

Decentralizing Industrial Relations and the Role of Labor Unions and Employee Representatives

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1. General overview of the trade union system in Italy

The system of industrial relations in Italy is traditionally characterized by a position of conflict between the actors in Collective Bargaining, with a distinct differentiation of the role of management, on one side, and trade unions, on the other.

This means that, differing from what happens in other European systems and, in particular, in the German system, trade unions do not participate in the decisions taken at any phase of the running of a business.

At a legal level, the fundamental disposition is that contained in the Constitution, in section 39, according to which trade union organization is free.

This principle has led to a distancing of the present situation to that of the fascist period, in force between the two world wars, in which trade union activity was made illegal, as was any form of organisation by workers for their rights; especially strike action. During the fascist period, corporations, organisms for public law, were to represent workers' interests by law, though they had to take into account the greater interest of the Nation and, therefore, also the needs of companies.

The principle of trade union freedom was introduced in 1948 with the Constitution and has led to the formation of trade unions that, adopting a system of voluntary membership, have had significant ties with the political forces present in parliament.

In Italy there are three main trade union confederations: the Cgil, the Cisl, and the Uil, that have had the respective political references: the Communist Party, the Christian Democratic Party and the Socialist Party.

After the severe crisis of the traditional political parties in Italy between the late 1980s and early 1990s, following the fall of the Berlin's wall, on the one hand, and judicial investigations into corruption in politics, on the other hand, both the Communist Party and the Christian Democratic Party have left the scene, whilst the Socialist Party, although still formally in existence, has but a marginal political weight. It can be said, still today, the Cgil is the most left-wing trade union, the Cisl is one of catholic inspiration and more inclined to moderate positions and collaboration with business, while the Uil is a moderate left-wing reformist one.

Although the trade union to gain the greatest consensus from workers has always been the Cgil, the three trade unions have always worked together to try and overcome their differences and to form a common front. There have been, however, periods in which trade union unity has been fragile especially over certain issues like, in the 1980s, the abandonment of the system of automatic wage increases linked to the reduction of purchasing power due to inflation ("scala mobile") and, between 2001 and 2005, the so-called Pact for Italy and the renewal of the national collective contract for metal workers.

The period of greatest social conflict that our country has had since the Second World War was from the 1960s to the early 1970s, during which time the political scene was strongly characterized by the influence of left-wing workers' political movements, that in those years – not only in Italy but in Europe in general – had widespread parliamentary representation.

Those years were the last of a period of extraordinary economic expansion for Italy, that had passed the difficult phase of post-war reconstruction. There was, therefore, a need to distribute part of the wealth that had been produced to the working class, whose work had not yet been adequately compensated. In that period, collective contractual bargaining, that ended periods of often harsh conflict with employers, brought continuous improvements in wages and work conditions and the trade unions, as one can easily imagine, enjoyed the full support of the workers.

But those boom years were soon followed by the first serious economic recession of the post-war period that had its roots in the oil crisis of the 1970s.

This meant that trade unions had less space in which to manoeuvre. For the first time contractual and wage discussions were made from a weakened position and the trade unions had the difficult task of mediating between the survival needs of business and the primary value of the defence of jobs.

There were the first so-called ablativ agreements; contracts that made the workers' conditions worse than under previous collective agreements. This situation led to a serious crisis of consensus within the trade union movement, aggravated by the fact that, from a legal point of view, in Italy collective agreements do not have effectiveness for all workers but are limited to the members of the stipulating trade union.

Whatever the complex economic, ideological, cultural or historical reasons maybe, one can say that, since the 1980s, trade unionism in Italy has been in a phase of crisis in terms of workers' representativeness that does not seem, at least for the moment, destined to be overcome.

2. Union Density and the role of trade unions in their recent developments

In discussing this point it is interesting to analyse the estimates of workers' membership in trade unions.

To be able to read the data of trade union density, however, one must consider that even though the total number of members of the main trade union confederations has increased by approximately two million since 1979, more than half of the members are pensioners. If the number of pensioners is not considered, however, the degree of unionisation can be seen to have come down from approximately 50% in 1980 to approximately 35% today: a reduction of over a quarter.

This drop in unionisation has probably been compensated, at least in part, by the increase in autonomous union membership, particularly strong in the public sector and in sectors protected from competition (the post office, railroads, energy etc.) and in the banking sector. Even so it is still difficult to determine the exact level of adhesion to this type of trade union.

In spite of the undeniable difficulties that trade unions have had in reinstating a relationship of confidence with their own traditional base, trade unions have gradually been assuming an increasingly greater role in deciding the political-economic agendas of the governments in the last decade.

