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THE RIGHT TO DISCONNECT THROUGH THE LENS OF SECURITY: A CONSTITUTIONAL READING

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1. *Introduction*

The present contribution stems from the awareness that digital technology has profoundly transformed the organisation of work. However beneficial such transformation has proven – in terms of flexibility, productivity and new opportunities[1] – it has simultaneously and progressively blurred the boundary between working time and personal life. More specifically, the contemporary worker, as a result of the process of the dematerialisation of the workplace,[2] is reachable at any time and from any location, such that rest periods risk becoming – as has been observed – an increasingly "limited and anachronistic" notion.[3]

Against this backdrop, the following reflections on the right to disconnect are concerned not exclusively with the range of instruments available for the protection of this emerging right, but rather, from a constitutional law perspective, with the place of this legal position within the fullest protection of the person envisaged by the Italian Constitution. This approach proceeds from the conviction that the pervasive digital connectedness of the individual renders it both necessary and urgent to restore the constitutional dimension of work to a position of centrality in legal discourse.

Such a perspective calls for an adequate methodological framework. At the conceptual level, the interpretation proposed here is grounded in the category of security, understood in a twofold sense: on the one hand, security in a static sense, as protection of the individual's

[1] Pasquarella Valentina, "Work-life balance: esiste un modello italiano di «conciliazione condivisa» dopo il jobs act?," *Rivista italiana di diritto del lavoro,* 1 (2017): 41; Timellini Caterina, "Il diritto alla disconnessione nella normativa italiana sul lavoro agile e nella legislazione emergenziale," *Lavoro, Diritti, Europa*, 4 (2021): 7.

[2] Preteroti Antonio, "Ambiente digitale e benessere: la disconnessione come diritto della personalità e strumento di tutela della dignità umana," *AmbienteDiritto.it*, 3 (2023): 2.

[3] Bellomo Stefano, "Forme di occupazione «digitale» e disciplina dell'orario di lavoro," *Federalismi.it*, 19 (2022): 167.

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physical and mental integrity; on the other, in a dynamic sense, as an instrument for the promotion of the human person and their dignity.[4] As will become apparent, it is precisely this dual dimension that allows the right to disconnect to be framed not merely as a defensive right nor as a straightforward application of Article 36, paras. 2 and 3 of the Italian Constitution – which protects daily, weekly, and holiday rest – but as a fundamental precondition for the full development of the person in the digital age.

To this end, the analysis begins by mapping the current state of the art on the right to disconnect at both the Italian and European level, so as to situate the constitutional reading proposed in the broader regulatory landscape. It then interrogates the relationship between disconnection and the constitutional right to work, before examining the right to disconnect through the lens of security. Some concluding remarks will then draw together the threads of the argument.

2. *The Right to Disconnect in the European Union and in Italy*

Before turning to the core of the analysis, it is necessary to briefly reconstruct the current state of play regarding the recognition of the right to disconnect in Europe and in Italy.

At the level of positive law, the picture is fragmented and of limited effectiveness.[5] Within Europe, a number of legal systems – France being the first in 2016, followed by Spain, Belgium, and Ireland – have already regulated the right to disconnect, albeit with considerably different scope and intensity. Some countries have indeed provided for it across all forms of employment, others only in the context of agile work; others still have imposed the relevant obligations solely on undertakings above a certain headcount. This variation itself reflects the absence of any shared qualification of disconnection as a right.

It was in this context that, on 21 January 2021, the European Parliament adopted a resolution containing recommendations to the Commission on the right to disconnect.[6] Situated within the broader framework of the digital transition, the right to disconnect was therein qualified as a 'fundamental right' requiring uniform regulation across Member States. For this reason, the Parliament called on the Commission to submit a proposal for a directive and to "include the right to disconnect in its new occupational health and safety strategy".

