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The history of the legal labour proceeding in Italy. Critical comments

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1. *The reasons for the process of the labour disputes*

It is assumed there must be a 'labour proceeding'; however, until the 1973 legal reformation (L. No. 533/1973), labour disputes concerning subordinate employment relationships lived within the same circuit of ordinary civil litigation. The diversification stems from a meditation on the interests at stake in the field of labour and from the development of a complex system, deriving from heteronomous sources of different origins and effectiveness, so much to require a specialized preparation of judges and lawyers. In this way, a non-arbitrary link could be established between the founding moments of the labour law field and the new procedural system, detached from the civil matrix. Mainly, the theoretical development of labour law due to the theorization of the "trade union system", which reflected a natural evolution as an ordered set of norms with its own rules of production and self-determined internal relations, indeed represented one of the underlying reasons for considering the legal relationships, concerning the "fact-job", as deserving of a distinction concerning the contractual relations of ordinary civil law.

Of course, there are also other reasons for this choice of judicial policy, which has seen consolidation in the labour law field as an institutional and theoretical space specifically aiming at the problems of the judicial protection

of rights[1]. This includes the nature of the interests involved in labour disputes, which are not limited to the critical individual or merely economic claims since the decision on labour conflicts often goes beyond and embraces collective interests, sometimes also general interests, and touches on issues that are relevant to the political and economic structure of society itself. Although economically assessable – sometimes with difficulty – these interests can be considered linked to fundamental values and rights recognised by contemporary systems, such as the dignity of the person, equality in a substantial way and not just formal, the right to work, and more. It is, therefore, a peculiar sphere of justice, as a legal system and an institution, which, linked to a variable economic and social situation, always looks on the background, interests assumed as fundamental by the Italian Constitution and instead placed on a higher pedestal than the patrimonial interest itself. The effectiveness of the protection becomes decisive to ensure that there is no discrepancy between the legal labour system and the concrete rules applied by the contractors, which would otherwise always be possible[2].

In summary, the perspective in the labour proceeding is broader than in the civil one, justifying a specific procedural model that arises from a need to protect interests of particular importance in the legal system.

The asymmetry of power between the parties of the employment relationship also represented a specific point of reflection for the lawmaker in the elaboration of the rules of the trial because the original and contractual imbalance is inevitably repeated in the lawsuit. The labour proceeding is, therefore, axiologically oriented towards its concrete purpose of doing justice and protecting, even at the endo-procedural level, the weakest contractor. The protection of rights and procedural rules do not follow separate logics, and it can be considered in a well-founded way that 'the right asserted in the proceeding is no different from the right granted by the law: judicial protection is the continuation of substantive protection in a different form[3]. The form of the trial is never detached from the socio-economic background, and perhaps a non-arbitrary link can be established between general perspectives and procedural tendencies[4].

[1] Mazzamuto, *La prospettiva dei rimedi in un sistema di CivilLaw: il caso italiano*, in *Jus Civile*, 2019, 6, p. 720 ff.

[2] Vettori, *Effettività delle tutele (diritto civile)*, in *ED,* Annali, 2017, p. 401 ff.

[3] Mazzamuto, *cit.*, p. 721.

[4] Damaška, *I volti della giustizia e del potere*, il Mulino, 1991, p. 37.

However, the purpose of protection, which is the task of the lawsuit to ensure, seems to be challenged nowadays precisely because of the increasingly clear divergence between the inspiring principles of Law No. 533/1973, to which we owe the birth of the labour proceeding, and the usual procedures and following reformations, which seem to go against the trend, absorbing paradigms and cultural models, that have spread with the crisis of the Keynesian welfare state.

Despite simplifying as much as possible, this paper will seek to highlight the intricate evolutions of the procedural system, identify some of the underlying reasons for this crisis, follow the field's historical development, and verify whether the process of differentiating labour disputes from civil justice is still alive.

