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The right to work as a social right in the Italian Constitution and in the Charter of Fundamental Rights of the European Union. A constitutional perspective

Contents: 1. Introduction. **2.** The notion of "social rights" in Italian constitutional law. The right to work as a social right. **3.** The Charter of Fundamental Rights of the EU: a European legal protection of the "right to work"? **4.** Conclusions.

1. *Introduction*

Much has been written, in Italian legal literature, concerning the relevance of work in the Italian Constitution. It is, in fact, art. 1 of the Constitution – whose legal significance has been at the center of attention in the academic debate[1] – that proclaims the Italian Republic to be "founded on work", thus introducing a principle pertaining directly to what constitutional law scholars name the "form of State", *i.e.* the relation between political authority and society[2]. On its basis, art. 35-40 contain provisions specifically

[1] About art. 1 of the Italian Constitution see MORTATI, *Art. 1*, in *Comm. Branca*, Zanichelli, 1975, p. 10 ff.; SMURAGLIA, *Il lavoro nella Costituzione*, in *RGL*, 2007, 2, pp. 427-428; FERRARA, *Il lavoro come fondamento della Repubblica e come connotazione della democrazia italiana*, in CASADIO (ed.), in *I diritti sociali e del lavoro nella Costituzione italiana*, Ediesse, 2006, p. 199 ff.; OLIVETTI, *Art. 1*, in BIFULCO, CELOTTO, OLIVETTI (eds.), *Commentario alla Costituzione*, Utet, 2008, p. 38 ff.; LUCIANI, *Radici e conseguenze della scelta costituzionale di fondare la repubblica democratica sul lavoro*, in *ADL*, 2010, 3, pp. 632-644; GROPPI, "*Fondata sul lavoro". Origini, significato, attualità della scelta dei Costituenti*, in *RTDP*, 2012, 3, p. 678 ff.; NOGLER, *Cosa significa che l'Italia è una Repubblica "fondata sul lavoro"?*, in *LD*, 2009, 3, pp. 436-437.

[2] About the notion of "form of State" see LANCHESTER, *Stato (forme di)*, in *ED*, Giuffrè, 1990, vol. XLIII, p. 796 ff.; BARTOLE, *Stato (forme di)*, in *ED Annali*, Giuffrè, 2008, vol. II-2, p. 1116 ff.

aimed at protecting the rights of workers, not only in relation to the State, but also in relation to private employers. In doing so, the Italian Constitution breaks ties with the tradition of liberal constitutions, whose indifference to the regulation of economic relations was in and of itself one of the key features of the liberal "form of State"[3].

In short, one of the most significant aspects of the Italian Constitution must be identified in the sheer number and detail of the provisions concerning work, workers, worker rights and employment relations. Among such provisions is art. 4 of the Constitution, which, significantly placed in the section of the constitutional document dedicated to the "Fundamental principles", enshrines the "right to work" as the first fundamental right to be individually mentioned in the whole text. Both in constitutional and in labour law doctrine, the right to work based on art. 4 of the Italian Constitution is commonly referred to as a "social right"[4].

It should be noted, however, that defining the right to work as a "social right" doesn't really help towards understanding its features and contents if there is no clear *consensus* as to what is meant by "social rights". Unfortunately, at least as far as Italian constitutional doctrine is concerned, this is precisely the case. In fact, although a careful reading of the Constitutional Assembly's debates and of the constitutional text itself makes it impossible to deny that such rights exist[5], that of "social rights" remains to this day one of the most obscure and disputed notions in the whole of Italian constitutional law.

In light of this, the present paper aims at answering the following questions: according to Italian constitutional law, what is a "social right"? Can

[3] Crisafulli, *Individuo e società nella Costituzione italiana*, in *DL*, 1954, 1, pp. 74-78. See also Giannini, *Lo Stato democratico-repubblicano*, in Id., *Per uno Stato democratico-repubblicano*, Edizioni di storia e letteratura, 2016, p. 16, as well as Dogliani, Giorgi, *Costituzione italiana: art. 3*, Carocci, pp. 84-85.

