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The labour process fifty years later: a comparative perspective

1. Act no. 533 of August 11, 1973, completed the system of protection for workers with specific procedural rules, aligning with the substantial progress made by Act no. 300 of May 20, 1970 (the so called "Workers' Statute"). Driven by the trade union movement and the goal of fully implementing Article 3 of the Constitution, this Act has now reached its 50th year.

This exceptional milestone is certainly worth celebrating. Moreover, when it's considered that the labour law proceeding has remained unchanged in relation to its fundamental pillars over time, despite the numerous reforms of the legal labour proceeding. Nor the current model has undergone significant distortions to distance itself from the one designed fifty years ago. Additionally, this anniversary is noteworthy because new procedural laws typically create more issues than they resolve. However, over fifty years, labour law proceedings have achieved a certain stability in interpreting labour process rules.

The virtues of the labour justice system are evident: the legislative choices (carefully debated and linked to substantive law) were subsequently adopted in the civil process.

The main factors contributing to its success rest on three closely related levels: the quality of the rules, the practices, and the key participants involved. It is essential to consider all three elements.

The main features of this procedure, based on full cognition of the judge and tailored on the specificities of labour disputes, essentially lie in some fundamental rules: a) the monocratic nature of the judge in the first instance;

b) strict procedural exclusions concerning the burden of events and evidence, with careful regulation of the trial's introduction phase and limited *emendationes* allowed only with the judge's permission; c) constant cooperation between the judge and the parties, with significant powers granted to the judge (Article 421 of the Code of Civil Procedure) to ensure fair and accurate decisions, considering the differing natures of the parties, d) the provisional enforceability of decisions, effective from the operative part when read at the hearing, if favourable to the claimant in cases arising from relationships governed by Article 409 of the Code of Civil Procedure; e) the second instance trial (which should aim for a clear and logical structure with causal connections between statements, in avoidance of biased language and employing a precise subject-specific vocabulary, when it is necessary) is typically sealed.

The feature, that has undoubtedly contributed to the success of the labour disputes system, is the suitability of the procedural physiognomy for the labour proceedings, designed by the 1973 legislation. It is precisely this suitability for these specific disputes, that also determines the limits of its general application. So much so that the attempt to extend the procedural discipline of labour law to other fields has been a disappointing, not to say unsuccessful, experience.

For instance, the Article 3 of the Act no. 102/2006 (provisions on the consequences of traffic accidents) was briefly in force: it extended the labour proceeding according to the Article 409 and ff. of the Civil Procedure's Code to the lawsuits for damages for death or injuries, resulting from traffic accidents, but it was repealed after only three years by the Act 69/2009.

The 1973 reform, moreover, focused on the ordinal aspects, in the awareness that effective research for the most suitable proceeding could not disregard the organisational profile, but it had to be a direct consequence of the unbreakable synthesis between the technical-legal profiles and the purely ordinamental ones (exemplified by the creation of specialized labour law sections within judicial offices).

The same assessment can be reached by considering the high professionalism of the main characters of the legal labour proceeding, who are in constant dialogue with each other, as figured by the lawmaker. A dialogue, that has led the case-law to important and shared procedural certainties in interpreting procedural rules (e.g., Cass. sez. un., February 3, 1998, no. 1099 about the objections in the strict sense and the broad one).

However, over time, there has been an inevitable distortion in applying labour disputes, particularly in social security and welfare disputes. The main issues, nevertheless, stem from the environment rather than the legislation. The delays in civil proceedings have also affected labour law trial and the related disputes due to the limited human and organizational resources of the justice system, exacerbated by increasing demands for social justice.

Indeed, the greatest risk, arising from the numerous reformations, that has hit the civil proceeding in general is the erosion of the rules of the labour proceeding on the margins. Also in the latest reform, known as the Cartabia Act (Legislative Decree no. 149/2022), there are regulations that could potentially undermine the principles of Chiovendian memory, such as orality, concentration and immediacy, which are visible in the discipline of the labour trial (e.g. the alternative ways of carrying out the hearing, introduced in the first book of the Code, allow the contact between parties and judge only as exceptional or merely eventual according to the Articles 127 *bis* and *ter* of the Code of Civil Procedure).

A risk of erosion, that hopefully the judge, in his enhanced ability as the subject that leads the trial, will be able to avert, avoiding in this way to realize the contamination of the cornerstone principles, on which nowadays after fifty years the labour proceeding still rests.