2. *The labour proceeding law in its historical-political context*

When presenting his famous manual of civil procedural law, five years after the approval of Law No. 533 of 1973, Virgilio Andrioli wrote that the inability to make justice effective – especially civil justice and therefore also the labour one – "it is not a less worrying phenomenon of the underdevelopment of some Italian regions, of the pollution of the atmosphere and water, of the lukewarm compliance of the rules on the prevention of workplace accidents, followed by the unenviable primacy of Italy regarding the commission of "White murders", of the unwise utilisation by public and private companies of grants and loans, provided at the expense of the community, of the concentration of media and – last but not least – of the tax evasions"[5].

The labour proceeding was born precisely to answer the problem of doing justice and doing it quickly and effectively. It seemed even more compelling after the hot autumn of 1968-69, which resulted in a considerable push for implementing the principles of solidarity. Hence, the need to create a legislative system not only to ensure rights in the workplace, as with the Workers' Statute of 1970, but also to create tooling capable of projecting those rights on the implementation level comes from.

After all, "the peculiarity" of the labour proceeding in comparison with

[5] Andrioli, *Diritto processuale civile*, Jovene ed., 1978, p. 20.

the civil one had already been theorized and concretized in previous periods, although with very different forms and purposes, as in the corporate era, differentiating collective disputes (essentially regarding the application of the collective agreement: R. D. No. 1130/1926, No. 1073/1934 and subsequent amendments and additions) from individual disputes, entrusted to ordinary judges (generally deemed "particularly competent in the field"). Subsequently, with the Code of Civil Procedure of 1940, every inch of differentiation was lost, and the legal labour proceeding was reunited entirely under the same rules applying to the civil one. Essentially, the legal labour proceeding was disciplined according to the principle of "equality of arms", assuming that the parties were in a position of equality thanks to the system itself (but it was just formal equality).

With the Constitution, however, this narrow view of the labor proceeding, from which, in the best case, a judge's neutrality with respect to disputes arising at the judicial level resulted, was abandoned, and legal thinking will rather focus on the right of action as a fundamental and substantial right[6]. Article 24 of the Constitution and, subsequently, article 47 of the Charter of Fundamental Rights of the European Union will provide formal recognition at the level of constitutional sources to the right to adequate judicial protection.

The reformations of the sixties and seventies – the years of the constitutional meltwater – imposed a new idea of protecting rights; consistently, even in procedural law, there will be a significant change. The Law No. 533/1973 represented the natural development of the route, promoted by the Workers' Statute of 1970 and by the new role of the judge in labour disputes, so embedded into the processes of change to be rightly considered almost as an institutional component of the industrial relations system[7].

The model of the labour proceeding was based on more than just a renewed political and institutional environment. The technical solutions that the Law of 1973 provided to the problems within a slow and inefficient judicial system, which gave an enormous advantage to the stronger party of the proceedings with its baroque model, were just as important. The sole judge, who replaced the collegial one (almost always pretended) of the civil

[6] MAZZAMUTO, *cit.*, p. 722.

[7] TREU, *Azione sindacale e nuova politica del diritto*, in the volume *L'uso politico dello Statuto dei lavoratori* (curate by T. Treu), research's summary led by Luigi Mengoni, il Mulino, 1975, p. 17.

court, the prompt enforceability of the verdict of first instance, the strict system of foreclosures, the trade union involvement in the proceeding and the implementation of the principles of merging, orality and immediacy undoubtedly were an utter novelty, whilst being connected, as always in the great reformations, to essential theoretical papers[8].

It was a reformation that perceived the establishment of an elaborate and coherent procedural system, with a judge as an active and leading figure and obliging the parties to a dialogical and "constructivist" connection, as a prerequisite for a more advanced and effective hermeneutic activity from the point of view of balancing the interests at stake. It happened consistently; it must be said, with the increasing relevance of protection techniques, that precisely in those years, specific development and theorization in the labour law environment occurred in the so-called "remedial" perspective of the mandatory norm in labour law[9].

Although not assuming the trait of a "special" proceeding, in other words, self-sufficient and closed to inclusion with the different principles of the Code of Civil Procedure, and therefore remaining in all aspects an ordinary proceeding[10], the differentiations of labour proceedings regarding civil practices and techniques were significant and prominent. It was a true Copernican revolution in which the verification of the truth seemed to prevail over the purpose of the proceeding as a mere instrument to end a dispute[11].

