DROIT DU TRAVAIL
LABOUR LAW

FLEXIBILISATION OF WORKING LIFE. POTENTIALITIES AND CHALLENGES FOR LABOUR LAW

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I. INTRODUCTION

While the analysis of Italian industrial relations of the '90s can be considered as one of the most stimulating areas of research, it is also one of the most difficult. This is because at least six factors of enormous importance need to be taken into account in the field of labour law: a) the legislation of 1990 on striking in essential services; b) the collective redundancies legislation of 1991; c) the labour market reform Acts of 1991 and 1997; d) the Tripartite Framework Agreements of 1992 and 1993 on collective bargaining structure and workers' representative bodies at plant level; e) the public sector employment reform of 1993; f) the legislation on temporary and atypical work of 1993-95 and 1997.

It is self-evident that labour relations have been marked by profound changes over the past decade. These have been made possible above all by the commitment of traditional trade unions on the employees' side for a more collective bargaining attitude towards government reform programmes. These latter have been promoted by two main factors first of all the European Community's influence at the economic and legal level (this is the case of the public sector employment reform, aimed at cutting down public expenditure, and of the Tripartite Framework Agreements, also aimed at lowering inflation rates through structured collective bargaining and collective redundancies); secondly, the employment crisis, partly due to the low flexibility of the labour market and labour law instruments - this was, and still is, the main complaint coming from employers.

Trade unions have also changed enormously over the past ten years. On the employees' side, the traditional organisations - CGIL, CISL, and UIL - have found themselves in growing competition with the so called autonomous unions, which have been favoured, by the negative results they have achieved through collective agreements during periods of economic crisis, where a lowering of pay levels has been accepted to avoid massive colective dismissal. On the employers' side,

the end of State involvement in the economy and the subsequent privatisation of public enterprises has led to the progressive disappearance of public employers' organisations, most of which have now joined the Confindustria, which represents almost all the private employers.

II. STRUCTURE OF INDUSTRIAL RELATIONS

1. Organisational representatives of employees

1.1. Different components of Italian trade unionism

Italian trade unionism is composed of four different elements. First, the so-called *"sindacalismo confederale"*, represented by the above-mentioned unions CGIL, CISL and UIL, which is traditionally composed of three confederations of various branch organisations - in other words, it is a federation of associations; each of these confederations has a specific political inspiration - the CGIL is on the radical left, the CISL is centre-oriented, the UIL is socialdemocrat - and is linked to a greater or lesser degree with the political parties; for this reason too, they are considered by the State as reliable counterparts in social bargaining.

The second element is represented by the autonomous organisations; these are traditionally right-wing. They are in diametric opposition to the CGIL, CISL, and UIL. The most important of these are the CISNAL, CISAL, CONFSAL, and in 1994 they promoted the creation of ISA with the aim of defining guidelines for common action. It should also be pointed out that, due to the radical political changes which the political system has undergone since 1994, the CISNAL - which has strong links with the new right-wing party *Alleanza Nazionale* - has also been accepted by the government as a reliable counterpart for bargaining. The membership of the CISAL and CONFSAL comes largely from the public sector; here, despite the important role they have played in the above-mentioned reform, the CGIL, CISL and UIL have not been very successful in attracting a high membership.

The third important area is represented by the craft and professional organisations: while the first group has its roots in the trade union movement, the second has developed only recently - for example, this is the case of the managers' union, the CIDA.

The fourth group, to which belong the so-called Cobas, is also recent, and was formed by the extreme left-wing component of the CGIL, which left the latter at the beginning of this decade. Craft and professional unions do not seem to have any definite political preferences on the contrary, the Cobas identify themselves with the neo-communst party, *Rifondazione.*

1.2. Union membership and unionisation rates in the various sectors of the labour market

In this section I shall present some data concerning the development of thirteen years of trade union membership, its composition and unionisation rates. All the figures come from a report - " *Le relazioni sindacali In Italia 1993/94* (Trade union relations in Italy in 1993/ 1994) - which is issue and aimly by the CESOS - *Centro di studi economici sociali e sindacali,* a research unit founded by CISL - under the patronage of the Italian Labour and Economic Council - CNEL, a constitutional body, in which both employers and employees are represented. Thus, these figures can be considered neutral.

Despite a general trend of growth in the medium period (an increase of 17.64% in membership from 1980-1993), the major Italian trade unions have faced a dramatic loss of members among active workers (minus 19.71% 1980-1993); this has been accompanied by a growth in the membership of pensioners (from 18.1% in 1980 to 43.1% in 1993) and a fall in active workers (from 81.9% in 1980 to 55.9% in 1993), with a subsequent decrease in the unionisation rate as far as the employed are concerned (from 49% in 1980 to 38.52 in 1993). The only sector in which the CGIL, CISL and UIL seem to have been able to counteract this negative trend is that of agriculture, where more than 93 % of the workers are members.