This soft law instrument – anticipated by the 2020 Framework Agreement on Digitalisation concluded by the European social partners, and later complemented by a 2022 agreement aimed at laying the groundwork for a shared directive on remote work[7] – has not yet been followed by binding legislation. Nevertheless, it has represented a significant step towards more systematic regulation of the phenomenon, contributing to heightened attention to the issue of disconnection within individual Member States.

[4] The term "security" is used here in a broad sense, encompassing both its protective dimension – concerned with the physical and mental integrity of the individual – and its promotional dimension – oriented towards the full development of the human person and their dignity. The latter dimension partially overlaps with what in English is more commonly rendered as "safety". On the distintiction of this two dimension, Giupponi Tomaso Francesco, "Sicurezza e potere," in *Enciclopedia del Diritto*, *I Tematici, Potere e Costituzione* (Milan: Giuffrè, 2023), 1151; Ruotolo Marco, "La sicurezza nel gioco del bilanciamento," *Astrid Rassegna,* (2001): 1 ff.

[5] Calderara Dario, *Garanzia della disconnessione nel rapporto di Lavoro* (Turin: Giappichelli, 2024), 5 ff.

[6] 2019/2181(INL)

[7] Zoppoli Irene, "Il diritto alla disconnessione nella prospettiva europea: una road map per le parti sociali," *Federalismi.it*, 1 (2023): 292 ff.

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In Italy, two legislative proposals were introduced in 2024 with the aim of overcoming the limitations of the existing regulation, which remains confined to the specific context of agile work ('lavoro agile') under Law No. 81 of 22 May 2017.[8] Within that framework, agile work is defined as "a mode of execution of the subordinate employment relationship established by agreement between the parties, including through forms of organisation by phases, cycles, and objectives and without strict constraints of working time or place of work, with the possible use of technological tools to carry out work activities" (Article 18). The law accordingly entrusted the parties' agreement with the dual task of determining rest periods and establishing "the technical and organisational measures necessary to ensure the worker's disconnection from technological work equipment" (Article 19).

This initial and limited form of protection was subsequently reinforced by Decree-Law No. 30 of 13 March 2021 – containing urgent measures to address the spread of COVID-19 and to support workers with minor children engaged in distance learning or quarantine – converted into Law No. 61 of 6 May 2021. The pandemic, by rendering recourse to agile work both necessary and widespread,[9] significantly accelerated its normative development. In particular, Article 2(1-ter) provides that "workers performing their activity in agile mode are entitled to disconnect from technological devices and IT platforms, in compliance with any agreements signed by the parties and without prejudice to any agreed periods of availability", further specifying that "the exercise of the right to disconnect, necessary to safeguard rest periods and the worker's health, shall not have repercussions on the employment relationship or on remuneration".

These provisions have, however, attracted widespread criticism. The objections are twofold: on the one hand, agile work does not exhaust all forms of work susceptible of being performed remotely;[10] on the other, the instrument chosen by the legislator to render the right effective, namely the agreement between the parties, risks becoming a source of conflict between subjects who inevitably represent opposing interests.[11]

The legislative proposals A.C. No. 1961 (submitted in July 2024) and A.S. No. 1290 (submitted in November 2024) seek to address these shortcomings through a series of corrective measures. Both texts – in line with the European Parliament's Resolution – define the right to disconnect as "the right not to receive communications outside ordinary working hours, unless there are justified emergencies, to be remunerated as overtime". Their primary objective is to extend the personal scope of this right to all workers, including the self-employed, whilst removing from individual agreements between employer and employee the power to determine the rules governing disconnection. The proposals further provide for specific information obligations and sanctions in the event of non-compliance, reaffirming that the exercise of the right must not have repercussions on the employment relationship or on remuneration.

[8] Scholarship has highlighted how this represented "a first tentative step towards bringing Italian legislation into the digital age". Allamprese Andrea and Pascucci Francesco, "La tutela della salute e della sicurezza del lavoratore «agile»," *Rivista Giuridica del Lavoro*, 2 (2017): 315. On the limitations of such an intervention, see also Altimari Marco, "L'effettività del diritto alla disconnessione: una sfida per il diritto del lavoro," *Rivista italiana di informatica e diritto*, 2 (2021): 67.

