

# SAFEGUARDS FOR LABOUR AND WAGES

By Angela Condello

*“Le travail éloigne de nous trois grands maux: l’ennui, le vice et le besoin”*<sup>1</sup>

(Voltaire, *Candide ou l’optimisme*, 1759)

## Focus

In piecing together as thorough and exhaustive a picture as possible of the right to work and wages, one should clarify in the first place that this is a complex, multi-layered and multifarious issue. By “right to work” one may mean both the right vested in each person to work in such a way as to lead a “free and dignified” existence – as set forth in the Constitution (Article 36) – and the set of conditions and legal remedies for employment relationships by having regard to the different shapes such relationships may take (labour contracts, trade union relationships, sick leaves, leaves of absence, welfare benefits, etc.).

This caveat is necessary to place this analysis in the broad context that is typical of work in a historical perspective; however, this chapter will be focused on certain specific features, i.e. those that are considered most significant from a social and cultural standpoint. “Work” is a notion that relates to the life of individuals at different stages of its evolution, so that each feature should be seen in this broader, overarching perspective rather than as a separate component. For exclusively methodological reasons it was found expedient to break down the facts section according to subject matters.

---

1 “Work keeps three great evils at bay: boredom, vice, and need”.

## Occupational Fatalities (“White Deaths”)

Starting from the most dramatic events, one cannot but point out that about 554 individuals died whilst at work in Italy in 2013; their numbers might actually be different, since it is not always the case that account is taken in this regard of those dying whilst travelling from home to the workplace – in which case the number of such fatalities would be in excess of 1,000 yearly. It should be emphasized at all events that 1,296 work-related fatalities were reported in 2012, of which 790 were certified by INAIL [Italy’s National Institute for Occupational Accidents Insurance].

The most tragic accident over the past two years is probably the one that took place in the province of Prato on 1 December 2013, when seven Chinese workers died in a textile factory and several others were seriously injured. This shows that in some industry sectors and some areas in Italy occupational conditions are out of control and, furthermore, the working and housing conditions applying to many workers (mostly migrants) are utterly in breach of the law. The seven fatalities in Prato highlighted the persistence of forms of “new slavery” as the existence led by many individuals is far from being free and dignified – in fact, it is ultimately the subject of ruthless exploitation brought to the very extreme: endless working hours and, after work, living in warehouses looking like prisons since it is as good as impossible to escape. Given these conditions, employees are almost never registered and those individuals are legally non-existent – or rather, they end up existing only if a tragic event like that in Prato happens to take place.

## The Alcoa and Pomigliano Cases

Many may still remember the image of the three workmen from Alcoa that climbed on a silos to protest against the shutting down of the plants in Sulcis (Sardinia) when, in the early months of 2012, it was already evident that prospective buyers for those plants were hard to find. Equally well-known are the many cases where mines were occupied by tens of workmen out of desperation for the loss of

their jobs.

The protest by Alcoa workers sparked up again in September 2013 opposite the closed gates of the Portovesme plants: buildings owned by the Region were occupied, helmets were thrown to the floor during the assembly held by the workers. These are signals of a state of necessity, of an emergency. In fact, these needs are well-known and have been repeatedly under the spotlight of Italian politics: along with trade unions, Alcoa workers ask for their redundancy pay. In the past two years, the protests by Alcoa workers have been surfacing repeatedly in Italy's political discussion as one of the main instances of workers' mobilization to protect their rights. In January 2012, Alcoa workers – having been fired without safety nets – occupied the tunnel underneath Serbariu mine; a similar protestation had been staged between August and September 2012 in the “Nuraxi Figus” mine. In fact, similar initiatives have been taking place for about twenty years; however, the difficult interaction between expectations, promises, investments and disappointments would appear to always get stuck at the same time: when a solution for the whole area is to be devised. Following several years of negotiation for purchasing the company, which would mean a new start for the workers, several proposals had been put forward; indeed, the summit between the Region and the company held in September 2013 had pointed to a rosy 2014 outlook including the revamping of Portovesme and the whole Sulcis area. And yet, workers are still protesting and the usual pattern would appear to cyclically set in: meetings and summits between governmental representatives and workers' representatives are going on, with particular regard to the provision of social safety nets and the possible restarting of business.

The case with FIAT's plants in Pomigliano D'Arco started about four years ago, when the company terminated various investments (amounting to about 800 million Euro) into the Pomigliano plants to start producing the new Panda. On account of reasons relating to the need for entering into a new national collective agreement including certain derogations, FIAT decided to set up a new company to manage the Pomigliano plants; such company would employ part

of the workers at those plants, whilst the old company was kept up to provide redundancy pay for the remaining workers. Thus, about 2,200 workers were recruited by the new company, whilst 1,700 were redundancies and were promised recruitment by the new company if market performance so allowed. However, none of the newly recruited workers were members of FIOM – the metal industry workers’ trade union that is part of CGIL, Italy’s leading trade union association; FIOM had opposed the changes planned by Marchionne and voted “no” during the well-known Pomigliano referendum. The most likely reason for excluding FIOM workers was FIAT’s concern that the FIOM workers would give rise to resistances inside the plants by opposing the new contractual and organizational model and thus hampering production and profitability. FIOM brought a legal action against FIAT on account of discrimination and requested, among other things, that FIAT should be obliged to recruit a number of FIOM workers in proportion to the percentage of FIOM members in the old Pomigliano plant. Conversely, FIAT held that the company was free to decide who to employ – and under what conditions – since the shift from the old to the new Pomigliano plant was no “transfer of business”, i.e. it was no merger or acquisition operation, which entails specific obligations to comply with past contracts. Regarding recruitment, the judge granted FIOM’s claims on 22 June 2012; accordingly, FIAT was obliged to employ as many FIOM members as corresponded to their percentage in the old company, i.e. 9% of the whole (145 workers). An initial batch of nineteen were recruited, and the remaining 126 were supposed to be recruited in the coming months. FIAT’s response was to set a threshold to the number of employees “needed” for the Pomigliano Plant. This threshold was set at 2,200 and in order not to overstep it, having been obliged to recruit 145 workers, FIAT decided to terminate its employment relationship with as many workers.