[4] Mazziotti, *Il diritto al lavoro*, Milan, Giuffrè, 1956, p. 87; Giubboni, *Il primo dei diritti sociali. Riflessioni sul diritto al lavoro tra Costituzione italiana e ordinamento europeo*, in *"Massimo D'Antona"*, 2006, 46, p. 5 ff.; Benvenuti, *Diritti sociali*, Utet, 2013, pp. 67-69. For a partially different approach to the social right to work see Salazar, *Alcune riflessioni su un tema "*demodè*": il diritto al lavoro*, in *PD*, 1995, 1, pp. 3-5 and 13-17, as well as Id., *Dal riconoscimento alla garanzia dei diritti sociali. Orientamenti e tecniche decisorie della Corte costituzionale a confronto*, Giappichelli, 2000, p. 43 ff.

[5] For poignant references to the debate about social rights at the start of the Constitutional Assembly's mandate see Calamandrei, *Costituente e questione sociale*, in Id., *Opere giuridiche*, Morano, 1968, vol. III, pp. 175-182.

the right to work, as set forth in art. 4 of the Italian Constitution, truly be defined as a "social right"? What consequences does such a definition entail, as regards the relation between the individual and public authorities?

After examining these questions, the focus will shift towards European Union law, in order to assess whether a legal protection of the "right to work" might be found in the relevant provisions of the European Charter of Fundamental Rights. Such an inquiry holds interest for at least two reasons. Firstly, because it highlights the benefits that, in a globalized world in which economic relations often escape the control of national States, might arise from a European protection of employment as the substantive object of a right. Secondly, because it might help towards understanding the extent to which, in this particular matter, the European Charter of Fundamental Rights builds upon the constitutional traditions of the Member States. In other words, confronting the Italian Constitution with the Charter in light of the "right to work" might offer a chance to ponder whether truly, as many say, the social model underlying the former finds itself replicated and strengthened in the latter.

In this perspective, it shall be necessary to face the following questions: is there a right to work in the European Charter of Fundamental Rights? If so, what kind of legal protection does such a right receive? Can it, too, be regarded as a "social right"?

2. *The notion of "social rights" in Italian constitutional law. The right to work as a social right*

As previously mentioned, although social rights represent one of the key components of the relationship between political authority and the community envisaged by the drafters of the Italian Constitution, and although the Constitution itself clearly refers to a group of constitutional rights named "social rights" (see articles 117, par. 2, lett. *m*, and 120, par. 2), few notions are as contentious and disputed, in the field of Italian constitutional law, as that of "social rights"[6]. As noted by Luigi Ferrajoli, such uncertainty is, no doubt,

[6] Giorgis, *Diritti sociali*, in Cassese (ed.), *Dizionario di diritto pubblico*, Giuffrè, 2006, p. 1903 ff.; Pinelli, *Dei diritti sociali e dell'eguaglianza sostanziale. Vicende, discorsi, apprendimenti*, in D'Amico (ed.), *Alle frontiere del diritto costituzionale. Scritti in onore di Valerio Onida*, Giuffrè, 2011, p. 1429 ff.

a symptom of the lack of a solid legal theory concerning the Welfare State, arising from a more general incapability of adapting the forms and instruments of the rule of law to the State's new social responsibilities[7].

Before trying to offer a clear definition, it might be useful to revisit the academic debate concerning the concept of "social rights", by briefly mentioning the main theories proposed on the subject. According to the more traditional theories[8] – which, despite having been first introduced in the Forties and Fifties, are to this day advocated by some Italian legal scholars[9] – constitutional rights should be divided into two groups: *civil rights* (also called *freedoms*), which require public authorities not to coerce the individual, thus protecting his/her autonomy; and *social rights*, whose main feature lies in a demand of a positive commitment by public authorities through legislative and administrative action. It must be stressed that, according to these theories, the difference between civil and social rights is of a purely *structural* nature: if the structure of a certain right entails some sort of an active benefit provided by public authorities, the right in question is a social right; if not, it must be defined as a civil right. For this reason, these theories have also been described as "structuralist theories"[10]. According to some "structuralist theories", from a strictly legal perspective, social rights should be regarded as somewhat less relevant than civil rights: unlike the latter, which are in full force by dint of their very mention in the Constitution, the former only truly take effect once the relevant public benefits have been outlined by the legislator[11].

