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RIGHTS OF WORKERS TO DISCONNECT GLOBALLY

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Abstract

The rights and principles for the digital decade, published by the EU Commission, Parliament and Council (European Declaration, 2023) are part of the statement that explicitly mentions the right to disconnection in its section on fair and just working conditions, where it is mentioned that the EU pledged to "ensure that everyone will be able to disconnect and benefit from guarantees of work-life balance in a digital environment".

However, in my opinion, it is a little too much to include this legislative power in the universal rule of law, because the rule of law is the highest general rule that summarizes social practice and guarantees the balance between the observance of rights and the fulfillment of rights. of duties. or if they are professions that require self-discipline, such as a investigating magistrate and a judicial police officer, they must complete an on-site investigation as quickly as possible, or a transparent agent to ensure that they are out. business hours.

Key words: law, principle, program, professions.

INTRODUCTION

The world of work is facing a digital revolution. The increasing use of digital and technological tools in recent decades has made it possible to work anywhere, anytime. The Covid-19 pandemic has only increased the pace of this development. While the digitization of work and the expansion of remote working present potential advantages in terms of flexibility, productivity and reconciliation, these trends can also lead to work intensification, long working hours, blurring the lines between work and rest or increased stress. from continuous supervision and monitoring of performance and productivity. These

factors can, in turn, negatively affect the physical and psychological health of employees.

Consequently, it seems necessary to regulate some aspects of the new digital work environment with the aim of compensating at least some of the negative impacts arising from the frequent use of digital work tools. In this context, the right to disconnect (R2D) becomes relevant. The ten fundamental principles (Guiding Principles) here establish a regulatory basis for R2D in Europe. They cover issues that should be considered when developing standards to ensure a balanced regulation of the right to disconnect.

The right to disconnect must be seen as a concrete measure to ensure that “[e]veryone has the right to fair, fair, healthy and safe working conditions and adequate protection in the digital environment at the physical workplace, regardless of their employment status, of their manner or duration”; as can be read in the statement, last but not least, this statement also offers interesting elements to be considered with the following guiding principles, especially on how to deal with data protection.

This is part of an EU-wide regulatory intervention under the 2023 Digital European Declaration.

Are we discussing this right as a principle or as an obligation at the level of the Member States of the European Union extrapolated to the global level?.

I. ABOUT THE PRINCIPLES OF LAW

Etymologically, the concept of principle comes from the Latin *principium*, which means beginning, origin or basic element. Each principle is a starting point, a source of action at the conceptual level. General principles of law are creative prescriptions that define the architecture and application of law.

The third source of international law, as listed in Article 38, is the "general principles of law" recognized by "civilized" nations. The Guide to International Legal Research states that “this traditional naturalistic approach provides a basis for decision when other sources provide no guidance, but it is not clear what these general principles of law are. Thus, locating these general principles in the course of legal research is extremely difficult. They can be general principles of justice, natural law, analogies with private law, principles of comparative law or general concepts of international law.”

General principles of law are primarily used as "gap fillers" when treaties or customary international law do not provide a rule of decision. Scholars have suggested that as new treaties and customary law develop to address areas of international concern not previously covered, the significance of general principles will fade as these gaps in international law are filled.

After becoming parties to a human rights treaty, states must comply with the obligations enshrined therein. Furthermore, when applying human rights

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treaties, it is important to consider the existence of general principles that are embedded in international human rights law and that guide their application.

General principles are not human rights, but there is a certain degree of overlap, as some general principles, such as the principle of non-discrimination and non bis in idem, have gradually evolved into substantive human rights, being sufficiently precise and fulfilling the existing conditions for human rights, as it results from Resolution no. 41/120 of December 1986 of the UN Commission on Human Rights:

- be consistent with the existing body of international human rights law.
- have a fundamental character and come from the inherent dignity and value of the human person.
- be precise enough to give rise to identifiable and enforceable rights and obligations.
- provide, where appropriate, realistic, and effective implementation mechanisms, including reporting systems; and
- attracting international support wide.