With the trade union activity, the judicial policy became a critical moment in social life and industrial relationships. The collective disputes were new for the legal culture and the same judicial practice. It would have wanted a significant role of the union (Mancini criticized Law No. 533 for the scarce involvement of the union in the labour proceeding[12]), but in any case, it is

[8] The reference to the judicial tradition represented by the work of Giuseppe Chiovenda, is underlined by Tarzia, *Manuale del processo del lavoro*, Giuffrè ed., fifth edition, p. 82.

[9] It must be mentioned the volume of De Luca Tamajo, *La norma inderogabile nel diritto del lavoro*, Jovene, 1976, a cult-classic for labour law experts.

[10] In this sense, the labour proceeding is subject, like the others, to the general regulations of the Code of Civil Procedure, Book I and to the ones of Book II about the trial before the court, as they are applicable.

[11] Taruffo, in the same place, p. 118.

[12] Mancini, *Il sindacato nel nuovo processo del lavoro*, il Mulino, 1976, p. 225 ff. For a recent revival of these issues, Candini, *Il giudice necessario? Brevi riflessioni sul giudice togato e monocratico quale giudice inevitabile del rito lavoro*, in *RIDL*, 2017, 1, p. 17 ff.

undeniable that the labour justice, thanks to the connection with the social situation, took on an extensive political role (in the best way)[13]. As Treu observed in the 1970s with the labour proceeding, "the shortening of the distance between the place of legal mediation and the place of social action has received a sharp acceleration... which has radically changed the area of application and the technical tools of judicial involvement"[14].

3. *New rules for labour justice*

How did the legal labour proceeding differ from the civil one, indicating the beginning of a new era regarding the judicial protection of the rights of the weaker classes? To answer this question, you must take a closer look at the procedural regulations that qualify the distinctive features of the labour proceeding.

First, it is essential to emphasize this in the draft of L. No. 533 the specific and distinctive nature of the principles of the merging of procedural activities and of orality of the verdict, which differentiated the labour proceeding from the civil one, defined by a long procedural process in which the preliminary and defensive activities unravelled, by a written process, in which the direct communication between the judge and the parties was considered an exception, so much that it was not even expressly covered.

Articles 414 and 416 of the Code of Civil Procedure, which governed (and still govern) the preliminary activities of the parties, served the procedural principles mentioned above.

These are the rules governing, respectively, the introductory act of the trial by the petitioner and the act of formation in a court of the defendant, and they are fundamental to allow the judge to have complete knowledge of the case under his examination.

In summary, the rules implemented by the lawmakers with the 1973 reformation – as well as different from the civil trial – wanted the parties to be compelled to "spill the beans", meaning to lay the cards on the table with which they plan to "play" that strange chess game, that is the judicial quarrel. Thus, on the one hand, the petitioner is compelled to explain all the actual

[13] Giugni, in *Conclusioni*, in D'Antona, De Luca Tamajo, *Introduzione*, in *Giudici del lavoro e conflitto industriale*, ESI ed., 1986, p. 112.

[14] Treu, *Azione sindacale e nuova politica del diritto*, *cit.*, p, 20.

circumstances and the related legal deductions on which the charges are based, specifying the pieces of evidence and depositing the papers that he plans to use, as well as, in the same way, the defendant – employer must exhibit in his act of appearance all his defences and the actual circumstances preventing the determination of the right, claimed by the employee, with the same commitment to specify all the pieces of evidence from the beginning.

Both positions (no longer editable) are evident from the beginning. In the event of omissions or delays, the expiry is triggered, which implies the subsequent inadmissibility of the same *de facto* deductions and/or the not listed evidence for the entire proceeding and the following degrees of judgment. In a nutshell, the procedural mechanism based on these two rules (articles 414-416 Code of Civil Procedure) prevents the parties from holding back "moves" that will be carried out later on, as it happens in the civil proceeding, where they can constantly "adjust the shot", and this allows the judge to be able to lead the trial with full awareness of all *de facto* or *de jure* issues to solve. In this way, a dialogical environment is created where both the parties and the judge can navigate, knowing the contentious points, the circumstances to explain and prove, and the legal problems to solve. The proceeding can be carried out through debate between the parties and the judge, and in compliance with the principle of orality, in such a way to deal with the legal and factual issues, arranging the investigative activities assumed necessary under the principle of procedural merging.

