

Creating new Markets and New Jobs: the Personal Services Sector. Problems and Perspectives from an Italian Point of View

1. Introductory Remarks (MT)

This paper intends to reveal some of the inconsistencies which are emerging in the policies of job creation at the local level recently pursued in Europe. Our purpose is to demonstrate how these inconsistencies are a direct consequence of traditional legal rule that is no longer adequate for handling the modern labour market.

In this perspective, the emerging sector of *personal services* (services like care for the elderly, child care, etc.) represents a valid field of verification of this thesis (see Scharpf 2001).

The specific characteristics of this sector show the positive role taken by the intermediary in the hiring of labour. According to each traditional national labour law, the presence of a third party in the employment relationship has been considered as being dangerous for the workers and for the precision of the labour market. The old legislative frameworks are not progressing at the same pace of the economy and society. Legal rules, work contracts and principles formulated over the course of the past century are inadequate for governing and representing the new types of labour of the XXIst century. They constitute one of the main obstacles in the efforts to create more jobs and also interfere with the enterprises that attempt to meet those needs that are not met by public services or by the market forces. If a rigid and old-fashioned legal framework discourages private enterprises to enter into and invest in a market of this kind, stable organisations willing to operate in this sector will falter. The response will hinder an increase in the development of informal practice, inevitably altering the purpose of this sector.

The recent attempts to support the emersion of a structured market in the area of personal, at home, services for the elderly by some Italian local authorities (Milano, Modena and Bologna) have given us the opportunity to observe the problems and perspectives which arise in the policies of job creation at the local level. Placed in the context of European Employment Strategy, these national experiences clearly show the im-

* The present contribution has been produced in collaboration with Marco Biagi and was previously published in *The International Journal of Comparative Labour Law and Industrial Relations*, vol. 18, 2002, n. 3, 315-328.

portance of a modern legal framework in order to determine the likelihood of success of the markets of the XXIst century.

Starting from the Italian experience with the development of the personal assistance services for the elderly, this paper seeks to illustrate the ways in which the system of industrial relations can contribute to develop, both at a local level and a national level, new strategies and policies able to modernise the legal framework, to regularise black labour, to increase the number and quality of jobs, to improve the quality of services supplied by upskilling the workers, organizing the services more efficiently, and to increase the employability of groups of workers experiencing difficulties in accessing the labour market (long-term and unskilled unemployed, immigrant, etc.).

2. Position of the Problem: New Markets, Old Rules (MT)

According to the academic, political and trade union circles the labour market is under a rapid and radical change. Less frequently made, however, is the mention that these changes are still governed by old rules; rules that don't seem capable of adequately representing and governing the modern ways of working and producing.

In Continental Europe, both statutory rules of labour law and collective agreements are still concentrated in the industrial sector, according to standard models of organisation and pre-defined contractual patterns. The lack of *ad hoc* rules causes the development of *sui generis* contractual schemes, mainly situated on the border of legalities. In Italy, this situation is the main cause of a very wide underground economy. By using the ISTAT estimates of the irregular labour, the average rate of irregularity of the system would seem to range around 15%, with values exceeding 20% in Southern Italy. (Nap 2000). In turn, the development of *sui generis* contractual schemes is the cause of unfair competition (i.e. social dumping) which further complicates the rare attempts to discipline the new markets and the new ways of working.

It is certain that these manifestations are common in the modern society, not only in relation to the labour markets. Every country and every sector of the economy is establishing informal practices of producing and circulating the wealth; practices more or less illegal and more or less tolerated by the Government. These illegal practices weaken the monopoly of the law of the State. The more the State pretends to regulate all the aspects of the economy and of the market, the stronger the pushes are towards the anti-state and the processes of auto-regulation of the society. However, this phenomenon is particularly relevant in the area of the labour market, especially if we take into consideration the historical role played by the State in protecting the workers like the 'weaker parties' of the employment relationship. In this respect, if the belief is that the end of labour law is possible, it seems true that we are going toward a 'labour law without the State' (Arthurs H., 1996).

It is equally true that the dimension of underground economy allows us to evaluate with a high degree of certainty the efficiency and rationality of the State intervention in the labour market.

