The 'Twilight' of Health, Safety, and Well-being of Workers in the Digital Era –Shaping the Right to Disconnect

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Abstract: The paper examines the theoretical foundations and conceptual framework of the right to disconnect, taking a comprehensive and integrated approach grounded in human rights principles. It explores the impact of psychosocial risks and challenges in the digital era, particularly in relation to occupational mental health, while also acknowledging the specific relevance of the education sector where digitally related burnout is prevalent and the need to ensure the well-being of educators in order to effectively mentor and educate the upcoming cohort of young individuals venturing into the workforce. The objective is to determine whether there is a need for the introduction of new rights or the adaptation of traditional ones in response to the significant transformations brought about by information and communication technologies in the workplace. This raises the question of whether we are witnessing the emergence of a new field of digital labour law, characterised by entirely novel rights and institutions, or if it remains rooted in the same ideological and conceptual foundations, requiring only normative adjustments to address the realities of the digitised world.

Keywords: Right to Rest and Leisure, Right to Disconnect, Conceptual Framework, Labour Law Issues, Psychosocial Risks, Mental Health Issues, Burnout

1. INTRODUCTION AND BACKGROUND OF THE STUDY

The evolution of information and communication technologies (ICT) in the early 21st century has brought about significant changes in business performance, work organisation, and subsequently, working conditions and workers' rights. In fact, towards the end of the 20th century, scholars began highlighting the necessity of regulating this new work model, particularly regarding internet availability and connectivity. Concerns were raised about the worker's right to rest, specifically in relation to receiving emails during weekends and annual leave (Pansu, 2018). Since then, the work environment has continued to rapidly transform with the advancement of novel informatics infrastructure, including the use of portable and wearable devices, big data, artificial intelligence (AI) and the internet of things digital technology.

The coronavirus disease (COVID-19) pandemic has had a profound impact on the rise of the 'work-from-home culture', blurring the boundaries between work and personal life. As workers became virtually available to employers throughout the day, concerns were raised by both the public community and academics regarding the intrusion into workers' private and family lives through constant digital connection. Additionally, the issue of psychosocial risks associated with remote work, particularly in terms of health and safety protection, has gained significant attention.

The paper aims to explore the interconnectedness between the traditional right to rest and leisure, as a fundamental labour right, and the emerging concept of the right to disconnect, which has been recently introduced in various legal systems. The overarching objective of the paper is to contribute to the ongoing global academic debate on the future of labour law and the calls for its adaptation to a changing world of work. The context is characterised by an uncertain economic transition towards a sustainable, digitalised society driven by knowledge and innovation, for which the precise inputs and means of achievement are not yet clearly defined. For this purpose, the link between traditional rights and a novel legal mechanism needs to be explored.

After the Introduction, Section 2 of the paper offers an overview of the origins and initial policy introduction of the concept of digital disconnection from work in the European Union (EU) context. The authors seek to identify, by looking into relevant literature and current theoretical reflections, the essentials of this emerging concept in terms of academic debates regarding the impact of ICT and digitalisation on traditional workers' rights and labour law in general. This section includes a subsection dedicated to

examining the psychological risks associated with burnout syndrome in the digital workplace. The authors explore the impact of continuous connectivity and heightened work demands on the well-being of workers, particularly in relation to psychosocial risks such as burnout, experienced by educators, whose constant availability and integration of technology into educational practices have blurred the boundaries between work and personal life, posing significant challenges to their ability to disconnect and recharge. Section 3 delves into the historical origins and evolution of the right to rest and leisure as a fundamental human right. It explores how this right has developed over time and its relevance in contemporary society. By analysing the historical origins and human rights perspectives that have shaped the right to rest and leisure in a broader labour context, the paper also seeks to understand its relevance and application within the education sector. Given the transformations in work organisation resulting from advancements in ICT and digitalisation, including the increased adoption of remote work models during COVID-19 pandemic and the emergence of hybrid work models in the post-pandemic era, the paper critically discusses the need for the right to disconnect as an emerging right within all working sectors. Section 5 introduces a conceptual framework for the right to disconnect, outlining the key principles and considerations that underpin this concept. This provides a theoretical foundation for its implementation, as an additional functional and operational mechanism for enforcing the right to rest and leisure in a changing world of work.

