Managing Innovation and Diversity in Knowledge Society Through Turbulent Time
25–27 May 2016
Timisoara • Romania

Management, Knowledge and Learning
Joint International Conference 2016
Technology, Innovation and Industrial Management

DECENT LIVING AND WORKING CONDITIONS: NEEDS WHICH ARE THE SAME ALL-OVER THE WORLD

Federica Stamerra
University of Bari "Aldo Moro", Italy
stamerrafederica@gmail.com

Abstract:
This research concerns the anomaly intrinsically connected to the work contract: the disproportion, which means that contract parties are inevitably put at different levels. It plays a main role in the principle of freedom of contracts, since the coexistence of both a stronger and a weaker part implies that satisfaction of last one's needs constitutes almost an act of clemency by the boss. The objective of the so-called *minimum acceptable conditions,* pursed by the first workers' struggles, has become the supranational bigger aim. This paper places as a key focus on one hand the ILO, undertaken to reach social justice, and on the other hand the concept of "life and work decent conditions", in order to analyse how can be possible to bind them and to reach an effective protection. The argument focused is the mandatory of ILO's provisions, that is limited for each treaty to signatory States. It have to be considered as a lighthouse for all the States because they have the duty to protect their workforce. The text highlights a fundamental problem: if these conditions represent the minimum acceptable, they should be guaranteed, but they bind just the States subscribing to OIL's agreements. It recent times has been therefore lost from sight an important aspect: despite the different economies of the individual states and the different demands of every single entrepreneur, the workers keep the same needs all-over the world. In conclusion, will be discussed the human aspect of the employment contract, since the performance is carried out by a human being, which remains a *person* everywhere.

Keywords: Working conditions, guardianship, contractual disproportion, human being.

1. INTRODUCTION – THE CONTRACTUAL GRADIENT AND THE CONDITIONS OF THE WORKER

The employment contract is characterized by such a disproportion that is necessary to provide norms directed to balance the differences among the parts. Those differences are due to the state of need of the worker, animated by the necessity to find a job in order to satisfy his proper demands and whose of his own family. Anyway, to a worker in state of need is counterpoised an entrepreneur who has the only goal to get the best possible performance to the least economic effort.

This famous situation, so-called "*competition to rebate*", has motivated the firsts trade union struggles, represented by the labour union interfacing with the entrepreneur, aimed at achieving the "*minimum"* to guarantee to workers decent living and working conditions (Cucculelli 2015). The minimum requirements are guaranteed on supranational basis, making head, beyond and before the individual State, to the community of States. In 1919 is established the ILO, which aims to the pursuit of social justice and in particular with reference to the human rights of the work.

This tendency to balance is not still able to neutralize that difference in height that is inherent to the employment contract, in reason of the so-called *metus reverentialis* characterizing the attitude of the worker in respect of their employer. The relationship between the parties, in fact, is marked by the fear of the worker toward his employer, standing the need to preserve his job place. The stability aimed by the worker can be easily affected by the employer's power, compared to the situation of need of the worker, especially when the labour demand is greater than his supply. In such economic contexts, the greater is the difference between supply and demand and the higher is the risk of incurring the competition to downward that allows the spread of the so-called "employment blackmail".

The condition of workers is therefore clearly compromised, and conditional. For this reason, as each category is contractually weak, interventions that guarantee at least a minimum threshold of protection, so as to balance the disparities between the parties, are necessary.

The problem treated in the present research concerns precisely the mandatory of this minimum threshold, established by an international organization but binding solely for the signatory States of the Agreement, remaining excluded not subscribing Countries.

1.1. Categories of weak workers

Which of "Workers" constitutes a contractually weak category, but, among the workers themselves, we can identify categories burdened by even more inequalities. Among all, women, children, disabled and foreigners cannot be omitted.

For women, both the access that the conservation of the workplace is more difficult than for man: the woman in fact, beyond a professional role, carries out in society also the function of mother and wife, notoriously challenging and bearer of difficult conditions to constancy in their work, for reasons that may relate to the propensity of the employer to take male staff, capable of favouring the needs more in the case of the working performance that requires a physical effort, or simply the desire to prevent the recruitment of female staff in order to prevent the obstacle of motherhood.