[9] Timellini Caterina, "Il diritto alla disconnessione nella normativa italiana sul lavoro agile e nella legislazione emergenziale," 26 ff.

[10] Calderara Dario, "Spunti in tema di lavoro a distanza e diritto alla disconnessione," *Federalismi.it*, 20 (2025): 162 ff.

[11] Timellini Caterina, "Il diritto alla disconnessione nella normativa italiana sul lavoro agile e nella legislazione emergenziale," 12.

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Despite the growing relevance of the issue, these legislative proposals are still pending before the labour committees and have not yet been scheduled for debate, reflecting a deeper uncertainty about the nature of the right itself. What is needed, therefore, is a shift in perspective: from the question of which instruments are available to the question of what values are at stake.

3. *The Constitutional Framework of Work and the Right to Disconnect*

To identify the values at stake in the right to disconnect is to return to the Italian constitutional framework of work itself – a framework that reveals, on closer examination, a depth and complexity that the prevailing instrumental debate has sometimes obscured: work as a founding value of the republican order, an individual freedom deserving of protection in all its forms, and a social right whose exercise must be compatible with the requirements of human dignity.

The reading must begin with the meaning that work assumes in Article 1 of the Constitution, by virtue of the "will to found the Republic on a profoundly egalitarian and even universalistic element, on an irreducibly human datum".[12] The value of work underpinning the republican order thus appears as the expression of a choice to place at the foundation of the nascent Republic "the human condition in its contemporaneity",[13] thus breaking the "line of continuity with the past" and defining "the worldview of the new democratic-republican order".[14]

Precisely from this foundational dimension of work emerges a first decisive implication for the present analysis: the need to interpret work in light of the historicity of the society to which the Constitution is addressed[15] – and thus, today, to reflect on a condition in which human action is constantly intertwined with the digital dimension, giving rise to a new form of *vita interactiva*[16] that progressively displace the Arendtian *vita activa*.[17] The impact of technology, both on the enjoyment of fundamental rights and on social relations, accordingly requires a "concrete and contextualised protection of the person".[18] The concept of work must therefore be continuously updated, even as it remains – in one form or another – "connected to a condition of subordination destined to be removed".[19]

This foundational dimension of work is inseparable from its nature as a sphere of personal freedom,[20] a dimension that finds its most direct constitutional expression in Article 4 of the

[12] Luciani Massimo, "Radici e conseguenze della scelta costituzionale di fondare la repubblica democratica sul Lavoro," *Argomenti di Diritto del Lavoro*, 3 (2010): 634.

[13] Ferrara Gianni, "I diritti del lavoro e la costituzione economica italiana ed in Europa," *Costituzionalismo.it*, 3 (2025): 1.

[14] Salazar Carmela Maria Giustina, "Alcune riflessioni su un tema démodé: il diritto al lavoro," *Politica del Diritto*, 1 (1996): 6.

[15] On which, extensively, Grossi Paolo, *L'invenzione del diritto* (Bari-Rome: Laterza, 2017).

[16] Montani Pietro, *Vita interactiva. Da homo sapiens all'universo digitale* (Turin: Einaudi, 2025).

[17] The reference is to Arendt Hannah, *The Human Condition* (Chicago: University of Chicago Press, 1958). In Arendtian thought, work constitutes a fundamental element of the human condition – that is, of the *vita activa*.

[18] Apostoli Adriana, *L'ambivalenza costituzionale del lavoro tra libertà individuale e diritto sociale* (Milan: Giuffrè, 2005), 13.

[19] Lavagna Carlo, *Istituzioni di diritto pubblico* (Turin: Utet, 1979), 495.

[20] Mazziotti Manlio, "Lavoro (dir. cost.)," in *Enciclopedia del Diritto*, XXIII (Milan: Giuffrè, 1973), 340.