The Pomigliano case was and is part of a larger game where evolving social and business models are facing one another: thus, the complex machinery for achieving an agreement and the conflicts arising in connection with this plant in Campania should come as no surprise.

The workers are afraid that a step backwards will be made, back to the years before 1970 when the so-called “Workers’ Charter” was enacted, marking a major achievement in this area. There are indeed causes for concern: there is an attempt to weaken trade unions, do away with the national labour agreement and shift to local or concern-based agreements letting employees go alone, therefore as weaker counterparties – in short, to narrow the scope of rights in breach of the Constitution.

### *Stories of the Italian Precariat*

According to the *Diritti globali 2013* report, there are currently about 3,3 million precarious workers in Italy; the highest percentage of them can be found in the South. More precisely, there are 3,315,580 workers that fit in the following framework: their mean net wages are 836 Euro monthly (927 Euro/month for males, 759 Euro/month for females); they hold high-school diplomas (46%) and work mostly in the South of Italy (35.18%) and in public administrative bodies (34%). Based on the said Report, precarious workers are to be found mostly in the civil service: school and health care account by themselves for 514,814 precarious workers, whilst 477,299 are those employed in public and welfare services.<sup>2</sup>

If one includes the 119,000 precarious workers that are employed directly by public administrative bodies (State, Regions, local authorities, etc.), it appears that one precarious worker out of three works for the public sector. Non-typical employment relationships are also rife in trade (436,842), corporate services (414,672) and the HoReCa sector (337,379). Geographically speaking, the highest incidence of precarious workers over the total number of employed individuals can be found in Calabria (21.2%), Sardinia (20.4%), Sicily (19.9%) and Apulia (19.8%).

Schools are among the sectors that are most affected by the widespread recourse to precarious workers; in December 2013 Italy

---

<sup>2</sup> In September 2013, CGIL CISL and UIL (Italy’s main trade unions) asked Government to shed light on the stabilisation of precarious workers in the public administration following the opinion rendered by the Senate’s Labour Committee, which imposed several constraints on the governmental decree and actually prevented such stabilisation.

risked an 8-million Euro penalty by the EU because of the failure to turn 130,000 fixed-time employment contracts into as many contracts of unlimited duration for school staff. The judgment by the EU's Court of Justice on compatibility of the Italian legislation with the European 1999 directive is expected by the end of March 2014; the European Union has already addressed several letters to Italy in respect of the latter directive. Of late, a warning to Italy was also sent by the European Commission: replacement teachers must get fair wages and the years of precarious work must be taken into account in calculating length of service.

Precariousness is an issue also in universities, because it slows down work and downgrades the overall outcome of research activities as no long-term investments may be performed – whilst such investments would be necessary to ensure effectiveness both in terms of production and in terms of the “existence” led by the individual researches. Recently, researchers from the University of Bari sent a letter to the Dean because they are still awaiting employment after three years from a competitive examination they had won.

### *The Case of the “Ousted”*

During the past two years the case of the so-called “ousted” has also grown worse; the “ousted” are employees at risk of being out of job and without any retirement benefits because of the increased age of retirement brought about by the recent reformation of social security legislation. Government is supposed to apply the old retirement rules only to the employees that have entered into ad-hoc agreements by 2011, have already quit their jobs by that date and are about to retire. At jeopardy are allegedly those workers that, in spite of their having signed up to the relevant agreements, are still employed (such as the Termini Imerese workers getting redundancy pay) and the workers that have embarked on a 4-year advanced retirement plan. According to the leaders of the main Italian trade unions, those workers that had accepted by 2011 to retire in accordance with the old rules, must be enabled to enjoy their retirement benefits. There is considerable disagreement also on the figures concerning the “ousted”: according

to Government, they were 65,000 in 2015, whilst their numbers were in excess of 160,000 according to trade unions.

## **Discrimination and Violence<sup>3</sup>**

Since different types of discrimination occur in Italy – in a widespread manner and across the whole social structure – one should assume that discrimination takes place in the occupational sector as well. Based on this assumption, attention will now focus on providing a concise overview of discrimination against migrants – whilst referring the reader to the ad-hoc section to be found in this report - as well as of gender-based discrimination.

**Migrants.** In December 2013, Amnesty International urged Italy to reconsider its immigration policies since those currently in force “contribute to the exploitation of migrant workers and violate their right to fair and favourable working conditions and to access to justice.”

The opportunity for Amnesty’s call on Italy was provided by the publication of a report called *We needed hands, men arrived* addressing the occupational exploitation of farmhands migrating to Italy. These are individuals mostly coming from sub-Saharan Africa, Northern Africa and Asia, although there are also nationals from EU countries such as Bulgaria and Romania and Eastern European countries such as Albania; they work in the provinces of Latina and Caserta although migrants are actually exploited throughout Italy.

