A13

Vai al contenuto multimediale

Sustainable Development and Innovation

A future perspective

edited by
Tindara Abbate
Patrizia Accordino
Giovanna Centorrino

Contributes
Alessandro Abbate, Tindara Abbate, Patrizia Accordino, Zora Arsovski
Antonina Astone, G. Maurizio Ballistreri, Daniela Baglieri, Francesco Benedetto
Salvatore Bottari, Giuseppe Campagna, Roberto Caratozzolo
Giovanna Centorrino, Marco Cesareo, Fabrizio Cesaroni, Maria Cristina Cinici
Antonio Crupi, Fatima De Cicco, Santa De Marco, Pierfrancesco Donato
Ganna Duginets, Marek Dziura, Fabio Fragomeni, Anzhelika Gerasymenko
Andrzej Jaki, Zoran Kalinić, Tiziana La Rocca, Emanuele La Rosa, Anna Lazzaro
Paweł Lula, Pawel Lukasik, Adele Marino, Francesco Martines, Anatolii Mazaraki
Nataliia Mazaraki, Bogusz Mikula, António Monteiro Fernandes, Laura Pergolizzi
Dragana Rejman Petrović, Renata Oczkowska, Anna Pietruszka–Ortyl
Nicola Rappazzo, Rosalba Rizzo, Tomasz Rojek, Daniela Rupo, Francesca Russo
Maria Vittoria Serranò, Marko Slavkovic, Salvatore Sidoti
Marijana Simic, Maria Francesca Tommasini, Riccardo Valente
Sylwia Wiśniewska, Katarzyna Wójcik

Aracne editrice

www.aracneeditrice.it
info@aracneeditrice.it

www.gioacchinoonoratieditore.it
info@gioacchinoonoratieditore.it

via Vittorio Veneto, 20
00020 Canterano (RM)
(06) 45551463

ISBN 978-88-255-2084-2

I[st] edition: December 2018

Contents

Part IV
Historical and Social Section

Appendix

Part I

LABOUR SECTION

Sustainable Development and Innovation
ISBN 978-88-255-2084-2
DOI 10.4399/97888255208421
pag. 11–16 (december 2018)

Labor Law, Innovation and Competitiveness

António Monteiro Fernandes*

In the eighties of the last century, the social role attributed to Labor laws has undergone a dramatic change. Until then, and especially since World War II, labor laws have evolved practically according to their own dynamics, reflecting primarily social concerns and aspirations. This perspective was, moreover, in accordance with the very genesis of Labor Law. It was born and grew in disharmony and even in conflict with the market laws, by limiting workers' competition for wages, by placing barriers to the "natural" degradation of working conditions in factories, by enabling, through organization and collective action of workers, considerable limitations on the power of employers to make decisions on working conditions.

The impulse for the evolution of Labor Law systems in the third quarter of the XXth century came mainly from the inspiration of the International Labor Organisation and from the reception of social principles and values linked to the dignity of work. The central idea at that time was that the modernization of social relations was a fundamental condition of economic development.

This evolution, although enhanced in the 1950s and 1960s by favourable economic circumstances, was largely treated as neutral in relation to the economic policies adopted throughout western Europe until the mid–1980s. Even the first international crisis generated by the huge and sudden rise in oil prices in 1973 had a relatively small impact in the field of Labor Law.

It was during the 1980s, and in the context of a serious international economic crisis, that the so–called "emergency legislation" came up with the new evolutionary logic of labor laws, inspired by the idea of their economic instrumentality and their subordination to business requirements. On the basis of this orientation of the labor laws was the conviction that there is a network of precise correlations between the degree of protection of workers' rights, on the one hand, and the evolution of the labor market and of the competitive capacity of economies on the other hand.

In fact, Labor Law is nowadays generally regarded as an obstacle to innovation and a brake on the competitiveness of firms and of national economies. This reputation of Labor Law is partly — but only partly — justified.

It is undeniable that, despite modern tendencies towards the flexibility of labor standards, there remain strong constraints on the freedom to hire and dismiss, on the decision–making powers of employers on the use of labor and on the adaptability of labor costs to the economic conjuncture of companies.

* Universidade Nova of Lisbon; Lisbon University Institute.