YEARS	CGIL		CISL		UIL		TOTAL	
	Members	diff. %	Members	diff. %	Members	diff. %	Members	diff. %
1980	4.599.050		3.059.845		1.346.900		9.005.795	
1981	4.595.011	-0,09	2.988.813	-2,32	1.357.290	0,77	8.941.114	-0,72
1982	4.576.020	-0,41	2.976.880	-0,40	1.358.004	0,05	8.910.904	-0,34
1983	4.556.052	-0,44	2.953.411	-0,79	1.351.514	-0,48	8.860.977	-0,56
1984	4.546.335	-0,21	3.097.231	4,87	1.344.460	-0,52	8.988.026	1,43
1985	4.592.014	1,00	2.953.095	-4,65	1.306.250	-2,84	8.851.359	-1,52
1986	4.647.038	1,20	2.975.482	0,76	1.305.682	-0,04	8.928.202	0,87
1987	4.743.036	2,07	3.080.019	3,51	1.343.716	2,91	9.166.771	2,67
1988	4.867.406	2,62	3.288.279	6,76	1.398.071	4,04	9.553.756	4,22
1989	5.026.851	3,28	3.379.028	2,76	1.439.216	2,94	9.845.095	3,05
1990	5.150.376	2,46	3.508.391	3,83	1.485.758	3,23	10.144.525	3,04
1991	5.221.691	1,38	3.657.116	4,24	1.524.136	2,58	10.402.943	2,55
1992	5.231.325	0,18	3.796.986	3,82	1.571.844	3,13	10.600.155	1,90
1993	5.236.571	0,10	3.769.242	-0,73	1.588.447	1,06	10.594.260	-0,06
1983-1993	637.521	13,86	709.397	23,18	241.547	17,93	1.588.465	17,64

Fig. 1: CGIL, CISL, UIL Members (source: CESOS, 1994)

YEARS	CGIL		CISL		UIL		TOTAL	
	Members	diff. %	Members	diff. %	Members	diff. %	Members	diff. %
1980	3.495.537		2.611.710		1.268.823		7.376.070	
1981	3.398.404	-2,78	2.476.342	-5,07	1.269.763	0,07	7.147.509	-3,10
1982	3.277.981	-3,54	2.406.378	-2,04	1.255.065	-1,16	6.939.424	-2,91
1983	3.145.820	-4,03	2.356.922	-2,06	1.232.669	-1,78	6.735.411	-2,94
1984	3.042.423	-3,29	2.414.304	2,43	1.212.129	-1,67	6.668.856	-0,99
1985	2.951.342	-2,99	2.204.060	-8,71	1.159.519	-4,34	6.314.921	-5,31
1986	2.837.975	-3,84	2.124.542	-3,61	1.144.895	-1,26	6.107.412	-3,29
1987	2.782.119	-1,97	2.114.899	-0,45	1.163.475	1,62	6.060.493	-0,77
1988	2.747.013	-1,26	2.192.865	3,69	1.194.298	2,65	6.134.176	1,22
1989	2.732.191	-0,54	2.162.508	-1,38	1.199.111	0,40	6.093.810	-0,66
1990	2.739.700	0,27	2.191.977	1,36	1.217.682	1,55	6.149.359	0,91
1991	2.720.276	-0,71	2.242.965	2,33	1.231.720	1,15	6.194.961	0,74
1992	2.655.041	-2,40	2.277.178	1,53	1.251.202	1,58	6.183.421	-0,19
1993	2.540.437	-4,32	2.160.001	-4,97	1.218.106	-2,65	5.922.544	-4,22
1983-1993	-995.100	-27,32	-447.709	-17,14	-50.717	-4,00	-1.453.526	-19,71

Fig. 2: Members CGIL, CISL, UIL active workers (source: CESOS, 1994)

YEARS	CGIL		CISL		UIL		TOTAL		Union Rate	
	Members	diff. %	Members	diff. %	Members	diff. %	Members	diff. %	ISTAT	Treasury
1980	3.484.004		2.507.641		1.145.910		7.137.555		49,00	48,60
1981	3.387.040	-2,80	2.371.471	-5,40	1.142.756	-0,30	6.901.267	-3,30	47,40	47,00
1982	3.266.816	-3,50	2.286.728	-3,60	1.134.376	-0,70	6.687.920	-3,10	46,20	45,60
1983	3.134.011	-4,10	2.224.112	-2,70	1.121.054	-1,20	6.479.177	-3,10	45,20	44,50
1984	3.030.323	-3,30	2.261.668	1,70	1.114.040	-0,60	6.405.940	-1,10	44,90	44,30
1985	2.939.370	-3,00	2.055.663	9,10	1.064.110	-4,50	6.059.143	-5,40	42,00	41,40
1986	2.825.273	-3,90	1.967.105	-4,30	1.046.086	-1,70	5.838.464	3,60	40,30	39,70
1987	2.768.384	-2,00	1.951.994	-0,80	1.069.024	2,20	5.789.402	-0,80	39,90	39,40
1988	2.733.017	-1,30	2.018.463	3,40	1.099.727	2,90	5.815.207	1,10	40,00	39,10
1989	2.717.567	-0,60	1.993.706	-1,20	1.104.166	0,40	5.815.439	-0,60	9,50	38,90
1990	2.724.802	-0,30	2.023.802	1,50	1.123.787	1,80	5.872.391	1,00	39,20	38,60
1991	2.706.214	-0,70	2.070.880	2,30	1.136.175	1,10	5.913.269	0,70	39,10	38,20
1992	2.641.782	-2,38	2.107.060	1,75	1.157.250	1,85	5.906.092	-0,12	39,14	38,39
1993	2.528.565	4,29	2.007.015	-4,75	1.125.376	-2,75	5.660.956	-1,15	38,52	38,69
1983-1993	-955.439	-27,42	-500.626	-19,96	-20.534	-1,79	-1.476.599	-20,69		

Fig. 3: CGIL, CISL, UIL employed members (source: CESOS, 1994)

Members status	CGIL		CISL		UIL		TOTAL	
	Members	diff. %92	Members	diff. %92	Members	diff. %92	Members	diff. %92
	1980%	1993%	1980%	1993%	1980%	1993%	1980%	1993%
Active	76,0	48,51	85,4	57,41	94,2	76,96	81,9	55,90
Employed	75,8	48,29	82,0	53,25	85,1	70,85	79,3	53,43
Pensioner	24,0	50,92	14,6	40,91	5,8	22,49	18,1	43,10