2. A REVIEW OF THE LITERATURE

Several European countries including France, Italy and Spain have introduced the innovative concept of digital disconnection from work

and enriched their legislative framework with the so-called right to disconnect. Notably, the European Parliament adopted a resolution on January 21, 2021 with recommendations to the Commission on the right to disconnect (2021/C 456/161) establishing the conceptual framework for digital disconnection from work. According to the resolution, digital disconnection is regarded as both (1) a fundamental right in the digital era and (2) a policy mechanism that serves as a specific means to protect workers' rights. The right to disconnect grants workers the entitlement to 'switch off work-related tools and not to respond to employers' requests outside working time, with no risk of adverse consequences, such as dismissal or other retaliatory measures'. The resolution emphasises the importance of occupational health assessment, particularly in terms of evaluating psychosocial risks, as part of the introduction and implementation of the right to disconnect. This highlights the need to consider the impact of constant digital connection on workers' health and safety within the workplace. Additionally, in the same year, the European Commission adopted the EU strategic framework on health and safety at work 2021–2027 – Occupational safety and health in a changing world of work (COM (2021) 323 final) that stressed the importance of modernizing the EU work health and safety (WHS) normative framework related to digitalisation, by considering the psychosocial and ergonomic risks, and by developing specific 'e-tools and guidance for risk assessments'. The EU strategic framework on health and safety at work 2021–2027 referred to the European Parliament Resolution on the right to disconnect by calling for concrete measures of its implementation.

Defining the boundaries between the intrusion of digital technology into workers'

private and family lives, which can have negative impacts on their physical and mental health and overall well-being, and the positive effects of ICT on economic efficiency and job performance is a formidable challenge. On one hand, ICT liberates workers from routine and hazardous tasks, protecting them from work-related injuries, and on the other hand, it raises concerns about the potential negative consequences on workers' personal lives. This issue poses a significant challenge to the very concept and future of modern labour law in a digitalised world. Policymakers and legislators are grappling with this challenge by proposing additional mechanisms, such as the right to disconnect, to safeguard workers' fundamental rights. However, some academics go even further and explore the potential 'positive' outcomes of digitalisation and AI in the labour law field. They argue for a more flexible approach to traditional labour law institutions, including a redefinition of the conventional notion of working time in the digital era. This approach prioritises values such as flexibility and workers' autonomy, influenced by the evolving work culture. In both cases, ICT is regarded as the foundation and means to achieve the objectives of modern labour law, which include ensuring decent work for all and fostering a society based on principles of social justice in an era characterised by intense 'datafication'.

In their examination of the future of labour law in the digitalisation and AI era, Cefaliello and Kullmann (2022) shed light on the positive utilisation of AI in monitoring workers' adherence to agreed-upon working hours for the purpose of injury prevention. However, they also highlight the potential negative consequences of what they term 'intrusive managerial practices' when the focus shifts from protecting health

and safety to sanctioning workers who do not strictly comply with agreed working hours. This raises concerns about the potential misuse of technology by employers. One example of this is the use of wearable mobile devices to track and measure workers' breaks, with AI systems analysing the data to assess productivity and task execution.

While such practices may have intended benefits in terms of monitoring health and safety and ensuring efficient work performance, there is a need for careful consideration of the boundaries between worker surveillance and privacy infringement. De Stefano (2019) argues for the necessity of regulating the usage of information technology and AI in the labour field. Rather than solely focusing on quantitative aspects such as the number of job losses resulting from work automation, De Stefano emphasises the importance of evaluating qualitative aspects, such as job automatisation's impact on the quality of work and the application of decent work standards.

Sánchez-Monedero and Dencik (2019) draw attention to the evolving landscape of work, driven by data-driven tools and the increasing prevalence of what they refer to as the 'datafication of the workplace'. This new reality necessitates a reevaluation of traditional notions of work and employment relationship. A notable development is the use of worker work activity monitoring for the purpose of predictive management models, particularly in the context of security, and WHS protection. Special monitoring software like RescueTime tracks the time spent on various applications, providing warnings when workload thresholds are approached. Additionally, facial and emotional recognition and monitoring software, such as FaceReader, collect emotional data, which can be analysed

to establish mechanisms for protecting workers' mental health at work. While Lerouge and Trujillo Pons (2022) acknowledge the positive impact of the ICT on workers' quality of life, they also raise concerns about the potential risks to other fundamental labour rights. These include the right to rest and leisure, the right to privacy, and the right to WHS. In response to this challenge, they propose the introduction of 'the minimum content of the right to disconnect' within national legislation.

