent to turn to Article 6 and its significance from a labour law perspective.

By far the most fertile and litigation-generating Convention guarantee,⁶⁶ Article 6 exemplifies the paradigm said to govern all of Strasbourg’s output, namely the search for a balance between unity and diversity.⁶⁷ Unity reflects the Court’s expansionist interpretative policy, which seeks to extend the reach of human rights law and to bring as many legal situations as possible within the Convention’s scope, thereby ensuring its uniform application.⁶⁸ As a counterbalance, diversity tempers unity by requiring the adaptation of Convention standards and rules so that they fit the acknowledgedly differing historical and cultural traditions within a given context or the specificities of a given legal relationship and litigation.⁶⁹ From a labour law perspective, the former has led to the so-called “*conventionalisation*” of labour law litigation, while the latter is mirrored in the “*labourisation*”

⁵⁷ *Golder v. United Kingdom*, no. 4451/70, Judgment of 21 February 1975, para 34.

⁵⁸ DRAGIČEVIĆ PRTENJAČA, M. I.1.2 The Interpretation of the Rule of Law by the European Court of Human Rights. In: János Bóka (ed.). *The Supranational Interpretation of the Rule of Law*. Miskolc, Budapest: Central European Academic Publishing, 2024, p. 45.

⁵⁹ *Golder v. United Kingdom*, para 34.

⁶⁰ *Id.* paras 28–36.

⁶¹ *Id.* para 34.

⁶² *Guðmundur Andri Ástráðsson v. Iceland*, no. 26374/18, Judgment of 1 December 2020, para 233.

⁶³ Case T-639/16 P FV v Council [2018] EU:T:2018:22, para 71.

⁶⁴ *Id.* para 68.

⁶⁵ *Id.* para 72.

⁶⁶ O’CONNELL, R. The Right to Work in the European Convention on Human Rights. *European Human Rights Law Review*. 2012, Issue 2, p. 184. VAN DROOGHENBROECK, S. Labour Law Litigation and Fair Trial under Article 6 ECHR. In: Filip Dorssemont – Klaus Lörcher – Isabelle Schömann (eds.). *The European Convention on Human Rights and the employment relation*. Bloomsbury Publishing, 2011, p. 159.

⁶⁷ *Id.* p. 160.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

of fair trial standards.⁷⁰ Together, these tendencies create fertile ground for what has been described as “*an incontestable trend to reduce the amount of labour law disputes that fall outside the scope of Article 6.*”⁷¹ Hence, the majority of labour law related cases have been considered under Article 6.⁷²

In *Obermeier v. Austria* – where the applicant, an employee, alleged a double violation of Article 6(1), claiming that he had been denied access to a court competent to determine the lawfulness of his dismissal authorised by an administrative decision, and that the courts had failed to conclude the proceedings within a reasonable time⁷³ as required by the Convention – the Court held that the dispute “*concerns private-law relations between employer and employee. It is thus a ‘civil’ dispute for the purposes of Article 6(1), which provision is therefore applicable.*”⁷⁴ Consequently, the Court unequivocally confirmed that employment relationships in the private sector fall within the ambit of Article 6, as they may give rise to “*disputes over civil rights and obligations,*” the interest in practising an occupation being regarded as corresponding to the notion of a “*civil right*”.⁷⁵

As for decisions concerning the employment of public servants, with its specific characteristics, the Court in *Pellegrin v. France* departed⁷⁶ from its previously settled case-law, which had established the general principle of the inapplicability of Article 6 to the civil service.⁷⁷ For the first time, it elaborated the “*functional criterion*”⁷⁸ to be applied in order to determine whether a public servant’s claims might be considered as relating to a civil right – and thus fall within the scope of Article 6 – or whether, based on the nature of the duties and responsibilities, their employment relationship is primarily a matter of public law. The Court, overruling its earlier jurisprudence,⁷⁹ held that “*the only disputes excluded from the scope of Article 6(1) are those which are raised by public servants [...] acting as the*

⁷⁰ Ibid.

⁷¹ Id. p. 173.