Indeed, immigration policies have been fueling anxiety in public opinion over the past ten years because it has been argued that the country’s safety is being threatened by the uncontrollable flow of “illegal” migrants; this was meant to justify the implementation of

---

<sup>3</sup> Please see the section on juvenile work in Italy in the chapter addressing children’s rights.

strict measures that made migrants' legal status highly precarious and turned them into the subjects of exploitation.

Exploitation is especially rife in farming and building industries in several areas of Southern Italy, where migrants' wages are about 40% lower than those of Italians although they work longer hours.

**Women.** The "Affirmative Action Code", which came into force by way of legislative decree No. 198/2006, includes a whole Chapter (iii) addressing equal opportunities in the workplace, the ban on any discrimination, safeguards and remedies to foster women's occupational role and bring about equality between men and women at the workplace. However, there is a long stretch of road ahead still to be travelled if one considers that women in top-level positions are as yet very few in Italian companies, Universities and public administrative bodies. The legislative instruments Italy has equipped itself with are not enough by themselves and they should go hand in hand with communication and awareness-raising campaigns focusing on respect for woman. Additionally, to counter violence and discrimination, Unified Guarantees Boards should be set up in workplaces; currently they are only envisaged for the public sector under Law No. 183/2010, but they may be certainly implemented in the public sector as well. Another tool to be relied upon to a greater extent is the Equal Opportunities Charter, whereby employers are required to respect gender-related differences. Furthermore, one should also foster the implementation by companies of working time flexibility, to be agreed upon with trade unions, to as to reconcile work with the care of children and dependents by giving priority to part-time work (including payment of social security contributions); corporate welfare tools should also be relied upon increasingly such as nurseries, vouchers, health care and welfare services, whilst maternity and paternity leaves should be extended and income support measures should be taken into account. With a view to protecting woman as a whole, i.e. both as a mother and as a worker, all optional leaves should entail the continued payment of social security contributions to prevent jeopardizing retirement

benefits. Thus, the road ahead is quite long in Italy also with regard to gender-related discrimination in the employment sector.

## **Legislation and Policies**

### ITALIAN LEGAL SYSTEM

#### Foundations, Promotion, Existence, Freedom and Dignity

The first paragraph of the first Article of Italy's Constitution includes a statement that was construed both literally and as an injunction by the Constituent Assembly, and indeed this is how it has ever been interpreted since: "Italy is a democratic Republic founded on labour (...)." Thus, labour is first and foremost the foundation of the Republic and democracy. This is so because society was and is grounded in labour (literal meaning), as well as because society must be grounded on labour (injunctive meaning) – which entails as a logical consequence that if this fundamental framework (labour) ceased to exist, the Republic would be required to take steps in order to prevent undermining such a basic foundation.

Another of the fundamental principles of the whole legal system in Italy can be found in Article 4 of the Constitution, whereby all citizens have the right to work and the Republic should promote those conditions which render this right effective (paragraph 1). Paragraph 2 of this Article takes up and lays down the typical rationale of modern contractualism: "Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society." The same fundamental values and principles as set out so unambiguously in the first part of the Constitutional Charter are reaffirmed in Title III thereof, which concerns economic relationships between citizens. Article 35 provides that the Republic protects work in all its forms and practices and, among other things, "(...) It promotes and encourages international agreements and organisations which have the aim of establishing and regulating labour rights." (paragraph 3). Additionally, Article 36 outlines the clear-cut connection existing

between the status of being a worker and the quality of life of any individual, as it provides that remuneration should be commensurate to work and in any case such as to afford workers and their families a free and dignified existence. Finally, Article 38 sets forth the principle whereby “Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment.”<sup>4</sup>

### Italy: The Main Regulatory and Political Developments in 2012 and 2013

Substantially different events have taken place over the past two years as for employment and wage-related policies; this is so especially in the light of two factors that are impacting the current historical and sociological paradigms considerably – i.e. economic crisis and the increased migration flows first from Northern African countries and secondly from the Middle East.

#### The “Fornero reformation”

In February 2012, there started a process that led to the labour reformation of August 2012, which is known as the “Fornero” reformation. This process was marked by the participation of Minister Fornero in the conference convened by the Prime Minister’s Office jointly with trade unions and relevant stakeholders on “Reforming the labour market in a growth perspective.” The key targets highlighted by the conference were as follows: countering precarious work, which in the then Minister’s view resulted from “bad” flexibility; leveraging “good” flexibility so as to encourage investments and growth by businesses. Additionally, it was found that so-called social safety nets had to be reconsidered by relying on all the safeguards so far envisaged.