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Constitution. Whilst explicitly qualifying work as both a right and a duty,[21] this provision has been read by the Constitutional Court primarily as enshrining a "fundamental right of personal freedom, expressed in the choice and manner of carrying out one's work activity".[22] From this perspective, the individual in the workplace "does not merely receive remuneration in exchange for performance, but affirms and develops their personality within the complex of relationships and values that the world of work expresses".[23] Work is, in this sense, an "expression of the value attributed to the person"[24] – a dimension that cannot be reduced to its economic or productive coordinates alone. Article 4 must therefore be credited with establishing an indissoluble constitutional link between work, personal identity, and human dignity.[25]

It is precisely in light of this dimension of freedom – encompassing 'access to work', its 'retention', and its 'proper performance'[26] – that the risks associated with technological transformation become more apparent, as the boundaries of working life grow increasingly blurred and the time, place, and modalities of work grow ever more fluid. In this context, the dimension of freedom of work acquires renewed significance, emerging with particular force when technology risks unduly compressing the individual's sphere of self-determination.

The freedom-related dimension of work examined above does not, however, exhaust its constitutional significance. Work also reveals an essential social dimension – one that fundamentally redefines its nature: no longer an activity aimed solely at the accumulation of property, as in the bourgeois individualist vision, but a "means for the material and spiritual progress of society".[27] In this sense, work is not merely an economic fact, but a social fact[28] and, more precisely, a social right. Thus, in addition to constituting a "dimension of the person, inherent to their dignity", work also represents "a contribution to a better existence in the concreteness of life".[29]

It follows that the significance of work is not confined to the individual and private sphere, but necessarily assumes a collective dimension, emerging as an essential instrument of inclusion in the *res publica*.[30] As Mortati observed, work constitutes "a necessary factor for the reconstitution of a new spiritual unity", presupposing "a new type of connection between community and State"[31] – and it is precisely this connective function that links the individual dimension of work to the broader programme of substantive equality set out in Article 3, para. 2 of the Con-

[21] On the topic, recently, Cavino Massimo, *Diritto costituzionale del lavoro* (Naples: Editoriale Scientifica, 2025).

[22] Italian Constitutional Court, decision no. 45 of 1965, *Considerato in diritto*, para. 3.

[23] Italian Constitutional Court, decision no. 60 of 1991, *Considerato in diritto,* para. 6.

[24] Cariola Agatino, "Art. 4," in *Commentario alla Costituzione*, edited by Raffaele Bifulco, Alfonso Celotto and Marco Olivetti (Turin: Utet, 2006), 4.

[25] In this sense, relevant is the «particular value that the Constitution attributes to work (Arts. 1, first paragraph, 4 and 35 Const.), in order to achieve a full development of the human personality», Italian Constitutional Court, decision no. 194 of 2019, *Considerato in diritto*, para. 13.

[26] Lavagna Carlo, *Istituzioni di diritto pubblico*, 496.

[27] Flick Giovanni Maria, "Lavoro, dignità e Costituzione," *Rivista AIC*, 2 (2018): 5.

[28] Prosperetti Ugo, "Lavoro (fenomeno giuridico)," in *Enciclopedia del Diritto*, XXIII (Rome: Treccani, 1973), 327.

[29] Grossi Paolo, *Oltre la legalità* (Bari-Rome: Laterza, 2020), 86.

[30] Cantaro Antonio, "La costituzionalizzazione del lavoro. Il secolo lungo," in *I diritti sociali e del lavoro*, edited by Giuseppe Casadio (Rome: Ediesse, 2006), 63.

[31] Mortati Costantino, "Art. 1," in *Commentario alla Costituzione, Art. 1-12*, edited by Giuseppe Branca (Bologna: Zanichelli, 1975), 10.

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stitution. For this reason, rights connected to work cannot be regarded as purely individual rights: they are "'bridge rights' between individual interests and the collective interest of the community of workers, often even of the entire national community".[32]

This social dimension of work is not extraneous to the question of disconnection: on the contrary, it suggests that the protection of the worker's time and autonomy is a precondition for the genuine exercise of that participative function which the Constitution assigns to work. And yet, this dimension remains largely overlooked in the prevailing debate, which has tended to focus primarily on the negative effects of continuous connectivity on workers' physical and mental health – an aspect also emphasised by the International Labour Organization[33] – whilst the broader social significance of disconnection has received comparatively little attention.

