

The Modernization of Labour Law and Industrial Relations in a Comparative Perspective

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Editorial

Six years after the barbaric assassination of Marco Biagi, who was attacked while returning home on his bicycle after a day spent with his research team and students, an impressive number of his friends and colleagues attended the Conference in Modena in March 2008 to commemorate his life and work as a leading labour law scholar. Marco's acute awareness of the shortcomings of the Italian labour market, particularly its failure to respond to the needs of the younger generation, made him an outspoken critic of the existing system, as he pointed to the gap between 'the law in the books' and 'the law in real life'. He pursued his research agenda with extraordinary courage and determination, in the belief that experimenting with innovative forms of labour market regulation with the active contribution of the social partners could play a positive role in combating the high levels of unemployment affecting many parts of the country. An essential aspect of his research was the comparative dimension, inspired not merely by intellectual curiosity, but also by the belief that the analysis of measures adopted in other countries could play a constructive role in policy-making. In his research writings he put forward ideas and proposals aimed at generating higher levels of employment of good quality, placing the emphasis on promoting investment in human resources rather than on allocating state subsidies for declining industries.

It was therefore fitting that, in addition to Marco's many friends and colleagues from various parts of Italy and numerous countries in Europe and beyond, who over the years have testified to the strength of their affection and esteem by contributing to the events organized by the Marco Biagi Foundation, a large number of scholars from many countries around the world attended the annual Conference in Modena for the first time. In this way they responded to the

invitation of the Marco Biagi Foundation, set up by the Biagi family and the University of Modena and Reggio Emilia, to contribute to a research initiative that was a continuation of Marco's work. The topic of the Conference, 'Workers' rights protection in a new world of work: The case for a comparative and interdisciplinary approach to labour relations', attracted scholars from a range of disciplines, and nearly all the chapters in this issue of the *Bulletin* were given on that occasion.

This volume begins with a critique of the comparative approach by *Richard Hyman*, who underlines the incommensurability of specific national institutions in an international perspective, a problem that is not simply a matter of terminology, as pointed out in the work of Marco Biagi. Hyman's fairly pessimistic conclusions are not shared by *Jacques Rojot*, who refers in his riposte to early comparative scholarship dating back to the 1960s. The practical implications of comparative studies are highlighted by *Luis Aparicio-Valdez* and *Jorge Bernedo Alvarado*, who discuss labour law in Peru and its relations with a number of other countries in Latin America. *Murad Wiśniewski* examines competing paradigms in the field of international business theory, paying particular attention to the Varieties of Capitalism approach, and its strong focus on employee relations in the firm.

With regard to the regulation of the labour market in the EU, on the other hand, *Frank Hendrickx* provides an authoritative in-depth analysis of the *Laval* and *Viking* rulings by the European Court of Justice, and their implications for trade-union rights in the Single Market. The EU perspective is also central to the chapter by *Martin Bartmann* and *Sabine Blum-Geenen*, who report on a project set up in response to the site selection process adopted by General Motors Europe, in which the trade unions managed to prevent a 'race to the bottom' during a period of economic downturn by means of a coordinated strategy based on the principle of 'sharing the pain'.

The chapter by *Sonia McKay* and *Sian Moore* provides an analysis of recent changes in trade union representation in the UK, against a backdrop of declining membership and a shift in political power towards employers and away from workers. Their survey findings indicate that union representatives are increasingly dedicating their time to individual casework rather than collective representation, with the boundaries between their work time and personal lives tending to break down. *Anna Pollert* and *Paul Smith* in their chapter point to the dominance of neoliberal discourse and the weakness of trade unions in the UK, recalling Kahn-Freund's argument that without powerful trade unions the effectiveness of legal regulation of employment is limited. *Patrice Jalette* starts from the claim that outsourcing has negative consequences for workers, in terms of job losses, a decline in wages and working conditions, and a weakening of union power, but then goes on to present survey data from the Canadian manufacturing sector to investigate this claim.

In the next two chapters the focus is on atypical employment. *Clémence Aubert* examines atypical employment contracts in the French press, and discusses the extent to which the use of these contracts can be justified, bearing in mind that they are used not only for new entrants, but also for fully qualified journalists,

many of whom are specialists in their field. *Elsa Underhill* and *Malcolm Rimmer* on the other hand discuss State protection for temporary agency workers in Australia, arguing that such workers can 'fall between the cracks' in protective regulation unless specific provisions are made for them.

With regard to globalization and social protection, *Kees J. Vos* highlights the risk for employment posed by operations on the financial markets, in particular, hedge funds, credit derivatives, and credit default swaps. In this connection he notes that taxpayers are expected to pay for the excessive self-enrichment of investment fund managers. The unprecedented developments on financial markets in recent months provide confirmation of the accuracy of his analysis.

In their diachronic analysis of employment protection measures in the Swedish labour market, *Bengt Furåker* and *Tomas Berglund* consider the impact of such measures on the willingness of workers to move from one employer to another, providing survey data to support their claims. Still with regard to employment protection, *Silvia Spattini* discusses the importance of active labour market policies in a workfare/flexicurity perspective, in order to facilitate a smooth transition between jobs.

