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The Impact of COVID-19 Crisis on Italian Labour Law

Summary

The Italian response to the COVID-19 crisis has involved a general lockdown of all non-essential activities, accompanied by significant labor litigation and social security measures. The overall idea behind the government's action has been that of safeguarding, as far as practicable, the employment level and income of workers and families, notwithstanding the sharp slowdown of business and professional activities. For that purpose, a temporary block of dismissals for economic reasons has been issued, combined with directives guiding companies towards the use of remote work, whenever feasible, and a massive recourse to short-time work compensation schemes. Other measures have involved financial support for the self-employed, unprecedented extensions of leave for parents to cope with the closing of schools, and special health and safety measures when work is to be performed upon the physical premises of the employer.

Keywords: COVID-19, labor law, dismissals, short-time work schemes, remote work, parental leave, health and safety

1. Introduction

Following on the declaration of an international emergency of public health made by the World Health Organization on 30 January 2020, the Italian Government declared a state of emergency on 31 January 2020, almost a month before a large coronavirus outbreak came to light. The first containment measures were enacted on 23 February, aimed at limiting the circulation of people and imposing social distancing; the scope – geographical and substantial – of these measures was then expanded, up to the declaration of the lockdown of all non-essential activities on 22 March.

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In this situation, we complied in Italy, like in many other countries, with a sharp restriction of constitutional freedoms. This was an almost unprecedented limitation of civil rights, which nevertheless has been generally accepted by commentators,¹ since it was aimed at preserving the most important right, deemed to prevail over any other: the right to life.² More precisely, within the meaning of article 32 of the Italian Constitution, health is “a fundamental right of the individual and a collective interest;” limitations to the free circulation of people are accordingly permitted by Article 16 of the Italian Constitution “for reasons of health and security.” Restrictions to the circulation of people have obviously impacted other rights, subject to specific measures as well, such as the right to work, to education, and freedom of religion and assembly.

Lockdown restrictions were relaxed starting from 4 May, when Italy entered the so-called phase 2. An almost complete release from closure of business activities took place on 18 May; the remaining restrictions, mostly concerning the movement of persons among Regions inside the national borders, and also from other countries, were lifted on 3 June, when the so-called phase 3 has started.

This article will focus on the labour law construct for the emergency, deemed to be dismantled after the end of the pandemic. It has been based on the assumption that a lockdown of non-essential activities was inevitable and so was the sacrifice of work and businesses, since ordinary or even extraordinary health and safety measures were considered insufficient to cope with the outbreak.³

The most iconic measure of the approach chosen by the Italian Government, which keeps the whole labour law construct together, is the ban on mass redundancies and individual dismissals for economic reasons from 17 March 2020 and progressively extended to 31 March

¹ The concerns of lawyers have been more focused on the technical means used by the Government. As highlighted by A. BELLAVISTA, *Normativa emergenziale e diritti fondamentali*, in *Covid-19 e diritti dei lavoratori*, O. BONARDI, U. CARABELLI, M. D'ONGHIA, L. ZOPPOLI (eds.), Roma, 2020, pp. 37–50, the most controversial issue is the constitutional legitimacy of restrictions enacted by a very dense regulatory net, including law decrees, Prime Minister's decrees, orders of the Minister of Health, and orders of the regional Governors and Mayors.

² F. PALLANTE, *Il diritto costituzionale e l'emergenza Covid-19*, in *Covid-19 e diritti dei lavoratori*, O. BONARDI, U. CARABELLI, M. D'ONGHIA, L. ZOPPOLI (eds.), Roma, 2020, pp. 21–22.

³ E. ALES, *Quale welfare ai tempi della Pandemia?*, in *Rivista di Diritto della Sicurezza Sociale*, 2020, in press.

2021.⁴ To see something similar we need to go back in time to the end of the Second World War; a circumstance in itself telling of the gravity of the current situation.

The overall idea is that of maintaining the employment level, notwithstanding the sharp slowdown of business and professional activities. This was a target only partially achieved, since the ban on dismissals involved only “standard” employees, with open-ended contracts. It is therefore not a surprise that according to recent statistics, many temporary, casual, and seasonal workers, dependent contractors and, obviously, informal workers have become unemployed.⁵ The latter have been particularly hard hit by the limits on free movement, even those employed in essential activities (i.e. the agro-food industry), since they could not lawfully commute to work because they were not regularly employed.