4. *Disconnection through the Lens of Security*

This narrowing has shaped both the scholarly debate and the institutional response. Scholarship and institutions, including at the European level,[34] have devoted particular attention to security in the strict sense – concentrating especially on the employer's obligation to adopt measures addressing the risks of hyper-connectivity as the correlative duty of the right to disconnect.[35] Whilst such attention is undoubtedly warranted, it risks reducing the right to disconnect to an instrument oriented exclusively towards the prevention of harm.

What a constitutionally grounded reading must bring to the fore is, by contrast, the broader notion of security linked to the individual's realisation within society and to what has been described as an "orderly and balanced social coexistence".[36]

The two dimensions – the individual one and the 'social' one – far from being separate compartments, are connected by a relationship of mutual presupposition: the protection of psycho-physical integrity is a necessary condition for the worker to fully participate in social life and contribute to collective progress; conversely, only a context not governed by the logic of constant connectivity – which easily translates into forms of workaholism and chronic overwork – can effectively ensure the protection of the individual as a condition for their full personal realisation.

It is precisely in light of this twofold dimension of security that the Italian constitutional order proves particularly revealing. Security, in addition to constituting the subject matter

[32] Cantaro Antonio, "La costituzionalizzazione del lavoro. Il secolo lungo," 71.

[33] International Labour Organization, *Revolutionizing Health and Safety: The Role of AI and Digitalization at Work* (Geneva: International Labour Office, 2025).

[34] Reference is made, in this regard, to Case C - 55/18, *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*, in which it was held that «the law of a Member State that, according to the interpretation given to it by national case-law, does not require the employer to measure the duration of time worked, is liable to render the rights enshrined in Articles 3, 5 and 6(b) of that directive meaningless by failing to ensure, for workers, actual compliance with the right to a limitation on maximum working time and minimum rest periods, and is therefore incompatible with the objective of that directive, in which those minimum requirements are considered to be essential for the protection of workers' health and safety», para. 59.

[35] Apostoli Adriana, "Nuovi lavori e nuove tecnologie," *Rivista AIC*, 2 (2025): 496.

[36] Di Raimondo Marco, *Ordine pubblico e sicurezza pubblica. Profili ricostruttivi e applicativi* (Turin: Giappichelli, 2010), 4.

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of concurrent legislative powers in the field of the 'protection and security of work' (Article 117, para. 3), finds expression, in its individual dimension, in job stability (Article 4) and in the protection of work in all its forms (Article 35), but also in the close relationship between workers, dignity, remuneration, and limits on working time (Article 36). Its collective dimension, by contrast, emerges from the system of social protection and welfare (Articles 37 and 38), from the requirement that private economic initiative be carried out in compliance with social utility and without causing harm to health, the environment, safety, freedom, and human dignity (Article 41), and from the duty to perform an activity or function that contributes to the material or spiritual progress of society, placed within the solidaristic perspective of social transformation set out in the Constitution (Article 4, para. 2).

The question of the constitutional foundation of the right to disconnect must therefore be reformulated in the terms once indicated by the framers of the Constitution. If the objective is the effective participation of all workers in the political, economic, and social organisation of the country – as required by Article 3, para. 2 of the Constitution, in a *promotional* conception – it is difficult to conceive of this goal being achieved in a condition where the individual is constantly absorbed by the working dimension.

In light of the reconstruction carried out, the right to disconnect thus appears to be, in some way, already rooted in the constitutional framework. It is therefore necessary to consider the ways in which this right can be construed even in the absence of explicit legislative regulation.