Starting from the Nineties, the aforementioned traditional approach has been challenged by other theories, sometimes labeled "innovative theories" or "continuity theories"[12], whose unifying trait lies in opposing the idea of

[7] Ferrajoli, *Stato sociale e Stato di diritto*, in *PD*, 1982, pp. 42-43 and p. 44.

[8] For some of the earliest traditional theories see Giannini, *cit.*, pp. 20-21; Calamandrei, *L'avvenire dei diritti di libertà*, in Id., *Opere giuridiche*, *cit.*, vol. III, pp. 197-200; Pergolesi, *Alcuni lineamenti dei "diritti sociali"*, Giuffrè, 1953, p. 10; Grasso, *"Stato di diritto" e "Stato sociale" nell'attuale ordinamento italiano*, in *IlPol*, 1961, 4, p. 807 ff.; Mazziotti, *Diritti sociali*, in *ED*, Giuffrè, 1964, vol. XII, p. 805.

[9] Pace, *Problematica delle libertà costituzionali. Parte generale*, III ed., Cedam, 2003, pp. 140-152; Grossi, *Qualche riflessione per una corretta identificazione e sistemazione dei diritti sociali*, in Id., *Il diritto costituzionale tra principi di libertà e istituzioni*, Cedam, 2005, p. 29 ff.

[10] Piccione, *I diritti sociali come determinanti di libertà nello stato costituzionale. Il paradigma del rapporto tra libertà e condizioni di disabilità*, in *MCG*, 2021, 2, pp. 377-378.

[11] Pace, *cit.*, p. 149; Onida, *Eguaglianza e diritti sociali*, in *Corte costituzionale e principio di eguaglianza*, Cedam, 2002, pp. 104 and 107.

[12] Goldoni, *La materialità dei diritti sociali*, in *DP*, 2022, 1, pp. 144-145.

there being a structural difference between freedoms and social rights. Among these theories, the most influential are those proposed by Antonio Baldassarre and Massimo Luciani. According to the former, the notion of social rights should be construed as comprising all constitutional rights that are afforded to the individual by virtue of their belonging to a certain relational environment, such as their family, their school, their workplace[13]. This theory, however, appears to advocate an excessively broad notion of social rights: so broad, in fact, that on its basis *all* constitutional rights might be construed as social rights, since – at a closer look – all rights depend, one way or another, on the individual's connection to a certain human community.

On the other end, in Luciani's view, no structural difference should be drawn between civil and social rights because all constitutional rights, freedoms included, imply some measure of active commitment on the part of public authorities[14]. Despite raising some very valid points, this argument, too, does not appear entirely persuasive. While it is undeniable that social rights are not the only fundamental rights to require some form of active involvement by public authorities, the kind of involvement they require is vastly different to that of civil rights: in fact, only social rights entail benefits that are specifically targeted towards removing social and economic inequalities among the recipients. In a very well-meaning attempt to oppose the idea of a legal minority of social rights, Luciani's theory of social rights seems to downplay the essential relation between said rights and the principle of material equality set forth in art. 3, par. 2, of the Italian Constitution, and should therefore be rejected.

On basis of these remarks, it can be argued that the first and most significant difference between civil and social rights lies not in their structure, but rather in their respective *function*. The function of social rights, which

[13] Baldassarre, *Diritti sociali*, in *EGI*, 1989, p. 14 ff. Similar remarks are present in Bifulco, *L'inviolabilità dei diritti sociali*, Jovene, 2003, pp. 11-18.