2.1. *Psychosocial Risks and Burnout in the Digital Workplace*

Psychosocial risks have emerged as one of the most challenging work hazards in contemporary times, arising from patterns of work organisation, design and management. These risks have the potential to negatively affect the health, safety, and well-being of workers, while the 'difficulties in combining commitments at work and at home' (European Commission – Directorate General for Employment, Social Affairs and Inclusion 2020) require careful attention. On one hand, the phenomenon of 'teleavailability' can be seen as a beneficial aspect of labour, as it allows workers to adjust their work activities to accommodate private and family responsibilities. However, it can also lead to the invasion of individuals' private lives through the overuse or misuse of information technology. Consequently, work-related stress resulting from constant connectivity to portable devices has become a major challenge in the 21st century. Moreover, there have been ongoing debates among academics and legislators regarding the recognition of work-related mental health disorders as occupational diseases or work injuries. This issue has sparked intense discussions about the need for acknowledgment

and appropriate measures to address these mental health challenges.

In today's fast-paced and demanding work environments, organisations have increasingly recognised the critical importance of their employees' mental well-being (WHO, 2020). As a result, psychosocial risks, which encompass the interaction between work-related factors and the psychological and social well-being of individuals within the workplace (Eurofound, 2014), have garnered significant attention. They can have detrimental effects on workers' mental health and overall well-being, potentially leading to burnout, characterised by emotional exhaustion, cynicism and reduced professional efficacy (Maslach et al., 2001). While the WHO included burnout in its list of diseases as an occupational phenomenon, it simultaneously denies categorizing it as a disease. This creates a somewhat ambivalent stance on the matter (WHO, 2020). Certain authors, including Maslach & Leiter (2016), Chirico (2017), Parker and Tavella (2022) and Calitz (2022), argue that burnout should be recognised as a distinct disease because it is specifically linked to the job, whereas conditions like depression and other mental illnesses are more general and context free.

The phenomenon of burnout has become a prevalent concern across various industries and sectors, affecting professionals at all levels of an organisation (Purvanova & Muros, 2010). However, it is essential to acknowledge that different occupations may face distinct psychosocial risks due to the specific nature of their work and the demands placed upon them. In a global survey conducted by the Statista Research Department in 2019, it was found that the hospitality sector had the highest risk of burnout among employees, followed by individuals in manufacturing,

healthcare, teaching and social work (Statista Research Department, 2022). The COVID-19 pandemic, as highlighted in a 2020 study by the International Labour Organisation (ILO), further exacerbated burnout, particularly for those working from home, including parents who had to balance their job responsibilities with caring for their children (ILO, 2020). This situation blurred the boundaries between work and personal life, resulting in workers being constantly available and on call. Despite these concerns, burnout is not universally recognised as a distinct mental disorder.

Expanding our understanding of psychosocial risks in a broader context provides insights into the common challenges faced by workers across various professions and the universal strategies that can be used to mitigate their impact. Workload emerges as a prominent psychosocial risk affecting all workers. Excessive work demands, unrealistic deadlines, and long working hours can lead to feelings of stress, being overwhelmed, and an inability to maintain a healthy work–life balance (Sonnentag and Fritz, 2015). Organisational culture, job insecurity and technological advancements introduce additional psychosocial risks. For instance, an unsupportive organisational culture characterised by high levels of competition, poor communication or a lack of recognition can create a toxic work environment (Rasool et al., 2021). Sverke et al. (2002) identified job insecurity, fueled by fear of layoffs or uncertain employment conditions, as a basic trigger of anxiety and stress among employees.

The COVID-19 pandemic, digital age and constant connectivity have brought about new challenges. They have intensified the concept of constant availability and accessibility, particularly due to remote work arrangements and

flexible working hours enabled by electronic communication, leading to difficulties in setting boundaries between work and personal life, which contribute to heightened stress levels and burnout. This highlights the emergence of the so-called 'right to disconnect' as a crucial concept of reshaping the modern work-related. Eurofound defines the right to disconnect as 'a worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours' (EurWORK, 2021). In other words, it emphasises the need for individuals to establish boundaries and find balance in an interconnected and digitally driven world.