⁷² PERULLI, A., SYCHENKO, E. *Recent jurisprudence of the European Court of Human Rights relevant to employment law*. pp. 287–298, 292. Because the rule of law requires the effective protection of the right of access to court, in *Cudak v. Lithuania*, no. 15869/02, Judgment of 23 March 2010, paras 54, 57, 59 and 74, the Court refined its case-law to ensure such protection in employment-related disputes by limiting the scope of State immunity. It held that the disproportionate restriction of the right to an effective judicial remedy on the grounds of sovereign immunity impairs the very essence of the right in question. For a detailed analysis of this development in the Court’s case-law, see LAUTENBACH, G. *The Concept of the Rule of Law and the European Court of Human Rights*. Oxford: Oxford University Press, 2013, pp. 142–144.

⁷³ On the excessive length of employment dispute proceedings, see also *BILIM v. Turkey*, no. 18546/08, Judgment of 24 January 2017 and *Korzeniak v. Poland*, no. 56134/08, Judgment of 10 January 2017.

⁷⁴ *Obermeier v. Austria*, no. 11761/85, Judgment of 28 June 1990, para 67.

⁷⁵ O’CONNELL, R. The Right to Work in the European Convention on Human Rights. *European Human Rights Law Review*. 2012, Issue 2, p. 184.

⁷⁶ *Eskelinen and Others v. Finland* no. 63235/00, Judgment of 19 April 2007, paras 55–56.

⁷⁷ *Pellegrin v. France*, no. 28541/95, Judgment of 8 December 1999. Exceptions to this were allowed where the claim concerned a “*purely economic*” or “*essentially economic*” right. On this matter, see *Le Calvez v. France*, no. 25574/94, Judgment of 29 July 1998, para 57.

⁷⁸ *Pellegrin v. France*, para 64.

⁷⁹ VAN DROOGHENBROECK, S. Labour Law Litigation and Fair Trial under Article 6 ECHR. In: Filip Dorssemont – Klaus Lörcher – Isabelle Schömann (eds.). *The European Convention on Human Rights and the employment relation*. Bloomsbury Publishing, 2011, p. 174.

depository of public authority responsible for protecting the general interests of the State or other public authorities.”⁸⁰

This criterion was thereafter further developed and, becoming even more clear-cut, leaving less room for exclusions,⁸¹ evolved into the so-called “*Vilho Eskelinen test*”,⁸² formulated in *Vilho Eskelinen and Others v. Finland*. According to this test, a public servant may be denied access to a court under Article 6 only if national law expressly excluded such access for the post or category of staff in question,⁸³ and if the exclusion is objectively justified in the State’s interest.⁸⁴ The mere fact that the applicant works in a sector or department participating in the exercise of power conferred by public law is no longer decisive.⁸⁵

This test has found repeated application in cases concerning the dismissal of judges. Among these, *Volkov v. Ukraine*⁸⁶ – in which the applicant, a Supreme Court judge of Ukraine, was dismissed by the Ukrainian Parliament for alleged breach of oath following disciplinary proceedings – is particularly revealing for two main reasons. First, similarly to *Kyriakides v. Cyprus*, it exemplifies the application of the integrated approach in relation to Article 8 of the Convention. The Court held that the applicant’s dismissal constituted an interference with his right to respect for private life under Article 8, reasoning that it affected a wide range of the applicant’s relationships, including those of a professional nature, and had tangible consequences for his “*inner circle*”, given the impact on the material well-being of both the applicant and his family. Moreover, because the dismissal was based on a breach of the judicial oath, it also affected the applicant’s professional reputation.⁸⁷ Second, the case illustrates the application of the two cumulative conditions established in the “*Vilho Eskelinen test*” for determining whether Article 6(1)

⁸⁰ Id. para 66.