According to some observers, the trade unions' increase in political weight is partially due to the overall weakness that has characterized the Italian political-institutional system since the beginning of the 1990s, as well as to the fact that becoming part of the European Union and the Euro area would not have been possible without the collaboration of all the social partners, especially the trade unions.

In fact the role of trade unions in last ten to fifteen years has radically changed: from an

antagonist of business and the constituted political power, to a privileged and necessary interlocutor in the most critical steps of the political and economic life of the country. Naturally, this new and important role has led trade unions to abandon more radical positions and to embrace the logic of the so-called "*concertazione*" (*concertation*).

Concertation seems to have been the key word of the Italian industrial relations at "macro" level during the 1990s. Even though concertation does not mean co-determination (in the sense used in the German system), its effect is that of preventing industrial conflict and, therefore, social conflict, through a system of continuous dialogue on economic issues that engage the social partners – that is, trade unions, employers' organisations and the government – to promote initiatives which have been previously agreed.

The need for concertation comes from the realisation – shared by all the social partners – that conflict generates diseconomy that is not sustainable in a fragile economic reality that is irreversibly projected into a competitive global market. Therefore, with concertation, it should be possible to resolve conflicts of interest that are inevitably generated between various members of society efficiently.

The practical effects of this concertation have been significant. In 1993 a trilateral agreement (the so called "1993 Protocol") between government, trade unions and employers' representatives was signed, which put an end to the automatic wage increase mechanism which was mentioned above. The mechanism was considered a generator of inflation; a framework stipulating the structure of policies concerning workers' wages and contracts was drawn up following predefined criteria which were in line with documents of economic and financial programming written each year by the government.

The complex system of collective bargaining was redesigned and, in particular, the relationships between the nation wide sector based contract and company level contract were defined. In the same Protocol of 1993 the social partners engaged to recognize a new structure of trade union representation within companies, on an elective and tendentially unitary base, in the sense of representing unitarily all the different union components.

The system of concertation introduced in the 1990s has had a high degree of effectiveness. This means that the social partners abide by the rules which they themselves have laid down through the stipulation of the collective agreement. It has also meant that there has been a significant reduction in industrial conflict, with a remarkable decrease of the hours of strike action.

The resistance of the system of concertation may also be attributed, in part, to the political scene of the late 1990s. Since 1995, Italy has had a series of centre-left governments. These governments have been considered as "friendly" governments and, above all, friendly towards the far-left component of the trade unions, represented by the Cgil that is the trade union that has the greatest number of members. The relationship of political homogeneity between government and trade unions has made the latter more open to accepting legislative innovations that, in the past, had been strongly opposed because considered "too liberal". A significant example of this collaborative attitude of trade unions was the go-ahead they gave to the introduction, in 1997, of the so-called "Pacchetto Treu", a body of norms aimed at introducing greater flexibility in the labour market and allowing, for the first time, the use of temporary jobs which had been prohibited by law until then.

Interesting results have also been achieved regarding collective bargaining: for example, the introduction of the so-called area or emersion contracts. With these collective agreements it is possible to derogate from – in certain geographic areas of our country and particularly in the south and other economically depressed areas – the minimum norms and wage scales established in national collective bargaining agreements. The aims of which is both to encourage businesses to invest in the lesser-industrialized areas and to bring out into the open the underground economy, that escapes, by definition, all collective contractual regulation.

It can be said that the centre-left governments have been able to put into effect – also

thanks to the system of concertation and, therefore, the direct involvement of trade unions in the writing of bills – social and labour policies that tend to give greater freedom to business and to favour, as far as possible, greater employment flexibility. A policy that the previous governments had not been able to realize due to the opposition of the trade unions.

Moreover, the system of the concertation intrinsically stands on fragile foundations. It is a system which needs the consent of all the social partners as each possesses the power of veto. For this reason it is clear that the system works and is productive as long as all parties have a common goal, this presupposes aims that are widely shared. Not only: concertation also necessitates strong cohesion between the single components within the trade union, it is not possible for them to sit at the negotiation table if the different trade unions have differing positions.

Though these characteristics of fragility have not represented a real problem of stability for the system of concertation during the years of the centre-left “friendly” governments, the political change with the electoral victory of the centre-right, in 2001, has radically altered the scene.

The politics regarding unions followed by the centre-right government have been characterized by a tendentially negative attitude towards concertation, as it is seen as an obstacle in the reforming process the new government wished to realize. In concertation there is a necessity to find the unanimous consent of all the trade union components. Each component has the possibility of vetoing and so can block reform processes.

