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I. Collective bargaining in Italy seen from a historical perspective*

I.1 The first symptoms of industrialism: the pre-Fascist period

A close connection can be established between the origins of labour law and the advance of industrialization, a process which began in Italy about fifty years behind other West European countries.[1] It was the advance of industrialization, too, which gave an impetus to the developent of the industrial relations' system, and its inspiration was drawn from the ideology of trade union freedom.

In Italy, no collective agreement system, worthy of that name, was in existence before the so-called Fascist period (1924–43). However, the first signs of collective bargaining were visible from the middle of the nineteenth century. These agreements on the remuneration of work ("tariff contracts") were negotiated by a coalition or groups of workers, together with workers who had not been well organized at the level of the individual enterprise. The first collective agreement (convention) was concluded in the printing industry, at Torino, in 1848.

By the end of the nineteenth century, an informal network of conventions emerged, especially among those engaged directly in production and manufacture (compositors, typographers and farm workers).[2] It was also at the end of the nineteenth century that the first national unions were established in various branches of the economy (among compositors, typographers, railroad workers, the employees of the tobacco monopoly, shipyard workers, the personnel of army arsenals, those engaged in some kind of service industry and even in some top government services). In its early stages, the Italian trade union movement was influenced by an ideology of a Socialist hue and most of its members were industrial workers. A few unions could also be found in the agricultural sector, but only at the provincial level.

At that time, the State's attitude to industrial disputes and trade union freedom was usually negative. This was due to the influence on the State's approach of a mentality, reflected in the legal regulation as well as in the attitude of the public authorities, inspired by a liberalist and individualist ideology, especially in the early stages of industrialism. That is to say that the absolute freedom of contract was supposed to be the basic principle governing labour relations. The individual labour relations were regulated by the general rules of private contracts, and were based on the idea of the equal status of the parties. The State had no intention of intervening in labour matters and tried to avoid involvement in early industrial conflicts.[3]

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[1] C.*Assanti*:Corso di diritto del lavoro, CEDAM, 1993. p. 1.

[2] B.*Veneziani*: Italy in A. blum, Int. Handbook of Ind. Rel., London, 1981. p. 303.

[3] T. *Treu*: Italy in International Enc. for Labour Law and Industrial Relations, ed. in chief R. Blanpain, VII, Kluwer,1991. p. 21.

The first legal regulation in this context was the Penal Code of Sardinia (1859), prohibiting coalitions and collective action as illegal restraints on the freedom of labour and as liable to penalization.[4] Nevertheless, as mentioned above, the ideology of trade union freedom also influenced the development of labour relations, that of industrial relations in particular, and contributed to change the attitude of the State to industrial action. Thus in 1889 the "Zanardelli Code" permitted freedom of coalition and revoked the penal sanctions that had been imposed earlier on strike actions. The first statute specifying special procedures for the settlement of labour disputes was drawn up in 1893. Special tripartite bodies (*collegi dei probiviri*) were organized as a first attempt to promote the solution of industrial conflicts through legistlation.

The decisions of these bodies, as reflected in their decisions on industrial strife, were much more liberal than the decisions given by ordinary courts, so their existence can be regarded as an important advance for industrial relations and also as a positive development in Italian labour law.

It has been a peculiarity of the pre-Fascist period in Italy that the first signs of industrial democracy made their appearance during that time. A very early form of workers' participation or, to put it more precisely, of the protection of workers' interests was also coming into being and could be traced back to 1906, when special workers' councils (*commissioni interne*) were set up to represent workers at the plant level. At that time, workers were not allowed more than to express their opinion on the activity of the enterprise. These councils were recognized in a contract negotiated between the FIOM union (*Federazione Italiana Operai Metalmeccanici*) and a big car *(automobile)* company (*Itala*).[5] Later some radical members of the labour movement, inspired by Communist ideology, tried to transform the workers' councils into factory councils (*consigli di fabbrica*), as a first attempt to put factories under workers' control. This experience, however, did not last longer than two years (1919–20).

The "*collegi dei probiviri*" had been active for quite a long time, they existed until 1928. By this time the corporative system had already been established by the Fascist regime.[6]

I.2 The Fascist period (corporations, corporative collective agreements, presence of the State in the process of bargaining)

The so-called Fascist period (1924–43) is by now history for Italian labour law, yet in some of the regulation its traces still exist, to this day. What we have in mind here is that the survival of a kind of corporative collective agreement is a unique peculiarity of Italian labour law.

The depressing presence of public powers in industrial relations was the main feature of the Fascist period, also known under the name of corporative period, because of the existence of corporations. The State executive power restricted the possibilities for the development of industrial democracy.

The liberty of organization was formally declared, because the Fascist regime did not want to oppose the ILO Conventions, ratified by Italy, extending to the field of trade

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[4] See No. 2. p. 304.
[5] See No. 3. p. 22.
[6] See No. 2. p. 304.

union freedom.[7] In fact, the Italian State had recognized only one trade union in each sector of the economy, and declared them to be public bodies. The administration of these associations was filled with members and followers of the Fascist Party. The public trade unions were organized in line with the branches of the economy, i.e. agriculture, industry and the "tertiary sector". The field of industry in particular was subdivided into further groups. As it was the output produced by the economic branches that governed the subdivision into categories, a description and classification of commercial goods *(merceologia)* was made, based on the various sectors of the economy, such as chemical engineering, siderurgy, food-processing etc.

In this way the Fascist Party could ward off the attacks launched against it because of its activity and they even took care that the actual formulas of the trade union institutions were adopted to legitimate the Fascist political influence upon industrial relations.

The law stipulated that if the unions managed to organize more than ten per cent of the members of a certain occupational category, this would provide them with a legal status (*personalità giuridica*). The protection of interests covered all the workers and employers, and was not limited to the members of the unions. The collective agreements concluded by the associations had "*erga omnes*" effect for all the members of a certain occupational category. The corporative legal system appointed bargaining units.The subdivision into categories was based on the production principle and excluded the trade unions organized in individual enterprises, not adhereing to the corporative principle. The collective agreements were subjected to a legal regulation which differed from that governing the individual employment relationship. The rules prohibited that strike and "lock out" should be used as a means of solving industrial conflicts, because the Fascist dictatorship wanted and required cooperation between employers and employees and would not tolerate any kind of conflict. The Fascist ideology held the opinion that any kind of industrial conflict was detrimental to productivity and the national economy in general. As an organ for solving these conflicts, a special tribunal (*Magistratura del lavoro*) was set up, with the participation of lawyers and non-professionals as members. The decisions of this tribunal had the effect of collective agreements.

All the institutions mentioned in this chapter were regulated by an Act of 1926, amended by an Act of 1934, which established the so-called corporations.

The collective agreements of the corporative period are still applicable to this day in individual employment relations, though their validity is limited to only a small number of cases. I have referred to this when speaking of the survival (*conservazione*) of the corporative collective agreement as a peculiarity of Italian labour law. More will be said about this problem in Chapter I.3.1 and Chapter II.2.1.

[7] See No. 1. p. 6.

I.3 The period leading to the adoption of the Constitution

I.3.1 Legal background

After the end of World War II (1945) there was a short period of transition, lasting for three years, till the adoption of the Italian Constitution (1948). It was during this period that free unionism was rebuilt in a short time. The trade union movement became strong and unified (the united CGIL (*General Confederation of Italian Workers*) had about six million members. The three major parties (Christian Democrats, Communists, Socialists) formed a government coalition, which continued in existence until 1947. This government assisted organized labour to obtain freedom of organization and bargaining and the right to strike.