In the early days of April 2012, the Monti Government launched

---

<sup>4</sup> Thus, promoting the right to work is meant in the Constitution also as a tool to protect the fundamental rights of individuals in the social communities where individuals act and express themselves. From this standpoint, the foundational value of the right to work (and wages) is also mirrored by the protection of especially vulnerable situations (accidents, sickness, disability, old age, or involuntary employment).

the “Fornero” bill on reforming the labour market; this started the legislative process that came to an end shortly thereafter. The reformation was part of Law No. 92/2012<sup>5</sup>; its main innovations consisted in the apportionments made (1.8 billion Euro) for social safety nets, some changes to traineeship categories and the relevant arrangements, increased flexibility in terminating employment relationships (Section 18 of the so-called “Workers’ Charter”), the introduction of a maximum duration for fixed-time contracts (36 months) and the reintroduction of a health care fee (“ticket”) applying to unemployed and their families. The focus on traineeship as regulated by Law No. 167/2011 was meant to curb the misuse of this type of employment contract but it has not done away with the many ambiguities the latter is fraught with in terms of protecting workers’ fundamental rights. Fixed-time contracts are increasingly instrumental to allowing young workers to enter the labour market, however the difficulties encountered in renewing such contracts (which at times proves downright impossible) result into increasing the time spent working under ultimately precarious conditions. As for project-oriented contracts, the reformation envisaged a more stringent definition of the “project” concept by eliminating – at least on paper – the possibility to consider that a programme or merely a phase of activity was a project and requiring the expected deliverables to be specified in the contract. The reformation also brought about changes to the regulations on ancillary work, silent (trading-limited) partnerships and the so-called “intermittent” work. Regarding Section 18 of the Workers’ Charter (Law No. 300/1970), in particular the obligation to reinstate a worker to his or her position following illegitimate termination of employment, the Reformation was rather vague and introduced distinctions that are not always easy to grasp. Additionally, no changes were made to the arrangements for terminating employment, as only the consequences possibly incurred by the employer were addressed.

On 1 January 2013 the reformation of social safety nets came into force as per the amendments introduced by Law No. 228/2012,

---

5 See [www.altalex.com](http://www.altalex.com)

following Section 2 of the Fornero labour reformation. In particular, the ASPI (Assicurazione Sociale per l'Impiego, Employment-Related Social Insurance) was created in order to provide a safety net against “universal” unemployment and overcome the “dual track” protection system, i.e. the protection afforded whilst the employer-employee relationship still exists – given the increasing inhomogeneity of working conditions and the increasingly non-permanent nature of employer-employee relationships. In fact, the initial objective was relinquished in the course of the law-making process so that the system is as yet grounded in the time-honored redundancy pay model as an unemployment buffering system or clearing room.<sup>6</sup> Following the reformation, redundancy benefits play actually an utterly marginal role unlike what is the case in many other European countries, as they are “squeezed” on the one hand by redundancy pay and, on the other hand, by “indennità di mobilità” [allowance paid to redundant workers from certain industry sectors after being included in a mobility list]. Finally, the increased flexibility in terminating employment relationships is rather questionable as it marks a shift towards a new approach to dismissal of employees. Before the Workers’ Charter was passed in 1970, employees could be fired on political or trade union-related grounds; Section 18 of the Charter does not allow for these types of arbitrary termination of employment, which was a major achievement by trade unions. Furthermore, the Italian labour market does not feature job-to-job mobility, unlike e.g. the US one, so that termination of employment has ever been received unfavourably.

### Beyond reforming the labour market: Legislation and policies

According to former Minister Elsa Fornero and the Vice-President of the European Commission, Viviane Reding,<sup>7</sup> there are as yet too few women holding executive and managerial positions in large corporations as well as at institutional level – in spite of the fact that as many as 60 out of 100 graduates in 2012 were women. A

---

6 For additional information, see [www.linkiesta.it/riforma-fornero-esperti](http://www.linkiesta.it/riforma-fornero-esperti)

7 <http://www.ilsole24ore.com/art/notizie/2012-03-07/fornero-reding-165131.shtml>

few figures are provided below to show the “crystal barrier” that is keeping women outside top-level positions: in Europe, only 1 director out of 7 in a management board is a woman (amounting to 13.7%) and only in 1 case out of 30 does a woman chair the board of directors (3.2%). In Italy the situation is actually worse, as only 6.1% of positions in boards of directors are held by women; in fact, women’s employment rate in Italy is as a whole lower than the average one in the EU (being under 50%).

In July 2012, a legislative decree was issued (No. 109/2012) to foster the legalization of illegal workers pursuant to directive 2009/52/EC, which was aimed at strengthening cooperation among Member States in the fight against illegal immigration. The decree introduced aggravating factors in case illegally staying aliens are employed as well as in additional cases – if over three such workers are employed, if underage individuals below the age of working are employed, if exploitation under Section 603-bis of the Criminal Code can be said to occur.

The Report on Policies against Poverty and Social Exclusion<sup>8</sup>

The Report provides an overview of 2012 and the preceding years; several highly critical situations can be highlighted, which were actually compounded by the financial crisis and the difficulties in regulating the flows of migrants to Italy. The main points have to do with the impact caused by the crisis and the resulting drop in business and production, and with the failure by many youths to leave their families. Additionally, the reduced production enhanced companies’ aversion to recruit new staff and caused whole manufacturing sectors to become redundant. Another major criticality has to do with the income of the elderly. Single-parent families also show organizational criticalities as the single parent has to leave home in order to get an income. Conversely, the employment rates of aliens proved the exception compared to the rule applying to the remainder of the Italian population.

In March 2013, a decree by Minister Fornero was issued pursuant to

the commitments undertaken on account of the failure to extend, via a law, the ad-hoc incentives to the recruitment of employees dismissed on justified objective grounds (GMO); the decree envisaged specific benefits in case such employees were recruited. In particular, it was provided that employers recruiting employees in 2013 - whether under fixed-time contracts or via contracts of an unlimited duration, also part-time - would be awarded incentives if such employees had been dismissed in the preceding year. The incentives in question consist in a 190-Euro allowance for the twelve months following recruitment.