In addition, Article 38.1.c of the Statute of the International Court of Justice considers the principles of common law, together with international customs and international treaties, as official sources of international law, so the court is obliged to use them unnecessarily, so that there are some gaps within these last two sources; that is, it works independently, not as an auxiliary source. (*Riofrío Martínez-Villalba, Juan Carlos, 2016, p. 283–309*)

The old Civil Code of the Argentine nation, written by Dalmacio Vélez Sarsfield, from 1871, stated the following in Article 16: "If a civil matter cannot be settled either by words or by law, the principles of law shall be respected as well." ; if the question is still in doubt, it will be settled by the common law, having regard to the circumstances of the case. "Many of the national philosophical doctrines have understood these words as a sign of denying the legal gaps in Argentine law, while other doctrines see it as an instruction to judges to fill the gaps in laws based on natural law, where there is no law to regulate the case. (*Ione Stuessy Wright; Lisa M. Nekhom, 1978, pp. 458-498*)

The Political Constitution of Colombia of 1991, in article 230, indicates that the legal principles of the anti-formalist position are auxiliary criteria in cases of inadequacy of the law, that is, in case of ambiguity or normative gaps. Since 1936, the Columbia case - the "Golden Court" period - in the new interpretation of Article 8 of Law 153 of 1887, under the influence of free scientific research and the school of German conceptualism, equality and others have been accepted. General principles of law for the fair resolution of legal conflicts. (*National Center for State Courts, 2012, p. 131-135*)

According to Article 1.1 of the Spanish Civil Code, the sources of the legal order are the law, customs, and general principles of law. Article 1.4 states: "The general principles of the law apply without prejudice to the nature of the

information to the legal system when the law or custom is absent." (*Riofrío Martínez-Villalba, Juan Carlos, 2016, p. 283-309*)

In Mexican law, Article 14 of the Constitution provides that civil actions must be resolved in accordance with the letter or interpretation of the law and, failing that, on the general principles of the law. According to Rafael Preciado Hernández, this reference links Mexican law with the best natural law traditions of Western civilization. However, the Federal Labor Law, Article 17, refers to the general principles of law and equity as one of them. They are also enshrined in the Federal Civil Code, the Commercial Code, the General Elections and Procedures Act, the General Health Act, the General Education Act, and virtually all federal agencies and local statutes, to name a few. or adjectives. (*Plottka J, Müller M, 2020, p. 34*)

A principle can be presented in several ways: axioms, deductions or generalizations of concrete facts. (*Von Ondarza N, Ålander M, 2021, p. 201-235*)

The general principles of law ensure unity, homogeneity, harmony, and the ability to develop certain associative relationships. A principle of law is the result of social experience, and the practical utility of knowledge of general principles lies in its expression of guidelines for the entire legal system and constructive action that guides the activity of the legislature.

On the other hand, general principles play an important role in the administration of justice, because those who have the power to apply the law must know not only the legal rules, but also its spirit, and must precisely define the spirit of the law. laws. In other words, in some cases legal principles supersede the regulatory standard. Finally, a judge cannot refuse to judge a case citing the absence of a legal text that could open the case, as he would be guilty of a judicial error and decide the case based on the principles of the law. (*Schutser J., 2020, pp. 45-49*)

The movement of legal principles leads to the unpredictability of coercive norms and the guarantee of right in guaranteeing agreement and conformity to laws.

Legal principles are derived from constitutional provisions or derived from the interpretation of other norms that have the function of guaranteeing the balance of the legal system with social evolution.

II. THE RIGHT TO DISCONNECT IN THE EU AND WORLDWIDE

The Guiding Principles, which cover all European legal systems, are intentionally broad in scope. (*Le Galès P, 2014, p. 303*) To the extent that the problem of excessive connectivity extends throughout Europe, it seems restrictive to limit the analysis to the EU. Both national legislation and EU legislative and policy documents are important sources of inspiration. The debates that took place during the drafting process highlights the particular difficulties accompanying a regulation on R2D in Europe. (*Jaworyska, K, 2022, p. 51-55*)

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Particularly challenging is the level to which the rules on disconnection should be applied and the people who should target them. Subsidiarity, articulation of sources and scope are therefore key issues to consider. (*Kochenov D., 2016, p. 11*)