When Italy had been liberated from Fascism (1943), a decree issued by the Badoglio government (9 August 1943)[8] abolished the corporations and all the institutions of the corporative regime (corporations, Ministry of Corporations), and subjected the unions to emergency administration, coopting the actual ex-leaders of the pre-fascist unions to the commissioners as leaders, putting the trade union movement under their control ("patronage"). This ambiguous situation came to an end in 1944, when an order of the Allied military government (No.28) and, a little later, Act 23, No.369 of November 1944 dissolved the Fascist unions, lifted the control exercised by the "patrons", and proclaimed full trade union freedom.[9] Still, trade unions needed some time for laying the foundations of industrial democracy and making new collective agreements. The main issue of the period was, whether it was worth while to conserve the corporative collective agreements or not. In the end, it was decided to keep them in force until democratic collective agreements could be concluded. Consequently, all the collective agreements which had been concluded under the Fascist regime, apart from subsequent modifications, continued in force. The reason why this course of action was found advisable was that it helped to avoid the alternative facing the decision-makers, i.e. a situation of lawlessnessness, owing to the lack of legal regulation, for an indefinite period of time.

The adoption of the Italian Constitution (1948) marked a turning point in the evolution of the system of industrial relations: although it made possible, to a certain extent, the survival of the above-discussed corporative norms, it made way, once and for all, for the development of a new type of collective agreement.

I.3.2. The key passage of the Constitution

The main provision of the Italian Constitution (1948)[10] dealing with the industrial era is Article 39. The aim of this provision has be to introduce the basic principle of the freedom of trade union organization into Italian law and to encourage the unions to make generally binding collective agreements. The passage concerned is the following: "Registered unions, represented as integral units with representation proportioned to their membership, may conclude collective labour contracts which will

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[8] See No. 3. p. 23.

[9] G. *Pera*: Diritto del lavoro, Padova, 1991. p. 36.

[10] Codice di diritto del lavoro, Cacucci Editore,G. Giugni, F. Liso, B. Veneziani.

be binding for all the persons belonging to the categories to which the contract refers".[11] The article has been based on the principle of the registration of unions as a means of recognizing their legal status. The registration by the State may imply a firm control by the State administration over the internal affairs of the trade union movement. This passage, however, has never been put into force, for reasons which will be discussed in the next point of this chapter.

I.3.3 Problems arising from Article 39 of the Italian Constitution

The most important point to be stressed is that Article 39 is a technique for restructuring the collective bargaining system, but real life managed to bypass and overtake this provision, because powerful interests of the social environment acted against its realization. Collective bargaining could be adopted more easily to the radical changes that had taken place in the economic and social conditions, than the to rigid procedure provided by Article 39. This Article, which had never been put into force, provided that registered trade unions could make collective agreements which were binding for every member of the categories the agreements referred to. Despite the existence of this regulation, no generally valid standards were available before it had become possible to loosen the close ties with traditional bargaining levels and issues. The adoption of this particular process by the Constitution had the effect that no other solution could be chosen. Later even more complex problems resulted from the impossibility of putting into force Article 39, among others that it lacked general validity and that the contracting parties could not be properly identified, and the problem of consent necessary for pluralism also acquired importance. That is the reason why the firm level and bargaining at the firm level were gaining increasing importance. The non-implementation of the rigid procedure provided by Article 39 – a procedure modelled on bargaining at a national level and aiming at the extension of collective agreements – facilitated the decentralization of bargaining; on the other hand, it was in diametrical opposition to the objectives set by the Constitution and the model it suggested. The fact that the above-mentioned section of Article 39 of the Constitution has never come into force has lead to a situation where trade union freedom could be exercised in more elastic forms and over a wider range, and where the legislation intervening in the processes could have changing objectives and follow varying trends.[12]

While the central problem was that Art 39 had never come into force, much less attention was paid to Art.46 of the Constitution. This article specified that, of the social groups expressly named by the Constitution, workers employed in the same plant had to be divided into bargaining units based on the branches of production (categories), and be registered by these categories. Thus the trade union structure reflected the structure of production, unless otherwise provided by the Statute of the Rights of Workers. This regulation was liable to make it difficult for the bargaining units to obtain recognition for their trade union freedom, or to exercise it, as the way they were organized made it easier for the management to assert its influence over them; moreover, it was incompatible with the intention of those who found it necessary to elaborate the special mechanism of Art. 39 of the Constitution. This provision was made with the not easily

[11] See above.
[12] See No.1. p. 172.

identifiable group of non-organized workers or employees in mind, while the plant-level collective agreements concerned individual employers and their relationship with their employees.

The aim of focussing on Art.46 has been to point out that various sectors would be interested in the modification of Art.39, if it seemed likely to them that it might be carried into effect. The issue is still being debated by professors and jurists.

Art. 39 has given rise to another interesting phenomenon, as well. The trade unions constituted on the basis of the principle of trade union freedom as constitutionally guaranteed by Art.39, section 1, have immediately proceeded to exercise their legal capacity by concluding collective agreements, too. In addition to this, the non-implementation of the process laid down in the last section of Art.39, has strengthened the effect of section 1, and contributed to extending its competence over a much wider range than it could be forseen earlier. This shows that although the model may not be in marked contrast with reality, it certainly falls short of its requirements, and important matters have remained uncovered by its provisions.[13] Nevertheless, reality has managed to break through the contradictions between the two sections of Art.39, of which the first one guaranteed complete trade union freedom, while the second one restricted it by maintaining the State's right to registration and by requiring from trade unions to conclude collective agreements with definite representation in proportion to their membership, but extending its effect to all the workers ("erga omnes" effect).

In fact, the model of collective bargaining the legistlators had in mind in Article 39 of the Constitution was the so-called pluralist model. The trade unions, however, had no intention of adopting this model and this was the main reason why it had never entered into force. In fact, the trade unions did not want to make a compromise between the democratic "*erga omnes*" effect of collective bargains and trade union pluralism.

By way of summary, it should be stressed that the aim of Art. 39 of the Constitution was to achieve trade union pluralism with "*erga omnes*" effect in the field of collective bargaining.

II. Collective agreement models in Italy from the beginning to the present

The literature of the subject has given a review of the models of Italian collective agreements, from the beginning to the agreements of the last seventy years of the history of industrial relations, and it seems undisputable that two main types can be distinguished quite clearly.[14]

II.1 The corporative model

It was the corporative legal system that created the trade unions, as public bodies. This system did not allow for trade unions to be organized in individual enterprises and insisted upon setting up bargaining units, by adopting the principle of dividing the

[13] See above p.175.
[14] See No.1. p.180–200.

membership into categories based on the product of their work. The collective agreements were made by public bodies representing the interests of both workers and employers. These agreements were devised so as to meet the various requirements of the individual employment relationship, with a bias to that relationship. Article 2071 of the Civil Code provided that the collective agreements had to include the rules needed for completing the labour regulation. The rules of the corporative collective agreements had a normative character, similar to that of the sources of law. The occupational categories were individuated authoratively, through Acts of the public administration. Every worker and employer who belonged to an occupational category so indicated by the Acts fell under the ruling of the agreements. Workers and employees were grouped into occupational categories, on the basis of the activity pursued by their employer. If the employer carried on various activities, the respective labour relations were regulated by the rules of collective agreements corresponding to the activity performed by the employee. The collective agreements, even if they expired, were to continue in effect until the new agreement came into force.