Fig. 4: CGIL, CISL, UIL, Members' status (source:CESOS, 1994)

Sectors	CGIL		CISI		UIL		Total		U. Rate ISTAT
	Members	diff. % 92	Members	diff. % 92	Members	diff. % 92	Members	diff. % 92	
Agricolture	316.800	-3,21	256.772	-4,11	135.679	1,25	709.251	-2,72	93,69
Industry	1.219.384	-5,12	685.581	-5,71	385.509	-6,71	2.290.474	-5,48	41,89
Services	510.874	-2,03	461.085	-4,28	271.771	-0,93	1.243.730	-2,64	22,79
Public Sect.	481.507	-5,17	603.577	-4,27	332.417	-1,67	1.417.501	-3,98	47,01
Tot. empl.	2.528.565	-4,29	2.007.015	-4,75	1.125.376	-2,75	5.660.956	-4,15	38,52
Tot. selfe.	11.872	-10,46	156.986	-7,72	92.730	-1,30	261.588	-5,67	
Pension.	2.666.463	4,74	1.542.086	5,19	357.313	11,44	4.656.862	5,39	
Unempl.	29.671	-2,33	63.155	17,35	13.028		105.854	25,72	
Total	5.236.571	0,10	3.769.242	0,73	1.588.447	1,05	10.594.260	-0,06	

Fig. 5: CGIL, CISL, UIL Members' per sector 1993 (source: CESOS, 1994)

Admin. Branch	CGIL		CISL		UIL		CISNAL		CISAL		CONFSAL		Total
	Mem.	%	Mem.	%	Mem.	%	Mem.	%	Mem.	%	Mem.	%	
Loc. Gov.	112.622	33,83	116.897	35,11	55.928	16,80	4.716	1,42	13.003	3,91	6.586	1,98	332.928
Health C.	88.272	28,83	108.850	35,54	54.693	17,86	3.255	1,06	13.182	4,30	4.801	1,57	306.236
University	7.302	31,00	9.612	40,75	3.519	14,92	45	0,19	487	2,06	927	3,93	25.585
Education	70.445	19,64	135.525	37,79	32.345	3,02	1.268	0,35	786	0,22	104.843	29,23	358.661
Research	1.665	29,24	1.794	31,51	1.380	24,24	48	0,84	99	1,74	49	0,86	5.694
Central G.	22.123	18,60	40.765	34,27	24.055	20,22	1.331	1,12	3.292	2,77	15.626	13,14	118.959
Enterpr.	13.779	37,06	14.405	38,74	5.084	13,58	461	1,24	1.142	3,07	92	0,25	37.182
Noprofit.	8.344	16,30	19.076	37,27	7.904	15,44	553	1,08	8.921	17,43	498	0,97	51.179
Total	324.552	22,20	446.924	36,20	184.872	14,90	11.677	0,94	40.913	3,31	133.422	10,80	1.234.424

Fig. 6: CGIL, CISL, UIL and autonomus Trade Unions Members (source: Nuova rassegna sindacale, 1994)

1.3. Decision-making structure within trade unions

In general it is possible to state that traditional Italian trade unionism is highly centralised, its decision-making processes being left mainly to national collegial bodies at the confederate level, elected by general congresses of delegates. In particular, as far as the major trade unions - the CGIL, CISL and UIL - are concerned, we can distinguish between political, executive and consultative bodies at the confederate level, the first usually being the Congress, General Council and Political Committee, the second the Presidium and Executive Committee, and the third the National assembly of delegates. Furthermore, at the same level, a crucial role is played by a monocratic body, the Secretary General, elected by the Congress, who is mainly responsible for any political action. The Confederate structure has extensions at the regional and provincial levels. Since, as stated above, the CGIL, CISL and UIL are a confederation of federations, each of them has its own monocratic and collegial bodies inspired by the confederate structure. This means the two different structures, confederate and federate, are both organised along vertical and horizontal lines.

In such a framework it is clear that decision-making is highly bureaucratic and no space is left to individual initiatives.

Since the attempts made during the 70s and the 80s to establish some permanent unitary bodies at the inter-confederate level were unsuccessful, now the CGIL, CISL, and UIL act together for political and bargaining purposes, although without any structural or formal links. This means that collective agreements have to be signed separately by union representatives in order for them to be applicable to their members.

2. Employers' organisations

The main employers' organisation is the Confindustria, and it is also a confederation of federations; this has become even more true from 1994 when - due to the progressive privatisation of public enterprises, above all in the energy and food sectors - the associations ASAP and Intersind, which were so important in the 80s underwent significant transformations, the former disappearing in 1993 and the latter joining Confindustria as a federation. As far as its structure is concerned, the Confindustria is formed by more than a hundred provincial associations - the so called *Unioni Industriali,* eighteen regional federations, more than a hundred national branch associations and more than forty minor associations which belong to the above-mentioned branches. These developments have led to a signfficant growth in membership and in political importance: the Confindustria, which was once one of the government's favourite partners in trilateral agreements is now "the" partner, acting on behalf of employers.

It is composed of three monocratic political bodies - the President, Vice-Presidents and Consultants, two executive bodies - Presidium and Board, and an administrative structure of a Director General, Vice-Director General and several Central Directors. While at the

confederate level the highly centralised and bureaucratic structure does not allow single employers any space for individual initiatives, at the provincial level, the *Unioni Industriali* also seem to act in an independent way within their sphere of competence.

The Confindustria is mainly formed by associations of employers in industry and services: those in agriculture, trade and handicrafts have their OWM organisations, i.e. Confagricoltura and Coldiretti, Confcommercio and Confesercenti, Confartigianato.

