

LABOUR LAW, INDUSTRIAL RELATIONS AND HUMAN RIGHTS IN RECESSIONARY TIMES: THE ITALIAN CASE

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The Challenges emanating from the Economic Crisis and their Impact on Human Rights: The Right to Work

Article 23 of the Universal Declaration of Human Rights reasserts one's "right to work": "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".

However, if one considers the foregoing article and the impact that the economic crisis has had on the EU and the Italian labour market, it seems evident that the right to decent work is not fully ensured.

The Impact of the Crisis on the Italian Labour Market: Some Statistics

Labour Market Indicators		2007	2013
Population		58.223.744	59.685.227
Population (15–64)		38.307.428	38.697.060
Workforce	TOTAL (15–64)	24.349.700	25.090.300
	Employees	17.100.000	16.784.000
	Self-employed Workers	5.347.400	4.902.300
Employment rate	TOTAL	58.7%	55.6%
	Females	46.6%	46.5%
	Young People	24.7%	16.3%
	Over-50s	46.5%	52.6%
Unemployment rate	TOTAL (15–74)	6.1%	12.2%
	Young People (15–24)	20.3%	40.0%
Temporary employment	TOTAL	2.261.800	2.219.300
	Temporary Workers as % of the Total Employed Population	13.2%	13.2%
Part-time employment	TOTAL	3.069.100	3.884.300
	Part-time Workers as % of the Total Employed Population	13.6%	17.9%
Hidden economy (% GDP)		17.5%	12.4%

Source: Eurostat.

Between 2007 and 2013, the number of 15 to 64 year-olds in Italy increased from 38.307.428 to 38.697.060, as did the number of those in employment in the same age group (from 24.349.700 to 25.090.300).

The falling demand for goods and services caused a reduction in labour demand and an increase in unemployment. Over the same period, the overall employment rate declined from 58.7% to 55.6%. Males were affected the most by this decrease, as the female employment rate decreased by only 0.1% (from 46.6% to 46.5%).

As far as age is concerned, young people experienced a significant reduction in employment, from 24.7% in 2007 to 16.3% in 2013. On the contrary, the employment rate for people over 50 years old was on the rise following an increase in the retirement age (from 46.5% to 52.6%).

Significantly, the overall unemployment rate grew from 6.1% in 2007 to 12.2% in 2013. Young people in particular reported a relevant increase in unemployment, with the percentage of jobless people that doubled, from 20.3% in 2007 to 40.0% in 2013.

Interestingly enough, no significant change was recorded in temporary employment: workers on fixed-term employment contracts accounted for 13.2% of the total number of workers in 2007 and in 2013. The same cannot be said of part-time work, for which an increase was reported. Specifically, the share of part-time workers out of the total number of workers was equal to 13.6% in 2007 and to 17.9% in 2013.

Finally, the negative impact of the crisis on the Italian economy is further evidenced by a decrease in the share of workers engaged in the hidden economy, estimated at 17.5% and 12.4% of GDP in 2007 and in 2013, respectively.

Employment-Related Recession Measures

In order to reduce the social impact of the downturn, the European Union put forward some measures to drive economic recovery and coordinate EU Member States public interventions (European Commission, 2008), while Member States made an attempt to promote existing labour market policies and/or introducing new ones.

Italy and most Member States envisaged special and wide-ranging ‘anti-crisis policies’ consisting in a set of measures to tackle the recession. This resulted in many public policy tools aiming at reducing the impact of the crisis and the worsening of labour market performances (European Commission, 2009).

The European Commission, OECD and other EU institutions produced many publications that analyse public interventions in the labour market. A study by EUROFUND is noteworthy, as it provided a useful classification of the crisis-related measures implemented in EU Member States (I. Mandl; L. Salvatore, 2009 and J. Hurley, I. Mandl, D. Storrie, and T. Ward, 2009). This classification is based on three different types of interventions: measures to maintain employment, income support measures for the unemployed, and measures to create employment or to promote re-employment.

Measures to Maintain Employment

The measures to help workers stay in employment are intended to prevent dismissals and preserve existing jobs. They include short-time working arrangements (including wage subsidies, social security contributions); training support (including aid to training costs, support to businesses, wage subsidies); reduction of non-wage labour costs (reduction of social security contributions and taxes); direct support to businesses (risk capital schemes, subsidies, reduction of company taxes); indirect support to businesses (public investments, incentives for consumers’ purchases).

Income Support for Unemployed People

Income support for the unemployed concerns unemployment benefits to reduce the social and economic consequences of job loss. Unemployment benefit systems are in place in all EU Member States, even though amendments have been made at a national level to cope with the increasing number of unemployed people following the crisis. Some significant changes have been made to such aspects as eligibility criteria, amount, duration of entitlement and beneficiaries.