[14] Luciani, *Sui diritti sociali*, in *Studi in onore di Manlio Mazziotti di Celso*, Cedam, 1995, vol. II, pp. 118-122. See also Salazar, *Dal riconoscimento alla garanzia dei diritti sociali. Orientamenti e tecniche decisorie della Corte costituzionale a confronto*, Giappichelli, 2000, pp. 11-15; Diciotti, *Sulla distinzione tra diritti di libertà e diritti sociali*, in *QC*, 2004, 4, *passim*; Razzano, *Lo "statuto" costituzionale dei diritti sociali*, in *GDP*, 2012, 3, p. 67 ff.; Rigano, Terzi, *Lineamenti dei diritti costituzionali*, Franco Angeli, 2021, pp. 78-79. The influence of this theory is also apparent in D'Aloia, *Eguaglianza sostanziale e diritto diseguale. Contributo allo studio delle azioni positive nella prospettiva costituzionale*, Cedam, 2002, p. 28.

separates them from all other fundamental rights, is that of removing those inequalities which prevent access to what we might call "fundamental opportunities", *i.e.* those resources – material or otherwise – that are indispensable towards personal fulfilment and active involvement in the community[15]. This particular function also determines the structure of social rights: unlike civil rights, social rights are what Italian legal theory calls "relative rights", that is to say rights whose fulfilment requires a positive action by specific subjects[16]. In most cases, these subjects must be identified in public authorities[17]; in others, they are to be found in individuals who, by virtue of their involvement in peculiar social and economic relations, find themselves in a position to directly influence the living conditions of other individuals[18]. In short, social rights are characterized first and foremost by their function, and only then by their structure[19].

It is on the first group of social rights – those implying the active involvement of public authorities – that we shall focus in the following analysis. If the peculiar object of these rights is represented by public provisions, the legislator's intervention is necessary to determine exactly what provisions are due, what groups of individuals are entitled to them, what public authorities are responsible for them[20]. As a consequence, social rights of this kind encompass, first and foremost, a claim against the legislator, in keeping with the idea – typical of the Italian system – that it is the Constitution's intention to indicate not only what the legislator *cannot* state, but also what the legislator *must* state and provide for[21].

This point might be better illustrated through a brief reference to Vezio

[15] Caravita, *Oltre l'eguaglianza formale. Un'analisi dell'art. 3 comma 2 della Costituzione*, Cedam, 1984, pp. 65-67; Barcellona, *Diritti sociali e Corte costituzionale*, in *RGL*, 1994, 2, p. 327; Pezzini, *La decisione sui diritti sociali*, Giuffrè, 2001, p. 189; Giorgis, *La costituzionalizzazione dei diritti all'uguaglianza sostanziale*, Jovene, 1999, p. 6; Riva, *Eguaglianza*, in Caruso, Valentini (eds.), *Grammatica del costituzionalismo*, il Mulino, 2021, p. 233.

[16] Grossi, *cit.*, p. 30.

[17] In the Italian Constitution, such is the case of the rights to work (art. 4), healthcare (art. 32), education (art. 33 and art. 34) and social security (art. 38).

[18] The main examples of this category of social rights are the worker's rights to adequate and fair wages, weekly rest and annual paid leave (art. 36). Such rights therefore pertain to the employment relation existing between employer and employee.

[19] Giorgis, *La costituzionalizzazione dei diritti*, cit., *passim* and especially pp. 6 and 50-51; Benvenuti, *cit.*, pp. 9-12.

[20] Onida, *Eguaglianza e diritti sociali*, cit., p. 107 ff.

[21] Giorgis, *La costituzionalizzazione dei diritti*, cit., pp. 15-16; Benvenuti. *cit.*, p. 48.

Crisafulli's theory of "programmatic norms". In this author's view, far from simply "recommending" this or that program of action, which public authorities may or may not pursue, "programmatic norms" impose a peculiar legal obligation on the legislator: the obligation to pursue a certain aim indicated by the Constitution[22]. Such an obligation produces legal consequences of the utmost importance, consisting of a *non-regression rule*: once the appropriate provisions have been set forth, they cannot simply be removed, and even their restrictive modification is subject to a strict scrutiny by the Constitutional Court. Further, "programmatic norms" prevent the legislator from setting forth norms that contrast with the aims indicated by the Constitution[23].