The appropriate starting point is the most general of these provisions, namely Article 35 of the Constitution, which protects work "in all its forms and applications"[37] and functions as a general provision with respect to the more specific provisions that follow. It is worth noting that this provision was retained in the draft constitutional text – notwithstanding a suppressive amendment tabled during the debates – on account of its 'far-sightedness': Constituent Assembly Member Ghidini had argued that this "statement of principle" could not be regarded as merely repetitive of Article 1, observing that the instruments and forms of protection of work regulated by the subsequent articles are "not exhaustive": "for this reason, a provision of a general character, enabling the legislator of tomorrow to introduce other forms of protection".[38]

Article 35 is therefore designed to extend protection to every type of work, including those – such as remote work – that were not foreseeable at the time of drafting the Constitution. This requires reflection on the distinctive features of remote work, which, as seen above, are intimately connected to the temporal dimension.

Yet the general protective scope of Article 35 must be read in conjunction with the more specific guarantees of Article 36. This provision governs the right to rest and, more generally, working time; it is precisely on this article that scholarship has most frequently concentrated its analysis of the problems associated with hyper-connectivity.

The scope of this provision has been progressively clarified by both legal scholarship and the Constitutional Court, which have framed the right to rest and the right to annual leave

[37] More specifically, this protection "is justified not within a generic protective-assistential perspective, but insofar as it is functional to the task of removing the obstacles that, in practice, hinder the substantive equality of workers". Treu Tiziano, "Art. 35," in *Commentario alla Costituzione, Art. 35-40*, I, edited by Giuseppe Branca, (Bologna: Zanichelli, 1979), 5.

[38] The speech is reported by Bifulco Daniela, "Art. 35," in *Commentario alla Costituzione*, edited by Raffaele Bifulco, Alfonso Celotto and Marco Olivetti (Turin: Utet, 2006), 720.

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as "perfect, inalienable, and non-waivable subjective rights, inherent to the human person as a worker".[39] In its practical application, the Court – called upon on several occasions to address the periodicity of the right to rest – has not only affirmed that the maximum duration of the working day may vary according to the type of work,[40] but has grounded the "periodic alternation between work and rest" in "reasons of a human and social order".[41] In sum, taking into account the various modalities of work performance – and the consequent needs arising from the particular nature of the work performed – the Court has repeatedly affirmed that the effectiveness of the right to rest must be guaranteed.[42] The "withdrawal from work", according to the Constitutional Court, in fact proves to be necessary in order to "restore the psycho-physical energies worn down by work" and to "satisfy recreational and cultural needs and more actively participate in family and social life".[43]

Thus, far from being reducible to the mere protection of psycho-physical integrity – which finds expression in Article 32 of the Constitution – the right to rest has already been assigned by our legal order the further function of safeguarding moral personality,[44] "through the guarantee of free time, recreation, and participation in the life of one's community of affections".[45]

Today, however, in light of what has been argued above, this framework is no longer sufficient. It tends to confine the question of the individual's reachability within the traditional parameters of working time – parameters which show their limitations. It is indeed outside working hours that a series of communications and requests are generated which produce a substantial effect of constant availability, rendering uncertain the line of demarcation between working time and non-working time.

To put it differently, with regard to the right to disconnect, the problem does not reside – or does not reside solely – in the performance of work in terms of hours, but in the quality of free non-working time. For this reason, scholarship has emphasised that the right to discon-

[39] Baldassare Antonio, "Diritti sociali," in *Enciclopedia giuridica*, XI (Rome: Treccani,1989), 16.

[40] Italian Constitutional Court, decision no. 99 of 1971, *Considerato in diritto.*

[41] Italian Constitutional Court, decision no. 67 of 1967, *Considerato in diritto*, para. 2.