One last comment needs to be made with regard to the public sector after the 1993 Reform. Given that conditions for emplayment are now ruled by collective agreements in this sector too, an independent administrative body has been created in order to represent administrations as employers within collective bargaining procedures: nevertheless, Aran - *Agenzia per la rappresentanza negoziale* - should not be seen as an employers' organisation as such, since it functions only for bargaining purposes, without any associative structure.

3. Bargaining structures and policies

The above mentioned Tripartite Framework Agreements of 1992 and 1993, signed by the government, CGIL, CISL, UIL and Confindustria, have effected profound changes on Italian industrial relations: in particular, that of July 1993 should be seen as a milestone for all legal and contractual developments in recent labour law. It is based on four main pillars: a) the withdrawal of the automatic system of adjustment of wages according to the inflation rate; b) the reform of the collective bargaining structure, now based on two kind of agreements, national per branch and integrative at local or plant level; c) collective redundancies management criteria; d) the flexibilisation of employment as a guideline for the actions of employers' and employees' organisations.

As far as a collective bargaining structure is concerned, important provisions refer to competences of the two levels, their relationship, and the timing of collective bargaining rounds. At national level, the basics of the employment contract are defined, such as minimum wages per branch, working time, holidays, disciplinary rules etc. and duties concerning collective parties, such as the exercise of trade union rights, occupational pension schemes, and matters to be dealt with by integrative agreements. The first part - which is economic - lasts for two years, the second and procedural one, for four. Integrative bargaining may carried out only with regard to the topics defined by national agreements: no overlapping is allowed, in relation to the integrative level, above all with regard to productivity incentives. Where the parties do not reach a new economic agreement according to the time stated, employers are obliged to pay, after three months, an additional lump sum which consists m a percentage of the expected inflation rate. This mechanism is aimed at avoiding long-lasting bargaining rounds which have characterised Italian industrial relations in the recent past, with negative consequences on workers' wages and social peace.

From the picture of the trade union movement it follows that strong co-ordination usually inspires collective bargaining which is carried out by CGIL, CISL and UIL, which is contributed to by the growing importance of the Confindustria as the employers' representative. This means that within the same branch an equal minimum wage is due regardless of employmont *status:* productivity incentive may be provided at local or plant level. Furthermore, Italian legislation does not allow for gender discrimination also from an economic point of view.

In 1996, to cope with a growing number of employers who did not apply the wage conditions laid down by the national branch agreements to their workers, Act n°. 608 provided for the temporary suspension of the contribution duty on social insurance for those employers who bargained a provincial agreement in order to reach national wage conditions.

4. *Rule- makers in the field of employment matters*

The above discussion shows a clear trend towards a tripartite management of industrial relations. It was indeed these actors, i.e. the government, employers' organisations and trade unions, which carried out the most important political deal of the '90s: economic growth, an increase in employment and labour

flexibilisation are the components of an unstable mix which seems however to be successful from the legal and contractual point of view.

II. THE RECRUITMENT AND STRUCTURE OF THE WORKFORCE

1. Recent developments in placement techniques

There were also radical changes in the field of manpower recruitment during the '90s in Italy. Although it is not possible to talk about a total liberalisation of labour demand and supply, the intervention of public powers has become increasingly less frequent in regard to many areas. The obsolete legislation laid down in 1949 - which allowed for State control of manpower recruitment, has been gradually disactivated. it is still in force as far as workers' compulsory enrolment into placement lists is concerned, but the pillars on which it was built no longer exist. Nowadays, employers can get directly in touch with potential workers without passing through the placement office, whereas previously they had to place a request for the number of workers and the type of skill needed. This has taken more than 25 years, starting from the 1970 legislation, in which for the first time nominative instead of numerical requests to placement offices were allowed as an exception, including the 1987 and 1991 Acts, according to which nominative requests became the rule, with the final approval of Act no. 608, 1997, which gives the possibility of contracting first and then, within five days, of informing the placement office.

The public monopoly of placement deprived trade unions of one of their traditional instruments of intervention on the labour market: it was in this direction that the 1949 legislation had operated, inspired by ILO conventions on the matter and also by a certain feeling of mistrust on the part of the government towards trade unions. Only in recent years have both employees' and employers' representatives been called on to take part in the placement mechanism inside public bodies with consultative powers. Some Italian scholars argue that this restricted role constitutes one of the reasons for the trade unions' support for insiders of the labour market. It can certainly be said that the trade unions have been operating in a defensive way, protecting employed people rather than trying to bring outsiders into the labour market.

2. Individual freedom to contract for flexibility

Fixed-term contracts, part-time and temporary work - which constitute at the present time basic statutory instruments of flexibility - are subject to many legal provisions as far as the possibility for individual employers or workers to use them is concerned. In many cases, statutory provisions directly provide for strict conditions, the violation of which leads to the transformation of temporary employment into permanent positions - this is the case of fixed-term contracts and of temporary work - and the conditions of which can be modified only by collective bargaining carried out by the most representative trade unions.

Furthermore, as for temporary workers, limits are provided as far as their employment is concerned; for example, in low skilled jobs it is not allowed to substitute workers on strike, in case the user has had recourse in the previous 12 months to collective dismissal affecting the sector in which temporary workers should be employed, in case the user is operating within the framework and the support of Loan Integration Found in the same sector.

In some cases, previous collective agreements are required by the law in order to define percentage limits, at national or local level, as for temporary workers; in other cases - such as part-time contracts - employers have agreed to bargain percentage limits in order to make these contracts effective. Interestingly, the trade unions work for many years strongly opposed to the introduction of part-time contracts, which were introduced for the first time in 1983. In 1997 legislation was passed guaranteeing relief on contributions for employers hiring part-time workers who are in peculiar conditions.