As has already been pointed out, between 2001 and 2005 a conflict took place between the Cgil, on one side, and the Cisl and Uil, on the other, which had serious repercussions on the entire system of collective bargaining and, more generally, on the system of trade union relationships. Today, after the three trade unions signed the new collective contract for metal workers on 18th January, we can say that this conflict has passed.

3. The organizational structure of trade unions

The Constitution of the Italian Republic, section 39, 1st paragraph, guarantees the freedom of trade union organisation. This means that trade unions do not have restrictions in the type of organisational structure they wish to have; they can choose to form an association, committee or occasional group in the prospect of a specific trade union dispute.

The 2nd, 3rd and 4th paragraphs of article 39, that have never been implemented by the ordinary legislator and so are not in force, has made the provision for the registration of trade unions and, therefore, the recognition of the legal status. If this system, hypothesised by the Constitution, had been put into effect, registered trade unions with legal status, would have been able to – through special representational organisms constituted in proportion to their membership – stipulate collective national agreements which would have effectiveness extended to all those pertaining to the category to which the agreements refer. However, as has already been noted, this system of trade union representation and collective bargaining has never been put into effect. Therefore, today, Italian trade unions cannot stipulate valid collective agreements *erga omnes*. Even though, in actual fact, the extension of collective bargaining goes beyond the membership of the stipulating trade union.

In 1970, the law no: 300 (the so-called *Statuto dei lavoratori*), recognized the specific right to allow trade union activity within the workplace, predisposing a special support regulation for trade unions at company level.

At the same time, the *Statuto dei lavoratori* specified the sense of trade union freedom, asserting the right of workers not to unionise or undertake any trade union activity, in doing so guaranteeing anti-discriminatory protection with penal endorsements.

The recognition of the freedom of union **organization** helps to understand the variety of types and structures of organized groups, like the same system of **pluralism**, typical of our

country marked by the presence of three main trade union confederations: the CGIL, CISL and UIL.

The trade union organizational structure is both **horizontal** and **vertical**.

The horizontal level is organised in function of territorial issues and is divided into: 1) district (territorial work office for the CGIL and UIL or the territorial work union for the CISL); 2) regional (territorial work office for the CGIL and UIL or territorial work union for the UIL) and 3) national (political trade-unionism). The last includes all the trade unions that cover productive categories present in a specific territory.

The vertical level is organised depending on the type of work sector of the company in which the worker enrolled in the union is employed: in this sense the confederations, federations of different categories, regional structures of the different categories are recognised and the territorial structures of the different categories are recognised.

Vertical and horizontal organizational structures also exist within the structures of entrepreneurial associations: these can also be divided into territorial or productive categories. However an important difference must be stated: whilst union organizations automatically belong to both vertical and horizontal levels, the entrepreneurial associations may be part of the territorial level without necessarily belonging to one of categories and vice-versa.

4. Trade union representation at company level

With specific reference to the safeguarding of workers' rights at company level, section 19 of the *Statuto dei lavoratori*, as modified following the referendum of 11th June 1995, expressly recognizes the right of individual workers to constitute workplace representatives (RSA) for every productive unit, in the area of trade unions that are parties of collective bargaining agreements applied to their productive unit. Trade union rights of promotion and support of trade union activity by the workers in a company for union representatives and their managers were recognised.

In its original formulation, section 19 of the *Statuto dei lavoratori* was written to get over the privatistic logic of trade union representation, typical of the qualification of the trade union as an unrecognised association according to the effects of section 36 and ss. of the Civil Code. The possibility for workers to constitute workplace representatives was recognized by the associations affiliated to the most representative confederations, that is, the associations not affiliated to the confederations mentioned above, as they are parties of national or provincial collective agreements applied to the productive unit.

Other than the demand for a connection to the extra-company reality, the original formulation of section 19 of the *Statuto dei lavoratori* also introduced a criterion of selection of the union – that of **greater union representativeness** – aimed at making, in the company domain, an area of privileged union activity; that is on the presupposition of the presumption of representativeness, consisting in the affiliation to a confederation that is better represented at a national level.

Following the referendum of 11th June 1995, symptomatic of a deeper and more radical crisis of the representative ability of trade unions, the text of section 19 St. lav. was partially modified: not fulfilling the requirement of greater representativeness, the support of trade union activity within companies is reserved exclusively to the parties of collective agreements already applied in the productive unit.