Fundamental guidelines such as the stability of employment and working conditions, the limitation of working time and freedom of association make it difficult for managers to adapt to the instability of the contexts in which they operate. It is also undeniable that Labor Law systems, designed essentially in light of the characteristics of large and medium–sized industrial enterprises, have shown difficulty in adjusting to new realities, such as the predominance of micro and small enterprises, the digitization of a large number of activities and the transition to autonomous work of much of the traditionally salaried work.

It is true that many of the constraints arising from rules on the use of labor in companies are not primary choices of legislators, but rather the expression of principles and values — such as personal integrity and freedom, equality and non–discrimination, conciliation life–work — that are, in many cases, enshrined in national constitutions, and embraced by universal consciousness, insofar as they are inherent to human dignity at work. The seriousness of the latest evolutionary trends in Labor Law is due to the fact that these principles and values are ignored or taken down, as factors of costs and difficulties for companies.

The aforementioned general perception of the role played by labor laws in the economy is certainly one of the reasons why, in situations of economic difficulty, immediate demands arise for the reform of these laws. Throughout Europe, but especially in the southern countries, such as Italy and Portugal, the change in the rules on employment relations, always to make them cheaper and more adaptable to the needs of business, has emerged as the first and most obvious measure to be taken against crises.

The recent economic and financial crisis which, in varying degrees and in different ways, has reached all the countries in southern Europe, has provided a perfect opportunity for the implementation, as a matter of priority, of such measures. In Spain, a law was published in 2012 reforming once again the *Workers' Statute*, clearly in the sense of overcoming difficulties and constraints felt by companies; in Italy, as we know, there were at least two important reforms of Labor Law in 2012 and 2015, the last of which is symptomatically known as the Jobs Act; in Portugal, under the pressure of the troika, a broad modification of the labor code was also introduced in 2012, all aimed at reducing workers' rights and guarantees and at amplifying the decision–making power of entrepreneurs. Nor is it worth mentioning the case of Greece, where a series of legislative reforms, as of 2010, totally disfigured the labor relations regulatory system.

Moreover, these measures follow a linear logic that makes them easily understandable and acceptable by the public opinion. On one hand, existing rules make the labor factor expensive and hard to use; on the other hand, companies suffer economic difficulties and face strong national and international competition; in many cases, companies and countries whose laws are less demanding and restrictive drive this competition. The possible surrender of national firms in the face of such challenge will result in the destruction of employment and thus deprivation of income for many people.

All these premises are matter–of–fact, and easily lead to a conclusive picture that seems almost indisputable: in times of crisis (or even without crisis), the

competitiveness of enterprises and economy must be supported by all means — the easiest way is to cut labor costs and to set free management decision powers — helping business is good for the national economy, so it's good for everyone, including those who lose their rights and income.

This type of logical and quantitative correlation, which is the basis of a large number of economic policy options, firmly supported by impressive econometric models, opens space for every kind of experimentalism, whose only certain and guaranteed results consist of the worsening conditions of life and work of the vast majority of the population concerned. This is the only fact that does not require demonstration. The uncertainty exists as to whether there is any actual causal correlation between the levels of protection afforded by the labor laws and the evolution of employment and the competitiveness of the economy, or whether, on the contrary, such relationship is largely neutral. There are "scientific" arguments in support of both theses. The development of the official OECD thinking in this area is quite eloquent as to the ambiguity of current demonstrations of causal correlations between the level of employment protection and the evolution of the economy.

These are realities whose interaction is very complex and depends on a wide variety of factors. Economics, as a science, is very close to applied psychology and sociology, that is, necessarily open to a large number of variables, namely behavioral; the problem begins when economists intend to make it an exact science and treat it as a chapter of applied mathematics. The reduction of the interaction between laws and economic reality to a set of linear correlations has only the effect of making space for the ideological interpretation of the data and for the consequent mystification of reality. Thus, the search for accuracy and certainty opens the door to uncertainty and perplexity.

Let's take the example of the reform of the Portuguese Labor Law, held under the aegis of the "troika" in 2012. In the following six months, the economy continued to decline and unemployment rose to historically high levels. Then the active presence of the "troika" ceased, the government changed. The economy began to grow again; unemployment fell to its current level, lower than it was before the crisis.

What parts of this evolution are attributable to the hard austerity imposed by the troika? How to relate the evolution of unemployment with the strong reduction of workers' rights operated in 2012, and continued in the following years? No one can seriously give an objective and secure answer to this question. The thesis that "labor austerity" has essentially had a depressing effect on employment and the economy is as valid, from de standpoint of objective truth, as the view that the tough 2012 legislative measures were de primary cause of improved employment and stronger competitiveness of businesses.