The tension between a regulation that is broadly applicable and the need to adapt R2D to the specifics of each country, sector, and company to ensure effective and smooth enforcement is reflected in these Guidelines. Particular attention has been paid to carefully articulating the regulatory sources to combine flexibility and adaptability with clear protective principles. (*Kaiser, Lena, 2023, p.377-289*) Thus, while R2D is intended to be uniformly applied throughout Europe, the specific rules, and modalities for implementing R2D are mainly left to collective bargaining or, failing this option, to be regulated at company or employee level. The idea is to respond to the realities of each workplace. However, this does not prevent the introduction of clear rules to guarantee the effective implementation of R2D. The result is, in our view, a delicate balance between principles and implementation. (*Duez D., 2011, p. 90*)

In terms of scope, the Guidelines propose research and development that applies to all workers as defined in EU and national law. This is consistent with its goals: protecting the health of workers and achieving a better balance between work and private life. (*Pech, Kochenov, 2021, p. 146*) This assumes that R2D is not limited to certain categories of employees: it applies to all those who carry out their activities under conditions of control and subordination, which will critically include the false self-employed. On the other hand, we propose to include, with limitations, management staff when they are in a position comparable to that of workers. The inclusion of management staff is balanced by the adaptation of R2D to their particular position: even if a manager should enjoy R2D in principle in the same way as their subordinates, the scope, and terms of such a right will not be the same, due to the responsibilities and activities of the first. (*De Witte B, 2018, p. 227-242*)

Finally, special attention must be paid to the correspondence between the requirements and expectations imposed on employers and the reality on the ground. Thus, it is necessary to consider the size of the companies in question and to ensure that their obligations do not represent an excessive burden. The adaptation of their obligations, as well as the collective negotiations regarding R2D are likely to protect the interests of employers, regardless of their size and resources.

These Guiding Principles are the result of collective reflection and discussion, which led to certain proposals and choices. The overall aim is to reconcile the interests of all parties and, in particular, the imperatives of protection and flexibility, while guaranteeing a broad application of R2D to all those who need it. (*Giegerich, 2019, p. 61*)

It would also be an EU-wide regulatory intervention under the 2023 Digital European Declaration

The rights and principles for the digital decade, published by the EU Commission, Parliament and Council (European Declaration, 2023) are part of the statement that explicitly mentions the right to disconnection in its section on fair and just working conditions, where it is mentioned that the EU is committed to "ensuring that everyone will be able to disconnect and benefit from guarantees of work-life balance in a digital environment". The right to disconnect must be seen as a concrete measure to ensure that "[a]nyone has the right to fair, fair, healthy and safe working conditions and adequate protection in the digital environment at the physical workplace, regardless of their employment status, of their manner or duration"; as can be read in the statement, last but not least, this statement also offers interesting elements to be considered with the following guiding principles, especially on how to deal with data protection.

In addition, R2D, as a specific right, helps to define the boundaries between working time and rest time.

Respect for working time and its predictability is considered essential to ensure the health and safety of workers and their families. In this sense, the R2D aims to protect the health and safety of workers at work, as well as to achieve a better balance between professional life and private life, which, in turn, it has a gender impact.

A prerequisite for a correct understanding and application of the R2D, therefore, involves a consistency in the regulation of working time, including, in particular, maximum working hours, minimum rest periods and clear definitions of working arrangements, such as 'stand-by' and 'on-call' periods. In accordance with Directive 2003/88/EC, EU employees have the right to minimum health and safety requirements regarding certain aspects of the organization of working time. In this context, (*Anagnostou, D., Mungiu-Pippidi A., 2009, p. 44*) The Directive provides for daily rest breaks, weekly rest, maximum weekly working time and paid annual leave and regulates certain aspects of night work, shift work and work patterns. According to the Court of Justice of the European Union (CJEU), on-call time, in which a worker is obliged to be physically present in a place specified by the employer, must be regarded as "full working time [...], regardless of the fact that, during the periods of on-call time, the person in question is not continuously carrying out any professional activity". Waiting time, in the sense that a worker is obliged to be available to the employer and does not have the ability to freely dispose of their time, is also to be considered as working time. (*Smith, M., 2019, p. 561-576*).

Moreover, the CJEU interpreted the minimum rest periods as "community social rules of particular importance which every worker must benefit from as a minimum requirement to ensure the protection of his safety and health". Thus, Directive 2003/88/EC does not contain any express provision for a worker's R2D, nor does it require workers to be available outside working hours, during rest periods or other off-duty time, but it does provide for the right to a daily rest,

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weekly and yearly uninterrupted periods, during which the worker must not be touched or accessible (*EP, 2021*).