This process involves all the sectors of production, not to exclude these apparent aliens of international competition. The services include those for the municipality (cleaning and maintenance of the streets, squares, parks; traffic control etc.), those for the people (care and assistance to the elderly, ill, disabled people, children; restoration; entertainment; culture, tourism; domestic cleaning, etc.), those for the enterprises (activity of so

called *facility management* like management of information technology, maintenance and surveillance of the enterprises possession, etc.), etc.

With respect to these sectors, relevant opportunities of regular work are not only disperse and fragmented in the labour market, but also generate social hardships, urban degrade, misdemeanours and in general a situation of wide illegalities. These activities are ultimately concentrated in the black market because they involve services which are labour intensive requiring a high degree of flexibility of the manpower.

3. The personal assistance services for older people and the employment relationships (MT)

Particularly emblematic in this perspective are the personal, at home, assistance services for older people, which are today completely deregulated. In the area of home care and household based care, provisions to care for elderly tend to be poorly articulated especially if compared with provisions for children or disabled people (see European Commission, 1998a). The legislative framework offers mainly services in kind, limited cash benefits and pensions in addition to very little time off for the family engaged in a work out of home. No legal rules seem to exist for any household services in the grey area that subsists between the domestic cleaning services and the field of medical assistance.

This is the reason why the market for personal assistance services to the elderly is little or not at all transparent. The supply of social and household services to the elderly responds to the changed nature of both potential and effective demand in a manner that is both quantitatively and qualitatively inadequate. From a socio-economic point of view these phenomena are the causes of inefficiencies and wastes (high cost for the services for the families which render a low quality of the services supplied). From a juridical point of view, they constitute a clear violation of the legal rules in the area of employment relationship. The absence of appropriate contractual schemes for the worker in the so-called grey area represents one of the main factors of distortion of the market of personal assistance services.

The resulting gap has been partially filled either by informal activities or, in other cases, by the families themselves, which have been obliged to act as self-producers. The overall quality of services supplied and of life components of the family has suffered from this situation.

Studies of the pattern of health expenditure for different age groups reveal that as people age, the families generally tend to spend increasing amounts on household care. However, measuring the impact of demographic changes on overall health expenditure is not as straightforward as it might first appear. Some recent studies suggest that as life expectancy (as well as the number of elderly people) increases in the future, individuals will enjoy a higher number of years in good health than previous generations. That is to say that although there will be increased numbers of elderly people in the future, this might not result in an increase in health expenditure. Moreover, a significant proportion of health care services are consumed in the final months of life prior to death, and are therefore not directly age related (European Commission 2000a).

Other factors, might also start to play a role in increasing the demand for personal assistance services, such as increased household fragmentation as a result of increased female participation in the labour force and the deep cultural change of the role of wom-

en in the society. (European Commission 2000a). On the other hand, the impressive growth of legal and illegal immigration has enlarged the number of people offering these kinds of services at low cost.

In Italy, the relevance of the personal, at home, assistance services sector is not linked only to the need to cope with the services offered by the immigrants at low costs, but in particular, with the crisis of the traditional welfare systems. To-date, the only form of private enterprise with a social aim present in Italy is represented by social co-operatives, that are among the most vital components of the system. There are over 4,000 social enterprises, employing over 100,000 paid workers, nearly 18,000 of them disadvantaged persons. The third system relies on the huge resource of the volunteers; estimates point to the presence of approximately 10,000 organisations with nearly 400,000 volunteers that produce an amount of work equivalent to nearly 60,000 full-time workers (Nap 2000). It is quite clear that in this context there has been an increase in the direct relationship between worker and families, mainly through 'black' work and irregular contract.

The lack of an appropriate legal framework still represents a challenging obstacle to the development of this sector. This is particularly true from the point of view of labour relationship between the family/elderly and the worker. At this regard, it is true that new regulations were introduced in 1999 in order to provide incentives to the social co-operatives, particularly for disadvantaged persons. The provisions of Law no. 44/1986 (on youth entrepreneurship) were also extended to the expansion and consolidation of social enterprises. In addition to elements of financial feasibility, the criteria adopted for granting incentives takes into consideration the social benefits of the activities.

However, the general case still remains that the direct and informal employment relationship between family/elderly and the workers. The individual relationship is inevitably concentrated in the wide area of black market, above all when the relationship is not governed by the rules of subordination.