The hub of the system, in its discussion hearing, is then represented by a regulation (article 420 Code of Civil Procedure) that, for its topic, can be described as a real break point with the old procedural tradition. It is not a coincidence that, first, it provides a close meeting between the parties and the judge for the "free questioning" of the parties, through which the "free belief" of the judge is formed.

According to the processual route of Law No. 533, article 420 of the Code of Civil Procedure would, then, demand at the end of the free questioning and of the conciliation's attempt, the prompt judgment of the judge about the possibility of finalizing the lawsuit, without further preliminary activities. Of course, this implies a necessary and already formed at the first hearing knowledge by the judge about the suit and its factual and legal coordinates. The procedural system, defined by the Law of 1973, was therefore built so that from the beginning, everyone must be fully aware of the facts and the law on which the verdict relies.

Moreover, the fifth subsection of article 420 of the Code of Civil Procedure allows the judge, in the same hearing, in the eventuality that he does not believe it possible to decide the trial, to admit the pieces of evidence asked by the parties, ordering their "prompt gathering" or postponing it to another hearing, but "no later than ten days from the first one". Following the principle of merging procedural activities, gathering evidence should terminate during the same hearing or, if necessary, during hearings on the following weekdays. To ensure the effectiveness of these principles, the prohibition of "mere adjournment hearings" must be mentioned when no procedural activity is carried out.

Another peculiarity of the labour proceeding, of great importance, consists of the judge's power on his own, that, according to article 421 of the Code of Civil Procedure, can order at any time the admission of evidence assumed necessary, even outside the limits provided by the Civil Code, in addition to the power to demand written information from the trade unions. This command can be recognized as the distinctive element of the labour proceeding, drifting it away from the principle of party disposition ruling in the ordinary civil one: "revolutionary" law for the procedural tendencies of the period, which portrays the profile of the labour judge as a judge that operates in the dispute, leads the proceeding and searches for the facts, even without the action of the proponent. Still within the framework of article 421 of the Code of Civil Procedure, to manifest the new role of the labour judge, the lawmaker has regulated the possibility of using as evidence and assessment (at the party's petition) the judge's immediate access to the workplace, commanding if it is necessary the examination of witnesses on the worksite.

Moreover, it is the ability granted to the judge in the dual perspective of dissuading stalling tactics and ensuring prompt and effective protection of the weakest party to require the prompt payment of the "undisputed sums" or a "provisional" by an always reversible ordinance in favour of the employee when the judge assumes the right being verified and in the limits "of the amount, in which he believes the proof has been reached" (article 423 of the Civil Procedure Code). It is relevant to the power of the judge to resort to technical advice dominated by speed and orality, so much as to allow the advisor to "report verbally", and in conclusion, the duty of the judge to deliver the verdict at the end of the oral debate of the trial, reading of the operative part of the judgment during the hearing (article 429 of the Civil Procedure Code, edited by Law Decree No. 112/2008).

These are the central procedural norms that, at the time of the introduction of Law No. 533/1973, constituted a total innovation concerning the rules of the civil trial. However, the break also concerned the prosecution in the appeal court, where the lawmaker also wanted to speed up the procedural system, according to article 435 of the Civil Procedure Code, providing the schedule of oral hearing within five days after lodging the appeal, holding it within sixty days. It is in line with the principles of merging and orality the disposition of article 437 Code of Civil Procedure, according to which the Board of Judges, after hearing the lawyers of the parties, utter a verdict by reading the reasoning in the same hearing.

Additionally, in the second appeal, the Board of Judges was granted its own powers of pre-trial nature so that new evidence can be allowed if it is essential for the solution, regardless of the parties' claims, therefore by way of derogation from the principle of party disposition.

In short, it is precisely thanks to the reformation of the labour proceeding that the mindset of the judge and the other leading figures of the trial has changed profoundly, creating an osmosis between the prosecution and the social aims of the Constitution. According to legal-positivism principles, the labour law judge has been appointed to play a very different role than a mere executor of the *voluntas legis*, up to the person directly applying constitutional principles in legal relationships.