It is precisely this notion of "programmatic norms" that allows Italian legal scholars to construe the "right to work", as set forth by art. 4, par. 1, of the Italian Constitution, as a social right. As understood by the main constitutional doctrine, in addition to the freedom of choosing one's occupation, this article encompasses two kinds of obligations imposed upon the legislator. Firstly, an obligation to plan and promote expansive economic policies meant to increase the chances of employment, with a view at attaining full employment[24], as well as to structure a system of placement services allowing for the meeting of supply and demand of work[25]. Seen from this angle, the social right to work lends itself to being described as a "right to have work made available"[26]. Secondly, the social right to work implies the legislator's obligation to regulate employment relations in such a way as to prevent arbitrary termination by the employer, thus protecting the worker's interest in stability[27]. So construed, art. 4, par. 1, of the Italian Constitution enjoys con-

[22] CRISAFULLI, *Introduzione*, in ID., *La Costituzione e le sue disposizioni di principio*, Giuffrè, 1952, p. 19, as well as CRISAFULLI, *Le norme "programmatiche" della Costituzione*, in ID., *La Costituzione e le sue disposizioni di principio*, cit., p. 54.

[23] CRISAFULLI, *Sull'efficacia normativa delle disposizioni di principio della Costituzione*, in ID., *La Costituzione e le sue disposizioni di principio*, cit., p. 48; MAZZIOTTI, *Diritti sociali*, cit., p. 806; PACE, cit., p. 150.

[24] MORTATI, *Il diritto al lavoro secondo la Costituzione della Repubblica (natura giuridica, efficacia, garanzie)*, in ID., *Raccolta di scritti*, Giuffrè, 1972, vol. III, p. 152 ff.

[25] GIUBBONI, *Il primo dei diritti sociali. Riflessioni sul diritto al lavoro tra costituzione italiana e ordinamento europeo*, in *"Massimo D'Antona"*, 2006, 46, p. 7 ff.

[26] To employ a definition proposed by ASHIAGBOR, *Article 15*, in PEERS, HERVEY, KANNER, WARD (eds.), *The EU Charter of Fundamental Rights: a Commentary*, Beck-Hart-Nomos, 2014, p. 428, concerning art. 1 of the Revised European Social Charter.

[27] CRISAFULLI, *Appunti preliminari sul diritto al lavoro nella Costituzione*, in *RGL*, 1951, pp.

siderable similarities to art. 1 and 24 of the European Social Charter, as revised in 1996.

The latter of the aforementioned obligations represents, without a doubt, the main reading key of the constitutional jurisprudence concerning the right to work. As a matter of fact, starting from ruling no. 45/1965, the Italian Constitutional Court has held that the right to work, as protected by art. 4, par. 1, entails "an obligation to orient the activity of all public authorities, the legislator included, so as to create the economic, social and legal conditions" of full employment. Crucially, among such "legal conditions" is the provision of "due limitations" of the employer's power of discharge. An obligation which the Italian legislator has fulfilled with parliamentary act no. 604/1966 and, later, with parliamentary act no. 300/1970. In later years, in rulings such as no. 60/1991, 541/2000 and 56/2006, the Constitutional Court has further developed this theory by stating that the right to work includes a right "not to be unjustly dismissed": as a consequence, it is the legislator's duty to regulate the power of discharge in such a way as to prevent its arbitrary use. Lastly, in rulings no. 59/2021 and 125/2022, both concerning the regulation of dismissals for economic reasons in the so-called "riforma Fornero" (parliamentary act no. 92/2012), the Constitutional Court has taken another step forward, by adding that the aforementioned right requires remedies against unlawful dismissals to be effective both in discouraging the employer from unjustly terminating employment contracts and in compensating the damage inflicted on the worker. In summary, according to the Constitutional Court, a key component of the social right to work is the legislator's obligation to precisely regulate, and therefore limit, the employer's power of discharge.