In this sector, the private mediator can, if he works with entrepreneurial methods (apart from the intention of gains) rationalise the management of the work relationship and contribute to the regularisation of relationships that elapse between worker and family. Apparently only the absence of the intermediary becomes the result of a more economic solution. It is true in fact, that in this way, one jumps to a level of intermediation. However in the direct relationship between family and worker assistant it is determined, that more of the time, these economic, judicial and social assumptions feed the black market and the scarce quality of service. In this way, only leaving closed the exclusive individual relationships towards the more collective forms, typically firms, they can reach an acceptable result for all: community administration, social parties worker assistants, and families.

4. The First Local Agreement in Italy for the Personal Assistance Services to the Elderly: the Modena Case (MB)

In the community of Modena a significant part of the budget is reserved to the social-assistance policies for the elderly. In 1991 the expenditure in favour of the elderly was 32 per cent of the whole budget designated to welfare. Currently it has increased to 75 per cent and represents the 36 per cent of the social expenses of the community.

In order to meet the needs of the elderly who are no longer self-sufficient, the Modena community offers a wide range of services to integrate the income of the elderly who need particular treatment but lack the funds. These services include assistance such as nursing homes, day care, home assistance, telephone help, and financial assistance. However, these kinds of services cover no more than one thousand people.

In any case, if we want to complete the picture we have to remind ourselves that the main part of the workforce is outside the control of the local authority and of the private enterprise or social cooperative and is based on a direct relationship with the elder and worker. In a relevant number of cases this type of relationship does not result governed by a true contractual relationship. We can go from the genuine voluntary to a continuous range of a more illegal relationship both from a contractual point of view and from a personal and legal position of the worker (for instance in the case of an illegal immigrant).

Every private operator performs in a highly regulated sector and with respect to which the asymmetry of information between who offers and who demands the assistance consent to adopt a highly different behaviour.

This explains the effort of the community administration of Modena to the major diversification of the collective entity (enterprises, associations, co-operatives, etc.) willing to work in the base of the personal assistance sector or however according to the entrepreneurial logic. Only in this way will it be possible to extend the guarantees of protection for regular work.

4.1. The SERDOM project

The hypothesis of a local pact in the area of Modena, intended to discipline the market of services of care and assistance to elderly, has found a fertile ground of experimentation in the SERDOM project. SERDOM is a trans-national project within European Social Fund (FSE) agreed between the Province of Barcellona, a French public company (SDES) and the Province of Modena (for further details see: Borzaga C., Olabe A., Greffe X. 1999, p. 24).

Objectives of this project are:

- the development of an occupational basin in the area of services of care and household assistance to the elderly;
- the increase of social services according to the different needs of the elderly;
- the immersion of black and irregular work;
- the development of an integrated network of services established by local authorities, the third sector and the private operator (agreed or accredited).

The aim of the project is the establishment of a formal system to facilitate the institutional match between the demand and the offer of services of household assistance to the elderly.

According to this goal, a system of rules related to the quality of the services as a guarantee both for families / elderly and workers involved has been established. These rules are related to:

- a sharp definition of the activities of household assistance (so called catalogue of services) and an identification of the characteristics and skills necessary to provide the service;

- the accreditation of the suppliers of the services, grouped in two categories (profit and non profit organisations), subordinated to the respect of some organised and professional standards;
- the establishment of a one-stop shop aimed at favouring the match between supply and demand of household services in order to guarantee the precision of the local market.

According to this framework the public services maintain the task to collect and evaluate the requests from the families / elderly. In particular, the public services offer consultation and information about the type of assistance needed by the elderly and about the right legal scheme to perform the activities requested. In some cases the public services can directly supply part of or all of the services. However in the majority of cases the public services help the family / elderly to identify the private supplier accredited. In these last cases the public services can decide to support the family by giving a financial grant dependent on the income of the family / elderly.

The participation of the Modena Municipality to the SERDOM project has been a unique chance to rethink the strategies of intervention in the area of social services and above all in the area of household assistance. From the SERDOM experience the Municipality of Modena has identified the following guidelines in order to realize the reform of local welfare:

- the public sector must not monopolize the social services to the elderly;
- the families have a universal right to benefit from social services to the elderly supporting the financial costs according to their economic conditions (income and assets);
- the public services and the social parties must identify qualitative minimum standards which the suppliers (both public and private) must possess if they want to operate in this market;
- the families have the right to choose freely the supplier, public or private. The only condition is the supplier must have an accreditation;
- the public services can grant vouchers and financial support only to the families who utilise services from suppliers that have an accreditation.

