

UDK: 34 + 3

ISSN 1330-349X

ZBORNIK
PRAVNOG
FAKULTETA
SVEUČILIŠTA
U RIJECI

PROTECTION OF SKILLS IN EMPLOYMENT RELATIONSHIPS AND IN THE LABOUR MARKET: AN OVERVIEW OF THE ITALIAN SITUATION

Prof. dr. sc. Marina Brollo*
Dr. sc. Caterina Mazzanti**

UDK: 349.22(450)
<https://doi.org/10.30925/zpfsr.39.4.12>
Ur.: 6. lipnja 2018.
Pr.: 4. srpnja 2018.
Pregledni znanstveni rad

Summary

Globalisation and technological changes have a dramatic impact on the labour market. For this reason, skills need to be strengthened and protected and workers have to respond to these great transformations by improving their professionalization. Focusing the attention on the Jobs Act, this paper offers an overview of the change that Italy may undertake, analysing the most innovative aspects of the new reform and paying particular attention to the protection of skills within the employment contract and the labour market. In this regard, the research highlights how the Jobs Act has strengthened the protection of skills. On the one hand, it specifies that in case of 'changes in job tasks' the employer shall provide training activities in order to develop the employee's skills (art. 2103 Civil Code). On the other hand, from the perspective of the labour market, it provides efficient active labour market policies in order to tackle the lack of skills protection. These are all considerable positive steps: the Jobs Act Reform represents a move in the right direction and the first important step towards the development of an enhanced skill system.

Keywords: *Jobs Act, ius variandi; protection of skills; training activities; active labour market policies.*

* Marina Brollo, PH.D., Full Professor, University of Udine, Italy; marina.brollo@uniud.it.

** Caterina Mazzanti, Ph.D. Candidate, University of Udine, Italy; mazzanticaterina@gmail.com. Prof. Marina Brollo is the sole author of section 1 of the paper. Caterina Mazzanti is the sole author of sections 2, 3 and 4. Both authors have contributed to the analysis presented in the concluding remarks.

This work has been supported in part by the Croatian Science Foundation – Project UIP-2014-09-9377 “Flexicurity and New Forms of Employment (Challenges regarding Modernization of Croatian Labour Law)”.

1. INTRODUCTION

In a world characterised by rapid technological changes, where advanced economies have to adapt to globalisation and where countries are strictly interconnected, regulations should respond to these huge transformations by bolstering a dynamic skill-based society.

The so-called Industry 4.0¹ with its epochal changes calls into question the traditional educational models, work organisation patterns and welfare schemes.

The skills that are important today will cease to be so in the future and the workforce is expected to develop both new skills and knowledge.

In this scenario, to foster inclusive and sustainable growth across the countries, each country has to adopt proper actions in order to make its workforce highly qualified and responsive to these unique challenges.

In Italy, the strengthening of skills has become a milestone of recent reforms involving different areas.

Moving from the 2014 labour market Reform (Act no. 183/2014, the so-called 'Jobs Act'²), the legislator has also introduced significant policy measures into the Innovation System (through the 2015 National Plan for Digital Schools and Industry 4.0, National Plan 2017-2020), which intends to develop modern and digitalised learning amongst teachers and students, and a new education system (through the so-called 'Good School Act', Act no. 107/2015³). The goal of the latter is to help students succeed in the transition from school to the labour market. In this sense, an important part of the 'Good School Act' is the so-called '*Alternanza Scuola Lavoro*' ('alternation between learning and training', art. 1, par. 7, letter o, Act no. 107/2015) which allows students to do traineeships during the last three years of secondary school, thus helping them make better academic or professional decisions.

As suggested by the OECD Skills Strategy Diagnostic Report, there are significant differences between the regions of Italy regarding the first application of '*Alternanza Scuola Lavoro*' and they may be attributed to the economic gap between northern and southern areas of the country.⁴ As pointed out by the mentioned OECD report, the '*Alternanza Scuola Lavoro*' project will be more difficult to apply in areas

1 The expression 'Industry 4.0' has been coined in 2011 by Henning Kagermann, Wolf-Dieter Lukas and Wolfgang Wahlster. See Kagermann, H., Lukas, W.D., Wahlster, W., *Industrie 4.0: Mit dem Internet der Dinge auf dem Weg zur 4. industriellen Revolution*, in VDI Nachrichten, Ausgabe 13, <<https://www.vdi-nachrichten.com/Technik-Gesellschaft/Industrie-40-Mit-Internet-Dinge-Weg-4-industriellen-Revolution>>, 1st April 2011.