Social protection may have one meaning in Europe, but quite another one in Southern Africa, where the informal sector plays a dominant role in the economy. The extension of social protection to those employed in the informal sector is the issue addressed by *Marius Olivier*, and then also by *Elmarie Fourie*.

In terms of human resource management, *Massimo Pilati* and *Laura Innocenti* discuss worker participation in relation to organizational climate and change, providing a classification of various kinds of corporate culture.

The remaining chapters in this volume are single-country reports. *Francisco José Barba Ramos* discusses recent developments in Spain, noting a two-fold phenomenon of supra-state intervention in employment on the one hand, and political decentralization on the other.

In her contribution *Éva Berde* assesses Hungary's ranking in the EU in terms of various flexibility indicators, while citing some interesting positive flexibility practices, for example in the case of workers with disabilities, and women returning to work after the birth of a child.

The new Lithuanian Labour Code is subject to critical scrutiny by *Tomas Davulis*, who proposes ways of introducing greater labour market flexibility. A similar analysis is provided by *Merle Muda* with regard to the regulation of the Estonian labour market, and by *Evgeny Khokhlov* and *Olga Rymkevich* with regard to Russian labour regulations, whereas the focus of the chapter by *Alexander Zavgorodniy* is the recent reform of higher education in Russia, and issues relating to academic recruitment.

In their critique of the Israeli labour market, *Itzhak Harpaz* and *Yosi Gattegno* cast light on the treatment of workers employed in hard, degrading, discriminating and humiliating conditions, often in violation of human rights and human dignity and in contrast with ILO standards. They also examine the role of negative criticism by the media and non-profit organizations in the protection of workers' rights in cases where trade unions are lacking.

The protection of workers' rights in Singapore is the topic addressed by *Chew Soon-Beng* and *Rosalind Chew*, who provide evidence to show that Singapore not only upholds the five core labour standards of the ILO, but also provides additional measures. However, in the case of Hong Kong, a less favourable appraisal of local employment conditions emerges from the chapter by *Rick Glofcheski*.

From Hong Kong the focus moves across the Pacific to Canada, where *Judy Haiven* and *Larry Haiven* examine workers' rights in a fishing cooperative. Finally, in Latin America, *Pablo Arellano Ortiz* considers health protection for workers in restaurants in Chile, and *Hector Lucena* provides an overview of political and labour market changes in the oil economy of Venezuela.

In conclusion, the range and depth of the studies in this issue relating to the protection of workers' rights, and the great variety of countries represented, in geographical, linguistic, and political terms, is remarkable, and a very real tribute to Marco's memory as an outstanding labour law scholar whose intellectual curiosity led him to investigate labour and employment issues far beyond the confines of the nation-state.

William Bromwich
Olga Rymkevich
Silvia Spattini
December 2008

founded that employ workers for the purpose of making them available to third parties for a fixed term. There are currently about twelve temporary work agencies in Estonia.⁴⁸ Therefore, it would appear that the use of temporary agency work is becoming more widespread, although due to the lack of regulation, there are a lot of problems concerning triangular working relations in practice.⁴⁹

As regards comparable countries, both Finland and Denmark have transposed Directive 97/81/EC into national law. There are also no legal obstacles to the use of temporary agency work⁵⁰ or other types of non-standard work in these countries.⁵¹

The draft of the new TLS does not provide for special rules on atypical work. Section 6(4) and (5) of the draft provide definitions only of telework and temporary agency work. The author of this paper holds that such regulation is not sufficient. Although non-standard work is not very extensive, it does not mean that Estonia does not need special regulations for non-standard labour relations. The author is of the opinion that, first and foremost, rules on triangular working relations must be drawn up. The lack of such rules rather impedes the creation of flexible labour relations as employers do not risk entering into exceptional contracts. The lack of regulation may also cause the conclusion of employment contracts that contain unfavourable conditions for employees that are without justification.⁵²

5. CONCLUDING REMARKS

Changing social relations have given rise to new forms of work, as well as giving rise to a need to enhance the role of employees and employers in shaping their own labour relations through the conclusion of individual and collective agreements. The employee can no longer be regarded only as a member of the workforce, but the individual abilities, skills, needs and wishes of the employee should also be taken into account. At the same time, the interest of the employer to develop the business should not be underestimated.⁵³

In this paper, the author examines whether the Estonian regulation of entry into employment contract, the termination of employment contract on the initiative of the employer and the rules concerning non-standard work are sufficiently flexible, allowing the parties to the employment contract to take into account the

48. Temporary Agency Work in an Enlarged European Union. European Foundation for the Improvement of Living and Working Conditions. Luxembourg: Office for Official Publications of the European Communities, 2006, 11.

49. For example, it is difficult to determine who must perform employer's obligations, the legal grounds for entering into a fixed-term contract, etc.

50. See R. Eklund, 'Temporary Employment Agencies in the Nordic Countries', *supra* n. 19 at 311-333.

51. N. Bruun & J. Malmberg, 'The Evolution of Labour Law in Denmark, Finland and Sweden 1992-2003, 2004. Available at <http://ec.europa.eu/employment_social/labour_law/docs/ell_da-fi_sv.pdf>, 6-8 and 24-26 (1 Sep. 2008).

52. See also *supra* n. 6 at 152-153.

53. *Ibid.*, at 150.

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