The education sector holds a significant importance in recognising the right to disconnect based on psychosocial risks leading to work-related burnout. Extensive research has highlighted the prevalence and detrimental effects of burnout among educators. A study conducted by Maslach (2003) emphasised that burnout is a result of chronic workplace stress, and it encompasses emotional exhaustion, depersonalisation and reduced personal accomplishment. Educators play a vital role in shaping the future generations, providing knowledge, guidance and support; yet, the demands and responsibilities placed on educators are often overwhelming. The extensive integration of technology in educational practices, particularly during COVID-19 pandemic, has further increased their workload and blurred the boundaries between work and personal life (MacIntyre et al., 2020; Škobo, 2022). According to Pressley (2021), the most proximal stressors associated with teacher burnout due to COVID-19 pandemic include COVID-19-related anxiety, anxiety about teaching demands,

parent communication and administrative support. The study conducted by Pressley pointed to the fact that teacher burnout stress was found to be consistent across different demographic factors. The demanding nature of the education profession, coupled with factors such as heavy workloads, time pressures, lack of resources and high expectations, increases the vulnerability of educators to burnout (Skaalvik and Skaalvik, 2017). Consequently, educators are at a heightened risk of experiencing psychosocial risks resulting from burnout due to their extensive use of ICT, which can severely impact their well-being and effectiveness in their roles.

According to the study conducted by Madigan et al. (2023), burnout among teachers is associated with a variety of health issues, including specific conditions such as gastroenteritis, as well as biomarkers indicating disruptions in various biochemical processes related to health, like cortisol levels. This aligns with research conducted in other high-stress professions, such as nursing and medicine (Williams et al., 2020) suggesting that teachers experiencing burnout may be at risk for poorer physical health outcomes. Madigan et al. (2023) also established a theoretical framework providing insights into the mechanisms through which teachers' health is susceptible to the impacts of burnout, by proposing three primary pathways: heightened engagement in unhealthy behaviours, dampened stress responses and compromised immune function. The findings of their review largely support these concepts, particularly in relation to increased illness rates and reduced cortisol responses. These findings add to the growing body of evidence emphasizing the significant impact of burnout, not only on teachers' work experiences but also on their overall well-being and quality of life.

Klusmann et al. (2016) emphasise that educators not only face the challenges inherent to their profession but also shoulder the responsibility of shaping young minds and fostering an engaging learning environment. In this regard, burnout not only negatively affects the mental and physical health of educators but also impairs their ability to effectively connect with and engage students, leading to diminished educational outcomes and compromised student well-being.

From the perspective of an academic and educator, it becomes evident that the psychosocial risks associated with digitally related burnout can hinder the pursuit of excellence in the field of education. While the enforcement of the traditional right to rest and leisure through the concept of disconnection seems intuitively beneficial for educators, it is crucial to note that empirical evidence is needed to substantiate this connection definitively.

Fedorova et al. (2022) discuss the need for enhanced legal regulation in response to emerging psychosocial risks in the digitalised economy, which are negatively affecting employees' health and well-being. The authors highlight the blurring boundaries between work and rest time in the digital age, leading to factors like cyber stress and work-related stress that significantly affect workers. The study conducted by Fedorova et al. draws on a 2018 sociological survey of employees from various countries, revealing commonalities and differences in their perceptions of work-related health and well-being factors. Stress at work emerges as a predominant negative influence. The article emphasises the necessity of regulatory measures to protect workers from work-related stress, citing international examples and suggesting areas for improving Russian legislation to address these issues.

The article entitled 'The right to disconnect and managing the psychological risks of being "online" outside office hours'[1] explores the evolving concept of the 'right to disconnect' in the Australian context, highlighting its significance in addressing work-related demands on employees outside of official working hours (see Milions et al., 2023). It underscores the impact of flexible work arrangements on psychosocial harm and need for employers to proactively address these risks to comply with health and safety regulatory standards. Also, it highlights findings from the Australian Work Health and Safety (WHS) Survey report, which identified the recent surge in home and flexible working arrangements as a significant contributor to psychosocial harm. Employees reported working longer hours, facing increased demands from superiors and struggling to disconnect from work outside of official hours.

The article emphasises that under the Australian WHS Acts, persons conducting a business or undertaking have a duty to eliminate, so far as is reasonably practicable, risks to workers' health and safety. It mentions the Queensland Government's *Code of Practice: Managing the Risks of Psychosocial Hazards at Work*, which recognises high job demands, including challenging work hours and expectations to be responsive outside of work hours, as common psychosocial hazards. Furthermore, the article discusses the importance of identifying psychosocial hazards at both organisational and task-specific levels. This can be done through workplace surveys, data analysis and collecting feedback from workers. The Code recommends

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[1]https://www.nortonrosefulbright.com/en-us/knowledge/publications/c4e629aa/the-right-to-disconnect-and-managing-the-psychosocial-risks.

looking for signs of stress, emotional exhaustion, coerced overwork, feelings of failure and concerns about understaffing when gathering worker feedback.