In limiting itself substantially to promoting and supporting only collective bargaining where it already exists, the new text of section 19 of the *Statuto dei lavoratori* does but widen the gap between the strong and weak areas of trade union representation. Today, after the new regulation system, the numerous marginal sectors of our economy can be seen to be compromised; collective bargaining is systematically eluded. There is no doubt that there now exists in such sectors an additional incentive to avoid unionisation and collective bargaining,

as this is the only condition for the constitution of workplace representatives.

Section 19 St. lav. does not identify a specific model of union representation in the workplace, but relies on the experience of industrial relations. Currently, workplace representatives (RSA) are identified with **unitary trade union representations** (RSU) by the 1993 Protocol.

RSUs are distinguishable from RSAs in that they represent all the workers in the working unit and not only those that are union members.

RSUs can be constituted in all productive units and in public administration where there are more than 15 employees.

Two thirds of the composition of the RSU is voted by means of a proportional election by secret ballot. The last third is assigned to the trade unions that are part of the nation wide-sector collective agreements applied to the productive unit.

It can be said that in Italy the representation of workers other than through trade unions does not exist, unlike, for example, the works councils in Germany or the comité of entreprise in France. As has already been mentioned, RSUs must be constituted by trade union associations.

These bodies are formally recognised as official interlocutors in bargaining processes, together with territorial-level union organisations. Recognition is granted by agreements. This means that decentralised collective bargaining (at the level of a company or smaller administrative unit as opposed to a whole department) is handled jointly by territorial worker-sector and the bodies elected by all the workers.

The RSU reflect the single-channel representation model traditionally prevailing in Italy, in which the body representing workers in the workplace is still formed “within” trade union organisations: when such bodies are voluntarily created, the unions forgo their right to form their own representative bodies. In this way, the united body combines representation of both the workers and the unions.

Although decentralised bargaining is quantitatively limited in Italy RSUs play an important bargaining and advisory role and at times take part indirectly in management of the health and safety protection system.

5. European Works Councils in Italy

As stressed in the last Italian report on the evolving structure of collective bargaining (<http://unifi.it/archive/00001164/>), the transposition of the directive on EWCs was greatly delayed in Italy and was only achieved with Legislative Decree no. 74 of 2 April 2002, which was enacted just in time to avoid an appeal by the Commission to the European Court of Justice on grounds of non-fulfilment.

The process of implementing the directive was, however, rapidly activated by the social partners, with the stipulation of an inter-confederate agreement on 27 November 1996 between Confindustria, Assicredito and the CGIL, CISL and UIL union confederations, in the presence of the Minister for Labour and Social Security; the agreement transposed the directive via bargaining, thus paving the way for company-level agreements to set up EWCs long before the actual directive was transposed. Until 2003 thirty-two agreements were signed in Italy, out of a total of about seven hundred in Europe as a whole. There are, however, many multinationals in which it has not yet been possible to set up an EWC. The consultation of EWCs and the quality of the information they are provided with follows the general trend. It emerged from a recent conference that «in most cases works councils only succeed in obtaining limited, generic information which is often already in the public domain, and are held only once a year, without being followed by the consultative phase, which would after all prove to be useless. Although limited in number, there are companies which provide satisfactory previous information, but leave no room for consultation; only a very small

number of EWCs are lucky enough to meet with a management providing adequate information and allowing delegates to express an opinion, which in many cases proves extremely useful to solve serious problems, especially regarding employment».

The operational difficulties experienced by EWCs are exacerbated by linguistic communication and management that is often hostile towards them. Sectors close to the unions demand modification of the EWC directive to impose and strengthen the rights it provides and require more active, direct involvement of EWCs in the social responsibility strategies pursued by companies.

6. The articulation of collective bargaining and the role of the nation wide-sector agreements

In Italy the aggregation of workers has happened, other than for some rare exceptions (like, for example, in the case of managers or air traffic controllers), around professional categories. The difference in other countries, above all in the UK and North America, where, in many cases, where the solidarity of professional groups is derived from the type of trade practised, in Italy workers are usually organized depending on the type of productive activity exercised by the company for which they work (trade union for sector or industry).

The collective agreements through which organised workers express solidarity and concur to work regulations are therefore, mainly, the **nation wide-sector collective contract**, that contain the minimum economic and normative treatment for all the workers employed in a certain productive sector (the category), even though it is not excluded that, for some areas or institutions of general interest, agreements be reached that involve all categories of workers (inter-confederate agreements). This happened, for example, for individual and collective dismissal regarding which, before the legislator intervened to regulate the case in point heteronomously, the only regulation was contained in inter-confederate agreements. In some cases, collective bargaining follows the specificities of the individual local and territorial contexts, with specific norms for certain areas of the country (territorial agreements). It is however the nation wide-sector collective contract that – although there are some recent signs of crisis caused by the tendency, generalized in all industrialised countries, of the decentralization of negotiation levels – now represents the main instrument of collective negotiation autonomy in the regulation of employment relationships and that governs the various types of collective agreements and agreements stipulated in our country.