Child labour is another interesting point for the purposes of this research, since it constitutes one of the most debated aspects on the theme of decent work. The child exploitation marks certainly an essential chapter talking about use of minors as work-force, but also when the minor is not exploited and, therefore, working conditions are respectful of the dictates of the law, for reasons related to the needs of the market, frequently the minor reveals itself a subject more flexible and therefore more easily exploitable by the employer.

The handicapped and foreigners belong to the categories weak since, like those analysed till now, do not respond to the general model of worker advocated by the employer as in need of special protections. Often the Member States, precisely in order to balance this situation, provide minimum quotas of subjects that fall under these disadvantaged groups, even if this has not contributed significantly to eliminate the discrepancies.

We must consider, for the purposes of an easier understanding of the whole labour law system, the general theory according to which if the worker aspires to the less possible sacrifice for the higher remuneration desirable, the employer aims to lower economic effort for the best performance.

2. THEORETICAL FRAMEWORK

2.1. The concept of “Decent Work”

The concept of decent work, drawn up by the ILO since the end of 20th century (Somavia 1999), has the requirement for a definition of the indices allowing to study the quality of work (Cecchini 2012). The fact that work is conceived as dignified means that its human dimension is presupposed, so the work cannot be conceived as a mere commodity exchange. In 2008 the concept of decent work is institutionalised in the *Declaration of the ILO on the Social Justice for a Fair Globalisation*, which fully describes *the universal aspiration toward social justice, […] the achievement of full employment and the need to combat poverty and growing inequality* (ILO Declaration 2008). The conditions for the so-called decent work, in some specific contests, concern aspects of the job appearing obvious at the theoretical level, but which are completely absent in practice. The ILO in 1999 has dictated certain essential points for the definition of decent work, among which certainly stands out the right to a decent wage that lets the worker and his family live in normal conditions; the tendency to favour the growth of working capacity, the right to carry out the performance in terms of time and place appropriate and reasonable stability of employment (Gallino 2001). An essential contribution to the definition of the decent work concept, with no doubt is the formula of *Caritas in veritate of Benedict XVI number 63* (Pope Benedict XVI 2009), where the attention is grasped toward the human aspect of the work, since the decent work is defined as a job that, in every society, is the expression of the essential dignity of every man and woman. Moreover, the Church recognizes the importance of decent work as in *Laborem Exercenses* (Pope Jean Paul II 1981) emphasizing as the measure of the dignity of work is precisely mankind.

In essence, if it is true that work ennobles the human being attributing him a dignity distinguishing human being from animals, this dignity must also impregnate the nature of the provision making the work itself with dignity. *Is the work to make this man* (Marx 1867).

Reading the Italian Government report *"ILO: migration fair, the dignity of work and access to a dignified employment"* (IT. GOV. 2015) it can be found an interesting point of the topic in question, namely the aspect of migration for work reasons: in the vast majority of cases, people who emigrated from proper home country are pushed from just need an employment more stable and dignified, a guarantee that obviously their home country is not able to ensure. The ILO concludes in this regard as the job should be dignified already in the home country, so that the migration would be *a choice and not a necessity*.

The affirmation of the decent work concept makes its way in time until the exhortation to the United Nations during the Economic and Social Council of the UN to proceed with policies of full employment and exploitation of labour within programs and activities (UN ECOSOC 2006). Already in 2000 Kofi Annan had understood its importance, and had impressed in the aspiration to "develop strategies that will give the young people in the world the opportunity to find a decent work" (Kofi Annan 2000).

Pope Bergoglio’s analysis is addressed just to young people, on the occasion of the audience to the groups of the project Policoro, exalting the salvific function that the work have for the human being. Creating work, according to the Pope, "it is also a responsibility of evangelization through the sanctifying value of work. Not any job, however! Not the work exploiting, crushing, humiliating, repressing, but the job that makes man truly free, according to its noble dignity" (Pope Francis 2014).

The work, therefore, makes it a noble man, provided that it is rewarding and allow people to find fulfilment in his creative dimension, enhancing the ability of the worker (Casavecchia 2014).