Measures to Create Employment and to Promote Re-employment

These initiatives promote the recruitment of workers through economic incentives – for instance the reduction of non-wage labour costs and wage subsidies – or through job creation strategies in the public sector. In Germany, France, Italy, Portugal, Slovenia, and Sweden, certain economic incentives are provided to recruit special categories of workers. Further initiatives include support measures for self-employed workers through the provision of guidance and training (Bulgaria and the UK) or the reduction and deferment of social security payments. Other Member States (Austria, Lithuania, Italy, Portugal and the UK) have introduced or extended subsidies for start-ups.

The measures to promote workers' re-employment by employment services are intended to smooth the transition from unemployment to employment by dealing with job mismatch through counselling, career guidance, placement services and activation measures, and by increasing employability through training.

Some attempts have been made at improving public employment services to cope with an increase in demand (for example by hiring additional staff, as in Germany, Norway, Spain, the UK) and to economically support private employment agencies through economic and / or legal incentives (the Netherlands and Italy).

Likewise, to increase workers' willingness to take a job, a number of grants have been made available favouring their transfer (Slovakia, Lithuania, and the Czech Republic).

A Traditional Answer to the Crisis: Public Spending

The anti-crisis measures in place in EU Member States to tackle the impact of the economic downturn and the worsening of labour market indicators can be seen as a traditional answer to the crisis, since they mostly concern public expenditure. Particularly in Italy, short-time working arrangements have been the main initiatives to tackle the economic crisis. Thanks to these publicly funded support measures, Italy has temporarily succeeded in containing job cuts and the increase in unemployment originated by the current economic crisis. Nevertheless, starting from 2010, Italy too has experienced a significant rise in unemployment.

Wage Guarantee Funds

Wage guarantee funds (*cassa integrazione guadagni*) are publicly funded support measures intended to protect workers' income in the event of a suspension of the employment relationship. This insurance-like fund is managed by the National Institute of Social Insurance (INPS) and is funded by the social security contributions paid by employers and employees. In case of total or partial suspension of the employment relationship resulting from the interruption or the reduction of business activity, employers apply for the wage guarantee fund to obtain a social security allowance that replaces the wage of those workers whose working activity has been interrupted.

Wage guarantee funds can be either ordinary or extraordinary and are used in the industry sector. In particular, the extraordinary wage guarantee fund is made available to firms with more than 15 employees and now extends to businesses with more than 50 employees.

The employer can apply for ordinary wage guarantee funds if his/her productive activity is suspended due to unexpected and unavoidable circumstances that cannot be ascribed to the employer's or to the employee's action, or due to temporary market situations (a fall in demand).

Extraordinary wage guarantee funds apply in case of a suspension of productive activity resulting from business restructuring, reorganisation or conversion, as well as in the event of the business facing severe financial difficulties, bankruptcy or liquidation.

Through this system, suspended employees are entitled to an allowance amounting to 80% of their wage in substitution for their remuneration. Depending on the reasons causing such suspension, ordinary wage guarantee funds are paid up to 13 weeks, while extraordinary wage guarantee funds last up to 24 months.

The Effectiveness of Anti-Crisis Policies

Albeit wide-ranging, most public interventions adopted by EU Member States were only intended to address the emergency resulting from the economic crisis. Yet their impact is barely visible, if not negative, although massive investments have been made on policy measures. This explains why a number of studies have negatively assessed the effectiveness of employment-related recession policies and pointed out their major shortcomings (Employment Committee, European Commission 2010).

Income support for the unemployed also has adverse effects on unemployment, since it discourages job searching and re-employment. For this reason, some adjustments can be made to improve its effectiveness, for example decreasing the amount of benefits and reducing the period through which such support is provided. Further, unemployment benefits are linked to activation policies, which require active job search from jobseekers, while sanctions should be applied if someone refuses to actively search for work or rejects a suitable job offer.

In relation to employment creation measures, job subsidies consisting in hiring incentives or reduction of non-wage labour costs prove effective in terms of job creation, but they are costly and can produce negative consequences, prompting a "deadweight effect". At the same time, public sector job creation is less likely than other policies to provide positive impacts (Kluve, 2007).

As regards measures to promote re-employment, training has a little impact on employment and is more likely to be associated with periods of high unemployment. In general, then, positive training effects become evident in the long run (Kluve, 2007).

On the contrary, job-search support services and activation measures have a positive impact on employment and are effective in the short run, but they need to be implemented in an economic context characterized by growing or stable labour demand. In fact, only if there is labour demand is it possible to support job matching and to help people to re-enter the labour market. For this reason, such measures are mainly adopted in the recovery phase.

Searching for Alternative Answers to Tackle the Crisis

Over the years, the need has arisen in Italy to look for alternatives to acting on public expenditure to tackle the economic crisis. This is because of a number of reasons, among others: the modest effects of traditional public interventions, the significant reduction in the public resources available; the sweeping reforms of the pension systems due to a longer working life; the reduction of job opportunities and worsened working conditions.