7. The company-level contract

The presence of a company-level contract is frequent in medium and large companies, whose norms are added to those defined at other contractual levels.

The company-level contract is in a position to regulate the problems of every single productive context and to adapt general and abstract rules agreed at category level or fixed by law to the organizational and company peculiarities in which they must find concrete application. In particular, this happens with reference to the determination of wages linked to productivity or the economic results of a single company, to issues connected to company canteens, to the collective management of company crises, to the operations of outsourcing, to career paths of employees etc.

The plurality of the levels of collective bargaining corresponds to the organisational structure of the representative associations of the workers and employers, organized at inter-confederate (national and territorial), federal category (national, regional and district) and company level.

To calculate the contractual level, the parties of collective agreements are the trade union and employers' confederations at inter-confederate level, the trade union and employers' of

sectors associations at categorial level, and the workplace representatives and employer at company level.

In the absence of trade union legislation, mutual recognition represents the main empirical criterion of selection for the parties that sign the collective contract.

At the moment, the set-up and levels of collective bargaining are contained in the previously mentioned 1993 Protocol. In synthesis, this agreement provides for two levels of bargaining: nation wide-sector contract is positioned with, where the parties feel it opportune, collective bargaining at a secondary, territorial-type level or, more often, at a company level. Nation wide-sector agreements have a duration of 4 years for the part relative to the regulation of workplace relations (c.d. **part normative**) and a biennial duration for the profile relative to wage schemes (**economic part**). The second-level collective contract has a four-year duration and is only valid in issues and institutions that are "different and not repetitive in respect to those of the national collective contract of category" (point 2 of the Protocol).

8. Subjects bound by collective agreements

Although expression of self-regulating power of interests of private subjects (**collective autonomy**), structure, content and effects of the collective contract cannot be adequately understood from (only) the general dispositions of the civil code in contract matter and obligations. It is true to say that in the field of industrial relations – and not only in our country – the collective bargaining agreement manifests a natural vocation to be seen as a privileged and generally obligatory instrument of regulation for employment relations, and thus can be better compared to a type of law governing the professional category, that is, the territorial and/or business context to which it refers.

If for the common law of contracts, the collective contract has an effectiveness only for unionised workers, one cannot neglect the tendency of all the interested parties to consider the collective bargaining agreement a collection of economic and normative conditions for the treatment of workers that should be respected, whether individual workers are members of the stipulating organizations or not. Such a spontaneous tendency assumes, in truth, legal relevance as the process of doctrinal and jurisprudential elaboration aimed at extending the subjective effectiveness of the collective bargaining agreement to all subjects that are not directly bound, by means of a plurality of techniques that range from the implicit adhesion to a certain collective contract to the extension of economic treatment in application of the constitutional precept of sufficient compensation.

9. The relationships between law and contract and the new functions of collective bargaining

According to a consolidated model, the relationships between contractual sources and legal sources in labour law are constructed hierarchically in the same way as the argumentation concerning civil law, that assumes the automatic prevalence of the legal source compared to the contractual source. Such a model is founded on two fundamental postulates: that the heteronomous source (the law generally speaking) has the task of safeguarding, in an *imperative* way, the fundamental rights – of freedom, dignity, safety – of the subordinate workers. Consequently, every norm produced from a contract – be it individual or collective – that lowers the system defined by the heteronomous precept will be annulled and destined to be replaced by the corresponding legal precept (in application of section 1418 of the civil code). In other words, the heteronomous source cannot be derogated "*in peius*" by the contractual source.

This seems to imply the existence – in truth, much debated at the level of positive law – of a **principle of favour for the worker**, which always remains except if there is the

possibility of derogating from the legal source from the subordinate source (the act of private contractual autonomy) when there are conditions or treatments that would improve the workers' position. In virtue of the possibility - limitless - of improvement of the legal limitations, the contractual source would therefore be provided with a competence towards improvement. This second postulate is usually defined as the capacity of being able to **derogate in melius** from the autonomous source regarding the heteronomous source.