Something similar has happened with the Italian Jobs Act and the Spanish labor reform. Each person is free to qualify these measures, from the point of view of their outcome, as best suits their ideological creed. At best, there have been positive phenomena in the labor market and economic growth since their entry into force. These phenomena may be the result of such measures, but they may

also be natural backflow effects that any economically unbalanced situation tends to produce, or both.

However, the uncertainty and ambiguity of the mechanisms that act on employment and economic growth do not lead policy makers in countries in difficulties to consider the gravity of decisions to revise labor laws. In other words, empirical uncertainty is overcome by ideological faith, despite the high social price that is certain and granted.

On the other hand, it is necessary to recognize that, according to its own evolutionary logic, labor laws have already proven to be sensitive to new demands of modernization of normative systems in the face of the evolution of the organization of economic activities, the new forms of work provision and even the way in which work is seen by individuals as an element of personal existence. With this, Labor Law changes some details of its physiognomy but keeps its essence unscathed.

In fact, it seems indisputable that certain trends and developments in the nature of work exert pressure on the classical systems of Labor Law, threatening their social validity and technical adequacy. Lawmakers try to respond to such pressure. New flexible rules on working time and on geographical and functional mobility, the incorporation of continuing training duties into the normal content of employment contracts, the prevision of new atypical forms of employment and the inclusion of ways of dismissal based on inadequate professional qualifications, are new sets of established solutions, which that seem useful for the improvement of the management of resources by companies and to increase their competitiveness, without undermining the nuclear principles and values that are the foundations of Labor Law from its very beginning.

However, driven by the changing reality and the ideological pressure resulting from a correlation of social forces, which is clearly unfavourable to labor, the pressure on Labor Law has become ever more intense, with the aim of transforming it into a set of instruments of human resources management in companies.

Even so, one cannot ignore the fact that, in several national experiences (such as the Portuguese one in the 1970s and 1980s), rigid and extremely restrictive normative systems, in the field of employment protection, coincided with a wide variety of situations in the labor market and the economy in general. There were historically low unemployment rates and high economic growth rates, which did not recur in recent decades. Although nothing can be seriously inferred from this background as an empirical evidence, it seems at least legitimate to admit that the traditional defendant — Labor Law — is largely innocent of the accusations relating to employment crises and insufficient competitiveness of enterprises.

As far as competitiveness is concerned, these allegations are based above all on a conception in which, practically, only labor costs are considered — even because the other factors of production in any economic activity are largely out of control of entrepreneurs. Even the claims for malleability of labor regulations, supposedly aimed at improving the conditions of adjustment of enterprises to market volatility, are mainly based on the demand for savings in labor costs. It is a superficial conception and destined to fail in the medium and long term.

Globalization is a phenomenon that prominently relates to trade, financial and communication flows, but it has projections in many other fields — notably that of consumption patterns and the consequent income requirements of people. Note, for example, the evolution of wages in China over the last three decades. At least at the level of social aspirations, patterns of consumption tend toward uniformity, even if people's actual incomes are not enough to cover them. Hence the indebtedness, sometimes astronomical, of individuals and families.

Labor costs tend to grow independently of productivity and every time this growth is repressed at the company level, it is exposed to image damage that is burdensome for competitiveness. It seems to be an acquisition of the universal social conscience, the ethical reprobation of the behaviour of great corporate complexes, generators of immense profits, which base their economic success on the use of underpaid and legally unprotected labor, through the structuring of productive processes so that segments with greater use of labor are located in countries with wage levels infinitely lower than those of the countries of origin.

From time to time, there is a public scandal about such practices on the part of one or another multinational, followed by regenerative media operations and, certainly, inducing high costs. Of course, multinationals with labour–intensive activities continue to search the world for places where they can benefit from lower wages, less demanding laws and less stringent public authorities, but at the same time they must take on increasing and sometimes costly corporate social responsibility commitments.

It is interesting to note the frequency with which policymakers and business leaders proclaim the inconsequence of competitive strategies based on low labor costs, and the frontal contradiction between this type of discourse and the respective practices, both in the field of legislative policies — seeking to boost competitiveness through the reduction of labor costs — as well as of management practices, which systematically establish as priority measures those of reduction of personnel, reduction of social benefits and increase of working times without increase of wages.