The guiding principles contained in this document seek to outline the main building blocks for a set of regulations on research and development across Europe, including at EU level. These Principles are the result of an analysis of existing regulations at the national level. To a greater extent, they also correspond to those underlying the European Parliament's proposal for 2021 (*EP, 2021*). However, on specific issues, the Guide to the Principles provides more extensive reflections or more comprehensive analyses, with national examples, including from non-EU states. The illustrations that accompany each Principle do everything possible to relate to the proposed new standards, to existing national practices. The national or subnational jurisdictions analyzed for this purpose are Belgium, France, (*Bertrand C., 2013, p. 6*) Germany, Greece, Ireland, Italy, Luxembourg, Spain, Sweden, Switzerland, Poland, and Portugal, some of which have no rules express laws in force regarding R2D. Outside of Europe, Canada (Ontario, Quebec) was also considered due to its innovative and recent position on legislation covering R2D.

For example, in Poland there is no specific regulation for R2D or any plan to adopt a specific regulation. Explicitly regulating R2D is perceived as unnecessary. The existing working time regulation is considered to adequately protect workers' rest time, including the possible negative effects of "wrong" use of digital tools (*Jaworyska, K, 2022, p. 51-55*). In addition, the widespread application of task-based work systems would hinder the implementation of R2D in Poland. Furthermore, a large proportion of employment in Poland is based on civil law contracts, with no statutory guarantees related to the right to rest. The German Working Time Act (*Arbeitszeitgesetz, ArbZG*) defines working time and rest time as mutually exclusive. Enshrining DD in law was debated as part of the global reflection between authorities and social partners on the future of work. However, more specific legislation appeared to be undesired, mainly because employers' organizations saw it as a brake on flexibility. There is some debate over the interpretation of the law and the question arises as to whether an employee's short connections outside of working hours should not be considered as such. The lack of precision in the Aegean is compensated in practice by the social partners: the big companies have taken measures (BMW, VW, Audi, Telekom) such as Codes of Conduct or disconnecting the servers at certain times. There is no legal provision in Switzerland that specifically addresses R2D. Although there have been many debates in the Federal Assembly over the past five years, none have resulted in a bill. A strong majority in the legislature as well as in executively, considers that the rules on working time are sufficient to enshrine R2D and that it is not necessary or desirable to regulate it specifically. On the contrary, a movement that supports a relaxation of working time, which would not consider as such the occasional connection of the employee outside the

working hours, has submitted several legislative initiatives, which will be followed by the Parliament in 2023. Ireland has no specific legislation. rules regarding R2D. (Abbott, F. M., 2005. P. 317) However, a code of practice has been adopted by the Workplace Relations Commission, which is an independent, statutory body established by law. The code of practice is recognized as not having the force of law but can be used to support claims by employees against their employer for non-compliance with working time and health and safety.

CONCLUSION

In the context of the massive digitization that gives both the employer and the employee unrestricted access to remote communication devices (telephone, email, social media platforms, etc.), but also the increase in the number of employees who carry out their work in a telework regime, the Parliament European adopted the Resolution of January 21, 2021 by which it addressed a series of recommendations to the European Commission regarding the need to regulate the employee's right to disconnect at the level of the member states.

When adopting the Resolution, the European Parliament took into account the fact that: - digitization and the use of digital tools presented countless disadvantages that created several ethical, legal and work challenges, such as the intensification of work and the extension of the work schedule, beyond the legally, thereby blurring the lines between professional and private life; - the increasing use of digital tools for professional purposes has led to the emergence of a new culture such as being "always connected", "always online" or "always on duty", which has the possibility violation of the fundamental rights of workers and fair working conditions, including fair salary, limitation of working time, balance between professional and personal life, physical and mental health, safety at work and well-being.

Unfortunately, the discussions did not take into account the exceptional professional situations, regulated by special laws, which require a different program, adaptable to the provisions of the administration of justice, or the rescue of fellow human beings, which require a permanent connection with specialist professionals, whose activity is based on the deadlines provided in the procedures and which, for example, relate to the freedom of the individual, to an efficient and timely investigation of the crime scene, as in cases of murder. Limiting the taking of custodial measures in time requires a quick and efficient preparation of the evidentiary material.