During a TED speech, the psychologist Barry Schwartz highlighted the importance of carrying out a satisfying work: through a simple game of words he demonstrates how an humiliating job damages

the soul affecting the performance of the employee. Schwartz highlights how it is not true that there is a good staff or a bad one, but that the employer does not find valid personal if he push the worker to little rewarding duties (Schwartz 2014).

Decent work, therefore, it's not only referred to human rights, but also to the satisfaction that the work contributes to the human soul, which cannot be reduced to mere remuneration.

The job as a human right is the subject of the art. 23 of the Universal Declaration of Human Rights, which in the first paragraph establishes and synthesizes the principle of fundamental labour standards, relating to the free choice of employment, to protection against unemployment and to proper working conditions and satisfactory, principles that the ILO must concretize.

We can conclude that the work should not only consider the aim needed for the man in order to lead a dignified life: the right to decent work means that it must be the job at the same as "dignified", and satisfactory for the worker.

2.2. What is the ILO

The ILO is the United Nations agency promoting the decent and productive work in terms of freedom, equality, safety and human dignity for men and women. Its main objectives are: promoting the rights of workers, encouraging employment in dignified conditions, improving social protection and strengthening the dialogue on labour issues. The Member States signing the agreement in order to adopt and implement labour standards applicable at international level are more than 180.

The ILO's structure is tripartite, and provides that the policies and programs of the organization are the result of the representations of the governments, of the workers and entrepreneurs' concreted activities.

The three components of the ILO are: the International Labour Office regulating the activity of the organization, acting as a secretariat; the Board of Directors that performs the executive functions, draws up the balance sheet to be submitted to the conference and appoints the Director General; finally, the International Labour Conference which meets every year in Geneva. The policies and programs of the organization are the result of the concerted activities of the governments, workers and entrepreneurs' representations, that takes place in the conference.

About the procedures for the attainment of its objectives, the ILO compiles, through the entire activity of the tripartite structure, conventions and international recommendations directing the legislative activity of the members. The latter, periodically, must submit a report about the progress of jobs as a result of the application of conventions, supporting, in so doing, the monitoring activities of the ILO.

The Acts of the ILO are distinguished in recommendations and conventions.

The conventions are treaties intended to be ratified and, therefore, to become binding for the Member States which are signatories. In addition, the signatories must allow the international controls on compliance with the provisions contained in the conventions.

These recommendations do not have a legal value, but their function is limited to direct the member on the policies to be followed, always so not binding.

The fundamental principles for the work of the ILO and, consequently, of the Member States, are expressed by the following sentences:

- Labour is not a commodity.
- Freedom of association and expression is an essential condition for a constant progress.
- Poverty, wherever it exists, constitutes a threat for the prosperity of all.
- All human beings, without distinction of race, religion or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunities.

2.3. The actual obligatory of ILO's acts

The control system on the Member States' action, provides the transmission by the States of an annual report with the imposition of a sanction in the event of non-compliance with the obligations contracts. This measures take place after the adoption of conventions compared to the international treaties, although adopted by the Conference and not by the members. The problem, which arises with reference to the constraints imposed by the Conventions, emerges from the two fundamental factors which cannot be omitted in an analysis of the provisions' effectiveness about the decent work: on one hand, the deterrent function of sanctions arranged, that is limited to what we can read in the art. 30 of the Act of constitution of the ILO and the effectiveness of which, therefore, is legitimate doubt; on the other hand, the fact that the acts of international law are not given by an authority higher than the States, but by the Member States themselves. Recipients, Member States, coincide with the subjects which give rise to the act, and therefore it becomes difficult to think that, in the presence of sanctions, however so slight, obligatory international provisions would be effective.

While the domestic law is a hierarchical institution, which rests on the role of the State, the international legal system is an anarchist institution (Slaughter 2011) missing a world government.

This expression perfectly encapsulates the question about the obligatory of international standard, determined by the coincidence between the creators and recipients of the norm. International orders, according to what sustained by Andreatta, govern *"on the willingness of the main actors"*.

Another interesting starting point of analysis is given by the fact that it is difficult to trace to infringements of the ILO provisions, always because of the contractual inequality characterizing the employment relationship: who needs to find a job does not complaint an exploit just when this occurs, if his silence allows him to cultivate the hope of survival (Borghi 2002).