Lastly, users have to inform trade unions representatives at the plant level about the reasons for temporary workers' employment, before the hiring contract is signed.

3. New statutory rules concerning flexibility

3.1. Temporary work

Important changes have also taken place within the framework of employment exchange as such: although the constitution of exchange agencies is still prohibited by law - Act no. 1369/ 1960 - Act no. 196/1997 recognises and allows temporary work in Italy also. According to this provision, workers, employed either as fixed-term or permanently by a hiring-out firm, become part of the workforce of a third-party user, being subjected to the managerial authority of that third party, without being paid by it. A copy of the hiring-out contract must be transmitted to the competent placement office within 10 days of signing.

Since this legislation was laid down in June 1997, it will be possible at this stage only to briefly describe some basic aspects, its implementation being far from coming. Hiring-out activity can be carried out by firms which are authorised - initially for two years - by the Ministry of Labour, after having checkec their economic and organisational credibility. Equal treatment between permanent employees and temporary workers has to be guaranteed by the user. National collective bargaining at branch levels will provide more detailed regulations concerning cases in which temporary work may be used, productivity wages and professional training. Sanctions under criminal law laid down by 1960 legislation referring to private employment exchange agencies still applyies to those user firms which contract with nonauthorised hiring-out firms. A temporary worker whose contract has not been laid down in writing, has to be considered as permanently employed by the user; the same happens if the worker is employed by the same user for more than 20 days after the termination of his contract.

3.2. Labour market policy work (LMPW)

Although the first legislation on unemployed refers to 1949, any effectiveness in this field has been achieved only recently, starting from 1991. Two main streams can be identified in this sector, the first relating to the unemployed with no social security protection, the second to the unemployed who are entitled to some kind of benefits; 1997 legislation provides LMPW for those whose social security coverage has expired.

3.2.1. LMPW for the unemployed with no social security protection. - Four different kinds of LMPW have been laid down by legislation between 1949 and 1997: a) training camps for the unemployed in the field of forest care and public facilities buildings, according to the statutory provisions of 1949. Important use of these instruments has been made since 1977, when competences regarding professional training passed from the State to regional and local authorities; accordingly, training camps have lost their independent role and can instead be seen as work done voluntarily or in fixed-term employment relationships with local administrative bodies; b) LMPW for the young unemployed implemented for the first time in 1988. In its last formulation - 1994 - this instrument referred to young people aged between 19 and 35 who were looking for their first jobs in highly depressed areas: the regional authorities and the Ministry of Labour are called on to establish LMPW projects the performance of which is the condition of entitlement for social security payment fifty per cent of which is paid by the State and fifty by the institution, and in which no employment relationship is envisaged. Also in this case institutions that are involved in, LMPW are obliged to provide professional training to the young; c) LMPW for the unemployed who, despite their enrolment on mobility lists, are not entitled to mobility grants. This provision refers to the 1991 Act, which provides for collective redundancies management in the case of the failure to establish a restructuring programme supported by the Extraordinary Earnings Integration Fund, or in the case of collective dismissal decided unilaterally by the employer. The above-mentioned mobility grant is not due to Workers unless they have a certain work seniority or to those whose former employer was not entitled for Extraordinary Earnings Integration Fund. In these cases the same provisions of young unemployed should be applied; d) Prolongation of social security benefits in the case of an LMPW project. This is the case of the termination of an integrative earning benefit which may be further provided where an LMPW project is proposed by the same employer or by an administrative body. It could happen that workers will be asked to undertake activities which are not of public interest but

instead still refer to their former employer; in this case they will not be paid by him but by the State.

3.2.2. LMPW for unemployed with social security protection. - The unemployed with social security protection have to be considered, for this purpose, as those who are entitled to an integrative earning benefit or to a mobility grant, i. e. as workers whose employers have been given support by the Extraordinary Earnings Integration Fund for temporary or structural crisis or as workers who have been fired by an employer who could have been entitled to support by Extraordinary Earnings Integration Fund. Briefly, these workers may be asked to undertake LMPW in return for the benefits they receive. If the worker refuses to perform this work, he loses his social security benefit. Until 1991, no additional sum to the benefit was due in the case of acceptance: it was this lack of incentive, and the long-lasting duration of earning integration together with the practical ineffectiveness of the benefit-forfeiture provision, which ended by rendering the instrument inoperational. Starting from 1991, it became increasingly attractive because o the provisions of further incentives and the fixed-term lengths of the treatment. In 1996 more than 54,000 workers were involved in LMPW in constancy of social security benefits.

If, on the one hand, it is very clear that LMPW will play an important role in the future, on the other, it is even clearer that the present legislation is too fragmented to enhance this growth: in this regard, in 1997 Parliament delegated the government to enact legislation that would bring a order to this field. Among the guidelines that the govermnent is obliged to follow an interesting one refers to the sectors in which LMPW have to be implemented,such as child, elderly and disabled care, environment and fine arts protection, waste recycling, public parks care, etc.

3.3. Contract work and subcontracting

Contract work and subcontracting are currently less important under the perspective of labour law, since, on the one hand, both are widely used by large enterprises to undertake specific, delimited activities at a lower cost and, on the other, only mere manpower provider, without his own productive structure is persecuted under criminal law according to Act no. 1369/1960.

4. Structure of workforce: recent trends

Since figures on temporary work will he only available in the future, I believe that two data are worth considering as far as the structure of the Italian worlkforce is concerned: first of all, the growing percentage of self-employed, who now represent more than 28% of the workforce and, secondly, the low level of part-timers in comparison with European Union standards (12% vs. 31%). Of this 12%, in 1995, more than 70% were women.