Even in individual labour contracts, between partners who fell into one of the categories to which the collective agreements made reference, the rules of the collective agreements applied and had to be respected. The different clauses of the individual labour contracts, whether these contracts had already been in existence before the conclusion of the corporative agreement or had been made following it, were replaced by the clauses of the collective agreements, unless they contained special provisions, more favourable to the workers, than the specifications of the collective agreement. The main peculiarity of the corporative collective agreement systeme was that it included a very rigid and mostly static set of rules, prohibiting any real bargaining and keeping the actual labour conditions on a substantially low level.

II.2 The post-Fascist model. (Collective agreements with subjective limited effect regulated by Article 39 of the Italian Constitution)

The new contractual model of Italian collective bargaining has been the so-called "*contrattazione di diritto comune*", a legal term for which it is rather difficult to find a correct English equivalent. "Private law contract" seems to be closest to the right term. "Contract without erga omnes effect" or "contract with subjective limited effect" might also be used. The peculiarity of this model is its subjective limited effect, i.e. that it binds only one of the negotiating partners, the workers, or to put it differently, only one side, while the employers are free to negotiate individually, as well.

A marked progress can be observed in collective bargaining with special reference to private law, which has been due to the trade union freedom principle. The contents of the agreements are more and more in harmony with international sources, along two main lines: concerning effectively representative conferedations, in the first case and Autonomous Trade Unions, in the second.[15]

The autonomous definition of the categories was formulated through negotiations, at the conference table, and confirmed the market economic arrangement.

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[15] See above p.193.

Then the categories, e.g. the industrial sectors, were subdivided into broad sections, by means of inter-confederal agreements ("*accordi interconfederali*").

It was rather difficult to define the enforcing provisions, and for two different reasons. The first impulse was to consider the new collective agreements as completely alien to the rules directly governing corporative collective agreements and to classify them with the rules governing contracts in general (Art.1321 and ff. of the Civil Code),[16] giving them the name of collective contracts "*di diritto comune*".

Jurisprudence, however, found Article 2077 of the Civil Code[17] applicable and also tried to prove, in various ways, that it was unalterable, and deliberately failed to refer to the above-mentioned classification of the new collective agreements under Art. 13211 and ff. of the Civil Code.[18] Yet the attempt was not convincing, for the judges in particular.

By way of summming up the issue, it is worth noting that the collective agreements with subjective limited effect developed autonomously in Italy and surpassed in efficiency the rigid process provided by Art.39 of the Constitution.

III. The present forms of collective agreements

According to the prevailing classification, by types of collective agreements, in Italy, four types of agreements are distinguished. The development of the present forms began with the the abolition of the trade union structures of the Fascist period, later it was also influenced by the fact that Article 39 of the Constitution had never come into force, as well as by the immediate effect of trade union freedom, and by the extension of the "*erga omnes*" effect of collective agreements to non-registered trade union members, which gave rise to various forms of collective agreements.

III.1 Collective agreements conluded before the present era, which are still applicable (corporative collective agreements)

At present, the collective agreements of the Fascist period or, at least, the parts which have not been replaced or altered, are still applicable.

Act No.369 of 23 November 1994 abolished the organizational structure of the corporative period, but provided that the corporative rules should remain in force. The Civil Code classed the corporative rules with the sources of law. The rules were fixed by collective agreements, by economy-wide collective agreements, by the collective sentences given by the Labour Court and by corporative ordinances. All of this regulation had been in force at the time of the adoption of the Constituion; however, when the Constitution came into force, the conservation of the above-mentioned corporative rules was not in harmony with the mentality inherent in collective agreements, therefore these rules have become incompatible with the Constitution.

Act No. 369 of 23 November 1944 provided that the corporative rules should be invalidated and the following modifications be made by passing particular laws which

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[16] See No.10.
[17] See above.
[18] See No.10.

would legalize the existing collective agreements. In the cases where the existing collective agreements regulated matters that had been under the regulation of the former corporative collective agreements, the new collective agreements have lessened the importance of the old rules.

Consequently, the corporative collective agreements were not applicable, unless their regulation was modified by a new collective agreement, with special reference to individual employment relationships.

It has already been mentioned above that the corporative rules were ranged with the sources of law and had an intermediate status between regulation and usage. The corporative rules could not "derogate the mandatory rules of law and regulation" (Art. 7, Introductory Dispositions of the Civil Code);, however, they could prevail against usage, even if it was invalidated by law or regulation, unless otherwise provided for (Art. 8). The regulation of this matter raised the issue of the relation between collective agreements and laws. According to one opinion, each class of sources included in the list in Article 1, Intr.Disp., Civil Code fixed minimum conditions amd the lower source cannot alter these conditions, unless it is an improvement for the workers, it is in their favour. Some jurists,[19] however, are not inclined to agree with the principle of applying the source which is more favourable to the workers. It is very difficult to define exactly what is favourable to workers, especially when provisions made by a law or in a contract have to be compared.

The practical relevance of corporative collective agreements has been diminishing rapidly and is by now confined to marginal categories of workers, not covered by any other agreement, and to a very narrow range of items.

III.2 Collective agreements that trade unions are entitled to conclude

This type of collective agreement is concluded in accordance with the principle of trade union freedom and that of the freedom of organization. This kind of collective bargaining is the pivot of the Italian collective bargaining system. These bargains can be negotiated by the unions and the employers and are binding for both parties.

When discussing such terms as the parties to, the levels, personal effects, duration, form and structure of the collective agreements in the following chapters, it is this type of collective agreement which will be examined, because, at present, this is the only form of collective agreement which can be concluded by trade unions and carries guarantees for both parties.

III.3 Collective agreements incorporated in special statutes

This type of collective agreement is recognized in delegated legislation, issued in harmony with the law of delegation, Act No.471 of 14 July 1959,[20] which has recently become generally binding, in an indirect fashion. By the end of the fifties, it was generally and strongly felt that the fact that collective agreements had no general effect

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19 As Cecilia *Assanti* in "Corso di diritto del lavoro".
20 See No. 10.

caused problems, and a solution was found by taking into consideration Art. 39 of the Constitution, which had forbidden the adoption of proceedings that differed from the one it provided. In order to fill the above-mentioned gap, Act No. 741, of 14 July 1959 and Act No. 1027, of 1 October 1960 were passed. The first Act authorized the Government to pass a number of delegated laws, conforming to all the clauses of individual collective agreements and of agreements already in existence up to the day, when the Act entered in force and registered by one of the signing associations at the Ministry of Labour and Social Security.

The purpose of this law was to assure a compulsory minimum level of economic and normative conditions governing remuneration and other aspects of labour relations, such as promotions, holidays etc., for all the employees, the same minimum applied to each member of the same occupational category.

The delegated laws automatically replaced the economic and normative conditions in force, i.e. the parts that were less favourable to workers than the new regulation. The previous conditions had continued to be valid until they were modified by sources with an "*erga omnes*" effect. However, it was possible to invalidate them by concluding individual labour contracts or by modifying existing collective agreements.

At first, the delegation was to have a duration of one year and concerned previously signed collective agreements alone. The second law, Act 1027, of 1 October 1960, however, extended the term by fifteen months and declared that its competence was also to be extended to agreements concluded up to ten months after the coming into effect of the first law. Nevertheless, the Italian Constitutional Court found the extension of the second term, extending the competence of the delegation, illegal.

The problem of the constitutional legitimacy of the two laws may currently become of interest again, because it is to be supposed that the solution offered by the two laws will be repealed again. In fact, the Constitutional Court has declared that the powers given to the Government were to be considered exceptional, and as a temporary solution. If that formula is re-proposed, great caution will have to be shown, particularly if it is to have general effect.

Under the influence of the delegated laws without corrective, the regulation of labour relations can become quite rigid, specifically for those not organized in unions, while the bargaining by organized labour may undergo important changes.[21] There are some other ways of applying collective agreements to non-organized workers. These will be discussed in Chapter VII.