⁸¹ It was again the integrated approach – in the application of which the Court sought guidance from the universal scope of the right to a fair trial enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, as well as from the case law of the European Court of Justice, reflecting a broader approach in favour of effective judicial control – that served to extend the scope of Article 6. *Eskelinen and Others v. Finland*, no. 63235/00, Judgment of 19 April 2007, paras 29–30, 60. After the references found in the famous *Demir and Baykara v. Turkey* case (see supra notes 15–16, 18), the Court explicitly acknowledged that “[t]he Convention, including Article 6, cannot be interpreted in a vacuum. The Court must therefore be mindful of the Convention’s special character as a human rights treaty, and it must also take the relevant rules of international law into account.” *Cudak v. Lithuania*, no. 15869/02, Judgment of 23 March 2010, para 56.

⁸² *Eskelinen and Others v. Finland*, para 94.

⁸³ Later, the Court ruled that since a straightforward application of this condition would not be entirely apt in all situations, it can be regarded as fulfilled even “*where the exclusion in question is of an implicit nature, in particular if it stems from a systemic interpretation of the applicable legal framework or the whole body of legal regulation.*” *Grzeda v. Poland*, no. 43572/18, Judgment of 15 March 2022, para 292.

⁸⁴ Id. para 62.

⁸⁵ Ibid.

⁸⁶ *Volkov v. Ukraine*, no. 21722/11, Judgment of 9 January 2013.

⁸⁷ Id. paras 166–167. Although not explicitly designated as such, the identification of these three categories of potential negative consequences for the applicant’s private life marked the first articulation of a ‘consequence-based approach’ – later explained in detail in *Denisov v. Ukraine*, no. 76639/11, Judgment of 25 September 2018, paras 107–109 – to dismissal cases raising private life issues under Article 8. On this approach, see SYCHENKO, E., PERULLI, A. *Employment Law and the European Convention on Human Rights: The Research of the Recent Jurisprudence of the ECtHR Related to Employment Law (2017–2021)*. The Netherlands: Kluwer Law International, 2023, pp. 56–58.

applies, under its civil limb, to a dispute concerning the dismissal of public servants – in this instance, judges. Therefore, one can assuredly point out that, alongside Article 8, Article 6 is relevant not only to cases involving the loss of employment, but also to establishing common ground between labour rights, human rights at work, and the rule of law.

CONCLUDING THOUGHTS

In a 2014 article, Justice Malcolm Wallis observed that the relationship between rule of law and labour relations is multifaceted, marked by remarkable complexity and occasional obscurity.⁸⁸ Accepting this reality as a starting point, the present paper has undertaken one of the more straightforward tasks in this regard: namely, to establish and illustrate the interrelationship between rule of law principles, labour rights and human rights in the workplace. In doing so, it first pointed out that the substantive, “*thick*” conception of rule of law encompasses respect for fundamental human rights, which – as a consequence of the previously epitomised labour rights as human rights discourse – is contingent upon safeguarding labour rights as well. Second, it argued that the interrelationship between the rule of law and human rights is a dynamic one, requiring the effective protection of the rights in question. This has been mirrored by the principles of equality before the law and non-discrimination – human rights guarantees of particular importance in the context of employment – being embedded in its substantive conception, but also by the positive obligations generated to secure the effective enjoyment of individual human rights, even in situations arising within private relationships – being referred to as human rights at work.

The role of the European Court of Human Rights and the integrated approach to interpretation it adopts is worth separately highlighting, as it is outstanding in both of the abovementioned contexts. It links labour law to human rights law – and thus, implicitly also to rule of law principles – through the indirect protection of certain aspects of labour rights under convention provisions – for example, key elements of the right to work under Article 8. This has been referred to previously as the conventionalisation of labour law. At the same time, as a result of the labourisation of fair trial standards, when employment rights fall within the extended scope of a “*civil right*”, the guarantees of fairness enshrined in Article 6 become applicable. Having established and exemplified how violations of labour rights or human rights in the workplace may implicitly call into question the very application of the rule of law, what remains – left for future inquiry – is to examine labour law legislation to a greater extent and test related disputes against the rule of law dimensions outlined above. The present discussion thus primarily serves as an intellectual scaffolding for further in-depth research.

⁸⁸ WALLIS, M. The role of law and labour relations. *Industrial Law Journal*. 2014, Vol. 35, Issue 4, p. 849.