As mentioned above, in 1996, more than 54,000 workers were involved in LMPW: some economists estimate that 200,000 unemployed people were prepared to accept such an activity.

III. EMPLOYMENT PROTECION

Employment protection in Italy is founded on legal provisions which have remote roots within the collective bargaining procedures of the '50s and '60s. Its current shape derives from changes implemented in the early '90s on both individual and collective dismissal. The result of this has been, first of all, that dismissal must be motivated, grounded on subjective or objective causes, and, secondly, that of a higher level of substantive protection for the worker. This higher level can be related both to the strictness of the statutory provisions as well as to the concrete attitude shown by judges in favouring workers when deciding about the fairness of the dismissal.

Without going deeper into details, I will attempt to give an updated picture of the extremely complex system which results from at least four main legal provisions dated 1966, 1970, 1990 and 1991.

1. Employment protection law and employers' size

1.1. Protection against individual dismissal

From the point of view of individual dismissal, the Italian system has to be qualified as "two-track", depending on the kind of remedy which is at the worker's disposal in the case of dismissal judged as unmotivated by the courts. This may simply be a monetary remedy, which allows the employer to choose between signing a new contract with the unfairly dismissed

worker and paying him a lumpsum, or it may oblige the employer to readmit the worker to his workplace, and also oblige the employer to pay the worker's wage until he obey the Court's decision. This latter remedy - called reintegration, which can clearly be considered as the most effective - is applied according to the emplover's size taking into account the point of view of the single production units by which the firm is organised as well as a general point of view: production unit must he composed of more than 15 workers - the same requirement applying to different units with more than 15 workers in the same Common. In general, the same employer must employ more than 60 workers.

1.2. Protection against collective dismissal

Employment protection against collective dismissal - recognised for the first time by a statutory provision of 1991 - is based, first of all, on a strict objective definition which requires that at least five workers be dismissed within a certain period of time on the grounds of reduction or transformation of working activity by a firm, which can he defined as an enterprise under civil law, and employs more than 16 workers in each production unit. Only when all these requirements are fulfilled can workers who have been unjustifiably dismissed avail themselves of the remedy of reintegration. It is clear that according to Italian legislation there is a clear link between collective dismissal and redundancy dismissal.

2. Burden of proof

According to Italian legislation, the burden of proof concerning the existence of motivations required by the law must always lie on the employer. This provision can be referred to general principles laid down by Italian civil law in relation to the burden of proof, since the employer's dismissal power comes under the requirement of motivation. No change is foreseeable at present.

3. The participation of administrative agencies and trade unions in collective dismissal procedures

In this field too, the main changes can be dated to 1991, when Act n°. 223 was enforced to rule on collective dismissal. Following the EC Directive that it was aimed at implementing, Act no. 223 provided for the participation of both administrative agencies and trade unions in dismissal proceedings, with labour offices charged with attempting a further mediation, within 30 days, in the case whereby consultation between the employer and the trade union failed. It is worth devoting a bit of space to the nature of trade union intervention in employers' decision-making: their role is closely related to the investigation and suggestion of suitable alternative solutions, aimed at avoiding collective dismissal by rethinking the labour organisation of the firm or by promoting the reshaping of the employment relationships of those workers who will not have a place in the new enterprise set-up. This means not just playing a game in defence, checking the correct exercise of entrepreneurial powers and challenging this through the courts in the case of abuses, but an open attitude, inspired by flexibility issues and instruments. To this end, Act no. 223 exceptionally allows most representative trade unions to negotiate a worsening in conditions of employment and pay level in order to not to lose working places: such an agreement would usually not be void if bargained both by the single worker, and by the trade unions - although these must he the most representative ones, according to art. 2103 of the Civil Code, which prohibits the employer from lowering the employment status provided by contract to the worker. This is the reason why, in opening consultative proceedings, the employer has to inform the trade union about the number, employment levels and skills of the worker he intends to fire. Collective bargaining may also lead to other and less radical results, such as the transformation of full-time to part-time employment, or a reduction of working time through so-called solidarity agreements, but may also end in a negative way, which allows employers to carry out collective dismissal.

4. Employees' priority ranking in redundancy dismissal

Italian legislation provides a particular solution to the problem of priority ranking in redundancy dismissal, leaving to collective bargaining the responsibility of defining criteria for the choice of workers to be fired, using legal intervention on the basis of the subsidiarity

principle only in the case of lack or failure of trade union action. It is, in addition, interesting to note that legally defined criteria simple recall those laid dow by interconfederate collective bargaining, which ruled the matter before Act no. 223/1991, i.e. those of family benefits, seniority, as well as technical and productive needs of the enterprise. These criteria have to be considered jointly. In this process, trade unions are empowered to establish flexible solutions suitable for the concrete cases; however, serious problems have been raised by the generally binding effect of such an agreement, particularly for those who are not trade union members. The Italian Constitutional Court, called on to review the legitimacy of this provision, limited the freedom of choice of trade unions, stating the need for rational motivation in derogating legal criteria.

5. Priority rights to re-employment

After being dismissed according to Act no. 223/1991, workers, transit within the above-mentioned mobility lists, which may be considered, from the point of view of worker placement, as waiting lists for a certain period. Although it would not be correct to state that workers who belong to the mobility list are entitled to a priority right to re-employment, it is a fact that these workers may well profit from legislative provisions. First of all - according to art. 8; Act. 223/1991 - the employer who is able to reemploy a number of workers within a year of collective dismissal is obliged to transmit to the placement office the names and skills of the workers he has fired, in order to allow the administration to select them first in respect of others on the lists. Secondly, art. 25 of the same act provides a reserve of 12% on the total amount of new hirings within the private sector, for people on the mobility list. Furthermore, public administrations are obliged to reserve a number of low-skilled places to the above-mentioned workers. Many other legal provisions are also aimed at giving employers incentives - through contributive relief - to hire workers on mobility lists.