Therefore, on the one side we have a dubious effectiveness of international provisions, about which it's necessary to talk the actual obligatory about, as well as the real scope of sanctions in the event of violation of the same; on the other side we have a subject who, while achieving the minimum allowing him not to live but to survive, is arranged to remain silent on working conditions and on the abuse that the "employer" puts in place since, a dismantling of what the subject exploited is "work" would imply a damage in the face of the demands of life more elementary.

Such a situation of employment blackmail is directly connected to the countries' poverty, or to the conditions of insecurity lading to call for work. There are countries where, still nowadays, the minimum safeguards of work covered by provisions ILO are a far mirage, as there are subjects easily susceptible to blackmail, in a manner directly proportional to the state of need where they are located.

Moreover, we must consider that exploitation can lead to many forms, giving rise to the coercion that most of the times have to do nothing with the work: we think about the exploitation of begging, or prostitution, or still to trafficking of immigrants. Analysing the situation from this point of view, we could say that the main problem, point of arrival of this research, coincides with the point of departure: the personal nature of the working performance. This suggests that there are existing safeguards to law and that as far as encoded and put in writing in international conventions, should be part of that perception preceding the right that dwells in each of us.

If the work ennobles man, it cannot be source of dishonour.

In addition to the actual violations, to dubious obligatory of international provisions for the reasons mentioned above, the ineffectiveness of deterrent penalties, we must analyse one more aspect before moving toward a conclusion: the means of provisions' circumvention, such that, despite appearing to have separately respected regulations, the fundament of rules have been circumvented. Let's take as an example just the concept of decent work: the economic crisis brings the consequences to the work which, if not lead in the exploitation, still have its repercussions on the workers' conditions, always if they have the luck to keep their job. In a context where the demand for labour falls and the offer salt, the blackmail of employment is strengthened and the work, from security source, comes to be a cause for concern. Who manages to keep its place sees

lead susceptible of modifications with respect to a job that becomes, little by little, precarious: the company needs flexibility, and it is this need, accompanied from the bustling market needs to fulfil it, to determine the fall in beaten, the devaluation of the work that moves back to a mere commodity in a dimension where it's forgotten that the provision is made by a person.

In Italy, for example, one of the most considerable Confederal syndicate, better known with the acronym CGIL, is developing a plan the recognizing the universal rights of work as its strong point. The document, the so-called *Charter of Universal Rights of Labour* (GGIL 2016), is a project of reform in line with the needs of the people, and in contrast with the recent policies that, in order to face the economic crisis, have been implementing a policy of flexicurity time to revive the undertakings, with the obvious consequence of damaging the workers. All this is due to the fact that, in order to analyse the consequences of the economic crisis and defying how the occupational statistics vary, are often taken into consideration quantitative data, despite the growth of job stability (Torres 2015).

So that, we can conclude that the definition of decent work is opened to a lot of shades, not only connected to the exploitation, but also to the stability of job, lacking which the worker is hanging by the thread of the insecurity.

3. CONLUSION

The system just described tracks a reality in which, beyond the satisfaction of the undertakings needs, or that of the same worker, should be first of all revised the concept of work. Only conceiving the processing of the job as a human fact, we can talk with full knowledge about worker's facts. The biggest problem is, in fact, in the commercialization trend, which permeates companies still nowadays.

This not only with regards to the conditions of exploitation and abuse that many people are brought to suffer conducting a performance work, most of the times so totally inadequate and insufficient paid; if there are realities characterized by these conditions, this is also due to the fact that, basically, worker is conceived as an expendable category, even in the simple States' politics spending-review optical during the economic crisis.

It should be started, in the context of a more precise revision of protection minimum levels, from the concept of work considering the human component as the essential element in order not to lose sight of the needs connected. Only beginning from such a conception of work, modelled accordingly on the worker, it would be possible to have a greater awareness of the member, so as to ensure at the internal level the minimum of protection desirable, so that the states come ready to commit to international level.

Therefore, before reaching the more significant processing of penalties, or developing measures actually binding, it should be made the minimum levels of protection extended to all States of the World, regardless of their affiliation to ILO and their implementation of his conventions, because the worker is, in each part of the world, a human being.

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