III.4 Collective agreements with "erga omnes" effect

This type of collective agreement, which is generally binding and is concluded in accordance with Art. 39 of the Italian Constitution, cannot come into being, for the time being, because of the lack of legislation allowing the implementation of the constitutional provision. This situation is of great interest and is peculiar to the Italian industrial relations system. To put it more clearly, a constitutional provision cannot be enforced, because it acts against some powerful social interest, against trade union liberty in particular, which is also guaranteed by the Constitution. Despite this state of

[21] See No.1. p. 181.

affairs, it cannot be claimed that this type of collective agreement is only a "nominal" arrangement, a mere shadow. At least one important right has resulted from it: it is not possible to give "*erga omnes*" effect to any collective agreement without taking into consideration this particular provision (concerning representation, registered unions etc.). This is the only constitutional way of concluding collective agreements with "*erga omnes*" effect, and it can prevent the arbitrary extension of the effect of any collective agreement, owing to the fact that Art.39 forbids the adoption of the proceedings which are not in agreement with its provisions.

IV. The partners to the collective negotiations

It has already been mentioned above that the need for collective agreements with general effect began to be felt from the early sixties, though the intensity of this feeling showed important fluctuations over the time, and the issues of how to identify the parthners correctly and of the consent necessary for pluralism have also gained in importance.[22]

What the negotiating parties should decide first is "for whom, on whose behalf they are negotiating", considering that the negotiating competence is limited to the categories into which the union membership is organized. Still, convenience and the power relations may offer them some opportunities for making choices.

The partners negotiating collective agreements are workers' organizations, in fact the trade unions, on the one hand, and employers or employers' organizations, on the other hand. The two partners' positions are not equal, and this is confirmed by Art. 39 of the Constitution, because the workers can only negotiate as a "collective", through their organizations, while the employers can negotiate as individuals as well, on their own behalf. It is worth noting, however, that the collective nature of this relationship is not quite clear, because the partners entering into collective relations should have a collective status.

On the workers' side, it is highly important to decide the proportion of participation in the negotiating process, taking into consideration trade union freedom and trade union pluralism. Despite the fact that there is a provision about representation in Art.39 of the Constitution ("Registered unions, represented as integral units, with representation proportioned to their membership, may conclude collective labour contracts ..."), no regulation existed on how to set the actual rules of representation until the promulgation of the Workers' Statute (*Statuto dei diritti dei lavoratori*), Act No.3, of 20 May 1970.[23]

IV.1 Workers' organizations. Trade unions

The number of employees in Italy amounts to more than twenty-three millions, of which more than fifteen million employees can be considered as prospective union members and about ten million people are actually members of the most important

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[22] See No.1. p.182.
[23] See No.10.

confederations.[24] As compared to other West European contries, the rate of trade union organization is somewhat above the average in Italy. The confederations are authorized to make statements on behalf of all of the workers, organized as well as not organized, and these statements are accepted by both the management and the Government. But as regards the most traditional trade union right, the right of concluding collective bargains, the unions' authority to make collective bargains with "*erga omnes*" effect is assured by the Constitution alone. The reason why it has to be so is the lack of legislation, which tends to limit the validity of the bargains to the members of the unions that are partners in an agreement.

The trade union structure is organized on an industry-wide basis, vertically and horizontally. Vertically, the structure is a reflection of the division of the industry into branches of production, and groups the industrial federations by occupational categories. Horizontally, the structure follows the pattern of geographic areas. Traditionally, organized labour in Italy has been divided into three major confederations, along ideological and political lines, in the following order of importance: the Italian General Confederation of Labour (*CGIL*), the Italian Confederation of Workers' Unions (*CISL*) and the Italian Workers' Union (*UIL*). The CGIL is composed of a Communist majority, a Socialist minority and a number of members who are politically non-aligned. The CISL is traditionally a grouping of Catholic workers, it is aligned politically with the Christian Democratic Party, yet in recent years the number of its politically non-committed members increased considerably. The UIL is a non-Communist lay organisation of Socialists, with a minority of Social Democrats and Republicans.[25]

Unions represent both union and non-union workers, when protecting workers' interests, because the benefits obtained by the unions are extended to both organized and non-organized employees. Therefore, many workers have no interest in joining the unions. The Italian law does not require from workers to join unions and the "closed shop" practice is considered to be illegal. It could be argued that the majority of Italian workers take the improvements obtained for them by the unions for granted.

There are some independent trade unions in Italy, too. These are often craft or occupational unions.[26] The autonomous unions have the strongest position in the public sector, they represent teachers, civil servants on a national scale, custom officers, employees in the national health service and railway workers. It is not possible to give exact figures and data concerning their membership, structure and organization.

By way of conclusion, the organizations of senior and middle managers should also be mentioned. The professional associations of the middle management are different in character from the workers' unions. Their membership is still quite limited in number and it has not been clearly defined up to now either, who falls within their scope of representation and whose unions they are. They have not concluded any collective agreement up to now, and their representation is not assured in colllective agreements.

In recent years, a new rank-and-file union organization has come into being, the "Cobas",[27] composed of highly skilled workers, grouped by firms and industrial

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[24] M. *Biagi*: Employee representational participation in Italy, in Comp. Labour Law Journal, vol.15, 1994, 303. p. 155.

[25] See above p. 156.

[26] G. *Giugni*: Recent trends in collective bargaining in Italy in International Labour Law Rewiew, vol. 123, 1984, 599. p. 601.

[27] See No. 24. p. 156.

branches, and this organization has managed to gain power at the shop-floor level. It has strong positions in the railway and educational sectors. It is opposed to traditional unions, which represent workers' interests in general, and are under the powerful influence of political parties, when it comes to issues connected with national economic policy.

The "Cobas" may want to pursue union activiy without political orientation, but in fact the protection of workers' interests cannot be separated from the political environment and workers as the individual subjects of industrial relations constitute a complex collective personality, showing various, often disparate interests and orientation.

It must be kept in mind that the main purpose of trade union activity is the protection of workers' interests, but there is more to it than that.

IV.2 Employer(s) or employer(s)' organizations

On the employers' side, either individual employers or employers' organizations can be seen to participate in negotiations. There are also a number of enterprise associations in the industrial sector in Italy. The most important employers' association is the Confindustria (Industrial Confederation) with some industry-wide or territorial associations as members. It represents the interests of more than 100.000 industrial enterprises, but most of these are very small ones, employing less than one hundred workers.[28] The Confindustria is the largest and most powerful employers' association in Italy, has no close connections with any political parties, yet it exercises a strong influence upon the nation's political and economic life. The enterprises in the public sector have their own associations, such as Intersind or ASAP, but their activity does not extend beyond the conclusion of collective bargains, while Confindustria protects and promotes the interests of its members in the domains of both industrial relations and of general economic policy.[29]

Private employers also have some organisations for representing their collective interests, Confcommercio and Confesercenti in the commercial sector, Confagricoltura in agriculture, Assicredito in the banking and credit sector, and Confapi for the small firms. The above-mentioned organizations represent the management's interests in labour management relations and in collective negotiations, on different levels, i.e. on the provincial, regional or national level.

Compared to the workers' side, unlike the workers' organizations, the employers' associations have no strong political orientation and their activity is limited to settling industrial disputes and collective bargaining (with the exception of Confindustria). Seen from this perspective, their industrial activity is much more closely connected to their professional activity than that of the workers' asssociations, whose main concern is the protection of interests.

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[28] See above p.157.
[29] See No. 26. p. 604.