IV. JOB SITUATION

1. Occupational mobility

From the point of view of occupational mobility, Italian labour law shows two different attitudes: on the one hand, in order to guarantee workers' rights towards abuse of powers by employers, it prohibits almost all those changes which will lead to job rotation inside the firm; on the other hand, it allows and favours inter-firm mobility, and guided intervention by administrative bodies. It also deals with incentives that are provided to employers who hire workers on the mobility list.

1.1. Intra-firm job rotation

According to the above-mentioned art. 2103 of the Civil Code, job rotation within the firm is only allowed if it consists in workers' being upgraded or if the worker is appointed at an equivalent employment level. At first glance, this provision may sound flexible enough to guarantee both workers'rights and employers' interests in satisfying job rotation: in practice, it has been applied by courts in such a strict way that it is quite impossible for the employer to be sure that he has placed the worker at a level of employment equivalent to their previous one. The Court's evaluation involves not only retributive parameters, which can easily be respected by the fair employer, but also professional ones, i.e. comparing the duties inherent to the previous activity with the new ones. Such a high level of discretion leads to total uncertainty in this field and to a growing number of judicial disputes, which are often decided against employers.

Only recently, in a situation of growing unemployment, have courts begun to change their attitude, taking in account more flexible interpretations of art. 2103, and, above all, concerning the possibility to bargain, through individual contracts, over the worsening of employment levels to avoid dismissal grounded on objective motivations. Doing this, courts seem to apply the same principle laid down by Act n°. 223/1991 as far as collective dismissal are concerned.

1.2. Inter-firm mobility

As far as inter-firm mobility is concerned two main legal instruments should be considered as important: the direct and permanent transfer of workers from one employer to another, and the temporary engagement of workers by another employer. The first instrument, which constituted for many years the only chance for employers to directly hire workers without using public placement

offices, has lost most of its appeal because of the above-mentioned liberalisation of placement. Of some importance can still be considered legislative interventions which provide for the direct and permanent transfer of workers from private employers facing redundancies to public administrations in need of the same skills. This was the case of 1,500 people employed by Olivetti Computers, who were definitely transferred to various local authorities in the north-west Italy.

Until 1997, the temporary engagement of workers by another employer allowed, under certain conditions, a version of temporary work which operated in the interest and favour of the employer who was outplacing his workers because of redundancies. In this way, workers' hiring out, which was still prosecuted under criminal law, could be considered legal. After the implementation of 1997 legislation, which rules temporary work, this provision will become less important.

Since 1993, the above-mentioned instrument has suited, above all, individual employers, usually belonging to the same group of undertakings, managing intra-group mobility. Act no. 236/1993 allows collective bargaining to provide such transfers to avoid collective dismissal and, in such a perspective, further developments may be foreseen.

2. Team work

Since the end of the '80s collective bargaining has constantly developed different kinds of team work, above all in the car industry, which are inspired by the principle of group productivity. Workers, guided by a non-managerial supervisor, are asked to cooperate together to complete single cars read to be sold on the market. Incentives are provided at the collective level, with no evaluation of the single worker's participation being made.

An interesting attempt to implement more flexible work patterns were tried also by the government in 1993, by means of a *decreto legge;* the aim was to create a form of job sharing between two workers employed to perform jointly the same task under the same employment contract. Criticism of this was strong among scholars, with reference to the foreseeable disputes that such a contract would provoke as far as workers individual responsibility in fair performance was concerned. Couple work as it was called - disappeared from further drafts of the same Act.

3. "Homework" and distance work

"Homework" (i.e. work that is carried out in the home), or decentralised work, has been a legally recognised and strictly ruled form of employed work in Italian labour law for many years; it has always been seen as referring to the flexible labour organisation of the firm more than as an instrument of flexibility of the employment contract and, for this reason, both the legislator and trade unions have never been in favour of it. They fear a concrete discrimination between decentralised workers and workers employed in the same firm, starting from the presumption that the first are more inclined to accept worse working conditions, any trade union control over them being virtually impossible.

More encouraging perspectives can be envisaged for distance work, which was introduced for the first time in 1994 by some important collective agreements at national level in telecommunication firms, such as Saritel, Italtel, STEAT, Dun & Bradsteet, Telecom Italia. Within a common framework given by the use of telematic instruments, three different kinds of distance work have been envisaged by collective bargaining, according to the sort of link that exists between the worker and the firm. Firstly, there might be no direct link between worker's station and the firm: this is the case of data-input activity on personal computers, which will be transferred by diskette to the mother station. This sort of distance work is very close to the "home work" defined above. Secondly, the worker's station may he linked to the firm but it is not possible for the latter to interact with him: there is a form of one-way communication, which does not allow interaction during the worker's performance. Thirdly, and more commonly, the worker's station is connected on line with other stations and with a mother station, interacting continuously in both directions, allowing for total control by the employer. These two last forms of distance work may be better defined as decentralised since workers do not perform their job strictly in the firm; their employment

relationship consists of the same rights and duties that normal workers have inside the firm. This raises problems as far as the employer's power of control on working performance is concerned, since according to Italian legislation on workers' rights at plant level, preventive assent by trade unions is due also in cases where control is not intentionally exerted, such as in this case.

Distance work, above all the kind that is performed on line, seems to have been widely accepted by trade unions, probably because it is most similar to traditional employment.