Further empirical research in this area can help determine whether restrictions on work intensification or the right to disconnect itself, or even a combination of both, would be more effective in addressing psychosocial risks. Nonetheless, the concept of the right to disconnect holds promise. It could ensure educators' well-being, promote a work–life balance, and, ideally, enable them to provide quality education to future generation entering the labour market.

The constant connection to digital devices disrupts leisure time, limits opportunities for rest and recovery, and impacts workers' ability to fully disconnect and recharge. Addressing and assessing psychosocial risks associated with the disconnection concept requires a comprehensive approach involving organisational policies, managerial practices and individual self-regulation (Eurofound, 2021). Through comprehensive psychosocial risk assessments and ongoing occupational health evaluations, organisations can identify potential hazards and develop strategies to mitigate them, ultimately fostering a healthier and more supportive work environment.

3. RIGHT TO REST AND LEISURE AS A FUNDAMENTAL HUMAN RIGHT – ORIGINS AND EVOLUTION

The concept of fundamental human rights arises as a set of universally recognised moral and socio-political claims that are protected by law. These rights are grounded in the inherent characteristics of all individuals as members of the human species and are primarily based on values such as dignity, freedom, necessity and justice. While this conceptual framework represents one of several approaches to understanding human rights, there is no universally accepted conception, particularly regarding the classification of human rights into two main groups: civil and political rights and economic, social and cultural rights. Over the years, academic discussions have revolved around the nature, position and scope of economic, social and cultural (ESC) rights within the human rights system. Traditionally, ESC rights have been considered of lesser importance when compared to civil and political rights. Civil and political rights are seen as inherent and universal, often referred to as 'real' rights, whereas ESC rights are often regarded as 'earned' and derivative in nature (Richards and Carbonetti 2012), representing more privileges than rights (Okeowo, 2008). Furthermore, the realisation of civil and political rights does not necessarily require active engagement from state authorities or the allocation of resources (referred to as 'negative' rights). However, the fulfillment of socioeconomic rights typically demands resource redistribution and active measures by the state (known as 'positive' rights).

To provide a theoretical and conceptual foundation for justifying ESC rights, the principle of (universal) *justice* has been primarily utilised. Pogge (2008) establishes the fundamental criteria for justice, which encompass aspects such as 'physical integrity, subsistence supplies (of food and drink, clothing, shelter, and basic health care), freedom of movement and action, as well as basic education, and economic participation'. These criteria highlight the value of need and emphasise the need-based approach to socioeconomic rights (Langford, 2017) that is prevalent in the existing literature. If we delve deeper into the subject, a need-based approach to socioeconomic rights can be rooted in the idea of human rights as understood from a

constructionist standpoint. In particular, Gregg (2012) presents a perspective that views all fundamental human rights, including socioeconomic rights, as socially constructed in a local sense. This means that 'human rights are understood in terms of the pragmatic imperative for desired results', which are limited to a particular society but have the potential to expand globally. It is worth mentioning Ronald Dworkin's theory of justice, which introduces the concept of 'equality of resources' or equal concern and respect for each individual. According to Dworkin, human rights serve as 'the criterion (for ensuring) an equal concern and just distribution of resources' (Vujadinović, 2012). This perspective supports the understanding of legal system as the integration of moral, social, political and legal standards. Furthermore, Dworkin's concept of 'policy' standards, which aim to achieve 'improvements in economic, political, or social features of the community' (Dworkin, 1967), implies the consideration of individuals' evolving 'needs' or, in Dworkin's terms, the 'equal concern' of the state for each member of society. When judges interpret legal norms, which are previously embedded in the conception of each human right, they take into account the needs and equal concern for individuals within the society or community (Dworkin, 1967).