Alongside the suspension of dismissals, as for labour and social security law-related measures, the Italian answer to the pandemic has been based on three macro-policies⁶:

- Massive use of remote work, whenever feasible (§ 2).
- Where businesses closed down or reduced their activity – and remote work was not an option – the remedy has been easier access to short-time work compensation schemes and the provision of financial help for self-employed workers (§ 3).
- On businesses not subject to lockdown and those re-opened, special health and safety measures have been imposed (§ 4).

2. Remote Work

As in most countries, one of the means to cope with the public-health emergency has been the “facilitation” of remote work arrangements. Obviously, work from home has the ability both to grant social

⁴ The measure was first undertaken with the Decree-law 17 March 2020, no. 18.

⁵ According to the data provided by ISTAT (Italian National Institute for Statistics), *Documenti con tag: occupati e disoccupati*, <https://www.istat.it/it/archivio/occupati+e+disoccupati> (10 November 2020) in April the number of unemployed grew by 270,000 compared to the previous month. Most impressively, the number of those not employed and not looking for a job increased by more than 700,000 people.

⁶ For a comprehensive overview of the Italian labour law-related measures see also C. GAGLIONE, I. PURIFICATO, O. P. RYMKEVICH, *Covid-19 and labour law: Italy*, in Italian Labour Law e-Journal, 2020, Vol. 13, No. 15.

distancing, by avoiding the need for workers' commuting and personal contacts in the workplaces, and to keep at the same time workers active and companies alive.

Italy has a comprehensive regulation for remote working. It includes quite old legislation on home-working, still in force,⁷ plus a statutory regulation of teleworking for the public sector and collective bargaining provisions for the private sector.⁸ The main purpose of these regulations is to prevent misclassification of remote workers into independent contractors, given the reduced control involved, and to provide special rules on H&S, working time, and employees' privacy.

More recently, in 2017, the legislature decided to regulate "agile" work, following on the elaboration of collective bargaining, as a peculiar execution mode of the employment relationship agreed by the parties, organised by stages, cycles and objectives, without strict time and place constraints, and possibly involving the use of technological tools for carrying out the work activity, partly outside the business premises, without a fixed location. "Agile" ways of performing work should be able to improve, in the vision of the legislature, at the same time, work-life balance and companies' competitiveness.⁹ This is supposedly achieved by decreasing companies' costs related to real estate and increasing workers' flexibility of organization, autonomy, responsibility and ultimately satisfaction, thus increasing their productivity.

According to the 2017 law, a specific agreement between parties, additional to the employment contract, is required for regulating the way agile work is executed (i.e. direction, monitoring, rest time, right to disconnection). Thus, the activation of agile work is on a voluntary basis.

Before the pandemic, the actual use of agile work was negligible in the public sector. In the private sectors there were some interesting experiments set up in big companies by company level collective bargaining, even though the total number of workers involved was not very significant.¹⁰

⁷ Law no. 877 of 1973, amended by Law no. 858 of 1980.

⁸ First and foremost a cross-sector agreement signed on 9 June 2004, implementing the European Framework Agreement concluded on 16 July 2002.

⁹ This is the stated purpose of rules on "agile" work, included, together with the definition mentioned in the text, in article 18 of Law no. 81/2017.

¹⁰ According to the Innovation Digital Observatories at Milan Politecnico, workers involved in agile work in the private sector were around 570,000 in October 2019.

With the COVID-19 outbreak, suddenly this modality of work had an unexpected success. It became, starting from mid-March, the ordinary way of performing work, whenever feasible, in both the private and public sectors.¹¹ To speed up its massive use, most of the ordinary rules provided by the above mentioned 2017 law have been derogated, so that, currently, the individual agreement is not necessary and the employer can unilaterally set the manner of work, within law limitations. Another important distinction concerns the working place, necessarily the worker's home, while "agile" work is supposed to be performed partly outside the work premises, "without a fixed location". As observed by many commentators,¹² COVID-19 remote work arrangements are much more similar to traditional teleworking than the "agile" arrangements, having a different rationale: public health protection, rather than enhancing work-life balance and companies' competitiveness.