4. *The crisis and new trends*

However, this environment will last as long as it is in the judicial system. The new political and economic forces will not make room for other trends, which are equally essential but of different course. It is no coincidence that already at the end of the seventies, the labour law doctrine wondered critically about the role of the judge, about the political and ideological alternative that lies ahead of him between being "warrantor of the rationality of the system, of the balances achieved by the subjects that stand for the strong interests of the job market or (...) guardian of the reasons of the weak interests and the excluded minorities"[15].

[15] D'Antona, De Luca Tamajo, *Introduzione*, in *Giudici del lavoro e conflitto industriale*, *cit.*, p. 11.

In this scenario, the idea that the role of the judge should return to being that of the "mouth of the law" (in the name of the traditional neutrality of the judicial office) will advance, challenging the active role of the Italian judiciary, in its most advanced members, in the project of change of the underdeveloped Italian society[16]. Standardization of the role of the judge (and of the proceeding, which will go back to the place of the neutralization of disagreements)will take over in an agnostic and indifferent to the "social issue" light[17]. Hence, Treu, one of the most careful observers of the relationship between trial and labour law, remarked a "change in the quality and also a downsizing of judicial involvement"[18]. It is precisely the "quality" of the first victim of the new times, so much that it has led to the non-application in the practice of the main solutions adopted by Law No. 533/1973, as described above, that made the legal proceeding efficient and fast to secure the enforcement of labour law in a prompt time to the regulated by it group of legal relationships.

The first reformation that hurt the labour proceeding was probably Legislative Decree No. 51 of 1998, which decided the cancellation of the magistrate's office and the allocation of the jurisdiction of labour disputes to the courts in single-member sitting, resulting in the gravitation of all labour disputes, arising in the sometimes vast area, which was included within the remit of the judicial office, in front of a judge far away from the workplace, from which the protection's claims arise[19]. It was a reformation that aimed to solve the problem of the definite disparity between the demand for justice and the resilience of the judicial establishment[20], followed by the devolution of the rule of second instance judge to the Courts of second instance, but perhaps with unforeseen effects of centralization and distancing of the judge from the local environment[21].

[16] Giugni, *Conclusioni*, in D'Antona, De Luca Tamajo, *Giudici del lavoro e conflitto industriale*, *cit.*, p. 113.

[17] Rodotà, *Le politiche del diritto, ieri e oggi*, in Mannuzzu, Clementi, *Crisi della giurisdizione e crisi della politica*, Franco Angeli ed., 1988, p. 157.

[18] Treu, *Neocontrattualismo e mediazione giudiziaria*, in D'Antona, De Luca Tamajo, *Giudici del lavoro e conflitto industriale*, *cit.*, p. 93.

[19] About the reformation under discussion read the comment of Balboni, *Quale futuro per il giudice del lavoro?* in *LG*, 1999, 9, 805.

[20] Luiso, *L'ordinamento giudiziario in evoluzione*, in *GI*, 1993, 3.

[21] About these issues De Angelis, *La tutela differenziata del lavoro tra strumenti di deflazione e impatto della riforma del processo civile*, in *Foro.it.*, 1992,V, c. 6 ff. and by the same author, *Il processo del lavoro tra funzionalità e rispetto delle garanzie*, in *RIDL*, 1994, I, 339 ff.

In this way, it will end up robbing the employment disputes of a judge in the area, as they say nowadays "neighbourhood", with obvious repercussions on the engagement and involvement of the employees in the trial. It will also make it objectively more difficult for the weakest part of the employment relationship, weaker also procedurally, to pursue action. It could also result in a lower involvement of the judge in the events and problems to consider.

A mention goes to the following revision of the judicial "geography" with the suppression of the so-called branch offices, which will deal an additional blow to the pledge of the "natural judge" by expanding excessively the geographical area of interest of the judge of first instance[22].

It will witness the paradox of a judicial system that provides a stronghold of justice for minor civil proceedings – so-called trifles – through the structure of the Peace Court offices across the country, while for labour disputes, it chooses to centralize and distance the judge from the worksites where hostilities and claims for justice arise.