2 Law conferring the competence to the Government in reforming the social block absorbers, active policies, employment relationships, inspection activities and work-life balance, Official Gazette no. 290/2014., 183/2014. The research will especially focus on the systematic discipline of employment contracts and on the review of the rules regarding the job tasks (Official Gazette no. 144/2015, 81/2015) as well as on the reorganisation of the matter concerning Active labour market policies (Official Gazette no. 221/2015, 150/2015)

3 Law on the Educational and Learning National System ('*Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti*'), Official Gazette no. 162/2015., 107/2015.

4 OECD Skills Strategy ..., cit., p. 22

where companies are lower in number and are less developed than the northern industries.⁵ Nevertheless, the ‘Good School Act’ is an essential step forward within the Italian education system, which has traditionally been based merely on a theoretical approach and has excluded practical experience for a considerably long time, thus leading to the difficult transition of young workforce to the labour market.

Whether or not the issue of increasing skills among the young population is being effectively tackled by the introduction of the last education system reform (Act no. 107/2015), it is necessary to improve and protect the skills of adult workforce.

In this regard, the research aims to analyse the impact of recent reforms (Decree no. 81/2015 and Decree no. 150/2015) on the Italian labour law system.

Firstly, the research will compare the modes of protection of skills in employment relationships before and after the entry into force of Decree no. 81/2015. Thereafter, it will analyse the protection of skills in the labour market after the introduction of Decree no. 150/2015.

2. PROTECTION OF SKILLS IN EMPLOYMENT RELATIONSHIPS: AN OVERVIEW OF THE ITALIAN DISCIPLINE BEFORE THE ‘JOBS ACT’

The recent reform has completely changed the wording of art. 2103 of the Italian Civil Code (c.c.),⁶ which concerns the duties of workers.

According to the first version of art. 2103 c.c.,⁷ the employee should be assigned job tasks for which he was hired. However, in case of continued economic needs (organisational and productive reasons), the employer would have the right to assign different duties to the employee, even the ones carried out by low-level employees (the so-called ‘*ius variandi*’). Formally, the unique limits imposed to the unilateral downgrading power were represented by the maintenance of the previous wage amount and by the impossibility of substantial changes in tasks. In other words, it was not possible to assign the worker a duty belonging to a different staff category.⁸

Nevertheless, the employer was allowed to unilaterally change the terms of the employment contract after entering into it.

On the other hand, the employee did not have the chance to refuse these variations, hence, the absence of legal protection against unfair dismissal increased the instability of the employment relationship, leaving the employee in a position of serious subjugation by the employer.

5 OECD Skills Strategy ..., cit., p. 23.

6 Royal Decree including the text of the Civil Code, Official Gazette no. 79/1942., 262/1942.

7 According to the original version of art. 2103 c.c., “*Il prestatore di lavoro deve essere adibito alle mansioni per cui è stato assunto. Tuttavia, se non è contenuto diversamente, l'imprenditore può, in relazione alle esigenze dell'impresa, adibire il prestatore di lavoro ad una mansione diversa, purché essa non importi una diminuzione nella retribuzione o un mutamento sostanziale nella posizione di lui. Nel caso previsto dal comma precedente, il prestatore di lavoro ha diritto al trattamento corrispondente all'attività svolta, se è a lui più vantaggioso.*”

8 Art. 2095 c.c. individuates four different staff categories: executives, middle management, clerical staff and blue-collar workers.

In 1970, art. 13 of the ‘*Statuto dei Lavoratori*’ (Act no. 300/1970⁹) modified art. 2103 c.c.¹⁰ and established that the worker should be assigned duties for which he was engaged or those corresponding to any substantially acquired superior category, or duties equivalent to those actually performed until the variation, without any reduction of remuneration. Any employment contract in breach of this principle would be considered void.

The principal purpose of such legal intervention lies in the concrete protection of worker’s position in employment relationships. In particular, the new Legislation aimed to ensure that workers could continue to carry out tasks that they had performed throughout their entire working lives.

The main innovations introduced by *Statuto dei Lavoratori* were firstly the ‘criterion of equivalent tasks’ and secondly, the nullity of any employment contract in violation of art. 2103 c.c.