Of course, one of the most problematic aspects of the project was related to the definition of the quality of services and the identification of the contractual scheme. In fact, aims of the project were:

- in the basic training, in the work and the professional adjournment, facilitating the access to such a market to foreign workers, adequately utilising the formative credits;
- the regularisation of the atypical worker relationships, from one side, the exploitation of the social roll turning to the dependent workers, both public and private, that operate in such a market, from the other side;
- the redefinition of the competence of the Municipality, with respect either to the collectivity or the organisations and to the private suppliers.

The central point of the SERDOM project is still the identification of adequate contractual tools that agree to adapt to the opposite requirements of the involved suppliers.

4.2. The local pact of December 22, 2000

On December 22, 2000, the Municipality of Modena and the social parties (CGIL-CISL-UIL) signed a finalised agreement noted to the construction of a local pact, between diverse social, institutional and economic actors. This agreement initiated by the distribution of the following goals: emerging undeclared work, regularising irregular work relationships, creating an area of new occupation by optimising the meeting stages between demand and supply, regularising a cross of insertion into the labour market of an extra-community workforce, rising of the quality of the workforce, such as standards for the rising of the quality of service, etc.

Probably the most relevant part of the agreement is the effort to regulate the grey area. In order to cope with this task the social parties have decided to increase the value of the *quasi* subordinated contract (c.d. *collaborazioni coordinate e continuative*).

This pattern of work is located in between self-employment and subordinated contract. The main characteristic of this contractual scheme is that the way of work is quite similar to the subordinate one (in fact the collaboration is co-ordinate and continual), but the legal effects still remain those of self-employment. This is the reason why this pattern of work is very attractive for the employer.

By signing the pact the social parties have tried to combine the flexibility related to this contract with a minimum level of protection of the workers involved in such working relationships.

This contract must be signed with indication of the duration, hours of work, the kind of services, compensation, causes of termination or suspension of the relationship. Even though it is not usual in a self-employment relationship, the social parties have considered a trial period useful, considering that the collaboration between the worker, the family and the elderly is based on a high level of confidence. In any case, the compensation should not be inferior to the wages indicated in the collective agreement of the third sector for comparable performance.

In the absence of a different agreement between the parties, the termination of the contract is allowed only for breach of the contract, just motive (objective) and expiration of the term. Illness, injury and maternity don't break the contract, but it simply remains interrupted. In case of illness and injury the worker receives the compensation agreed, but only for the first month of the interruption of the contract.

The agreement recognises some basic trade union rights to the worker (freedom of association and the right of participation to the assemblies called by the trade unions) and some training rights in order to develop the quality of the services supplied to the families.

5. Conclusion (MT)

There is a growing awareness of the opportunities that exist at the local level for developing employment. This has led most Member States and the European institutions to support a variety of strategy building concepts of the 'Local Development and Employment Initiatives' (see European Commission 1995; Id. 1998b; Id., 2000b).

Also in the local experience in Modena the arrangement and the negotiated program among the diverse social actors has played a fundamental role in the formulation of adequate actions to regulate the labour market and create significant contributions to the

additional occupations. The linkage between the action of social parties and the Modena Municipality with the European Employment Strategies is self-evident.

In this respect it seems sufficient to remember the recent Communication of the European Commission, *To do in a local level in the matter of employment- To give a local dimension to the European strategy for employment*, that emphasizes the local dimension which sits suitable to guarantee, above all in the area of new jobs and of the services for the elderly:

- a better ability to insert professionals;
- the encouragement of the adaptability of the enterprises and of the workers;
- a reinforcement of the politics of peer opportunities man/women.

According to the Commission, in particular, the powers/competences that have the local entity with reference to the services to the elderly constitute potential sources of new places of work for which the actions are subject to the structuring of a considerable portion of the local labour market. The same number of indications are contained in the Resolution of the European Council of February 22, 1999 relative to the orientation in the matter of employment for 1999. The European Council states that if the European Union wants to win the challenge of employment, it must be the harvest of all fruit to the possibilities of creating new places of work as well as new technologies and innovations. In order for the member states to promote, in particularly, the means to fully utilize the possibilities offered to the creation of the places of work to a local level in the social economy, in the technology sector and in the new activities connected to the needs not yet satisfied by the market, examining at the same time and with the objective of reduction- the obstacles that could act as a brake. In this context, there must be calculation of the special roles turning from the local authorities and from the social parties.