To these steps, all the projects, changes and new procedures aiming to dissuade judicial actions, which have had an even more negative impact on the relationship between labour justice and the weakest groups, must then be added. First of all, it refers to the estimate of the cost of admission to the trial, which will invalidate one of the critical principles of labour justice, its (at least tendential) gratuitousness, causing fees that are not always affordable for the employees, especially for the instances, following the first one and in the event of losing (with ridiculously punitive damages such as the duplication of the expensive tax contribution). All this will complement the legal rule of the imposition for the judge to prosecute and the employee to pay the litigation costs in the event of losing, apart from exceptional circumstances, which remained valid until the statement of the Constitutional Court with decision no. 77/2018 (that has been carried on in practice, especially facing the superior courts, with very little interest in the discrepancy of economic situations of the parties).

[22] It should be noted that with the reorganization of the so-called judicial 'geography', in application of Legislative Decree No. 155/2012, 29 courts and 220 branch sections were suppressed.

5. *Is the end of the speciality of labour proceeding?*

Since the nineties, these regulatory policies have been followed by wider procedural reformations of civil law, designed to be applied also to labour law proceedings. Paradoxically, these reformations have proven to be among the leading causes of the surfacing of "old defects", both in the legal class and in the judiciary itself.

As Taruffo spotted, it should always be remembered that "the inconveniences and malfunctions of the procedural law system do not cause the same consequences for everyone" since a socially and economically weak individual "gets hurt to a larger extent from the malfunctions of the system, and he will be more easily persuaded to not protect his rights or to drop out of a trial that is too long and ineffective"[23].

The numerous legislative amendments to the proceedings, implemented to reduce conflict flows and make the judicial proceeding more effective, often had counterintuitive effects in the labour law field.

To speed up the proceeding, the parties were sent away from the palaces of justice, and the judges were isolated from the main character of the conflict. At showdown, the judicial protection of rights was made much more difficult and twisting (and certainly not more effective).

It should be reminded of the reformations about the second degree and Supreme Court trial, which have enormously aggravated the procedural route, almost forgetting that the first regulating principle in the procedural field should be to remove obstacles to the decision regarding the substance of the contested right. Instead, with formalistic and byzantine rules, an obstacle race has been created that caused and still causes, unavoidably, mere ritual decisions at a steady pace, with dire consequences of "denied justice", especially in the Supreme Court's assessment, which affects the constitutional pledge of action (article 24, first subsection, of the Constitution) which necessarily includes the power of those who consider themselves as the owner of a right unfairly prejudiced by an order regarding the substance to sue a Superior Court[24]. However, the Italian lawmaker has forgotten this lesson. This is not to mention the abstruse reasoning regarding artificial and for-

[23] TARUFFO, *Razionalità e crisi della legge processuale*, in *Sui confini*, Il Mulino, 2002, p. 59.

[24] OLIVIERI, *Il quesito di diritto nel procedimento davanti alla Corte di Cassazione*, in *GI*, 2008, 6, 1578 ff., who rightly points out the 'serious concern' arising from these regulations.

malistic issues, which have created a trial full of obstacles and "traps", between which it is necessary to untwist[25].

Another tricky issue is the judge's remoteness, especially in the higher ranks and in the Supreme Court, where almost all the parties and their lawyers can orally discuss the vexed legal issues since the lawmaker chose the one in the council chamber as the ordinary rite.

Recently, then, with the norms provided for in the new text of articles 127 and ff. of the Code of Civil Procedure, which are also relevant for the labour proceeding and in each grade of trial, the trial can be conducted "from a distance" or even through the exchange of written papers ("certificated hearing") electronically, with the consequence of creating an invisible and insurmountable barrier between the judge and the parties. In this way, it makes a trial "between absentees", only virtually present, which shows obvious suitability problems with the procedural law principles of Law No. 533/1973. The extreme technicality implanted into the old trunk of the labour proceeding is one of the consequences of reformations that have greatly aggravated the trial to the point of making it difficult to reach a substantive verdict on the controversial theme.