In truth, formulating the reasoning in these terms is not totally convincing. The second postulate – that of the ability of derogating *in melius* – is in fact founded on an assumption that needs to be demonstrated, that is, the existence in our legal system of a general principle of favour for the employee. Although specific normative references exist, some of which have done so for a considerable time, it is a principle that is not sanctioned in an explicit and generalized way by any norm of our regulations. To derive a similar general rule from some specific and fragmentary normative references therefore does not seem to be very persuasive.

It is necessary to point out that the first postulate of this way of reasoning – the impossibility to derogate *in pejus* of the legal source compared to the contractual source – is also a moot point due to the loss of centrality of State law and from the contextual expansion of self-regulation of social processes. Furthermore, it is the same legislator who, more and more frequently, delegates to the collective bargaining the possibility to introduce derogation – also pejorative – from regulations of heteronomous derivation, be it for management of situations of business crisis be it for strategies to combat unemployment that often demand the introduction of flexible normative systems that are adherent to the conditions in the territory and/or in the single company.

To say the truth, it is the premise assumed initially that is not totally correct. The theory that places autonomous and heteronomous sources at the same level, connecting them to each other through hierarchical relationships, does not faithfully reflect the formation of our labour law. In reality autonomous sources are totally inhomogeneous compared to the heteronomous sources: regarding the subjects that express them (society and the State) the formative procedure and in relation to the actual structural aspects.

Until the relationship between autonomous and heteronomous sources had remained quantitatively insignificant (in Italy until the 1970s) it was possible to conceive the relationship between law and collective autonomy as a mutual relationship of non-interference and, consequently, as a last resort in case of conflict, the use of the unbreakability *in peius* criterion and the prevalence of the heteronomous source over the autonomous source.

In the present context, in which the overlap of autonomous and heteronomous sources is the norm in the regulation of labour law – creating a situation of continual conflict, competition and, often, also integration between the various sources – the criterion of unbreakability can but lose its centrality and importance. As regards the real dynamics of normative processes, the relationship between autonomous and heteronomous sources is consequently better explained in terms of competing sources – even though they are hierarchically ordered – and do not simply follow an abstract hierarchical criterion. However, according to prevailing opinion, the existence of an area reserved for the exclusive determination of collective bargaining with the preclusion of State law participation should be excluded.

After the most recent legal developments, autonomous sources are today sometimes involved in actual normative procedures, as the presupposition for the State law and as the content of the same law. In many other cases autonomous sources derogate from heteronomous sources (for example in the case of the change of worker's duties); in others, laws are integrated (as happened in the case of the hypotheses of staff leasing legitimated during collective bargaining); in yet others, they are proposed as alternative sources to the heteronomous ones for the regulation of employment relationships (illustrated by the case of the criteria of choice of the workers to be dismissed collectively based on the law no.

233/1991).

In all these cases, it is the same legislator that realises that the collective bargaining constitute the most suitable instrument of social regulation and so does not exercise his regulatory power.

Theoretical debate on the topic has for some time now highlighted a progressive enrichment and diversification of the functions of bargaining, showing that in an evolving economic and social context it has come to involve issues in which it does not perform its traditional acquisitive function as regards wage increases and new guarantees, but rather “administers” risks a group of workers are exposed to. With increasing frequency in the last few decades, often thanks to specific legal delegation, collective bargaining has been entrusted with the additional task of collaborating in the organisation of labour and in particular handling company crises and the ensuing employment problems.

10. The relationship between collective agreements of different levels

Coordination and connection problems, other than those between sources of law and contracts, are also found in norms of contractual derivation, both in relation to the relationships between the different types of acts of the collective autonomy and between these and the acts produced by the autonomy concerning individual legal transactions. The question is which of the clauses of the nation wide-sector contract and those of the company-level contract should prevail in case of divergence from the regulation by the same institution or issue. A similar question may be asked in case of conflict between a collective bargaining agreement and an individual contract.

We shall first consider the relationship between the different collective agreements.

In the applied experience, overlap of collective clauses of different levels happen. It must be said that a general norm that regulates the relationships between the sources of the collective autonomy does not exist. The rules used to resolve cases of conflict are normally only those elaborated at a doctrinal and jurisprudential level. Jurisprudence has dealt with the problem of relationships between collective agreements for a long time; an effect of the principle of the *favour* for the worker mentioned earlier. When a problem of contrast between two collective regulations arose the regulations that most favoured the worker prevailed, applying to the relationships between collective agreements the logic of section 2077 of the civil code that regulates, in terms of the impossibility to derogate *in peius*, the relationship between collective agreements and individual contracts.