In order to attain such goals, and in the prospective of a coordinated strategy of the struggle of unemployment (that looks at the movements of the extraordinary European Council of Luxembourg of 1997 until the recent extraordinary European Council of Lisbon of 2000), the governments and the social parties are invited to promote a modernisation of the work organisations, and of the negotiating forms are invited to negotiate and implement at all appropriate levels agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive, achieving the required balance between flexibility and security, and increasing the quality of jobs. Subjects to be covered may, for example, include the introduction of new technologies, new forms of work (e.g. telework) and working time issues such as the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, and access to career breaks. Within the context of the Luxembourg Process, the social partners are invited to report annually on which aspects of the modernisation of the organisation of work have been covered by the negotiations as well as the status of their implementation and impact on employment and labour market functioning.

The Employment Guidelines for the year 2001, emphasize the importance of the mobilisation of all the subjects interested at the regional and local level, identifying the employment potential at a regional and local level and impending the partnership in such a sense. In this prospective, and in the outline of the extraordinary European Council of Lisbon, the member states:

- encourage the entities, both regional and local, to work out employment strategies in order to take full advantage of the opportunities of places of work at the local level;
- promote the collaboration/coordination of all the interested subjects, included the social parts, in the presence of such strategies at the local level;
- promote time measures and increase the competitive development and the capacity of creating places of work of the social economy, in particular in the area of supplier of products and services that respond to the needs not yet satisfied of the market and examining, with the objective of reducing all the eventual obstacles which interpose themselves at such measures;
- impending at every level the function turning to the public services of employment in the identity of the opportunities of local work in the better functioning of the local labour market.

The political community identifies a dynamic process of complex governing of the services market that sees the presence of the public and private accredited. This is, however, agreed in Italy in Protocol on Employment of 1998, where government and society have emphasised the rules of the local actors.

As a pilot project in the area of domestic services to the elderly the recent agreement between the community of Modena and social parties could represent one of the best national practices that returns in the area of European Employment Strategy. It might open the road to future agreements in all the areas of the country and the community that seem today far from the perception of the employment potentialities of this particular sector.

References

- Arthurs H. (1996), *Labour Law Without the State*, in *University of Toronto Law Review*, 1 ss.
- Biagi M., Tiraboschi M. (2000), *Servizi di cura alla persona, assistenza domiciliare agli anziani e politiche locali per l'occupazione: l'esperienza modenese nel contesto comunitario*, in Associazione Mario del Monte, Università degli Studi di Modena e Reggio Emilia, *Rapporto sulla situazione economica e sociale della provincia di Modena 2000*, Modena.
- Campbell, *The Third System Employment and Local Development*, I, Syntesis Report, 1999, in <http://europa.eu.int>;
- Borzaga C., Olabe A., Greffe X., *The Third System Employment and Local Development*, II, Key Sectors, 1999, ivi;
- European Commission (2000a), Communication From The Commission To The Council And The European Parliament, *The Contribution Of Public Finances To Growth And Employment: Improving Quality And Sustainability*, Brussels, 21.12.2000, COM(2000) 846 final.
- European Commission (2000b), Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, *Acting Locally for Employment. A Local Dimension for the European Employment Strategy*, Bruxelles, COM(2000) 196 final.
- European Commission (1998a), *Care in Europe. Joint Report of the Gender and Employment and the Gender and Law Group of experts*, Bruxelles.
- European Commission (1998b), *The Era of Tailor Made Jobs: Second Report on Local Development and Employment Initiatives*, Forward Studies Unit, Bruxelles.

European Commission (1995), *Local Development and Employment Initiatives: Lessons for Territorial Employment Pacts*, Bruxelles, SEC 546/95.

Lloyd P., Granger B., Shearman C., *The Third System Employment and Local Development, III, Tools to Support the Development of the Third System*, 1999, ivi.

Nap (2000), *National Action Plan For Employment Implementation Report, Year 2000 ñ Italy*, Ministero del Lavoro, Roma.

Scharpf F.W. (2001), *New Challenges and Political Responses*, in *Conference on The Future of Work, Employment and Social Protection*, Annecy, January 18-19, 2001.