Legislative developments in recent years, in the field of labor law, and in several European countries, have clearly been inspired by the aim of supporting and enhancing this type of competitive strategy. In addition to its inconsistency and the unjustified social costs it induces, this legislative orientation conflicts with the nature of labor law and tends towards its destruction.

Let me repeat: Labor law was born and developed at the margins of the market, and even against the market. It does not seem legitimate to attempt to use their techniques and their normative structures to counteract the protection aims that constitute, from the beginning, their raison d'être, that is to say, in other words, to convert the laws of labor into a kind of formalization of the laws of the labor market, adjusting them to the needs of business management.

It is clear that Labor Law cannot fail to take competition as an economic and social data. However, its mission is not to incorporate the competitiveness among its value references. On the contrary, it is economic competition — and its regulation — which should incorporate the basic principles and standards on

the use of human labor as a "rule of the game", and thus should be seen as one of the devices regulating competition. This would give rise to the notion of socially legitimate competition alongside that of fair competition.

But at the same time, a positive effect of the existence of Labor Law in the current form is also that of challenging companies to find other types of competitive advantage, less volatile than labor costs, more linked to corporate identity and more expressive of companies' capabilities, in particular through quality and innovation.

Competition by labor costs is — or should be — competition by prices. In fact, in many cases — if not the majority —, savings from the reduction of labor costs are earmarked for profits rather than competitive prices. In one way or another, the benefits of reducing labor costs are episodic and easily overcome by the natural evolution of the economy. My firm conviction is that sustainable and consistent competitive advantages should be based on product quality and design, marketing efficiency and innovation capacity — not in prices.

In particular, the field of innovation is virtually unlimited, and above all much less dependent on external factors than the rules that must be observed in the use of the workforce. Innovation can concern technology, the organization of production processes, the nature of products, including design and functionality, marketing procedures, the organization of workspaces, management practices. In virtually everything, it is possible to innovate, obtaining sustainable competitive advantages.

Sustainable Development and Innovation
ISBN 978-88-255-2084-2
DOI 10.4399/97888255208422
pag. 17–24 (december 2018)

Hypothesis of Minimum Wage by Law of Italy

G. Maurizio Ballistreri*

Abstract

In November 2017, the 28 Heads of State and Prime Minister of the EU countries met in Göteborg Sweden to discuss "Social Europe", and one of the key issues was minimum wage set by law in every country of the Union. The aim of legal minimum wage in the Community is to counter the competitiveness of individual countries, pursued through social dumping. Italy is one of the few European countries that does not have this instrument and the legislator has repeatedly tried to make up for the issue of, the failure to implement art. 39, paragraphs 2, 3 and 4 of the Constitution and, therefore, of the lack of connection with art. 36 of the Constitution. In fact, over time, a series of legislative interventions with different contents have followed, each aimed at indirectly reinforcing the ultra partes effect of collective labor agreements, even if it was jurisprudence, to provide the solution to the issue of guaranteeing workers minimum wage through the interpretation of art. 36 of the Constitution. The Jobs Act had projected the introduction of legal minimum wage, but in the end, the disposition was removed from the approved text.

Key Words: legal minimum wage, collective barganing.

1. Introduction

The 28 Heads of State and Prime Minister of the EU countries have recently held talks on "European Social issues" (Fontana, 2016). The discussion opened with the issue of adopting the so–called, "European Pillar of Social Rights", which developed following a public consultation in March 2016. In view of the Gothenburg summit, the proposal was submitted as a Recommendation in April 2017.

One of the key issues, discussed at this meeting place, was minimum wage set by law in each country of the Union (Schulten and Watt, 2007), specifically indicated by the Recommendation of 26 April, 2017 as a guarantee of *minimum wage* (point 6, Ch. "Fair working conditions", while the wide production of conventions of the International Labor Organization on this subject, cannot be forgotten, and is partly acknowledged in our work regulation (Giubboni, 2003)[1]. In fact, out of the

* University of Messina.

1. In sequence: ILO Convention no. 28/1928, concerning the establishment of methods of fixing minimum wages for workers employed in sectors in which there are no rules for fixing wages and the same are too low,

twenty–eight States which make up the European Union, in addition to Italy — the only country in southern Europe without a system of legal determination of minimum wages — neither Sweden, Finland, Denmark, Austria nor Cyprus have one.