When analysing the idea of human rights from a metaphysical and philosophical standpoint and a natural rights perspective, defending the classification of rest and leisure-related rights within the group of ESC rights becomes challenging. In contrast, adopting a constructivist conception of human rights provides a basis for justifying the inclusion of Article 24 in the Universal Declaration of Human Rights (1948), which recognises 'the right to rest and leisure, including reasonable working hours and periodic

holidays with pay' for everyone. Scholars advocating for the legal existence of this article rely on the social constructionism approach when addressing all human rights, emphasising the historical, social and cultural context of human rights. Richards and Carbonetti (2012) argue that the protection of human dignity, which is jeopardised by excessive work, is a value that must be safeguarded to fulfill the societal function. Being a member of a particular society entails the need for protection against the risks of overwork through the right to rest and leisure. This perspective aligns with the concept of distributive justice and upholds the dignity of all human beings.

Generally, the right to rest and leisure has been introduced to provide protection for workers and can be analysed in relation to working conditions, as stated in the International Covenant on Economic, Social and Cultural Rights. The International Convenant on Economic, Social and Cultural Rights (UN, 1966) guarantees 'the enjoyment of just and favorable conditions of work' (Article 7), which includes the right to rest and leisure. In this regard, Veal (2015) emphasises that rest and leisure-related rights are only one aspect of fundamental labour rights. Rest is necessary for physical and mental recovery from work, while leisure serves as a pathway to cultural activities and community engagement for individuals (Veal, 2015). Both aspects aim to safeguard a person's well-being and, consequently, their right to health. However, critics (see Allan and Bagaric, 2006) who undermine the right to rest and leisure seem to downplay the importance of the right to health. Nevertheless, current liberal and globalisation initiatives are increasingly recognising the so-called positive claims of socioeconomic rights 'as legitimate aspirations of all people' (Evans, 2002). These aspirations can be achieved by promoting the

negative claims of civil and political rights in order to attain sustainable development goals. Consequently, this highlights the interconnectedness and interdependence of all (fundamental) human rights.

However, current liberal and globalisation initiatives are increasingly recognising the legitimacy of socioeconomic rights as valid aspirations for all individuals. In this regard, the prevailing approach to socioeconomic rights in the literature is need-based perspective. Hence, socioeconomic rights are considered as fundamental human needs, encompassing not only basic necessities but also the broader requirements for individuals to fully realise their potential. This broader perspective includes 'the need for self-expression, association with other human beings, and control over destiny' (Langford, 2017) aligning with liberal views of societal development. When considering all the aforementioned points, it becomes evident that fundamental human rights, including socioeconomic rights, can only be enforced within a political community and/or society. Therefore, they represent the *sui generis* social construction that aims to adapt to societal changes. In modern society, the expansion of fundamental rights may occur not only through the addition of new rights but also through the implementation of soft mechanisms for policy change. These mechanisms involve shifting existing structures and introducing new and innovative policies. This raises the question of whether these new and innovative policies require the introduction of novel human rights or simply a holistic and integrated interpretation of existing ones. Furthermore, the choice between soft and hard law instruments in addressing societal changes, including the emergence of ICT, is another issue to consider. In this regard, it is

crucial to explore the possibility of interconnecting these two instruments in a way that one reinforces the enforcement of the other.

4. APPROACHING THE CONCEPTUAL FRAMEWORK OF THE RIGHT TO DISCONNECT

The implication of the 'always-at-work' culture for fundamental labour rights and their protection have become urgent issues to address. Policymakers, academics, and society as a whole come together in order to discuss potential approaches and mechanisms to manage these challenges. The focus has particularly centred around health-related rights within the realm of labour, including the potential deterioration of mental and physical health that could result in disability. Work health protection is a key concern in this regard. Additionally, the potential impact on workers' family and private lives has also been a significant concern. Both socioeconomic rights, such as the right to health, and civil rights, such as the right to privacy, have been compromised by the unethical and socially unjustified use of ICT in the context of labour.

In order to address concerns surrounding the always-at-work culture and its impact on labour rights, some European countries have proposed the establishment of a new right known as 'the right to disconnect'. France has been at the forefront of this movement, pioneering the introduction of this right through legislative changes. Previously, the concept of disconnecting from work had been implemented through collective agreements in France and through internal self-regulation and voluntary policy mechanisms, such as codes of conduct, in Germany (Fairbairn, 2019). Between 2012 and 2014, a collective agreement was negotiated and signed in France involving participants

such as the French insurance company AXA, the French renewable energy company Areva, and the General Union of Engineers, Managers, and Technicians. This agreement established mechanisms to prevent excessive workloads and the extensive use of ICT by setting limits on working hours during weekdays and weekends (Fairbairn, 2019). In Germany, companies like BMW and Daimler have included provisions in their internal work codes that grant workers the autonomy to choose not to respond to emails sent after working hours (Govaert et al., 2021). Volkswagen, on the other hand, reached a collective agreement that prohibits the sending of emails on company mobile devices after working hours (Chiuffo, 2019).