Since the 1970s, jurisprudence has changed orientation and the proposed solutions have been varied and sometimes divergent. It has been claimed, for example, that contractual structure should be supported by a principle of hierarchy generally speaking – based on the principle of the irrevocable mandate to contract conferred by the stipulating trade union associations the contract of inferior level in favour of the associations of a superior level – for which contracts of inferior level could never derogate from contracts of a superior level neither *in melius* nor *in peius*. But an opposing theory has also been advanced; that for which contracts of an inferior level could always derogate (even *in peius*) from contracts of a superior level, in virtue of the fact that the trade union associations of an inferior level stipulating such a pejorative contract would implicitly manifest the will to revoke the mandate to contract conferred to the organizations of a superior level.

More recently the hypothesis that the relationships between contracts of various levels should be resolved based on **the criterion of speciality** has been advanced, in the sense that the clauses of the collective contract that are nearest the actual situation to be regulated should always have prevalence, that is those of the company contract (whether they be more or less favourable for the workers). This theory has been accepted in some occasions also in jurisprudence. Finally, the problems of conflict between contractual norms of different levels

have been resolved based on a **chronological criterion** for which successive regulation prevails. This solution seems to be the most viable today and the one that has met with greatest favour in both doctrine and jurisprudence.

Often however, in order to resolve the possible contrasts between collective norms in advance, the stipulating parties should regulate the mechanisms of coordination between the different levels in advance and so establish the areas of competence of the different levels concerning legal transactions. As has already been mentioned, the Protocol of 1993, provided that second level bargaining (that which is integrative for the company or territory) need not be repetitive in terms of the national ones as regards to remunerative structures. In order to avoid overlapping and conflicts the competences of the different contractual levels have been separated.

11. The relationship between collective agreements and individual work agreements

As for collective sources of different levels, problems of conflict between norms of collective agreements and individual contracts may arise. Between agreements at a collective level and ones at an individual level, as a general rule, the principle of unbreakability *in pejus* is valid for the latter compared to the former.

This principle has been supported by jurisprudence on the basis of section 2077 of the civil code, which asserts the principle of real effectiveness or unbreakability of the collective contract. The first paragraph establishes that "individual work contracts between those parties of the category to which the collective contract refers must conform to its dispositions". The second paragraph sanctions, in cases of violation of the rule in the first paragraph, the sanction of the real effectiveness is not merely obligatory, providing that "the different clauses of the individual contracts, pre-existent or successive to the collective contract, are surpassed by those of the collective contract unless they contain more favourable dispositions to the employee". The real effectiveness is differentiated by the automatic substitution of the different clause, where the merely obligatory effectiveness would cause a simple breach of contract, with eventual compensation for damage.

However doctrine has criticized the reference to section 2077 of the civil code, as it is a norm devised for the corporative system, where the collective contract has been inserted among the sources of law at a superior level to the contractual autonomy.

Since 1973, the problem of the unbreakability of collective agreements by individual contracts has been resolved by the reformulation of section 2113 of the civil code. In this norm the invalidity of every renunciation or transaction of rights deriving from the law or the collective contract is established.

This means that the parties cannot make agreements in which there be a pejorative derogation not only in respect to that provided for by law but also in respect to what is provided for by collective agreements, of whichever level.

Moreover, article 2113 of the civil code provides for exceptions to the principle of absolute unbreakability. Indeed, both the employer and the worker can derogate from, even *in peius* for the worker, the conditions provided for by the collective contract or the law, if the agreement is signed before a judge and in the presence of the lawyer for defence, or in trade union offices, in the presence of a trade union representative with the appropriate power of attorney.

The presence of a judge and lawyer (in the case of transaction during litigation), or the presence of a trade union representative (in the case of transaction on trade union premises) guarantees that the renunciation of the worker not be due to pressure exercised on them by the employer and, at the same time, that the worker be totally aware of the rights he/she is renouncing.

This exception to the principle of unbreakability is seen to be necessary in order to allow

the all parties involved in the employment relationship to establish the terms of the transaction themselves and not to risk losing the case.

12. The possibility to derogate *in peius* in relations with collective agreements

The question of the possibility that collective autonomy may dispose of rights that employees derive from the collective regulation of the employment relationship, also in the hypotheses in which the purview of the statute of such rights is derived from an inferior level (for example company level contract) compared to that from which the right itself is derived (for example a nation wide-sector contract).

Doctrine and jurisprudence are in agreement in that the clauses of collective agreements are not incorporated in individual employment contracts, the reason for which collective bargaining may always dispose of rights of which they are personally the source and that are destined to operate within the sphere of the employment relationship. Collective agreements can therefore modify for the future previous collective regulations, even if in a pejorative sense for the employee.