With relaxation of prescriptions on social distancing and re-opening of business activities, the consideration of remote work for the private sector has switched from almost mandatory to an "exhortation" included in the latest Government's act and protocol with social partners on health and safety prescriptions (see below §4). The "exhortation" is supposedly expected to remain in place as long as the COVID-19 threat will be around. As for the public sector, it will remain the ordinary way for performing work, with only the exclusion of activities "which necessarily require the physical presence at the workplace" till the end of the state of epidemiologic emergency.¹³

An alternative to remote and also "traditional" work has been, over the course of the different lockdown stages, the resort to extraordinary parental leave, made available to help parents to cope with the closure of schools that started on 5 March 2020. Initially it was 15 days from

¹¹ Several Government measures have followed one another, expanding progressively the scope of provisions in parallel to the spread of the outbreak, starting from Law-Decree 23 February 2020, no. 6 up to Law-Decree 25 March 2020, no. 19, all available at <http://www.governo.it/it/iorestoacasa-misure-governo> (10 November 2020)

¹² L. ZOPPOLI, P. MONDA, *Innovazioni tecnologiche e lavoro nelle pubbliche amministrazioni*, in *Diritto delle Relazioni Industriali*, in press; C. ALESSI, M. L. VALLAURI, *Il lavoro agile alla prova del Covid-19*, in *Covid-19 e diritti dei lavoratori*, O. BONARDI, U. CARABELLI, M. D'ONGHIA, L. ZOPPOLI (eds.), Roma, 2020, p. 135.

¹³ Article 87, Law-Decree 17 March 2020, no. 17, converted into Law 24 April 2020, no. 27, consultable at <http://www.governo.it/it/articolo/decreto-legge-17-marzo-2020/14333> (10 November 2020).

5 March, then extended by a mid-May decree to 30 days, to be used by 31 July. For parents with children under 12, the leave is paid at 50% of the salary; if children are aged between 12 and 15 the leave is not paid. Each parent can take the leave, but not both at the same time. The use of the ordinary parental leave is obviously another viable option, recommended by the Government in some of its acts. At the end of the day, as has happened for agile work, also the functionality of parental leaves has been adapted to cope with the needs of pandemic public policies.¹⁴

Instead of the leave, families can get a voucher for babysitting arrangements. The amount of the voucher was set at 600 € in total (1000 € for health workers), then increased to 1,200 € starting from May (2000 € for health workers). A similar right has been interestingly extended to self-employed people and freelancers under certain conditions.

3. Short-time work compensation schemes and other forms of financial help for businesses

Given the generalized block of dismissals for economic reasons, where companies have had to suspend or reduce their activities, short-time work compensation schemes have come into play.

Italy has a well-established short-time work program, pursuant to which employees receive from a public fund (wage guarantee fund) a subsidy proportional to the reduction in hours: normally 80% of their wage with a cap (roughly 1,400 €). Employees are paid in advance by firms, which can balance out the amounts paid to the workers with contributions due the social security starting from the subsequent month. It is generally reserved to the industrial sector and companies employing at least 15 employees, conditional upon a prior information-consultation procedure with company union representatives and trade unions.

Starting from mid-March, short-time work has been extended to almost all employers affected by the COVID-19 crisis, with few exceptions (i.e. domestic workers), and the exclusion of many of the or-

¹⁴ As highlighted by L. CALAFÀ, *Conciliare nell'emergenza*, in *Covid-19 e diritti dei lavoratori*, in O. BONARDI, U. CARABELLI, M. D'ONGHIA, L. ZOPPOLI (eds.), Roma, 2020, p. 154, this has caused even broader gender imbalance than those already in place with the ordinary use of the leave, since it is mostly women who have had to make use of it to look after the children.

dinary conditions required for the activation of the scheme. Among those, from mid-April, the information-consultation procedure has been excluded, while initially it was supposed to take place digitally. The duration of the intervention was initially set for 9 weeks, extendable for 4 more weeks between September and October 2020, in accordance with a new decree approved on 19 May 2020 (no. 128), and then again for six more weeks until 31 January 2021 by a Decree approved on 28 October 2020 (no. 137).¹⁵ On the employer's request, payments to employees are provided directly by the administration, so to relieve liquidity pressures on firms.

As expected, there has been a massive increase in uptake compared with even the Great Recession. According to recent data: it has concerned 7.3 million employees, which is almost one third of the Italian total employment. The cost to the public budget is around 6.2 billion euros a month and the employees' wage reduction is estimated at around 3.5 billion. It is not difficult to imagine the impact on Italian outstanding public debt and an already weak economy, given also the reduction in the purchasing power of people.