As mentioned earlier, France was the first European country to enact the right to disconnect through the El Khomri law in 2016 as a part of a labour law reform. Subsequently, in 2017, Italy incorporated the right to disconnect into its legislation through a revision of the remote and smart working law. Spain followed suit by adopting a new Data Protection Act in 2018, which introduced a set of digital rights for citizens and employees, including the right to disconnect (Dima and Högback, 2020). In Spain, the right to disconnect was further enshrined in the Law 10/2021 on remote work (Lerouge and Trujillo Pons, 2022). However, these legislative approaches have raised certain issues surrounding the nature, content and scope of the right to disconnect. There is vagueness regarding its position within the framework of human rights and the national legal system, as well as a lack of precise definition for the right itself.

In terms of the legal nature of the right to disconnect, there are two main approaches among academics. The first approach considers it as a new autonomy right that has emerged with the advent of ICT and digitalisation. The second approach argues for its derivative nature from traditional human rights, such as the socioeconomic right to rest and leisure and/or the civil right to privacy (Chiuffo, 2019). However, the majority of academics support the view that the right to disconnect is derived from the right to rest and leisure. They consider it as a 'modernization of some traditional labor rights' and 'a new aspect of the right to rest and leisure' (Chiuffo, 2019) emphasising its connection to the protection of health and safety in the workplace (Chiuffo, 2019; Lerouge and Trujillo Pons, 2022). Scholars such as Lerouge and Trujillo Pons (2022) argue for this derivative nature and highlight the importance of ethical considerations and education within employers' management practices for promoting health and preventing workplace risks. Additionally, some scholars like Secunda (2019) explore the interconnection between the right to disconnect and workplace violence. Secunda suggests the development and implementation of workplace digital connectivity prevention programs, drawing on the model of violence prevention programs introduced in the USA by the Occupational Safety and Health Act in 1970 (Secunda, 2019).

Although most scholars conceptualise the right to disconnect based on traditional labour rights, such as the right to rest and leisure, and the right to health and safety, there has also been a focus on its relation to the policy concept of work–life balance, which is seen as a mechanism to address work-related stress and other negative effects of changes in the work environment on the health and well-being of workers and their families. The right to privacy has also been frequently invoked in the context of the right to disconnect, particularly regarding

the 'home invasion' of the ICT (Kéfer, 2021). However, there is a lack of insightful analysis regarding the concept of privacy and its relationship with the concept of disconnection in a digitally driven work environment.

Privacy-related rights issues, predominantly viewed from a liberal perspective, are often analysed as a manifestation of individual autonomy. This perspective emphasises an individual's right not to participate in social and political life and emphasises the establishment of clear boundaries between private and public spheres and interests. Samuel Warren and Louis Brandeis, American lawyers, provided one of the earliest theoretical definitions of the right to privacy as 'the right to be let alone' (Holvast, 2009).

The right to privacy, also known as the right to private life or the right to freedom, is rooted in universal moral principles of autonomy, freedom and dignity. It is considered 'morally superior to the society and state' (Gumbis et al., 2008). However, the modern understanding of privacy acknowledges its socially and politically constructed nature, recognising its constitutive and instrumental role within the social and political sphere (Mokrosinska, 2018). Privacy is seen as both a means to achieve certain goals and a fundamental aspect of individual identity. In this context, the right to disconnect can be justified by and derived from the liberal concept of privacy, which places importance on the moral value of personal autonomy and the need for individuals to detach from work life. Additionally, the modern understanding of privacy incorporates the social and political interests of maintaining work–life balance to protect overall health, including the well-being of the broader working population. This justification further supports the introduction of the concept of disconnection.