The assumption that overly stringent employment protection legislation (EPL) limits job opportunities (especially for young people), and the desire to overcome the dualism in the labour market between insiders and outsiders by relaxing statutory protection against unfair dismissals increased deregulation. Moreover the spreading of the *flexicurity* mantra (I. Mandl, J. Hurley,

M. Mascherini, D. Storriell, 2010) and the idea of transposing the Danish model into Italian system made it possible to equate *flexicurity* to a modern form of deregulation.

Against this background, successive governments in Italy have tried to tackle the crisis by implementing a number of labour market reforms based on deregulation.

Five reforms were approved in the last five years. A 2011 provision enabled derogation of mandatory labour rules concerning recruitment and dismissal through company-level collective bargaining. The 2012 labour market reform made open-ended contracts more flexible in relation to dismissal and reduced the numbers of atypical contracts. In 2013, a new law provided atypical contracts with higher flexibility, while introducing economic incentives promoting recruitment on open-ended contracts. The labour market reform in 2014 deregulated fixed-term employment contracts and introduced more flexibility for apprenticeship contracts. Moreover, a legislative decree that will enter into force in 2015 will deregulate employment protection legislation for newly issued contracts in case of economic dismissal.

Unjustified and Unfair Dismissal in Italy

With reference to the regulation of unjustified and unfair dismissals in Italy, the termination of one's employment contract is possible only for just cause or by providing a justifying reason. A just cause is serious non-compliance with the obligations laid down in the employment relationship, or serious misconduct undermining the relationship of trust on which any employment relationship is based, and preventing the continuation of the employment relationship even on a temporary basis. The employer can terminate the employment contract without notice. A "justifying reason" can be a significant breach of or non-compliance with contractual obligations on the part of the employee ("subjective" reasons) or a compelling reason concerning productive activity, work organization and the regular functioning of a business (objective reasons). In the absence of these two main conditions, any dismissal is unjustified. On top of that, a dismissal resulting in discrimination on grounds of race, religion, gender, trade union affiliation is regarded as unfair.

In the event of an unjustified dismissal, the sanctions applicable to the employer vary according to company size. For large and medium-sized companies (with more than 15 employees in a production unit or more than 60 employees regardless of the place of employment), the employer can be obliged to reinstate the employee in the same position or in an equivalent position, for the employee has the right to return to the same post as before. In addition, the employer should pay the employee the amount of salary due from the date of dismissal to the date of reinstatement.

For small companies (with a production unit of up to 15 employees and companies with up to 60 employees regardless of the place of employment), employers can choose between re-employment and compensation amounting from 2.5 to 6 months' salary (depending on seniority and company size).

Re-employment is different from reinstatement, because it does not give one the right to compensation for the period between the date of dismissal and the court decision.

Following the reform started in 2012, several options are possible besides reinstatement and/or compensation (from 12 to 24 months' salary depending on factors such as age, length of service, number of employees, company size) and judges can use their discretion on a case-by-case basis.

The new reform bill provides that reinstatement will take place only in the event of unfair dismissal (i.e. discriminatory dismissal). If the courts rule that the dismissal was unjustified, an indemnity will be paid by the employer to compensate for the damage suffered by the employee. Conversely, the court is given little room for manoeuvre in relation to dismissals for economic reasons concerning productive activity, work organization and business functioning.

The Limitations of Reinstatement and the Challenges to Fundamental Rights

Article 30 of the Charter of Fundamental Rights of the European Union reasserts the right to protection in the event of unjustified dismissal: “Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices”.

In this sense, one can wonder if the labour reform in Italy amending the sanctions applicable in case of justified dismissal can be seen as a form of modernisation of the Italian labour market or as a move narrowing down one’s fundamental rights.

A lively debate is currently taking place among policymakers and trade union representatives as to whether the liberalization of dismissals challenges or limits workers’ fundamental rights.

The Universal Declaration of Human Rights refers to the right to work and protection against unemployment. The Charter of Fundamental Rights of the EU talks of protection against unjustified dismissal and not of the right to reinstatement. In this perspective, the Italian Constitutional Court has also clarified that reinstatement is not a fundamental right if regarded as a sanction applicable in the event of unjustified dismissal.

Is there any other Challenge to Human Rights?

No evidence exists that job creation and the labour market benefit in terms of efficiency and dynamism from deregulating dismissals and replacing reinstatement with re-employment (especially in the event of unjustified economic dismissal).

Many doubts might arise on this aspect, but fundamental rights will certainly not be affected, as long as initiatives against unemployment, adequate safety nets and social security systems are actively implemented.

In considering human rights, what can be questioned is the idea to circumvent the judges’ authority in making a decision concerning the lawfulness of dismissals to give employers more freedom.

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