In March 2013, two decisions were also adopted to support employment. One of them reduced the obligations concerning social security contributions vis-à-vis employers that had stipulated labour integration contracts up to 31 December 2012; the other one determined who was a “disadvantaged worker” pursuant to the principles set forth in EC Regulation No. 800/2008.<sup>9</sup>

After the new Minister of Labour, Mr. Enrico Giovannini, took office, decree No. 54/2013 was published including urgent measures on the refinancing of social safety nets by derogating from applicable legislation and extending the duration of fixed-time contracts in public administrative bodies. In the early days of 2013, the general policies of the Ministry were discussed with particular regard to social policies in the presence of the former Minister, Enrico Giovannini, and the Junior Minister Ms. Maria Cecilia Guerra before the Labour and Social Security Committee of the Senate and the Social Affairs Committee of the Chamber of Deputies, respectively. The key points were as follows:<sup>10</sup>

- The role of social and employment policies in fostering social inclusion;
- Funding of social policies at local and peripheral level;
- Reforming the “ISEE” system [a mechanism to calculate the

<sup>9</sup> The text of the decree is available here:

[http://www.lavoro.gov.it/Strumenti/normativa/Documents/2013/20130320\\_DM\\_lav\\_svantaggiati.pdf](http://www.lavoro.gov.it/Strumenti/normativa/Documents/2013/20130320_DM_lav_svantaggiati.pdf).

<sup>10</sup> The full text is available here:

[http://www.lavoro.gov.it/PrimoPiano/Documents/Linee\\_programmatiche\\_politichesociali\\_04062013.pdf](http://www.lavoro.gov.it/PrimoPiano/Documents/Linee_programmatiche_politichesociali_04062013.pdf).

eligibility score regarding certain allowances and benefits] by having regard to the “Salva Italia” (Rescue Italy) decree;

- The new social card;
- Setting up of a welfare register, an information system for welfare services, and a database for social benefits;
- Start of a two-year programme for individuals with disabilities;
- Outlining a procedure for legalizing aliens’ occupational relationships.

Decree No. 69/2013 contains “Urgent provisions to re-launch economy” (this is the so-called “Action Decree”) and envisages simplifications of formal requirements concerning employment as well as measures fostering economic growth and providing facilitations to companies and measures to revamp infrastructure-related activities and simplify administrative requirements.

In September 2013, the process started that is meant to ultimately set up a national agency for the fight against poverty along with an “Active Inclusion Support” plan.

Finally, in November 2013 the decrees allocating resources for social safety nets by derogating from the applicable legislation were enacted. The first of such decrees distributed 500 million Euro among Regions and Autonomous Provinces out of the Social Fund for Occupation and Training. The second decree allocated 287,741,250 Euro out of the funds of the Action and Cohesion Plan with a view to active and passive policy experimental measures in Convergence Objective regions.

### Case-Law of the Constitutional Court

#### Section 19 of the Workers’ Charter

By way of its judgment No 231/2013, the Constitutional Court ruled that Section 19 of the Workers’ Charter was unconstitutional. This decision followed the request for an incidental ruling lodged in the course of proceedings pending before the courts of Vercelli, Modena

and Turin; it has to do with the violation of the right to the freedom of trade-union associations. Workers from the Ferrari in Modena had been denied the right to set up trade union representations because they had not undersigned the collective labour agreement after actively taking part in the relevant negotiations. Under Section 19, letter b), of Law No. 300/1970 (the so-called Workers' Charter), the rights at issue were only vested in the trade union organisations that undersigned collective agreements. Conversely, the Court stated in its recent decision that it had long questioned compliance of Section 19 with the Constitutional Charter, ever since the 1980's; indeed, the Court had repeatedly stepped in via warnings to invite Parliament to amend the relevant legislation (Judgment No. 1/1994), since only the trade unions meeting the so-called "increased representativeness" standard could enjoy the rights afforded by the Workers' Charter. Thus, the illegitimate nature of the arrangements resulted from excluding a trade union from enjoying the applicable rights, because it had failed to undersign collective agreements and in spite of its representing the views of several workers. In particular, the Court stated that Section 19 was in breach of the fundamental principles of the Constitution as it violated Articles 2, 3 and 39 thereof.

### Constitutional Court and European Court of Justice

By way of its order No. 207/2013, the Constitutional Court lodged, for the first time, a request for preliminary ruling with the European Court of Justice in the course of an ancillary proceeding instituted to establish compliance with constitutional principles.<sup>11</sup> The issue arose from the proceedings instituted by the courts of Rome and Lamezia Terme, challenging the constitutional legitimacy of Section 4 of Law No. 14/1999 (Urgent measures concerning school staff) because of the alleged violation of Articles 11 and 117(1) of the Constitution. The latter Articles had been made applicable by a clause contained in the framework agreement on fixed-term work annexed to Council directive No. 1999/70/EC. That clause is aimed at preventing abuse resulting from the use of successive fixed-term

---

11 See B. Guastaferrro, *Quaderni Costituzionali*, 4/2013.

employment contracts or relationships; to that end, it provides that Member States should introduce measures to determine either the maximum total duration of fixed-term employment contracts or the number of renewals or objective reasons justifying the renewal of such contracts. The directive was transposed into Italy's legal system, however the possible incompatibility between domestic laws and the directive arises from the circumstance that the decree implementing the directive excludes school staff from its scope of application – the reason being that “insurmountable requirements” allegedly legitimate the use of successive fixed-term employment contracts with regard to the same employee. Thus, school staff are allegedly outside the scope of application of the legislation on compensation for damages that is conversely applicable to all other civil service sectors.