IV.3 The presence of the State (public authorities) in the system of collective negotiations

The State's presence in collective negotiations seems to indicate an obvious lack of collective relations. In Italy, the State is present in the three-sided agreements on the national level, which will be discussed in Chapter X. These play an important part in industrial relations, but bargains made on the national level could be called only gentlemen's agreements, involving no legal obligations. It is only in trilateral agreements that the State is in a position of direct partnership, but its indirect presence and impact can be felt in the collective agreements, too. In some cases, the State's presence can be a highly important factor. The implications of State presence are the following: First, it is mainly in democratic industrial systems, where the partners have a genuine intention of abiding by the gentlemen's agreements, that trilateral agreeements can have an influence on collective negotiations. Secondly, if the partners involved in the collective agreements are not able to agree on the disputed matters, they can call on the State to assist them to come to an agreement. The State usually tries to help through one of the Ministries, but it is not in a partner's position, though its presence is important, and plays the part of an intermediary. Finally, the strongest presence of the public authority in the collective agreements is made possible through legal regulation.

The system of industrial relations is not highly regulated in Italy. In Hungary, the regulation is rigid and goes into great detail, which is not favourable to industrial freedom. The Hungarian regulation, even if its purpose is to help, functions like a spiral movement accelerated by its own momentum.

An unprecedented State intervention into industrial freedom in Italy was Act.300, of 20 May 1970, named the Workers' Statute (*Statuto dei lavoratori*),[30] which contained provisions for the protection of workers' freedom and dignity, for trade union freedom and freedom of action within the workplace, and provisions for placement. The Act is meant to be the basic source of the legal protection of trade union freedom in Italy, stating more precisely and clearly what Section 1 of Art.39 of the Constitution declared earlier: "The trade union organization is free" (*L'organizzazione sindacale è libera*).[31] Art. 14 of the Workers' Statute grants to "every worker" the "right to form trade unions, to join them, and to take part in union activity". It makes provisions for the exercise of this right "within the workplaces". It is worth noting, in connection with Hungarian experiences, that the latter right is not necessarily favourable to trade union freedom. During the codification of the Hungarian Labour Code, there was some discussion about whether it the Code should guarantee union activity within the workplace or not. It is true that such a provision makes it easier to pursue trade union activity there, however, trade union officials have to work subordinated to employers, in their individual labour relations, and subjected to the power relationships prevailing in the workplace and this is a situation which may hinder their freedom of action in such cases, when they must oppose the demands of the employer, in order to protect the employees' interest. A great variety of negative experiences can be found in Hungary to illustrate this view.

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[30] See No.10.
[31] See above.

Returning to the Workers' Statute, it contains an important discriminatory act and a detailed regulation of how to establish workers' unions (*rappresentanze*). In the course of time it has become its main purpose to give legal expression to industrial realities.[32]

V. The levels of collective negotiations

In the course of the development of the new bargaining model in Italy, the importance of the various levels of collective bargaining has undergone a change.

The interconfederal bargaining for large sectors of the economy or for the entire industry played a key role in the period of the post-war reconstruction and in times of recession, because it guaranteed minimum working conditions for workers employed in broad sectors of the economy.[33]

During the 1960s, and especially the 1970s, the national, industry-wide agreements performed an essential role in deciding questions such as the remnuneration, the problems of work organization, working conditions, working hours and trade-union rights.[34]

The significance of firm-level agreements was especially great between 1968 and 1970. From 1974 on, the importance of the plant-level bargaining had diminished progressively, but the *Protocollo...* of 1993 brought favourable changes at this level again.

As to the present, an evening out of the different contractual levels can be observed now. This has contributed to a more balanced distribution of the agreements among the different contractual levels, which, in its turn, gave rise to a complex contractual network.

V.1 Confederational level (Confederazione)

The Confederation is a complex association, in a horizontal as well as in a vertical position, it can make agreements within the limits of the statutory regulation of competences, and these are applicable to the associates of member associations, too. These are the so-called "*accordi interconfederali*". The interconfederational bargainings are very wide in scope, cover all the manufacturing industries and, indirectly, some other branches of industry, too. Following the example of the former bargains, they incorporate the issues, upon which there had been former agreements. These agreements have been concluded at varying intervals and refer to wages, the labour market and to the actual employment policy, in particular.[35]

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[32] *Wedderburn*: Employment rights in Britain and Europa, London, 1991. p. 236.

[33] M. *Biagi*: Recession and the Labour market:training for flexibility, in Comp.Labour law Journal, vol.15, 1994, p. 305.

[34] G. *Guigni*: Juridification of Italian Labour Relations in Comp. Labour Law Journal, vol. 8, 1987, 309. p. 318.

[35] See No. 26. p. 600.

V.2 Federational level (Federazione)

The Federation (*Federazione*) is a national association with vertical connections, i.e. including all the territorial associations of the same occupational category. The Federation can negotiate – with reference to the same fundamental criterion, and in its own field – collective agreements applicable to the territorial associations, which are its members.

The national industry-wide agreements have considerable importance for the Italian system of industrial relations. This kind of agreement played an essential role during the 1960s and especially in the early 1970s.

V.3 Provincial level (Associazione provinciale di categoria)

The provincial association of occupational categories has negotiating competence in its own territory (province). Some of these agreements made by it do not cover the whole province, and a great number of its agreements cover one firm alone. This kind of agreement can often be found in the agricultural or construction sector.

The Association can also negotiate on behalf of the employees of a field which is narrower than its official sphere of action. A case in point is that the Confederations concluded agreements for the industrial sector. This is a highly important point, indicating how Art.39 of the Constitution, last section is implemented in practice. It should be mentioned that this section contains no requirements for structuring the categories of the associations, their negotiating competence is enough for making agreements.[36] (Moreover, in this way, they can ignore and get round the representation organized along vertical lines.)

V.4 Firm level (Contratti aziendali)[37]

The development of company collective agreements has raised new problems lately, particularly with reference to the modification of Art.39 of the Constitution.[38] This kind of collective agreement, covering an entire company, has become quite common by now. There are some bargainings, the scope of which extends to a group of companies, with activities in several branches, or to a holding company, but it is rare now for bargaining to occur at the shop level.[39]

The first experiences of company collective agreements were gained from the agreements concluded by the "*commissioni interne*", in 1943. These bodies were elected by the entire community of workers in a company. Despite the fact that they were not authorized, by the agreements that set them up, to make collective agreements, in actual fact, they concluded a great number of collective agreements between the years 1943

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[36] See No. 1. p. 193.

[37] S. *Sciarra*: Plant bargaining: the impact of Juridification on current deregulative trends in Italy , in Comp. Labour Law Journal, vol. 8, 1987. p.123–125.

[38] See No. 1. p. 194.

[39] See No. 26. p. 605.

and 1966. These agreements have raised a complex question. According to an opinion,[40] these agreements are to be considered as statements by the employer, adressed to the employees, and are also extending to the workers employed subsequently. The fact that the workers "agree" with the employer's statement can be be given the interpretation that the employers "have made an agreement with the employer" and, to carry it a step further, can be seen as the completion of a kind of transaction, though it is clearly not a contract.

Jurisprudence declared the agreements concluded by the "*commissioni interne*" to be collective agreements.

A second series of expriences of company collective agreements were collected in the years between 1962 and 1963, and did not raise any problem.

The third stage in the development of firm collective agreements fell to the early 1970s. The Workers' Statute (*Statuto dei levoratori*), Act No.300, of 20 July 1970, provided for collective agreements at the plant level in Articles 4 and 6.