According to the established labour case law, the criterion of equivalent tasks constituted the milestone of the Legislation. In fact, it achieved the protection of the set of acquired professional competences.

The main issue concerned the meaning of the expression ‘equivalent tasks’. As a matter of fact, there was no consensus whatsoever amongst academics and practitioners as to the common approach to this issue. Nevertheless, it is possible to identify two views adopted by the *Corte di Cassazione* and the most important scholars in their contributions.

The first view attributes a ‘static’ meaning to the expression ‘equivalent tasks’ (Italian: *orientamento statico*). In other words, the newly assigned tasks have to be considered equivalent to those that were performed last if they do not compromise the worker’s skills and his/her professional growth. This especially holds true, when the new assignment allows the employee to develop new skills, at the same time benefiting from his/her previous practical experience and thus achieving professional growth.¹¹

9 Law on the protection of the freedom and dignity of workers, of trade union freedom and union activity in the workplace and on the public employment service, Official Gazette no. 131/1970., 300/1970.

10 According to art. 13 ‘*Statuto dei Lavoratori*’, which amended art. 2103 c.c., “*Il prestatore di lavoro deve essere adibito alle mansioni per le quali è stato assunto o a quelle corrispondenti alla categoria superiore che abbia successivamente acquisito ovvero a mansioni equivalenti alle ultime effettivamente svolte, senza alcuna diminuzione della retribuzione. Nel caso di assegnazione a mansioni superiori il prestatore ha diritto al trattamento corrispondente all’attività svolta, e l’assegnazione stessa diviene definitiva, ove la medesima non abbia avuto luogo per sostituzione di lavoratore assente con diritto alla conservazione del posto, dopo un periodo fissato dai contratti collettivi, e comunque non superiore a tre mesi. Egli non può essere trasferito da una unità produttiva ad un’altra se non per comprovate ragioni tecniche, organizzative e produttive. Ogni patto contrario è nullo.*”

11 In this sense, the *Corte di Cassazione* ruled that: “*Le nuove mansioni possono considerarsi equivalenti alle ultime effettivamente svolte soltanto ove risulti tutelato il patrimonio professionale del lavoratore, anche nel senso che la nuova collocazione gli consenta di utilizzare, ed anzi di arricchire, il patrimonio professionale acquisito con lo svolgimento della precedente attività lavorativa, in una prospettiva dinamica di valorizzazione della capacità di arricchimento del proprio bagaglio di conoscenze ed esperienze*” (Cass. Civ., 30th July 2004,

On the other hand, according to the second view, the expression ‘equivalent tasks’ has to be considered in a dynamic sense (Italian: *orientamento dinamico*), based on the potential working capacity and a rather elastic concept of skills. In this regard, the analysis is focused on what the worker is effectively able to do rather than what he has previously done. In other terms, skills are considered from an evolving perspective and are projected for future professional life.¹²

To put it simply, *Corte di Cassazione* pointed out that assigned duties have to be considered equivalent to the ones for which the worker has been engaged if they could lead to the same professional category (as suggested by the Collective bargaining).¹³

The principal remedy in case of assignment to inferior duties is the action for damages.

In fact, in case of assignment to lower tasks that may cause discrimination against the worker, he/she has the right to claim compensation for the harm suffered (Italian: *danno da demansionamento*). This principle includes a variety of material and non-material damages, such as the ones for wage and career loss, the loss of skills improvement, as well as damage to the worker’s personality; all of which are caused by the employer’s breach of articles 2103 and 2087 c.c. within the framework of contractual liability. In particular, according to the latter, the employer is required to take all appropriate measures to avoid both the risks inherent to the work environment, and those resulting from external factors and related to the location where that environment is based.¹⁴

According to the view of some scholars, this damage does not need to be proven by the injured person. In other words, damage automatically results from the mere violation of art. 2103 c.c.¹⁵

The majority of scholars, however, believe that such damage has to be demonstrated by the injured person, who also has to prove the causal link between the occurred damage and the employer’s breach of contract.¹⁶ The amount of compensation is calculated considering the wage, which would have been earned by the employee if he hadn’t been assigned lower duties. Moreover, it has to be calculated by taking into

no. 14666, in *Diritto e Pratica del Lavoro*, 2004, 3077).