Section 4 of Law No. 124/1999 was rejected as to its final provisions rather than by having regard to its main import. In the Court's view, “the provision whereby replacement teachers may be employed to cover vacancies that are actually available as of the 31<sup>st</sup> of December pending the performance of competitive examinations to recruit non-permanent teachers might give rise to the renewal of fixed-term contracts in the absence of any definite timeline for the performance of the said competitive examinations.” Hence the need to request a preliminary ruling from the Court of Justice regarding interpretation of the above clause so as to determine whether the latter was in conflict with the domestic law provision being challenged.

Thus, the issue raised by the Constitutional Court concerns the possible conflict between the provision being challenged and the clause contained in the framework agreement, as the former envisages a differential treatment of school staff.

The most significant feature of the order No. 207/2013 is that the Constitutional Court requested a preliminary ruling for the first time on an ancillary issue and justified this decision by having regard to its role as a national judicial authority (see Article 267 of the TFEU) also in proceedings concerning ancillary issues. This window opened vis-à-vis the Luxembourg Court would appear to be especially

interesting because it was not made necessary by or anyhow it did not result from the non-availability of other judicial authorities dealing with the same case. Additionally, if one considers the subject matter of the claim addressed via the order No. 207/2013, one can attach special importance to the approach followed by the Constitutional Court in that the same thorny issue of precarious work in schools – which impacts workers’ fundamental rights – was addressed by the Court of Cassation, in spite of its being Italy’s supreme i.e. last-instance court, by ruling that the domestic legislation on recruitment of school staff was compatible with directive 1999/70/EC without applying to the European Court of Justice. The peculiarity of this case would point to an attempt being made by the Constitutional Court to strike up a dialogue with the European Court of Justice on major issues such as those relating to workers’ rights.

Focus on minimum income: Between European policies and Italy’s legislative process

By way of Recommendation 92/441, the then European Economic Community set out common criteria concerning sufficient resources and social assistance in social protection systems.<sup>12</sup> The EEC urged all Member States (including Italy) to introduce guaranteed minimum income schemes. All Member States have taken the necessary measures since – except for Italy and Greece. Guaranteed minimum income is expected to allow those living close to the poverty threshold to lead a dignified existence.

There is actually some confusion around this issue from a semantic standpoint and this is the right place to bring about clarification. Guaranteed minimum income and basic income are not exactly the same. Basic income is a universal, generalized form of income support that is afforded by a State to all citizens that are not underage – whether employed or unemployed, whether they worked in the past or have never worked. Thus, it is a type of income that is provided throughout an individual’s life irrespective of that individual’s

---

12 (92/441/EEC) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992H0441:EN:HTML>; the text mentions “minimum guaranteed income”.

readiness to work. A different rationale applies to guaranteed minimum income, which is afforded to workers that have lost their jobs and is “hitched” to social safety nets. Accordingly, guaranteed minimum income is time-limited and conditional upon the recipient’s readiness to accept job offers or participate in training programmes aimed at reintegration into the labour market.

A proposal to introduce a guaranteed minimum income was first tabled before the Chamber of Deputies in April 2013 by the Democratic Party. Although it was titled “Introducing basic income schemes”, the bill provided that the recipients of such income would be the unemployed or jobless, and out-of-job precarious workers – on condition they declared “their readiness to work and attend training or reintegration courses.” Thus, this is a type of guaranteed minimum income rather than a basic income scheme, pursuant to the distinction drawn above. In April 2013 a bill was also tabled by Sinistra, Ecologia e Libertà (Left, Ecology and Freedom) in connection with the “Minimum Guaranteed Income” campaign<sup>13</sup>; the idea is to introduce a minimum income of 600 Euro per month for all individuals (jobless, unemployed, precarious workers) having a taxable personal income not in excess of 8000 Euro if they have been resident in Italy for at least 24 months and are registered with the job placement lists of Employment Offices. The proposal by the M5S (Movimento 5 Stelle – Five-Star Movement) was introduced shortly thereafter; it is similar under many respects to that by SEL but it was rejected by the Chamber at the end of June. The main issue concerning guaranteed minimum income has still to do with its implementation – or rather, with the feasibility of its implementation.<sup>14</sup>

## National Strategy for the Inclusion of Roma, Sinti and Nomadic Communities in the Labour Market

In 2012 and 2013, the national strategy for the inclusion of Roma,

13 <http://www.redditogarantito.it/#!/reddito-garantito>.

14 In practice it is unclear how to bring it about. There are several proposals: setting up a fund to be financed jointly by State and Regions; enhancing the fight against tax evasion or introducing new taxes; cutting expenditure, e.g. military expenditure.

Sinti and nomadic communities highlighted the need for fostering the integration of these ethnic and social groups in Italy's labour market. The key objectives of the strategy focus on promoting the fair social and economic inclusion of Roma, Sinti and Caminanti (Gens de voyage) communities. In particular, there are four main objectives in the Employment Area (as per the Communication by the European Commission No. 173/2011) : access to education, employment, health, housing. With particular regard to the employment area, the strategy will seek to promote the fair treatment of Roma, Sinti and Caminanti Communities (RSC) in terms of social and economic inclusion – that is, first of all in the employment sector.