Article 4 prohibits the use of audiovisual equipment and any other equipment for monitoring the workers' activity. The Act allows the installation only in case if the organization and productive exigences or the safety of the work should require it. Nevertheless, the equipment must be placed at a distance from the workers' activity. The possibility and the conditions of the control must be regulated in the collective agreements concluded by the the employer and the company unions (*rappresentanze sindacali aziendali*) or, in the absence of company unions, by the "*commissioni interne*". If there is no collective agreement between the employer and the employees, at the request of the employer, the Department of Labour is entitled to decide the matter.[41]

Article 6 prohibits the bodily search of the workers, except for cases of emergency, and when company property needs to be protected. In these cases, it is permissible to make bodily searches at the exit of the workplace, by using an automatic selection system. The cases when search is permitted and the way it is done must be fixed in advance, in the agreement between the employer and the company unions, or in the absence of an agreement, at the request of the employer, the Department of Labour can grant authorization.[42]

The issues raised by the above are the following: First, have the company collective agreements, provided for in Art. 4 and 6, general effect? The question can be answered, by keeping it in mind that, in these cases, the collective agreements regulate indivisible matters (*materia indivisibile*), and their sole concern is to serve the firm's organizational and operational needs and requirements, which makes it impossible that these could be agreements between contrasting interests. These questions must be regulated in such terms which presuppose a unity of interests between the parties, they must extend to all the workers and must have general effect.

Secondly, do these two articles invalidate Article 39 of the Constitution, in which the subjects that can be stipulated in collective agreements are set out? The answer is no, because it is not Art. 39 of the Constitution, which is involved, but Art. 46. If the matter is indivisible, all the company unions need to consent.

The Workers' Statute, of 1970, charged the firm-level collective agreements with an important new function, they had to decide in the questions of the "*cassa*

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[40] See No.1. p. 197.
[41] See No. 10.
[42] See No. 32. p. 238.

integrazione guadagni", of the equality of opportunity between male and female employees, of the transfer of the firm in case of crisis, of the authorization to conclude fixed-term individual labour contracts, of the reduction of working hours and wages. Viz. in the above matters, the law does not contain clear indications and provisions as to what should be included in and regulated by the collective agreements. In case of indivisibility, all the common subjects included in Art. 19 of the Workers' Statutes need consent. If the matter is divisible, keeping in mind that, in this case, it is Art. 46 of the Constitution which is involved, and not Art. 39 of the Constitution, the need for the consent of either all of the representative company unions or that of most of the workers will depend on what is required by the Italian model of democracy. It is worth noting, however, that the matter is very often indivisible.[43]

Changing to another subject, namely to who the partners are in plant-level collective agreements,[44] it can be observed that, in this case, the management of the enterprise and the "*commissioni interne*" or the workers' concil ("*consiglio di fabbrica*") have been the bargaining agents. The Statue of Workers (1970) established a new institution on the workers' side of the negotiations, called RSA (*rappresentanze sindacali aciendali*). The RSA was the most representative union of the enterprise organization.[45] Nevertheless, the most widespread form of representation at the firm level was the workers' council, representing the interests of all the workers, whether organized or non-organized. From 1991 on, another form of employee representation has come into being at the company level, called "united representation of the union" (*rappresentanze sindacali unitarie*, RSU), established through an agreement between the CGIL, the CISL and the UIL. The pact provided that the RSUs be elected by secret ballot in the workplace and had to subject themselves to competition from other trade union bodies, not affiliated with the CGIL, the CISL or the UIL. All eligible workers, including non-organized employees, were entitled to vote.

More recently, the 1993 agreement (*Protocollo triangolare 23 luglio*) provided that one third of the RSU members be "either designated or elected by those labour organizations which had taken part in the negotiations (rather than by the signatory organizations) and by those presenting electoral lists, proportionally to the casted votes".[46] According to the Protocollo triangolare..., the RSUs are accredited as bargaining agents at the plant or company level, but only if they are able to link with the national unions which negotiated the industry-wide agreement applicable to the plant or company. In this way, national and company bargaining is coordinated, according to the principle declared by the trilateral agreement, viz. that matters should be differentiated between the national level and the plant level.[47] One of the objectives of the above-mentioned agreements was to make the structure of the collective agreement system more clear and ordered. This subject will be discussed in the following point of this chapter.

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[43] See No. 1. p. 194.
[44] See No. 24. p. 158.
[45] See No.32. p. 249.
[46] See No. 10.
[47] See No. 24. p. 160.

To begin with, it should be stressed that the provisions of the *Protocollo...* have favoured the plant agreements, which had considerable importance in the 1960s and 1970s, but lost much of this importance in the 1980s and 1990s.[48]

Nevertheless, concluding collective bargains at the plant level has not been an undisputable and proper trade union right, and this level has not seemed more entitled to making bargains than the others. The "*commissioni interne*" and the "*consiglio di fabbrica*" have been institutions representing the right of all the personnel of a company or workplace to participation. The Workers' Statute attempted to make the situation clear by establishing the RSA as the most representative union of the enterprise organization, but as already mentioned above, the most widespread form of representation at the firm level has been the workers' council, representing the interest of all the workers. Recently, the *Protocollo triangolare* by accrediting the RSUs as bargaining agents at the plant level – but only if they were able to link with the national unions that bargained the industry-wide agreements applicable to their plant – has not helped to clarify the situation. Our opinion is that it would be important to set it down clearly in Italy that the right to make collective agreements is a trade union right and it is the institution of workers' participation in decision making. But, in the latter case, the absence of the institutions of workers' participation over the firm level is bound to be a problem.

V.5 Problems arising from the decentralisation of the collective negotiations

In the last years, the magic word in connexion with the development of labour law was "flexibility". This notion has connexions with decentralization, too. There is an opinion, in which in future the plant level will become the most important of the bargaining levels, because it is much more flexible than the other levels.[49] Some important rules, favourable to firm-level bargaining in Italy, have already been mentioned above, the most recent example cited being the *Protocollo triangolare...* On the other hand, bargaining over the firm level is also in a strong position in Italy. Two contrasting tendencies are discernible as influences on the process of structuring by levels the bargaining. The first tendency is centralisation at the federational level, i.e. a tendency to make industry-wide collective agreements. The second tendency is decentralization, i.e. shifting the focus towards the firm-level, which means collective agreements concluded in the firms. The *Protocollo triangolare* shows quite clearly the influence of both opposing tendencies in the part which refers to the reform of the collective bargaining system. Its aim is to set out a new integrated framework for Italian industrial relations, and it establishes that there are only two levels of collective bargaining. The first level is bargaining over a national collective employment contract (*contratto collettivo nazionale di lavoro*, or CCNL) for each sector, the second level of bargaining is either the company level or the territorial (local) level, depending on the current practice within each sector.

The *Protocollo* has also provided highly important changes in the duration of collective agreements. These will be discussed in Chapter VIII.

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[48] Central agreement on Incomes Policy and Bargaining Reform in European Industrial Rel. REv.,1993, n.236, p. 15.

[49] See No. 34. p. 326–327.

As far as we are concerned, we admit that plant-level agreements have a more flexible character than the agreements made at other levels, they can be better adapted to economic and technological changes, yet the separate regulation is not favourable to the interest of the national economic development. This separate regulation is not necessary, the parallel regulation of some aspects of labour relations should be avoided, in favour of the cooperation between producing units and workers at times of labour mobility.

On the other hand, the national tripartite agreements can be considered to be the most centralized form of bargaining , but they cannot be regarded as collective agreements. Still, their importance for collective agreements is great, they have exercised considerarble influence on them. This will be discussed in Chapter X.