V. PAY

Wages have always been a difficult topic for lawyers, probably because they feel inadequate to the task which goes further than pure legal analysis. In addition, Italian labour lawyers feel uncomfortable because of a Constitutional provision, art. 36, that lays down some principles of both great moral relevance and enormous practical difficulty. That is to say, wages must be proportionate to the job performed and sufficient to guarantee a decorous standard of living to the worker and to his family. The sources of reference for this definition were discussed over a long period; having waited in vain for statutory provision on minimum wages, courts finally decided to refer to the national collective agreements of each branch. This choice, which can be defended or not, has played an important role in increasing the significance of wage definition by collective bargaining, since, in the case of judicial disputes, judges will refer to it, defining adequate pay at the individual level.

1. The role of wage bargaining at individual level and the problem of equal treatment

Having said this, we must assume that wage bargaining at the individual level can result only in an increase of basic treatments guaranteed by collective bargaining. Since the above-mentioned Tripartite Framework Agreements of 1993 define a double level of collective bargaining - national and integrative - whereby the first guarantees a basic minimum wage and the second provides for a productivity increase, individual wage bargaining has been mainly considered by employers as an opportunity to circumvent unionisation. Despite the fact that there is no evidence that the fall in the unionisation rate is linked to the bargaining attitude of the trade unions towards the government's attempts at lowering inflation and to the subsequently narrow space left to integrative bargaining, in practice the number of workers who prefer a higher wage to better working conditions guaranteed by collective bargaining is growing. This trend has become more markedly consistent since the Supreme Court rejected a controversial principle stated by the Constitutional Court according to which employers were not allowed to remunerate workers at the same employment level differently, without a reasonable motivation. This holding, which was a significant conquest for Italian civil law, extended the principle of motivated action from public bodies to private ones. Thus, the employer now has the right to pay workers at the same employment level differently, within the limits of non-discrimination based on sex, political ideas, religious beliefs and unionisation.

At the collective level, trade unions have always been against any kind of wage differentials grounded on geographical reasons.

2. Role of the government in matters of pay determination

The results achieved by the Italian government in counter-acting inflation - which reached the lowest level than ever in 1997 - are due to the development of a new economic policy which is based on the strict control of wages, public expenditure, and the cost of the public services. In 1993 employer and employee organisations accepted in 1993 playing an active role in this direction, agreeing to link wage growth to 50% of the expected inflation rate. The same policy was also pursued with success in the public sector, where the introduction of collective bargaining rather than administrative instruments, led paradoxicaly to a better wages control.

VI. WORKING TIME

1. Flexible use of working time to cope with redundancies

For many years working time has constituted one of the most widely debated

issues in labour law, not in relation to employment flexibility but also in view of reforming a statutory regulation which is more than 70 years old. Although everyone agrees that, in this field, legal provisions may be successfully operated only in order to fix the maximal duration of working time, we can find many acts refer to this issue in Italian legislation. Not only should the legislation on solidarity agreements be added to the above-mentioned detailed legislation on part-time, but also that of 1997, on "average" weekly working times.

What emerges from this picture is, firstly, an instrumental use of working time flexibility to cope with and avoid redundancies. This is certainly the case of the so called defensive solidarity agreement, incentivated by the law through contributive relief for the employer; this consists in the lowering of working time at the individual level to allow potentially redundant workers to remain within the firm. Defensive solidarity agreements have been considered by courts as legally binding for the whole workforce employed in the firm, even for those workers who are not trade union members and who refuse such a reduction. It is difficult to view flexible working time in Italy under the perspective of individual contract, since this plays a marginal role in comparison to collective bargaining. This does not mean that no room is left to single employer and employee agreement, but the trend Showed by Italian industrial relations does not allow for any other conclusions. Such a view is confirmed by the legislative intervention of 1997, which, unusually for statutory provision, defines 40 hours per week as an "average period of working time", as this were a suggestion for employer and employee organisations in collective bargaining. Individual agreements made between employers and employees on part-time work may also be modified by solidarity collective agreements.

2. Working time in the public sector

The idea that working time is dealt with at the collective rather than at the individual level is confirmed by recent developments following the public sector reform of 1993: although working time has been excluded by the law from bargainable issues, at the local level interesting solutions have been provided to cope with the opening time necessary for customer services. Workers can choose individually among some different timing solutions defined at the collective level.

VII. CONCLUSIONS

There has been much discussion regarding flexibility issues in Italian labour law. Currently three different approaches exist: the first, supported by the employers' organisation, is pursuing deregulation on the labour market by leaving the power to bargain their employment conditions to individuals and the right to dismiss workers, reducing firing costs to employer; the second, which seems to be supported by the government and on which trade unions have slowly agreed, is aimed at defining a new regulation - so named re-regulation - laid down through collective bargaining delegated by framework legal provisions, in order to balance flexibility and the protection of workers' rights; the latter, supported by the extreme left wing trade unions and political party, would like to maintain the *status quo,* fearing that flexibility will endanger the effectiveness of workers' protection. Since this dispute has not yet been considered won by any of the participants, a first conclusion is that we cannot talk about the consequences of flexibility - on the social partners, the government, or the courts - because we are still at a stage in which flexibility is a goal to be reached.

As far as individual contract is concerned, it is difficult to classify the Italian experience according to the main categories of contract and status, because the importance of statutory provision and collective bargaining has, as already shown above, dramatically influenced individual contractual freedom: instead, some contractual status, in which parameters are defined and laid down by collective provisions can be mentioned. Workers are always considered too weak to contract without any external support their working conditions. This principle still inspires the current labour law and the struggle towards flexibility will be strongly influenced by it.

To conclude, it is generally supposed that we are on the path of flexibility, but more legal provisions are necessary before this path can become reality.

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