To further highlight these features of Italian constitutional and labour law, it might be of interest to note that the approach to dismissals is vastly different from that of the U.S. system. Here there is no general principle of due protection of workers against wrongful discharge, much less a veritable "social right" requiring the national legislator to restrict the employer's power of dismissal. In fact, in the U.S. the subject of dismissals is governed by the opposite principle of "at-will employment", according to which both the employer and the employee are presumed to be able to terminate the

168 ff.; Salazar, *Alcune riflessioni su un tema "demodè*, cit., pp. 13-17; Calcaterra, *Diritto al lavoro e diritto alla tutela contro il licenziamento ingiustificato. Carta di Nizza e Costituzione italiana a confronto*, in *"Massimo D'Antona"*, 2008, 58, p. 14.

contract whenever they please and for whatever reason. Consequently, in principle, the employer is free to dismiss the employee without need of a valid reason.

These remarks, of course, shouldn't be taken to mean that dismissals are completely bereft of regulation. Such regulation exists, and it is, in fact, copious. But crucially, it arises not from the federal Constitution of the United States (which, as has been noted, does not contain a single article or amendment pertaining to social rights[28]), but rather from federal legislation, from State statutes and, in part, from the Supreme Court's case law[29]. The difference from the Italian system, as construed by the Constitutional Court, could not be clearer: neither the federal legislator nor the States are in any way obliged to restrict the power of discharge in view of the worker's interest to stability. The consequences are obvious: federal and State statutes are free to suppress all existing statutory protection against dismissal, if they so choose; a conclusion which, in view of the social right to work, the Italian Constitutional Court has consistently rejected.

3. *The Charter of Fundamental Rights of the EU: a European legal protection of the "right to work"?*

In light of the foregoing, it is possible to attempt a brief evaluation of the scope and meaning of the "right to work" in the Charter of fundamental rights of the European Union. Unlike the Italian Constitution, and unlike the Revised European Social Charter, the Charter of fundamental rights is undoubtedly centered around the idea of freedom to choose one's occupation[30]. Such a connotation is apparent in art. 15, which, tellingly placed in Title II (concerning "freedoms"), closely associates the "right to engage in work" with the right "to pursue a freely chosen or accepted occupation", as well as with the "freedom" of European citizens "to seek employment,

[28] Bassu, Betzu, Clementi, Coinu, *Diritto costituzionale degli Stati Uniti d'America. Una introduzione*, Giappichelli, 2022, p. 96-98.

[29] Foote, *Il diritto del lavoro statunitense: un sistema deregolamentato?*, in *DRI*, 1999, 2, pp. 129-130; Zubin, *Il licenziamento nell'ordinamento statunitense*, in *RGL*, 2018, 1, pp. 169-174.

[30] Ashiagbor, *cit.*, pp. 423 and following; Ales, *Articles 5, 8, 15, 29 CFREU*, in Ales, Bell, Deinert, Robin-Olivier (eds.), *International and European Labour Law*, Beck-Hart-Nomos, 2018, p. 195 ff. See also Del Punta, *I diritti sociali come diritti fondamentali: riflessioni sulla Carta di Nizza*, in *DRI*, 2001, 3, esp. p. 343 ff.

to work, to exercise the right of establishment and to provide services in any Member State". Even more significantly, the Explanations relating to the Charter of fundamental rights, as prepared under the authority of the Praesidium of the European Convention, state that art. 15 draws specifically upon art. 1, par. 2, of the Revised European Charter of Social Rights; that is to say, the only paragraph dealing not with the "social" dimension of the "right to work", but with free choice of occupation. Further, the Explanations strictly associate art. 15 with the "freedoms" guaranteed by artt. 26, 45, 49 and 56 of the Treaty on the Functioning of the European Union.