12 Cass. civ., 2nd May 2006, no. 10091, in *Rivista italiana di Diritto del Lavoro*, 2007, II, p. 654.

13 Broglio, M., *La mobilità interna del lavoratore. Mutamento di mansioni e trasferimento*, in *Codice civile commentato*, diretto da Schlesinger, Milano, Giuffrè, 1997, sub art. 2103 c.c., p. 259; See Cass. civ., 2nd May 2006, no. 10091; Cass. Sez. Un., 4th April 2008, no. 8740, in *Foro Italiano*, 2008, I, p. 2534; Cass. civ., 11th May 2010, no. 11405, in *Rivista Italiana di Diritto del Lavoro*, 2011, II, p. 149.

14 According to art. 2087 c.c.: “L’imprenditore è tenuto ad adottare nell’esercizio dell’impresa le misure che, secondo la particolarità del lavoro, l’esperienza e la tecnica, sono necessarie a tutelare l’integrità fisica e la personalità morale dei prestatori di lavoro.”

15 Cass. civ., 13th April 2004, no. 7043, in *Giustizia civile*, 2004, I, p. 3204.

16 Cass. S.U., 24th March 2006, no. 6572, in *Foro italiano* 2006, 5, I, p. 1343. Regarding the issue concerning the proof of the so-called ‘danno da demansionamento’, see Broglio, M., *La mobilità interna ... cit.*, p. 259; Caiafa, L., *Demansionamento: onere della prova e risarcimento del danno*, in *Diritto del lavoro*, 2004, p. 53; Morone, A., *Alcune considerazioni sulla giurisprudenza in tema di prova e di quantificazione del c.d. danno alla professionalità*, in *ADL Argomenti di diritto del lavoro*, 2000, p. 747.

account the time period for which the employee conducted such inferior tasks.

The worker can also claim non-pecuniary damages when performing lower tasks has had a negative impact in the workplace as well as on the worker's personal life, hence, when it has significantly disrupted his/her way of life and living habits.¹⁷

3. MODIFICATION OF ART. 2103 C.C. BY THE JOBS ACT

The last legislative intervention in art. 2103 c.c. by art. 3 Decree no. 81/2015 has completely changed its wording.¹⁸ Unlike art. 13 of the *Statuto dei Lavoratori* that aimed to protect the workers' position, the Jobs Act Reform fosters productivity and competitiveness, with the aim of tackling Italy's economic precariousness. Its purpose is to modernise the discipline and to meet the needs of both the employer who is interested in optimising and increasing his/her production and the employee, whose prospects are dependent on job retention and the implementation of his/her skills.¹⁹ Since human workforce is one of the least adaptable production factors, the Jobs Act aspires to link human workforce capacities to technological innovations and to the epochal changes in entrepreneurship.

For this purpose, the 2015 Reform increases internal flexibility in employment relationships. Removing previous limitations of the right to unilaterally change the terms of the employment contract after it was entered into, the new version of art. 2103 c.c. introduces mobility within and between staff levels, allowing employers to assign workers different duties of the same, or lower rank.²⁰

In particular, it is possible to identify three different modifications in the assignment of tasks: the first one consists of assigning duties belonging to the same staff rank (Italian: *mobilità orizzontale*), the second one in relocating the employee to lower staff rank (Latin: *ius variandi in peius*) and the third one in assigning upper level duties to the employee. (Latin: *ius variandi in melius*).

As regards the first modification, art. 2103 par. 1 c.c., which confirms that workers should be assigned tasks for which they were contracted, allows employers to

17 Bonaccorsi, F., I percorsi del danno non patrimoniale da demansionamento tra dottrina e giurisprudenza, in Responsabilità civile e previdenza, IV, 2007, p. 843.

18 As clearly highlighted by Carinci, the new version of art. 2103 c.c. definitely marks «the decline of the Statuto dei Lavoratori». Carinci, F., Il tramonto dello Statuto dei lavoratori (dalla L. n. 300/1970 al Jobs Act), Adapt University Press, p. 12, e-book series no. 41, (2015) <https://moodle.adaptland.it/pluginfile.php/21449/mod_resource/content/4/ebook_vol_41.pdf> .