VI. The legal nature (la natura giuridica) of collective agreements (normative or contractual character)

An important issue raised by collective agreements is, that is should be decided, whether collective agreements have a normative or a contractual or any other character, and what is the relationship between the collective agreements and the law.

Mention must be made here of the distinction made in German legal doctrine between the two parts of collective agreements, one has a normative character, while the other has a contractual character. In spite of the fact that an Italian jurist[50] agrees with the use of this distinction to Italian collective bargaining, our point of view is that these distinctions are not applicable to the Italian position. Compared to conditions in the past, trade union liberty has considerably widened its scope, widened the range of the possible contents of the collective agreements etc.; consequently, the use of this distinction (between the normative and contractual aspect) for the Italian system requires great caution. It would be better to say that the Italian collective agreement system is characterized by a combination of various traits.

To find an answer to the question, whether the collective agreement can be considered as a source of law, is quite simple. Art.1, General Introduction of the Italian Civil Code (*Codice Civile*) gives us the answer, because the rules governing collective agreements are not classed with the sources of law. (Of course, we are not concerned here with marginal corporative rules, still present in Italian labour law, but those of a more recent origin, established by bargaining and laid down in agreements.) Still, there are some characteristics features of Italian collective bargaining which makes it necessary to examine the legal nature of collective agreements. It should be stressed again that what is discussed here is the "*contrattazione collettiva di diritto commune*" (collective private law contracts). The process of concluding that kind of collective agreement is a contractual one: the two parties establish that they will agree on the general rules and, for the unions, on their statute. As far as the workers are concerned, they have followed for serveral years now a phased procedure of drafting and drawing up the agreement, discussing it at negotiating platforms and defining the alternatives, then subjecting the draft agreement to the workers for examination, sometimes for a decision by "referendum".

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[50] S.Sciarra in No. 37.

As to interpretation, the general rules for contracts are also applied to collective agreements.

Collective agreements are periodically renewed, owing to the obligation to negotiate. This obligation is usually of contractual origin and results from the permanent relations existing between the parties, better known under the name of industrial relations.[51] The above-mentioned characteristics refer to the clearly contractual character of the agreements. The problem posed by the relation between collective agreements and the law is the following: first, the collective agreements must respect all the mandatory (*inderogabile*) rules of law and they can improve the legal conditions in the cases when this is to the benefit (*principio di favore*) of the workers. Secondly, there are no matters (subjects) reserved exclusively for collective agreements. It is difficult to share the first opinion,[52] asserting that the collective agreements must respect the constitutional principles alone and the enacting laws.The above-outlined situation came to a crisis when, following the 1980s, the law specified a compulsory ceiling, which could not be exceeded, for some collective agreements. In the opinion of some scholars,[53] it is very difficult to compare what the law gives to the workers and what the collective agreements manage to achieve for them, and to decide, which is more favourable from their point of view. Art.2078 of the Civil Code regulated the relation between relevant rules and statutes, and also decreed the application of the principle that what was more favourable to workers should have precedence over the legal regulation currently in force.

We agree with the opinion in which it is very difficult to decide, what is more favourable to workers, especially when comparing legal norms and contractual dispositions. However, we would argue that the application of the principle of the "more favourable treatment" is equally important and useful, as a minimum guarantee for the workers who are, in fact, not in the position of equality compared to the employers, in individual labour relations, because of their subordinate position in the labour organization. This also applies to the relation between the law and collective agreement, where the stronger position of the employers can be supposed to allow them to dictate a regulation, which may be less favourable to the workers than the provisions of the law. If the "*erga omnes*" effect were in force, it would be more difficult for the employers to behave so, especially in their relations with organized labour. Still, it is true that the principle of the more favourable treatment should be applied with great care and caution. The above-analysed issue has also been posed in Hungary, where the principle of the treatment in favour of workers was also laid down in statutory regulation, in some cases in the Labour Code, but the Court of Constitution declared the application of that principle unlawful, with special reference to the application of a rule, fixed in the Labour Code: "In issues relating to employment, the trade union shall be entitled to act in the interest of, in and on behalf of, the employees, without special authorization" (this formulation may imply that the opinion of the employees themselves may be left out of consideration). As the Court created a precedent, it may return similar decisions, in future as well.

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[51] See No. 1. p. 189.
[52] See above p. 181.
[53] See No. 1. p. 182.

VII. The personal effects (l'efficacia soggetiva) of the collective agreements

The last section of Art.39 of the Italian Constitution provided that registered trade unions, represented by their organizations, could enter into collective agreements with compulsory effect, for all the members of the category the agreement referred to. In Chapter I.3. it has already been analysed, why this Article has not entered into force. The Italian Constitution aimed at constructing a new contractual model for collective agreements, with "*erga omnes*" effect, but incorporated in the text – perhaps as a guarantee – the element of State control exercised by the public authority over union liberty.

The actual development of collective bargaining followed a different path than the one planned in the Constitution, and has lead to the development of collective bargaining under private law or other conventions without "*erga omnes*" effect, the result of which was the so-called "*contrattazione collettiva di diritto comune*". The negotiating competence was limited to occupational categories and to personal (subjective) effect, but offered a choice between the two options, on the basis of convenience and that of the balance of power between the parties. Thus the occupational approach to the problem was confirmed by usage, painfully, through a long process of arrangements, the equivalent of which could also be found, as the ILO Conventions confirmed it, in the industrialization process of other countries. The personnal effects of the collective agreements were also limited, viz. to the members of the contracting partner unions.[54]

As time passed, the rule specifying that collective agreements affected only the concluding parties and their membership also underwent a modification, owing to the reassessment and restructuring of the system of social obligations, among others the obligation of the employer towards the opposite party, which was extended to apply to all of his employees. (See the decision of the *Corte Cassazione*, No.4611, of 8 August 1979). More recently, the reappraisal of the obligation to equality of treatment carried a step further the extension, while the necessity of negotiating a new collective agreements, because of the adverse effects of the economic crisis had on them, has narrowed its range, because the organized people tended to assert their independence of non-organized workers.

It has already been mentioned above that the State attempted to extend the "*erga omnes*" effect of collective agreements by delegated law, but the constitutional legitimacy of this procedure has been questionable. The application of collective agreements to non-organized workers can also be acheived by other means. It may be obtained by a spontaneous adjustment, made by an individual employer, in partnership with employees who find that the change is to their advantage. Sometimes it may be offered as an incentive, e.g. see Art.39 of Act No.300, of 1970. For some subjects, such as the Christmas bonus, a general extension can be obtained, often under Art.1374 and Art.2078 of the Civil Code. As to the employees' pay, the collective agreements can also be of use in this matter, in application of Art.3 of the Constitution or Art.2099 of the Civil Code. Sometimes judges may also refer to collective agreements, e.g. when they have to decide on questions of pay, which have not been fixed in the indivudual contract

[54] See above p. 178.

or fixed in violation of Art.36 of the Constitions, which refers to the principle of equal pay (*retribuzione*).[55]

VIII. The duration of the collective agreements

As to the problem of interpretation, the general rules for contracts are applied to collective agreements, too, and this applies to their their term of expiry, too. The collective agreements can periodically be renewed. This is usually included in the obligations laid down in the agreement, on a contractual basis. This obligation derives from the permanent nature of the relationship between the negotiating parties.Still, there are some rules, inherited from corporative collective agreements, which are still valid. E.g. Art. 2074 of the Civil Code provides that the expired collective agreement continues to be in force until the new agreement comes into force.