[42] See Italian Constitutional Court, decision no. 150 of 1967, «The Court holds that the constitutional precept, necessarily taking the form of a broad statement of a general principle, is not limited to the only form of periodicity that most commonly occurs, but also encompasses those other forms provided for by ordinary rules as a consequence of the requirements dictated by the great variety of working arrangements in the fields of industry, commerce, agriculture, transport, etc., and in relation to the various types of working activity characterized by peculiar circumstances (industries with continuous-process shift work, homeworkers, seafaring or travelling personnel, seasonal agricultural work, etc.). Nor can it be denied that the enactment of specific rules – which, in the spirit of adaptation to the needs of production, industry or agriculture, regulate the exercise of the right – serves the interests of the working world, provided they do not depart from the principles of reasonableness, which must necessarily be taken into account in the assessment of constitutional legitimacy. What matters is that the cases in which rest is granted after more than six working days be confined to situations of evident necessity for the protection of other appreciable interests, and that, above all, they be not such as to distort or circumvent the constitutional precept. It follows that those rules are legitimate which, within strictly indispensable limits, authorize on a case-by-case basis rest at intervals longer than one week, on the condition that within the working cycle of a given period of time the average of twenty-four hours of rest after six working days is maintained», *Considerato in diritto*, para. 2.

[43] Italian Constitutional Court, decision no. 616 of 1987, *Considerato in diritto.*

[44] Preteroti Antonio, "Ambiente digitale e benessere: la disconnessione come diritto della personalità e strumento di tutela della dignità umana," 12.

[45] Baldassare Antonio, "Diritti sociali," 16.

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nect possesses "autonomous legal dignity with respect to the right to rest – that is, alongside it, and not within it".[46] In this sense, disconnection is "inherent to working time, without necessarily coinciding with it".[47] The right to rest may ensure the recovery of energies, but it does not necessarily guarantee that individuals can enjoy time truly exempt from the logic of work. In such a condition, they may be formally free, yet not fully able to engage with the constitutionally recognised dimensions of personal life – such as political participation (Article 49), cultural and sporting engagement (Articles 9 and 33), or family life (Articles 29, 30 and 31), and, more broadly, active membership in the social community that the Constitution envisions as part of a dignified existence.

5. *Concluding Remarks*

The right to disconnect has today assumed a central role, particularly in light of the increasing digitalisation of employment relationships. As Jean-Emmanuel Ray observed, the ability to work anywhere entails not only a fundamental modification of private life, but also of family and social life. And yet, as argued throughout his analysis, the right to disconnect is more than a mere *droit à la vie privée du XXIème siècle*: it concerns the very conditions of social and civic participation and, more fundamentally,[48] the effective attainment of the constitutional rights pertaining to labour within the digital society.

This conclusion rests on the argumentative path developed above. The right to disconnect, as argued, cannot be reduced to a merely defensive instrument aimed at protecting the worker's psycho-physical integrity, confined to the static dimension of security. Its deeper constitutional significance lies in the dynamic dimension of the realisation of their personality: the condition of availability generated by hyper-connectivity, even outside formal working hours, prevents the individual from genuinely disengaging from the productive dimension, thereby compromising their participation in political, cultural, familial, and social life.

Notwithstanding the legislative interventions of 2017 and 2021, the right to disconnect has not yet taken shape as a general guarantee applicable to all forms of work. The legislative proposals of 2024 – still pending before the labour committees – represent a step in the right direction, insofar as they seek to extend the personal scope of this right to all workers and to remove from individual agreements the power to determine its conditions of exercise. In the light of the foregoing analysis, a comprehensive and organic regulatory intervention therefore appears indispensable, in order for the State to fulfil its task of "reconciling order, liberty and, beyond liberty, the rights of the person", while at the same time addressing the "legitimate concern for justice and security".[49]

This reading finds further confirmation in the very structure of the right to work: its full realisation entails the commitment of "all public authorities (including the legislature) and the

[46] Preteroti Antonio, "Ambiente digitale e benessere: la disconnessione come diritto della personalità e strumento di tutela della dignità umana," 9.

[47] Maresca Arturo, "Il nuovo mercato del Lavoro e il superamento delle diseguaglianze: l'impatto della digitalizzazione e del remote working," *Federalismi.it*, 9 (2022): 173.

[48] Ray Jean Emmanuel, "De la sub/ordination à la sub/organisation," *Droit social*, (2002): 5 ff.