The adoption of differentiated procedural forms fulfils the principle of effectiveness of judicial protection; and as it was mentioned above – particularly about the differentiated labour proceeding the lawmaker kept on interfering by introducing appropriate remedials to the main needs, that this type of disputes entails. Also recently, with the already named Legislative Decree no. 149 of 10 October 2022 the lawmaker felt the need to further interfere in the field of judicial protection related to the employment disputes. In particular, the new Article 441*bis* determines the "priority" of the handling and the decision of disputes concerning the instance trial against job losses, in which an application for reintegration into the workplace is presented, urging the judge to quickly resolve them. The new Article 144 *quinquies* implementing the Code of Civil Procedure lies in the same path of strengthening the judicial solution, since it stimulates the organization of the judicial office and, specifically, of the labour section (as Presidents of the section and directors of the judicial offices) to favor and verify the priority handling of the disputes according to the Chapter I-*bis* of Title IV of the Book II of the Code.

2. This special edition of the Revue aims to examine how other European Union countries and beyond adapt their forms of protection to specific circumstances. Authors are invited to reflect on the special features of labour justice, considering both contentious and non-contentious perspectives, alternative dispute resolutions, and differentiated proceedings for specific labour law aspects.

Many technical elements are shared in this analysis, but they are often articulated with significant peculiarities. Key areas of interest include: a) the establishment of specific procedures distinct from general rules; b) the participation of knowledgeable individuals, sometimes non-professional judges; c) the balance or alternative between contentious and non-contentious solutions, with varying emphasis on each.

About the first two points all the studied countries have a targeted and specific procedural structure – where undoubtedly the speed and the concentration are the transverse adjustment measure – together with an organization of the judicial offices, that suits the peculiarity of the labour subject: the British Employment Courts (once Industrial Courts) are a good paradigm of it; but also in Germany the roles of the honorary judges, nominated by the social parties, show a significant model of justice, defined by an active involvement of the delegates of the litigious parties. Another circumstance, that tends to unite the analyzed ordinamental systems, lies in the fact that they have lately undergone reformations with an obvious and inevitable urge for the use of digital technologies, that has been accelerated by the pandemic crisis.

In many countries, perhaps less in Italy, alternative dispute resolution methods are emphasized. The conciliatory petitions are already stimulated in the workplaces – the experience of the Polish Workplace Conciliation Committees is very interesting – or the arbitration proceedings are established and are sometimes reserved to collective disputes – it is the case of the Central Arbitration Committee in the United Kingdom – and are anyway supported by specific precautions and forms of pledge. There is also some interesting testing of a combined proceeding, *id est* of contentious one, that is convertible into a conciliatory instance: the French experience of the *saisie des rémunérations du travail issue* (*Loi* n. 1059, 20 November 2023) heads along these lines.

3. In conclusion to these brief preliminary notes, a general inclination towards a "particular" justice for labour disputes is evident in all contributions' readings.

On the other hand, the judicial protection of rights embodies the moment, where the substantive situation and its inner features must find proper space, because the law lives its most acute extent precisely in the crisis phase of the substantive system. The same definition of judicial protection, which is not indifferent to the subjective and objective attributes of the law, necessarily implies its adaptation and shaping to the specific needs and peculiar values of the involved subjects and of the substantive circumstances, that are typical of the proceeding.

The user is also entrusted with the task of enhancing the particular and specific demands of employment disputes: the general rules – shared by all disputes and disciplined in the Book I of the Code of Procedure – must be modulated according to the pledges prioritised by the lawmaker through the prescription of special jurisdictional techniques. It has to be considered the alternative methods of carrying out the hearing (Articles 127 *bis* and *ter* of the Code of Civil Procedure), which, although designed as exceptional to the oral hearing, must be interpretatively confined at least to the cases, in which the structure of the hearing's activities (particularly the discussion's hearing according to the Article 420 of the Code of Civil Procedure) is incompatible with the distance, that is imposed by the template in the Article 127*bis*, or with the written formality, as in replacement of the hearing, according to the Article 127 *ter*.

The fifty years of labour proceeding legislation in Italy, analyzed comparatively, reveal that despite numerous reforms, key values remain intact, reflecting principles of social justice, that indeed represent the general heritage of European legal culture.