Whether the above-mentioned Article was suitable to be applied to the new form of collective agreements, as supplementary regulation, viz. without the possibility of imposing the provision of duration, which falls under the regulation of Art.2071 of the Civil Code, was subject to discussion, involving a great variety of interpretations. The first anwser to this question was positive, and started from the Article's aptitude to assure the connection between the collective agreements, succeeding each other as time went on, and to avoid or fill in gaps (see No.3899, 21 April 1988, *Corte Cassazione*).

This problem may be of importance for employees joining a trade union after the date when the collective agreement was signed, or for employees entering into an individual labour contract, while the collective agreement was in force or after its expiry, which might affect the employer in a different way than they do the employee. Later on, the solution that the employer should apply the above Article not only to the associates of the unions but to all his employees has become increasingly popular. However, it has always been clear enough that the employer cannot disregard the conditions required by the legislation in force, and cannot use the expiry of the agreement for the purposes of putting pressure on the negotiating partner and of shaping the next agreement at his pleasure. As a matter of fact, when the employers are reluctant to apply Art. 2074 of the Civil Code, they must still take into consideration the most important social obligations, and it is also rare for a collective agreement not to fix a predetermined term of expiry, so the good-faith principle must also be considered, as well as the principle which excludes the perpetual validity of compulsory restrictive clauses and guarantees the possibility of rescission.[56]

Finally, in connection with the duration of collective agreements, some points of the *Protocollo triangolare* should also be mentioned. These provide that the CCNLs (*contratto collettivo nazionale di lavoro*), for each sector, should have a duration of two years, as far as the arrangements affected remuneration, and a duration of four years concerning other matters. A reason why a distinction should be made between the terms of duration for remuneration and other matters is that the remuneration package sections have to be in harmony with the income policy parameters and with the planned or expected inflation rates. As the central agreement puts it: "the dynamics of the economic

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[55] See No. 1. p. 179.
[56] See above p. 181.

effects of the contract shall be coherent with the planned inflation rate taken as a common goal".[57]

Setting a special deadline for wage agreements, which is different from the term of expiry of the entire collective agreement, was completely new to the Italian bargaining system.[58]

The regulation has provided for the company and territorial agreements to have a four year duration, instead of the three they have at present.

Passing over to the problems of retroactive force (*efficacia dopo la scadenza*), it must be pointed out that the deadlines fixed by Italian contracts have not had a great impact on the bargaining process.[59] The agreements were often signed months after the expiration of the previous one, and long after the conclusion of the bargain and were applied retroactively, if possible, or an alternative was found, i.e. some money was given to the employees to compensate them for their losses. The *Protocollo...*[60] provides for a new system of wage adjustment for periods falling between collective agreements, called "allowance for lack of bargaining". Pending the renewal of the collective agreements, an automatic adjustment, equivalent to 30 % of the living-cost index will be applied to wages and salaries after three months from the expiration of the previous agreement and 50 % after six months. The aim of this system is to bring about a fast renewal of the collective bargaining system in Italy.[61]

IX. The form and structure of collective agreements

In harmony with the principle of the freedom to bind contracts (contractual liberty), the parties can agree upon the form and structrure of collective agreements without any interference from the law. Still, comparing the texts of some collective agreements, similarities of structure – deriving from usage – are clearly discernible.

The only problem that can be posed in this context is, whether there is a need for a compulsory written form of the agreement or not. According to an opinion,[62] the need for giving the written form a probatory (probative) aim arises from the general principles of Italian labour law (see Art. 2721 of the "Codice Civile").

X. Consensual agreements at nation-wide level[63]

The consensual agreement is legally binding for the trade unions and the enterprises, but not for the government, and does not impose legal obligations on the latter ("*accordi tripartiti*"). They are based on social consensus. Nevertheless, these engagements are very important to the social partners. The parties to the trilateral agreements are the government, the enterprises and the trade unions. In these

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[57] See No. 48. p. 17.
[58] See above. p. 15.
[59] See No. 48. p. 18.
[60] See No. 10.
[61] See No. 33. p. 316.
[62] Cecilia *Assanti* in "Corso di diritto del lavoro" p. 194.
[63] See No. 48. p. 15–19.

agreements, the government accepts engagements which have influence on the collective agreements between the enterprises and the trade unions. The Italian trilateral agreements are following the practice of other Western democracies where the lefties parties take part in the government.[64]

In Italy, trilateral agreements of great imporance were concluded in 1983, in 1992 and, recently, in 1993. In 1984, some unions (the CISL and the UIL) also concluded an agreement, but they did not sign it, and there was a union, the CGIL, which was not among the partners.

The trilateral agreements raise two problems. First, they may put presssure on the Parliament, which is in contradiction to the autonomy of the deputies belonging to the majority as well as to the autonomy of those belonging to the minority. Secondly, trilateral agreements may lead to a collision between the unions and the political parties.

In spite of the above-mentioned problems, the importance of the trilateral agreements has been increasing, and nothing can be done against it. This tendency is strengthened by the State's endeavour to participate in the social consensus, even if the State's presence disturbed the free development of the agreement between the two main actors of the national economy, the employers and the employees. Finally, we would argue that the three-sided agreements are not favourable to industrial democracy. However, it is not necessary to go into details, because the detailed analysis of the problems raised by trilateral agreements falls beyond the scope of this paper.

XI. The current trends of collective bargaining in Italy

In former chapters, some reflections have been made on certain aspects of collective bargaining and the current trends in Italy. Now a short summing up of the subject will be attempted below.

Since the confederational and federational levels of the collective agreements are much less flexible than the agreements made at the enterprise level, the latter agreements may lead to great tension because of their greater flexibility, which is much more accomodating to economic and social changes. As a result of this state of affairs, the plant-level collective agreements play a leading role in the Italian industrial relations system. At the same time, an opposing tendency can also be observed to be in action in the industrial relation system, a centralised one, and this has a growing importance for national industry-wide collective agreements.

The *Protocollo triangolare* has tried to encourage the above two-directional tendencies and this may result in a restructuring of the bargaining levels.In future, bargaining based on a tripartite relationship may become more and more common, and may lead to the strengthening of the neocorporative model or corporative democracy. As we have already pointed out, the presence of the State in these agreements is not favourable to the autonomous development of industrial democracy, even it is intended to promote the social dialogue between the partners and even if the social peace is its final objective.

An important ambition of the State is to extend the "*erga omnes*" effect of collective agreements, in fact, the enforcement of Article 39 of the Italian Constitution.

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[64] G. *Giugni*: Social Concertation and Political system in Italy, in Labour, 1987, 3. p. 63–65.

Nevertheless, mention should be made of the fact that, parallel with the State's aspiration, there is another important striving, on the part of the trade unions, to preserve and protect their independence, first of all from the control and interference of the State. This could lead to a situation, where the unions may do their utmost to frustrate the coming into force of Article 39.

The emergence of a new trend can be observed in the regulation of industrial relations, which goes into greater detail as the previous ones, especially with regard to plant-level collective agreements (in the *Protocollo triangolare*). In connexion with the above-mentioned trends, it should be stressed that Italian industrial relations have not been meticulously regulated, going into small details, up to that time.

This has been a very valuable asset, which should be safeguarded.

The *Protocollo triangolare* has also provided for different terms of expiry in the same collective agreement, fixing a special deadline for wage agreements, which was completely new to the Italian bargaining system.[65]

Another important phenomenon should also be mentioned, the emergence of the initial forms of European collective agreements. The highest national level of the collective bargaining is bound to become the first level of decentralized European bargaining, which will tend to make the process of arriving at a consent even more complex.[66]

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The above-mentioned trends are characteristic features which might have strong influence on the future development of Italian labour law in the field of industrial relations.

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[65] See No. 10.

[66] See No. 1. p. 182.