[49] Girardet Raul, "L'uomo e lo Stato," in *Linee per uno Stato moderno. Terzo incontro romano* (Rome: Giovanni Volpe editore, 1975), 13-14.

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community as a whole […] to create the conditions necessary to ensure that every individual may engage in work capable of securing a dignified life".[50] Indeed, as already noted, work is regarded as one of the principal instruments through which to transform the relationship between the State and its citizens – along a path that relies on the "integration of individuals into both the life of the State and that of the social community"[51] – providing the latter with an essential means for achieving freedom and equality, while at the same time constituting a "factor of unity and organisation of the social base", as well as a "factor of inclusion".[52]

From this perspective, the constitutional configuration of the right to work highlights the coexistence of both an individual and a public dimension.[53] It is precisely by virtue of its 'ambivalent' nature[54] that work cannot remain extraneous to the "discourse" of the social State governed by the rule of law,[55] which is called upon to undertake "a careful reading of social dynamics"[56] and to adapt protective instruments to the transformations of labour.

Within this framework, the right to disconnect emerges as a safeguard of non-working time, conceived not as a residual category or a mere absence of work, but as something that belongs to the individual. Accordingly, a conception of labour freedom has been advanced, taking the form of "a leisure" that "is not merely separate from or opposed to work, not a negation of work, but one that is capable of maintaining relations of freedom and meaning with it".[57] In other words, a form of non-working time that is not in opposition to work, but rather capable of contributing, together with it, to the achievement of constitutional aims, for it is only within such a horizon that the "maximally emancipatory and socialising function of work"[58] can be realised. It is precisely at this conceptual juncture that the right to disconnect intersects with the polysemic nature of security: from this perspective, the proposed interpretation makes it possible to reaffirm the public dimension of labour, preventing both security and labour itself from being reduced to what has been described as "an equality in insecurity".[59]

This reflection is all the more significant at a time when labour is undergoing a deep crisis that puts its very meaning into question.[60] If the constitutional recognition of labour as a "structural principle"[61] was intended to capture the complexity of social reality,[62] today the right to disconnect can be seen as a renewed expression of those constitutional safeguards, highlighting its essential role in protecting workers.

[50] Bartole Sergio and Bin Roberto, *Commentario breve alla Costituzione* (Padova: Cedam, 2008), 38.

[51] Tondi della Mura Vincenzo, "La solidarietà fra etica ed estetica. Tracce per una ricerca," *Rivista AIC*, 2 (2010): 2.

[52] Flick Giovanni Maria, "Lavoro, dignità e Costituzione," 5.

[53] Cariola Agatino, "Art. 4," 4.

[54] Apostoli Adriana, *L'ambivalenza costituzionale del lavoro tra libertà individuale e diritto sociale*.

[55] Cantaro Antonio, "La costituzionalizzazione del lavoro. Il secolo lungo," 63.

[56] Grossi Paolo, L'invenzione del diritto, XI.

[57] Mari Giovanni, "L'ozio come compito del lavoro," *Iride*, 2 (2006): 249.

[58] Benvenuti Marco, "Lavoro (principio costituzionale del)," in *Enciclopedia giuridica*, Agg. XVIII (Rome: Treccani, 2009), 5, which in turn cites Romagnoli Ugo, "Il diritto al lavoro nel prisma del principio d'eguaglianza," in *Costituzione, lavoro, pluralismo sociale*, edited by Mario Napoli (Milan: Vita e pensiero, 1998), 15 ff.

[59] Benvenuti Marco, "Lavoro (principio costituzionale del)," 4.

[60] Zagrebelsky Gustavo, *Fondata sul lavoro* (Turin: Einaudi, 2013), *passim.*

[61] Crisafullli Vezio, "Appunti preliminari sul diritto al lavoro nella Costituzione," *Rivista giuridica del lavoro*, 1 (1951): 166.

[62] Benvenuti Marco, "Lavoro (principio costituzionale del)," 2.

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