The only limitation is that of the vested rights of the worker, and these rights, even though they derive from statutes concerning legal transactions, they can be considered to have become part of the workers' rights.

13. The phenomenon of the so called “company usages”

The phenomenon of the so-called “company usages” deserves a brief mention. According to jurisprudence company use constitutes the activities of the entrepreneur, who, spontaneously, out of generosity (and not because he/she feels obliged) gives all his/her employees (or a certain number of them), consistently and for a certain period of time, money or treatment that is neither stipulated in the individual contracts nor in the collective ones. Jurisprudence deems that the company usage legally binds the employer to guarantee the favourable activities in the future and also extend them to those workers who enter the group subsequently.

In order to understand the relationships between the company usages and the other collective sources it is necessary to define their nature. It is debated whether they are norms of the individual autonomy, or simply praxes to be seen within the framework of the collective autonomy (like collective company agreements or company regulations). The first solution, having greater support in jurisprudence, has as an effect the incorporation of the usages in the individual employment contracts: they therefore cannot be altered in successive collective agreements. The second interpretative solution requires that the usages be modifiable from any source that is referable to the collective bargaining.

14. The tendency of decentralising collective bargaining

The centralization of collective bargaining, established in the Protocol of 1993, has unquestionably contributed to the balancing of public finance and the reduction of inflation thanks to the control of wages. However, in a situation where inflation is at very modest levels and with union demands linked to increased productivity, the two-tier contractual system has progressively shown all its limits. The structure of collective bargaining can be seen not to be sufficiently articulate to tackle the specificities of the labour markets throughout the territory, squeezing the enormous potential of local employment policies. Also company contractual bargaining, that should have increased the variable part of remuneration and guaranteed flexibility in the contractual system, has been unsatisfactory both at a quantitative and

qualitative level, being limited to a traditional type of distribution which are rarely linked to objective parameters of productivity. Wage adjustments have been hindered as well as policies for employment.

The limitations of the contractual model designed in the agreement of 1993 were highlighted, as early as 1997, by the Giugni Commission that verified the performance of the protocol and did not hesitate in speaking out about the stickiness of the previous praxes, the "cultural" unpreparedness of the subjects involved in decentralised collective bargaining as well as the resistance met in increasing the issues object to bargaining (for example employment organization). On the basis of these considerations an important debate amongst academics about the articulation of the collective bargaining and the relationships between national agreements and company agreements has been going on for the last decade. In the wake of this debate there was published, in October 2001, the White Paper on Labour Markets that, from what had emerged from scientific reflection, proposed the strengthening of decentralised bargaining so as to render wage structuring more flexible. A greater emphasis on company and territorial bargaining, far from decreeing the death of income policies, could turn out to be coherent both in terms of overcoming the logic of wage moderation and in terms of the need to render the coherence of the negotiating system more effective, already included in the 1993 Protocol, to take into account the costs entailed at the various phases of negotiation. Once the barycentre of the contractual system has been moved from the national level to the company and territorial ones it would be possible to guarantee not only a more effective distribution of productivity, but also a greater diffusion of agreements for new employment organisation that have long been desired, included in the European Strategy for employment, with reference to the objective of the adaptability of companies and their workers.

In a future perspective, it has to be noted the role of bilateral decentralised bodies. These are voluntary organisms to which national agreements assign management and dynamic bargaining tasks (based on the concertation method), which are of increasing importance in market issues and active labour policies (see 2003 national contract in the tourism and commerce sector); the realisation of new industrial relations at the level of decentralised production units; conflict prevention.

Of interest also is the fact that bilateral decentralised organisms are also entrusted with handling delicate "new" issues such as mobbing and sexual harassment or topics such as food safety and the social responsibility of companies.

In the transition from a system of collective bargaining of a distributive type to a model that is more oriented towards competitiveness and employment, the national employment contract seems destined to play a central role for a long time. Probably that role of framework ("*accordo quadro*") that is able to safeguard the purchasing power of low-income workers and contribute to its consolidation in a climate of reciprocal confidence between the parties involved in the system of industrial relations, without necessarily questioning the (virtuous) bonds of wage policies based on programmed inflation.

In conclusion, it must be noted that in the last few months the debate on the necessity of a thorough review of the contractual system has seen a sudden revival, having been stimulated by, amongst other things, the serious difficulties found in the final phase of the renewal of the collective contract for metal workers. It can be said that nobody today sees the current system of collective bargaining as efficient, and the solutions that are being proposed by different parties: trade unions, businesses and politics are more and more numerous. So numerous in fact to make one fear that things will remain as they are for a long time to come.