

Normative perspectives on quality of employment

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WP03
Tensions between
Quality and
Quantity of Jobs

Research questions

- How does international, European and comparative law frame the idea of quality of employment?
- How relevant is the political concept of “quality of employment” compared to the “ideal of social law”?
- How could the EU legal framework on quality of employment be fulfilled in order to suit with international and national legal standards?

Constructing a common research framework

One of the four axes of RECOWE concerns the tensions between quantity and quality of employment in Europe, and had led to a first work relating to the quality of the employment, and already published in Pie. P. Lang. Under the direction of A.-M. Guillen of S.-A. Dahl, this first collective volume analyzed under sociological, economic and politological angles, a series of conceptual, methodological and **substantial questions related to the quality of employment**

A simple statement has led to the proposal for a second work dedicated to the quality of employment: the concept, approached in the European Union in the field of the European Employment Strategy - emblematic of the soft law -, echoed the long European and national legal tradition of labor law. From the point of view of the lawyers, the idea of **quality of employment** is embedded in the roots of social law (labour and social security law), that appears with the industrial revolution. It covers a range of fundamental features of the employment relation, recognized in the international, European and national social law. It consequently appeared necessary to confront the political concept of “quality of employment” with the “idea of social law”, in order to evaluate the normative relevance of it.

Main research findings

The international approach of decent work (ILO) and a comparative perspective show that quality of employment is primarily a matter of fundamental substantial and subjective social rights. The framework of social rights still remains uncompleted at the EU level, compared to national traditions and national engagements in the sphere of the ILO and the Council of Europe (Strasbourg). This has led to fatal EU jurisprudence (Laval, Viking etc) in the field of labour law, undermining the construction of a genuine European social model in line with national and international fundamental social principles and rights. Quality of employment may not be anymore pursued at EU level within this framework. UE has to seek for new grounds in order to guarantee quality of employment and to build a genuine European social model.

- Establishing a catalogue of rights and freedoms that form “quality of employment in Europe”. This catalogue must include the 4 universally acknowledged social rights listed in the ILO Declaration, and has to be extended to the common agreed corpus of social rights in the EU (on the basis of the EU “acquis social”, of the Charter of fundamental rights of EU and of the relevant instruments of the Council of Europe). This catalogue has to constitute the “vertebral column” of a EU strategy of quality of employment, supplemented by soft law.

- all the new possibilities offered by the Lisbon Treaty must be exploited to ensure the efficiency of social rights: implementation of the charter of fundamental rights, EU

Publication output

Normative perspectives on quality of employment, Borelli, Silvia & Vielle, Pascale (Dir.), Brussels, Pie P. Lang, 2011 (to be published)

The book is subdivided in three parts. The first, theoretical, points out the references which found and legitimate social law as a privileged instrument of quality of employment. The concept of “decent work” developed by the International Labor Organization, the concept of “capabilities” of Amartya SEN, the major work of Alain Supiot: “Critique du droit du travail”, and even the social doctrines of the Church, hold an essential place in the installation of a normative framework of the quality of employment. The work returns on these theoretical bases, evaluates their contribution to the development of the social law, and analyzes the conformity of the political and legal European framework European to these fundamental norms.

A second part returns on some of the most critical aspects of the quality of employment: need for a good circumscription of the concepts of employer, worker, and trade-union freedom - recognized by the ILO as the most fundamental of the social rights. Without precise and clear legal definition of these concepts, the quality of employment is aimed to remain dead letter. However the evolution of the organization and the forms of employment progressively blurred the contours of the concepts of employer and of worker, on the one hand, and the European law omitted to recognize trade-union freedom as a basic right, at the same level as certain economic freedoms and rights, on the other. This second part shows the dead ends to which a compartmental - if not lacunar - European legal framework may carry out. It proposes concrete tracks to consolidate the national and international traditions of social Law in the Union.

Lastly, the third part analyzes under various angles two substantial dimensions of the quality of employment: the articulation of employment with social protection, on the one hand, and the prohibition of discrimination, on the other hand. Through these two contrasted examples, it shows the interest of a legal and qualitative implementation of the quality of employment, rather than a simple monitoring on the basis of indicators in the sole context of the European Employment Strategy.

Worked out in an interdisciplinary and international context, the work pursues a **triple ambition**. For the first time in the contemporary debate, a scientific work takes stock of the legal and normative apprehension of the quality of employment in Europe. Moreover, this work aims at offering the conditions of an interdisciplinary dialog enriched by a legal approach. It is indeed a question of making it possible to a public of non-lawyers to determine the importance of the law in the debate on quality of the employment - which until now has given little place to a legal and normative approach -, and to adapt the concepts and useful tools likely to make progress the scientific reflection. Lastly, the work proposes concrete and realistic tracks of improvement of the European social law.

The work endorses a **qualitative and normative posture**. It aims at pointing out the cultural, historical, and legal context in which fits the quality of employment, and to formulate concrete tracks to reinforce the European social law in line with the concepts exposed within the framework of the European Employment Strategy, but in the respect of the national and international legal traditions.

adhesion to the European convention of human rights but also to the ILO - which leads to automatic adhesion to fundamental social rights -, to the European social charter of the Council of Europe, and other relevant international instruments (including CEDAW and others at the UN level).

- “Decent work” at the ILO level shows the efficiency of a soft law strategy build on the roots of fundamental social rights => necessity to review EES and OMC in line with the rights that are recognized at EU level. These rights must shape the list of criteria of “quality of employment”, but also the way they are conceived through indicators (and not the reverse).

- The recent revision of economic governance in Europe shows the limits of a social soft law, which from now on is going to be more and more shaped by economic considerations and objectives. If EU still pretends to build a “European social model”, it has to immunize “quality of employment” from the economic governance. A quality of employment strategy anchored in a fundamental rights framework would contribute to this autonomisation of the social field and would suit with the new article 9 UEFT (social horizontal clause) and the “capabilities” approach.

- art. 9 UEFT (horizontal social clause) has to be fully implemented in order to assess the impact of EU policies on quality of employment.