The aim of legal minimum wage within the Community is to counter the competitiveness of individual countries, achieved through social dumping, which also favors delocalization. Such a prospective would « federalize the foundations of social citizenship » (Giubboni, 2003), which would also be re–enforced through the realization of supranational Welfare structures. As a result, there would be an increase in social protection levels (Veneziani, 2000), which are indeed continually being compressed and reduced by policies tied to European austerity aimed at containing public spending (Ballistreri, 2017).

2. Minimum wage in Italy – between law and collective agreement

In Italy, this issue has often, indeed, been confined within the scope of legislative policy debates, thus constituting more an economic than employment law competence (Ballistreri, 2013). This is despite the fact that only a legally qualified representative may furnish standards within which the different political options can develop (Magnani, 2010).

The final solution adopted by the members of the Constituent Assembly, as is well known, excluded any establishment of minimum wage set by law, entrusting such a task to collective labour agreements (Treu, 1979) — also in consideration of the fact that *erga omnes* collective agreements under art.39 of the Constitution, should have seen to fixing minimum wage in general terms to all employees framed into a category, therefore, through a connection to art. 36 of the Constitution.

However, such a choice of the founding Fathers has historically revealed to be limited, due to the failure to implement art. 39 with regards to the general effect of collective agreements (Craveri, 1977) As a result, the task of ensuring workers' minimum wage was left to the jurisprudence interpretation of art. 36, a *transient extra–legislative substitute* (Magnani, 2010), pending solutions to implement collective labour agreements in general terms (Grandi, 1962; Perone, 1971; Roccella, 1986).

ratified by Italy with the law of 26 April 1930, n . 877; ILO Convention no. 99/1951, on minimum wages in the agricultural sector, ratified by Italy with the law of 19 October 1970, no. 864; ILO Convention no. 117/1962, on the objectives and basic norms of social policy, supplementing that of 1928 and ratified by Italy with the law of 13 July 1966, no. 657. The ILO Convention no. 131/1970, containing the obligation for States to « establish a system of minimum wages covering all groups of workers that need such protection » (article 1), has not been ratified by Italy.

3. Minimum wage legislative intervention

The legislator made several attempts to compensate for both the failure to implement art. 39, paragraphs 2,3, and 4 of the Constitution, and therefore its disconnection to art. 36 of the Constitution. In fact, a series of legislative interventions with different contents followed, teleologically oriented to indirectly reinforce the *ultra partes* effect of collective labor agreements of categories.

These too concern solutions consistent with the structure of industrial relations adopted by governments and social partners, following the coming into effect of the Constitution of our Republic; they are consistent as they guarantee minimum wage based on salary levels established by national collective agreements rather than being pursued directly by law (Treu, 2015).

This is generally the path taken by the so–called "Vigorelli law". Over the years, various regulatory interventions have followed, in order to maintain the respect of national collective agreements on minimum wage, making it the condition necessary in order to take advantage of various public benefits and tax breaks, such as the fiscalization of tax burdens and the participation in public tenders: see from art. 36 of the *Workers' Statute* up to art. 10 of law no. 30/2003, which subordinates regulatory and contributory benefits to full observance of national, territorial or corporate collective bargaining agreements.

A similar approach has been taken in terms of stand–by allowance for performed labour (art. 22, d.lgs. no. 276/2003) and for intermittent workers obliged to answer calls, as well as in labour–time calculation for occasional accessory services. Furthermore, law no. 296 of December 27, 2006, allows project workers to defer collective agreements, establishing that remuneration for services must not only be in proportion to the quantity and quality of work performed but must also « take into account the fees normally paid for services of similar profession, also based on national collective agreements of reference: a positivization of the deferral of collective agreements » (Magnani, 2015), also reinforced for project workers under law no. 92/2012, art. 1, paragraph 23, letter c, amendment of art. 63, paragraph 2 of the legislative decree. no. 276/2003; and for posted workers by art. 3 of the legislative decree 25 February 2000, no. 72. A further hypothesis of legal determination of minimum wage is found in the norms on the economic treatment of the worker member (law 3 April 2001, no. 141). Finally, the law of 31 December 2012, no. 233, determines fair payment for journalists (Bellavista, 2014) who do not have a subordination contract with newspapers and periodicals, news agencies or radio and television broadcasters. Payment for services are established through a procedure involving a joint committee, including trade unions; the law also imposes a disincentive to its application in the form of forfeiture from the right to benefit from contributions paid in by the publishing house and other public benefits.