By making the procedural path more difficult, by moving away from the judge from the parties, and by imposing so often high costs, there was indirectly a remarkable reduction of controversy, but at the price of a more significant obstacle to judicial protection precisely for the weakest groups of the population, which reproduced that different accessibility to justice that was one of the reasons for the birth of the labour proceeding[26]. Also, the procedural difficulties, not only the economic costs, impact selectively and end up damaging the weaker part of the employment relationship, also procedurally weaker and therefore less able to avoid the numerous threats that are littered along the judicial route at the behest of the lawmaker, but also of the judiciary. These obstacles have an amplified harmful relevance in the labour.

Proceeding, which was born as a simplified and expedited proceeding

[25] About it the European Court of Human Rights with the verdict of 28 October 2021, *Succi* commented in a very critical way, detecting the violation of Article 6 of the Convention. The verdict can be read in *Foro.it*, 2022, 3, IV, col. 113 ff. with footnote by Damiani.

[26] Sassani, *Il nuovo giudizio di cassazione*, in *RDP,* 2006, p. 223. About these changes it should be read the volume edited by Iannirubertо e Morcavallo, *Il nuovo giudizio di cassazione*, Giuffrè, 2007.

based on the Chiovendian principles, and it has been transformed, unfortunately, into a procedural model full of difficulties and with some neglect, it must be said, for the questions of justice and perhaps also for the very significance of the labour proceeding, that is diminished to a simulacrum.

The labour judge, disconnected from the social situation, no longer seems to understand the axiological significance of labour justice and his role, back to a bureaucratic insight, in behalf of a neutral and purely technical conception of the proceeding.

Ferrajoli, in one of his old writings, remarked that the jurisdiction has two distinct sources of entitlement: a formal one and a substantive other. The first stems from the judge's submission to the law and the principle of legitimacy. The latter comes from its purpose of defending and granting the fundamental rights of citizens and, regarding the labour proceeding from the protection of the weak contractor, originates from the enforcement of labour law[27]. Nowadays, only the first leg of these two sources of entitlement, which asks the judge to be obedient to the legislature, is still perhaps standing, while the other seems to be wholly cut off.

The trial is again a "playing field" that dissuades those who do not have commensurate tools and where there is a formalistic "equality of arms" between unequal players. It seems to be moving towards a separate and elite specialized knowledge, so much so that it makes it difficult for individuals who cannot "buy" the required support on the professional market. On the other hand, influential law firms can look after substantial contractors suitably and influence case-law directions in their development.

In this way, the labor trial becomes a technical proceeding with high specialization, where the "right determination" is no longer linked to justice criteria but only to its entitlement or legitimacy, or rather its adherence to the positive rule that applies to the individual case according to a strict formalist view or, at most, according to pure "procedural justice"[28].

At the end of this paper, it is no longer well understandable what the *ratio* of labour law proceeding's distinction from the civil trial would be. In the meantime, the civil one was subject to changes that embraced a theoretical baseline layout, precisely the original one of the labour proceeding.

[27] FERRAJOLI, *Precarietà dei valori di riferimento ed emergenze*, in MANNUZZU, CLEMENTI, *Crisi della giurisdizione e crisi della politica*, *cit.*, p. 179.

[28] TARUFFO, *Idee per una teoria della decisione giusta*, in *Sui confini*, *cit.*, pp. 220-221.

The problem of the reunion of labour law proceeding to its native matrix could, therefore, be raised again (and indeed, there are those who wonder about it) since, on the basis of reformations and customary, there is no longer a discrepancy to defend, taking into account that also from the point of view of procedural timeframes, there are no longer significant distinctions.

The labour proceeding's crisis may then develop into a surprising proceeding reformation for those who still have in mind (and in the heart) the labour law proceeding like a place where a driven judge was often able to reconcile law and justice.

Abstract

This paper discusses the origins and history of the legal labour proceedings from Law No. 533 of 1973 to the most recent period, discussing the various trends that occurred over time. Labour justice has been an abnormality in Italian civil justice due to its highly advanced technical solutions and the function of protecting rights, but these characteristics have gradually weakened. The author discusses the labour proceeding's crisis, connecting it to legislative amendments on the proceeding and the return of old practices, considering that the reasons for the differentiation from the civil one are now blurring.

Keywords

Process, labour, justice, crisis, rights.