This isn't to say that the more "social" connotations of what the Italian Constitution names the "right to work" are completely absent from the Charter. In fact, whereas art. 29 guarantees a right to a free placement service, art. 30 endows workers with a right to protection against unjustified dismissal. It would be incorrect, however, to conclude that the latter provision enjoys the same systematic position – the same legal relevance – as in the Italian Constitution. As stated by the Court of Justice in the well-known *AMS* case[31], in order to determine whether an article of the Charter provides a "right" or a "principle", for the intents and purposes of art. 51 and art. 52, it is necessary to consider the "wording" of said article. Now, considering that art. 30 does not determine what is meant by "unjustified dismissal", nor what kind of "protection" is accessible in such cases, whereas it does refer to existing "Union law and national laws and practices", it seems inevitable to identify such article as a "principle", rather than a "right"[32]. And crucially, concerning the "principles" set forth in the Charter, art. 52, par. 5, explicitly states that they "*may* be implemented by legislative and executive acts" of the Union or the Member States, which has been taken to mean that the enactment of such "principles" is merely *optional* for the legislators involved[33]. Such a conclusion is again supported by the Explainations, according to which "[p]rinciples *may* be implemented through legislative or executive acts […]. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities". The non-mandatory nature of said implementation might find further confirmation

[31] Case C-176/12.

[32] *Contra*, however, see Delfino, *La Corte e la Carta*, in *DLM*, 2014, 1, pp. 179-180.

[33] Proia, *Lavoro e Costituzione europea*, in *ADL*, 2004, 2, p. 524; Peers, Prechal, *Article 52*, in Peers, Hervey, Kanner, Ward (eds.), *The EU Charter of Fundamental Rights*, cit., p. 1509.

in the fact that, to this day, a Directive of the EU on the general protection of workers against unjustified dismissals is yet to be adopted[34].

On the other hand, in the Italian constitutional order, the "right not to be unjustly dismissed" is a key component of the social right to work, that is to say a right provided by a "programmatic norm", whose implementation, by definition, is *mandatory* for the legislator; so much so that the relevant norms, once provided, are subject to a principle of *non-regression*, nor can the national legislator produce laws contrasting the constitutional objective.

4. *Conclusions*

It has been argued that, despite not explicitly mentioning the "right to work", the European Charter of Fundamental Rights contains all the main features that have been identified in art. 4 of the Italian Constitution. In particular, the "right not to be unjustly dismissed", *i.e.* the most significant "social" component of the right to work, is protected by art. 30 of the Charter[35].

Such a conclusion, however, does not appear entirely persuasive. Firstly, with the sole exception of art. 29, the aspect of the "right to have work made available" is completely absent from the Charter. Secondly, as art. 52, par. 5, makes abundantly clear, the Charter is unwilling to allow the existence of "programmatic norms" encompassing rights to a positive action by the European and national legislators. Unlike the "programmatic norms" set by some articles of the Italian Constitution, the Charter's "principles" – including art. 30 – are optional in nature, and therefore cannot give rise to any direct claim against public authorities. As such, no social rights against the legislator stem from the Charter's "principles". It follows that no "social right to work" might be derived from art. 30 of the Charter.

[34] KENNER, *Article 30*, in PEERS, HERVEY, KANNER, WARD (eds.), *The EU Charter of Fundamental Rights*, cit., p. 805 ff.

[35] ALAIMO, *Il diritto al lavoro fra Costituzione nazionale e Carte europee dei diritti: un diritto "aperto" e "multilivello"*, in *"Massimo D'Antona"*, 2008, 60, pp. 42-47.

Abstract

Moving from a recollection of the Italian academic debate concerning the notion of "social rights", the paper aims to offer a definition of "social rights" through which to look at the "right to work", as outlined by art. 4 of the Italian Constitution and by the rulings of Constitutional Court. On this basis, the Italian Constitution shall be compared to the European Charter of Fundamental Rights, in order to determine whether the "right to work" enjoys the same kind of legal protection both at the national and at the European level.

Keywords

Right to work, Social rights, Programmatic norms, Italian Constitution, European Charter of Fundamental Rights.