The specific objectives (OS – Obiettivi Specifici, in Italian) of the EMPLOYMENT area are as follows:

- OS1: Fostering non-discriminatory training and access to training courses with a view to integration in the labour market and the creation of business;
- OS2: Fostering tools, arrangements and mechanisms to legalise precarious or illegal work and promote entrepreneurial work and self-employment;
- OS3: Devising customized processes to enable Roma women to access the labour market and supporting under-35 RSC in accessing the benefits and facilitations envisaged for young entrepreneurs and youth employment in general.

Over the past few years, many Roma encountered considerable difficulties in terms of occupational integration either because of the inadequate wages or because of the organizational features of their employment. The success of occupational integration is closely related to the cooperation with employment centres and real time exchanges on vacancies available in companies; however, one cannot but leverage the skills, capabilities and aspirations of each individual involved whilst doing away with all sorts of discrimination in the workplace and ensuring the appropriate vocational training.

Regarding the objectives specified above and following the Communication by the European Commission, the Ministry of

Labour tried to ensure (OS1), in 2012 and 2013, full access by Roma and Sinti meeting all the eligibility requirements to the projects and experimental initiatives undertaken by the competent directorates general.

As for OS2, an additional nationwide project was launched in December 2011 called “System action to foster and create innovative operational tools at Occupational Services with a view to self-employment and micro-entrepreneurship”. This project is aimed at facilitating occupational integration of individuals at risk for social and occupational exclusion – such as, inter alia, Roma, Sinti and Caminanti communities.

Regarding OS3 implementation, there is currently a Programme that has been modeled after the Spanish one (“Acceder”) and focuses especially on the occupational inclusion of RSC women via customized integration processes. Finally, it should be pointed out that in Italy – unlike what is the case in some EU countries – there is as yet no social funding programme aimed at the inclusion of Roma people.

### *The Supranational Level*

#### Council of Europe

The latest report on Italy by the Human Rights Commissioner at the Council of Europe, Nils Muiznieks, dates back to July 2012.<sup>15</sup> After an overview of the level of integration of refugees and beneficiaries of international protection in Italy, the Commissioner notes (item III in document COMMDH2012-26) that the situation is very serious. The Commissioner urges Italian authorities to take steps by way of measures countering disadvantages in the labour market. In particular, the discrimination to be tackled has to do with the risk of exploitation of refugees and international protection beneficiaries in the employment sector: laws and regulations should be reconsidered in a more inclusive perspective so as to ensure

integration alongside protection. This process may only be ensured by doing away with the administrative obstacles that slow down the integration of refugees and international protection beneficiaries in the labour market. The Commissioner calls upon Italy to transpose the EU directive extending long-term resident status to refugees and other international protection beneficiaries as for market labour facilitations and the fundamental rights vested in refugees intending to work in Italy.

The directive was transposed recently by way of Law No. 97 of 6 August 2013,<sup>16</sup> i.e. the so-called “2013 European Law”; this law includes, among other things, provisions on aliens’ access to employment by the public administration and lays down the rights vested in relatives of EU citizens, long-stayers, refugees and beneficiaries of ancillary protection to access public offices also via sector-specific legislation on civil service – whereby the same limitations and conditions apply as those envisaged for EU citizens. The law in question also settled the issues related to incompatibility of Italian legislation and practices with the European obligations arising out of Directive 2003/109 – as long-stayers were denied access to the INPS allowance granted to large families.

### European Commission

In April 2013, the European Commission issued a Communication addressed to the European Parliament and the Council containing the Annual Report on Asylum and Immigration (SWD(2013) 210 final). The Report includes several considerations that also deal with integration via the labour market. The key message is “migration as a tool of growth”. This may be achieved by developing tools for the communication between companies and workers and, generally speaking, between demand and offer within the framework of the European labour market; by improving the skills of the current labour force; creating new positions for the unemployed; and increasing workers’ mobility in the EU. The integration of third-

---

16 Further details on the “2013 European Law” transposing the directive can be found here: [http://www.asgi.it/home\\_asgi.php?n=2866&l=it](http://www.asgi.it/home_asgi.php?n=2866&l=it)

country nationals, who often are migrants, should take place on different levels: social security, training, labour and wages.

The key instrument on labour and wages as regards the Commission is Communication (COM(2013) 83) to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - "Towards social investment for growth and cohesion, including implementing the European Social Fund 2014-2020". The Europe 2020 Strategy for smart, sustainable and inclusive growth sets targets to lift at least 20 million people out of poverty and social exclusion and increase employment of the population aged 20-64 to 75%. The flagship initiatives of the Europe 2020 Strategy, in particular the European Platform against Poverty and Social Exclusion and the Agenda for New Skills and Jobs, support efforts to reach economic, social and geographical cohesion and fight against social exclusion and discrimination in line with the fundamental EU targets as enshrined in the Treaty.