Or, these situations can be rewarded in an efficient legislative system, as a result of a Directive that would impose a legislative obligation on the member states.

Legislative regulation was also the initial suggestion, but the imposition of a principle of law would lead to dissatisfaction of these categories of professional employees, who would demand their right which would become fundamental.

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BIBLIOGRAFIE

1. Abbott, F. M., “The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health”, (AJIL) 2/2005, p. 317;
2. Anagnostou, D., Mungiu-Pippidi A., “Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter” EJIL 25/2014, 205;
3. Aust, A., “Kadi: Ignoring International Legal Obligations”, International Organizations Law Review 6/2009;
4. Smith, M. (2019). Staring into the abyss: A crisis of the rule of law in the EU. *European Law Journal*, 25(6), 561-576. <https://doi.org/10.1111/eulj.12345>;
5. De Witte B (2018) International law introduction. In: Schütze R (ed) Globalisation and governance. International problems, European solutions. Cambridge University Press, Cambridge, p 227–242;
6. Duez D (2011) La démocratie participative européenne. Du citoyen à la société civile organisée. In: Chenevière C, Duchenne G (eds) Les modes d’expression de la citoyenneté européenne. Presses universitaires de Louvain, Louvain-La-Neuve, p 90;
7. Kochenov D (2016) The acquis and its principles. The enforcement of the ‘Law’ versus the enforcement of ‘Values’ in the EU. In: Jakab A, Kochenov D (eds) The enforcement of EU law and values. Ensuring member states’ compliance. Oxford University Press, Oxford, p 11;
8. Le Galès P (2014) Gouvernance. In: Boussaguet L, Jacquot S, Ravinet P (eds) Dictionnaire des politiques publiques. Presses de Sciences Po, Paris, p 303;
9. Bertrand C (2013) La démocratie participative dans le système institutionnel de l’Union européenne, *Siècles* [en ligne], vol 37, p 6. <https://journals.openedition.org/siecles/1246>;
10. Plottka J, Müller M (2020) After a decade of EU pragmatism, it is time to talk about democracy again. *EURACTIV Media network*, Institut für Europäische Politik 8 December 2020 <https://www.euractiv.com/section/future-eu/opinion/after-a-decade-of-eu-pragmatism-it-is-time-to-talk-about-democracy-again/>
11. Von Ondarza N, Ålander M (2021) The conference on the future of Europe. Obstacles and opportunities to a European reform initiative that goes beyond crisis management. SWP Comment 2021/C 19, 17 March 2021, Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs. <https://www.swp-berlin.org/en/publication/the-conference-on-the-future-of-europe>
12. Schutser J (2020) Report on economic policies of the euro area 2020, 2020/2078(INI), point K available at: https://www.europarl.europa.eu/doceo/document/A-9-2020-0193_EN.html
13. Kaiser, Lena: *A New Chapter in the European Rule of Law Saga?: On the European Commission's attempt to mobilise Art. 2 TEU as a stand-alone*

provision, *VerfBlog*, 2023/3/04, <https://verfassungsblog.de/a-new-chapter-in-the-european-rule-of-law-saga/>, DOI: 10.17176/20230304-185110-0.

14. Pech/Kochenov, *Respect for Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case*, 2021, p. 146;

15. Giegerich, *Die Unabhängigkeit der Gerichte als Strukturvorgabe der Unionsverfassung und ihr effektiver Schutz vor autoritären Versuchungen in den Mitgliedstaaten*, in: ZEuS 22 (2019) p. 61 (95);

16. Ione Stuessy Wright; Lisa M. Nekhom (December 1978). Historical dictionary of Argentina. Scarecrow Press. ISBN 978-0-8108-1144-7., p. 458-498;

17. Riofrío Martínez-Villalba, Juan Carlos (2016-04). „SCOPE AND LIMITS OF THE PRINCIPLE OF PROPORTIONALITY”. *Revista chilena de derecho*. 43 (1): p. 283–309. doi:10.4067/S0718-34372016000100012. ISSN 0718-3437. Accesat în 20.06.2023;

18. Jaworyska, K, (2022) „Dreptul la deconectare”, *Studies on Labor Drept și Politică Socială*, 29, nr 1 p. 51-55;

19. *The Justice System Journal* Vol. 33, No. 2, Rule of Law (2012), pp. 131-135 (5 pages) Published By: National Center for State Courts



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