Considering the modern understanding of traditional labour law rights and institutes that rely on comprehensive, integrated, holistic and human-centred approaches to the subjects, encompassing moral, social, political and legal values, the concept of disconnect could be constructed based on both rights: the right to rest and leisure as a fundamental labour right and the right to privacy as a basic civil right. The overall aim would be to protect workers' health and well-being referring to the universal right to health. Given this, the standpoint of Lerouge and Trujillo Pons (2022) of placing the right to disconnect in the centre of work health policy and law is potentially the most applicable one. It aligns with both policy (soft-law) and legal (hard-law) instruments, serving both preventive and protective functions for the idea of disconnecting from work in the digitalisation era. Furthermore, the right to disconnect could be considered a policy mechanism for the enforcement of the right to health and safety at work. The possible practical, and consequently theoretical, ground for this standpoint would be the normative solution of the Spanish legislator who introduced the novel psychosocial risk in the WHS management system along with the right to disconnect. This psychosocial risk is named 'fatiga informática', but the Spanish legislator also failed to define or conceptualise it, offering only a simple explanation, i.e., a legal provision of 'an emerging psychosocial risks that is a consequence of a violation of the right to disconnect' (Trujillo Pons, 2023). The so-called 'fatiga informática' is a unique psychosocial risk known only in Spanish regulation but its content and the mechanisms of its implementation are left to the self-regulatory efforts of the concerned parties, i.e., social partners (Trujillo Pons, 2023). This represents a legal

gap with only indirect reference to health and safety standards. Nevertheless, in the context of current academic debates about adjustments of labour law as a legal discipline in a changing world of work and in terms of evaluating the effectiveness of health and safety legislation, both notions could represent valuable instruments to achieve that goal. Given this perspective, the view of Del Punta (2013) about the future of labour law merits quotation: 'Labor Law needs to update its protective paradigm, passing from a paternalistic concept of protection to a positive and proactive one, which is focused on the effective needs of workers and is capable of mobilizing their autonomy and responsibility'.

In terms of the scope and content of the so-called right to disconnect, there is no clear determination in the legislative models of the European countries that have introduced this right. France and Spain have chosen not to establish explicit standards for exercising this right and have delegated the power to social partners, mandating negotiation at the company level. On the other hand, Italy has a more limited application of the right to disconnect, which is specifically applied to smart and remote working models through provisions included in individual employment contracts (Dima and Högback, 2020). Moreover, the enforcement mechanisms for the right to disconnect are lacking, as legislators have not fully regulated all the necessary aspects of disconnecting from work after working hours. They have opted for collective or individual autonomy in this matter. Additionally, when introducing the right, legislators in these countries have emphasised the aim of protecting the right to rest and leisure and promoting work–life balance. Among them, Spain explicitly recognises the closer relation to the right to privacy, as evidenced by the inclusion of disconnection standards in data protection regulations.

It appears that both in theory and legislation, the right to disconnect is not defined as a new right (Chiuffo, 2019; Lerouge and Trujillo Pons 2022; Secunda, 2019) but rather as an additional policy mechanism to uphold the right to rest and leisure and protect the health and well-being of workers. In this regard, it can be established as an instrument for assessing health and safety, particularly in terms of psychosocial risks, taking into account the specific work sector and nature of job tasks. The obligation to conduct this assessment should be incorporated into legislation. However, the influence of business culture relativism among legal systems significantly impacts the adopted concept of disconnecting from the workplace. As a result, the model of the right to disconnect can be introduced through legislation, autonomous collective agreements or even self-regulation policies.

5. CONCLUDING REMARKS

Employers play a crucial role in addressing the psychosocial risks associated with burnout related to the excessive use of digital technologies in the workplace when implementing work health standards. By acknowledging the specific needs and challenges faced by professionals in various fields, including the education sector where digitally related burnout is prevalent, organisations can proactively assist their employees and alleviate the adverse consequences of psychosocial risks and burnout.

This involves implementing policies and practices that promote work–life balance as a policy instrument for protecting privacy-related rights, while respecting boundaries and

promoting health and employee well-being. It also entails providing training and resources to help employees manage their digital presence and develop strategies for effective work–time management protecting the right to rest and leisure. In this context, the concept of the so-called 'right to disconnect' can serve as a tool for reshaping modern work relationships and addressing the psychosocial risks arising from workers' constant availability.

The arguments concerning the advantages and disadvantages of introducing the so-called 'right to disconnect' through legislation are primarily based on the political, social, ethical and cultural values of each country, as well as their prevailing business work culture. A constructionist perspective on human rights and Dworkin's theory of justice, specifically the concept of 'equality of resources' along with his integrated interpretation of legal system, support the inclusion of additional mechanisms such as the 'right to disconnect' to enforce traditional labour rights, including the right to rest and leisure, and consequently, the right to health and safety in the workplace. All of these aspects are discussed in the context of the interconnectedness and interdependence of all human rights, encompassing both socioeconomic and civil and political rights.

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CONFLICT OF INTEREST STATEMENT

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