However, the challenges posed by the crisis have led to growing risks of poverty and social and labour market exclusion in many countries. Welfare policies play three functions in this connection: social investments, social protection and stabilization of the economy. To meet the Europe 2020 targets, a new approach is needed, recognising the budget constraints and demographic challenges that Member States face. Social policies need to be both adequate and fiscally sustainable, as these are two sides of the same coin. This means putting greater focus on policies such as childcare, education, training, active labour market policies, housing support, rehabilitation and health services. Social investment plays a particular role for those people that are disproportionately affected by unemployment, poverty, bad housing and poor health conditions and discrimination. Following up on a recommendation by the European Council, the European Commission drew up several considerations and recommendations for Italy at the end of May 2013 regarding labour, income and social inclusion and concerning the Italian stability programme 2012-2017 (COM(2013)). The Commission observes that Italy is going through major macro-economic imbalances

which require active policies to restore a balanced situation. In particular, this is due to the loss of competitiveness externally and to the considerable public debt against a general backdrop of economic stagnation: these continue to be the main macro-economic imbalances affecting Italy. Furthermore, the Commission observes that while important reforms have been adopted to foster fiscal sustainability and to spur growth, their full implementation remains a challenge and there is scope for further action.

The participation of women in the labour market remains weak as well and the employment gender gap is one of the highest in the EU. The risk of poverty and social exclusion are markedly on the rise, while the social protection system has increasing difficulties to cope with social needs.

#### European Union

By a decision of April 2013, the European Council reaffirmed the guiding lines for all Member States in the labour sector: elaborating a coordinated development strategy so as to foster the increase in specialized workforce, including individuals trained in specific skills and capable at the same time to adapt to the needs arising from the changed economic paradigms – including the occupational one. The 2020 Strategy as developed by the Commission allows guiding the European economy towards balanced, sustainable, inclusive growth supported by high occupational, productivity and – above all – social cohesion levels.

The evaluation of the national reformation projects as collected in the Joint Employment Report adopted by the Council in February 2013 shows that Member States should continue making all efforts to develop a set of priorities: enhancing participation in the labour market and reducing structural unemployment; developing a workforce having the required skills to easily integrate in the labour market by fostering quality of work and lifelong training – therefore improving, in the first place, the training system and increasing education for the services sector. Only in this manner will it be possible to foster social inclusion and fight poverty.

## European Court of the Human Rights

In December 2012, the Strasbourg Court ruled against Italy because of the failure to respect the rights of 38 former employees of the Province of Milan who, having been transferred in 1999 to the Ministry of Education, were not recognized their length of service with the Province of Milan. Although all of them had filed a suit against the State, their interests were not protected because the rules on recognition of length of service were amended with retroactive effects by the 2006 Budget Act whilst the relevant proceedings were still pending. In 2012 the Court ruled that the arguments submitted by the Italian Government to justify the introduction of new rules, allegedly grounded in the need for filling a legal loophole and preventing discrimination between State employees and employees coming from local authorities, were not convincing. In the Court's view, the actual purpose served by the new rules was to preserve the State's economic interest by reducing the backlog of judicial disputes.

## International Labour Organisation (ILO)

In December 2012, Italy signed ILO's Convention on domestic workers, thus making a major step forward in protecting this category of workers and recognizing domestic work as a form of professional activity also in legal terms. The then Minister of Foreign Affairs (Terzi) declared that in so doing "Italy meant to be among the first European countries to sign because it is a Convention that fosters social cohesion and the affirmation of rights, in particular women's rights, which is a fundamental standard of civilization." Having signed this Convention is also important because of the high rate of aliens working in the tertiary sector in Italy, especially as domestic workers.

The Convention concerning decent work for domestic workers was adopted in June 2011; it is aimed at ensuring an adequate protection standard for domestic workers in full compliance with gender equality by taking also account of the high number of women working

in this sector. In particular, the Convention lays down domestic workers' right to be informed on employment terms and conditions; it prohibits forced labour and regulates recruitment methods. At the same time, the Convention introduces minimum requirements with regard to housing and privacy of the workers living at the families employing them. The Contracting Parties are also required to set a minimum age for admission to domestic work in compliance with international child protection instruments.

## **Recommendations**

- 1) Ratifying the International Labour Organisation's Convention on minimum wage fixing and introducing a basic income scheme, that is a universal and generalized instrument to support individual income as applied by the State to all citizens of age – whether they work or are currently jobless, and whether they used to work or have never worked.
- 2) Introducing more effective legislation to ensure flexibility in working hours so as to reconcile work with care of children and non-self-sufficient individuals, by giving priority to the latter requirements in granting part-time arrangements (including the payment of social security benefits) as well as in connection with corporate welfare tools such as in-house nurseries, vouchers, health care and assistance.
- 3) Reconsidering the occupational conditions applying to pregnant women as well as pregnancy-related practices of unjustified dismissal. It is furthermore recommended to improve and increase benefits for families including two working parents so as to foster gender equality in the labour market.
- 4) Reducing segmentation in Italy's labour market. In particular, steps should be taken to enhance the initiatives aimed at developing a full-fledged, productive labour market where workers' operational freedom can be guaranteed and all workers are protected whether at the start or at the end of their careers.
- 5) Introducing harsher penalties vis-à-vis those employers that fail to respect safety requirements, whilst enhancing controls.
- 6) Regulating the status of precarious workers [fixed-time contract workers] in public administrative bodies, in particular in schools,

so as to comply with the guidance provided by the Court of Justice of the EU.

- 7) Adjusting social safety nets to the standards existing in the other EU countries. It is recommended to introduce a mechanism in this respect that focuses on the key role of the worker's dignity.
- 8) Introducing more effective flexibility mechanisms for retirement so as to protect, in the first place, personal freedom.
- 9) Immediately affording the right to wages for those "ousted" workers that are currently jobless and without any retirement benefits because of the increase in the retirement age provided for by the recent reformation of social security schemes.