For those not covered by the Guarantee Fund, basically because they are not employees or not currently employed, like self-employed and seasonal workers, there was provided a special allowance of 600 € a month for March and April, increased to 1000 € for May. For the self-employed the March and April benefit was unconditional. As for May, they had to prove a turnover reduction of at least 1/3.

The 19 May decree (no. 128) finally introduced a brand-new measure called the "emergency income," dedicated to low income-families (household income less than 15,000 €), not receiving any other subsidy. Its amount is between 400 and 800 € a month, depending on the composition of the family.

4. Health and safety prescriptions

When work is performed on the employer's premises, special health and safety prescriptions should be in place. They stem from the generic duty of care imposed by article 2087 of the civil code, under

¹⁵ Available at http://www.governo.it/sites/new.governo.it/files/DL_20200520.pdf and at <https://www.gazzettaufficiale.it/eli/id/2020/10/28/20G00166/sg> (10 November 2020).

which the employer is committed to put in place “all security measures” in order to guarantee the safety of employees, and by the more specific prescriptions of the H&S consolidated act (Legislative decree no. 81/2008), including protection from exposure to biological risk.

Precise prescriptions dedicated to COVID-19 have been imposed by collective agreements. First and foremost, there is a protocol signed by the Government and social partners on 14 March and revised on 24 April in consideration of the approach to the so-called second phase. Those measures have been implemented and supplemented by a number of sectoral collective agreements, local agreements and company level agreements.

The general prescriptions included in the protocol deal with:

- workers’ information on COVID-19 related risks and health and safety prescriptions;
- management of suspected COVID-19 cases;
- rules on entering the company premises for employees, clients, suppliers;
- workers’ distancing;
- protective equipment;
- sanitization of instruments and premises;
- use of common spaces;
- rules on meetings;
- personal protective equipment;
- institution of a committee for the supervision of the measures.

The employer bears the obligation to translate the general prescriptions into specific measures for his/her company and to monitor compliance with these measures. If an employer is not able to comply with H&S prescriptions, the activity should be suspended until compliance is assured.

5. Conclusions

The Italian government has had a particularly difficult task, especially since Italy was one of the first countries to face a large and sudden coronavirus outbreak, making it impossible to learn from the experience of others. Relying on short-time work compensation schemes coupled with a generalized moratorium on layoffs has probably been the right thing to do. According to some economic analyses, short-time

work schemes are much more effective than other forms of insurance such as unemployment insurance or universal transfers, and more efficient than other forms of wage subsidies.¹⁶

Another positive aspect of the action of the Italian Government is that, unlike other national Governments,¹⁷ it has refrained from any temptation to change labour law rules, and to provide more deregulation on the pretext that the situation required it.

There are, however, some issues related to the measures taken so far, which would perhaps require some adjustments.

First of all, the current situation is increasing the insiders-outsiders division. Adopting a rather case-by-case approach, the Government has tried a comprehensive, but quite fragmented and not always reasonable, distribution of monetary support for those affected by the crisis. Notably, those engaged on a temporary or casual basis, including dependent contractors, who have lost their employment have not been able to rely on the same assistance as “standard” employees. The same has obviously been true for informal workers, who are not considered at all by public welfare. The crisis has therefore reminded us that we are very far from a real and complete universalization of social protections. On the contrary, the current emergency approach has emphasized the differences in social protections between sectors and workers.

The most relevant issue is the financial sustainability of the measures undertaken. They are artificially keeping alive many jobs, with a non-negligible impact on the Italian outstanding public debt. However, dismissals cannot be blocked forever and the financial resources are anything but unlimited.

With an expected 9–10% decrease of the GDP on the doorstep,¹⁸ which tells us that the economy is not likely to restart from where

¹⁶ See for example, G. GIUPPONI, C. LANDAIS, *Building effective short-time work schemes for the COVID-19 crisis*, in VOX CEPR Policy Portal, 01 April 2020, available at <https://voxeu.org/article/building-effective-short-time-work-schemes-covid-19-crisis> (10 November 2020)

¹⁷ See, for example, the case of Australia, dealt with by A. FORSYTH, *Covid-19 and Labour Law: Australia*, in *Italian Labour Law e-Journal*, 2020, Vol. 13, No. 1S, and notably the case of Hungary, considered by T. GYULAVÁRI, *Covid-19 and Labour Law: Hungary*, in *Italian Labour Law e-Journal*, 2020, Vol. 13, No. 1S.

¹⁸ EU Commission, *Economic forecast for Italy*, at https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/italy/economic-forecast-italy_en. (10 November 2020).

it was before the pandemic, the foreseeable picture is rather grim, with mass layoffs on the horizon. This creates a situation for which solutions should be quickly developed by the Government. To this purpose the financial help of the EU will play a key role. The recent European Commission's initiative SURE (Support to mitigate Unemployment Risks in an Emergency)¹⁹ and the proposal for the institution of a European Unemployment Benefit Schemes (EUBS) are important steps toward a common European mutualization of the risks related to unemployment and, broadly speaking, a joint management of the next stages of the crisis and of the post-pandemic reconstruction.

Finally, in the undesirable, but not unlikely, case of a new COVID-19 outbreak, the legislature should probably rely more on H&S extraordinary measures and selective lockdowns, rather than on generalised business closures, which the economy would not stand.²⁰

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¹⁹ EU Commission, A European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE), at https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/loan-programmes/sure_en. (10 November 2020).

²⁰ According to OECD Economic Outlook, June 2020, available at <http://www.oecd.org/economic-outlook/june-2020> (10 November 2020), the expected GDP decrease for Italy is -11.3%. However, it could increase up to -14% in case of a second outbreak.

voxeu.org/article/building-effective-short-time-work-schemes-covid-19-crisis (10 November 2020).

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L'impact de la crise causée par la pandémie de COVID-19 sur le droit du travail en Italie

Résumé

La réaction de l'Italie à la crise du COVID-19 consistait entre autres en la suspension de toutes les activités jugées non essentielles, ce qui a entraîné des litiges juridiques majeurs et une mobilisation des mesures d'assistance sociale. Le principal objectif des mesures prises par le gouvernement était et est toujours de garantir, dans la mesure du possible, le niveau d'emploi actuel et celui de revenu des salariés et des familles, et ce, malgré le ralentissement radical des activités économique et professionnelle. À ce fin, les licenciements pour motif économique ont été temporairement suspendus. Cette mesure était accompagnée de recommandations aux entreprises ayant pour but d'encourager le travail à distance et un vaste système de compensations à court terme. Parmi les autres mesures figurent: une aide financière aux travailleurs indépendants, des prolongations sans précédent du congé parental en tant qu'assistance liée à la fermeture d'écoles et des mesures de santé et de sécurité spécifiques dans les cas où le travail en présentiel est nécessaire.

Mots-clés: Covid-19, droit du travail, licenciements, programmes de travail à temps réduit, travail à distance, congé parental, santé et sécurité

Wpływ kryzysu wywołanego pandemią COVID-19 na prawo pracy we Włoszech

Streszczenie

Reakcja we Włoszech na kryzys wywołany pandemią COVID-19 polegała między innymi na zawieszeniu wszystkich rodzajów działalności uznanych za nieistotne, czemu towarzyszyły poważne spory prawne oraz mobilizacja środków pomocy społecznej. Ogólną przesłanką działań podjętych przez rząd było i jest zabezpieczenie, w ramach praktycznych możliwości, dotychczasowego poziomu zatrudnienia i dochodów pracowników i rodzin, pomimo radykalnego spowolnienia działalności gospodarczej i zawodowej. W tym celu powstrzymano tymczasowo zwolnienia pracowników z powodu niewydolności ekonomicznej przedsiębiorstw. Działanie to powiązane zostało z zaleceniami dla przedsiębiorstw zachęcającymi do przejścia na pracę zdalną tam, gdzie to możliwe oraz z zakrojonym na dużą skalę systemem krótkoterminowych

kompensacji. Inne środki obejmowały: pomoc finansową dla osób prowadzących własną działalność, bezprecedensowe wydłużenia urlopów rodzicielskich jako pomoc związaną z zamknięciem szkół oraz szczególne środki ochrony zdrowia i bezpieczeństwa w przypadkach konieczności kontynuacji wykonywania pracy stacjonarnej w miejscu zatrudnienia.

Słowa kluczowe: COVID-19, prawo pracy, zwolnienia, polityka zatrudniania na krótki okres, praca zdalna, urlop rodzicielski, zdrowie i bezpieczeństwo