19 For this purpose, see art. 1, co. 7, let. E, Law 183/2014, cit.

20 There are several contributions concerning the reform of art. 2103 c.c. Above all, see Brollo, M., Inquadramento e ius variandi, in G. Santoro Passarelli (a cura di), Omnia, Trattati giuridici. Diritto e processo del lavoro e della previdenza sociale. Privato e pubblico, 2017, Torino, Utet, pp. 768-872.; Id., Disciplina delle mansioni, (art. 3), in Carinci, F. (a cura di), Commento al d.lgs. 15 giugno 2015, n. 81: tipologie contrattuali e lo ius variandi, Adapt University Press, e-book series no. 48, (2015) <https://moodle.adaptland.it/pluginfile.php/24135/mod_resource/content/1/ebook_vol_48.pdf>; Id., La disciplina delle mansioni dopo il “Jobs Act”, in ADL Argomenti di Diritto del Lavoro, 6, 2015, p. 1156 ff., Miscione, M., Jobs Act: le mansioni e la loro modificazione, in Lavoro nella giurisprudenza, 2015, 5, p. 437; Pisani, C., La nuova disciplina del mutamento delle mansioni, Torino, Giappichelli, 2015.

assign workers different tasks of the same staff rank. In this regard, the main difference from the previous version of the article is the omission of the ‘criterion of equivalent tasks’. Instead, the new article refers to the ‘tasks belonging to the same staff rank or legal category’,²¹ thus leading to the ambiguities in the interpretation of the concept and consequently to different applications by the courts.

In other words, as clearly suggested by some scholars²² – the new legislation adopts a different approach in order to protect the worker’s skills.

While judges have thus far measured the ‘criterion of equivalent tasks’ based on the comparison of the new tasks and the ones previously performed by the worker, the new art. 2103 c.c. abandons this kind of evaluation in favour of an easier one based on the description of staff ranks in collective agreements.²³

Instead of discretionary assessment, in order to check the legitimacy of unilateral contractual modifications the courts will only verify whether the assigned duties belong to the same staff ranks by adopting an objective perspective. In other words, in these cases it is not necessary to compare worker’s previous tasks and new ones, hence, judges will be able to apply the article easier than before.

Consequently, while the role of judges will become less important in the new legal framework, collective agreements describing different staff ranks that are used as parameters in judges’ decisions will assume a central role.

As regards the second modification in the assignment of tasks, art. 2103 par. 2, 4, 5 and 6 c.c. allows the employer to assign employee lower tasks (*ius variandi in pejus*) in several cases: firstly, if internal modifications directly affect the employee’s work position (art. 2103, par. 2 c.c.). This provision is strictly connected with the principle of free enterprise enshrined in art. 41, par. 1 Constitution, according to which, the employer has the right to freely organise his/her activity. In other words, judges can only verify the internal influence of that modification on the employee’s work position without interfering with the employer’s organisational choices.

Furthermore, the collective agreements can identify other cases in which the worker is assigned lower duties. As highlighted by the scholars, this provision, enshrined in art. 2103 par. 4 c.c., has significantly augmented the role of collective agreements. Despite the ambiguity of the expression “other cases of assignments to lower duties”,²⁴ the cases to which the Act refers are exclusively limited to the situations of organisational changes.²⁵

21 Art. 2103 par. 1 c.c. establishes that: «Il lavoratore deve essere adibito alle mansioni per le quali è stato assunto o a quelle corrispondenti all’inquadramento superiore che abbia successivamente acquisito ovvero a mansioni riconducibili allo stesso livello di inquadramento delle ultime effettivamente svolte».

22 Brollo, M., *La disciplina delle mansioni dopo il Jobs Act*, in *Argomenti di Diritto del Lavoro*, 6, 2015, p. 1161.

23 Pisani, C., *Lo “ius variandi”, la scomparsa dell’equivalenza, il ruolo dell’autonomia collettiva e la centralità della formazione nel nuovo art. 2103*, in *ADL Argomenti di diritto del lavoro*, 2016, 6, pp. 1114-1146.

24 Art. 2103, par. 4 establishes that «Ulteriori ipotesi di assegnazione di mansioni appartenenti al livello di inquadramento inferiore, purché rientranti nella medesima categoria legale, possono essere previste dai contratti collettivi».

25 Brollo, M., *La disciplina delle mansioni dopo il Jobs Act*, in *Argomenti di Diritto del Lavoro*,

Finally, according to par. 6, individual agreements may be concluded which change the duties related to a given level of classification and the relative remuneration, all for the purpose of the workers retaining their jobs, increasing the level of their professionalization or improving their living conditions.

Nevertheless, in order to protect the employee's position, art. 2103 c.c. stipulates that the employer must only assign the worker the duties of the staff category immediately below the one for which he was contracted. Since the employee occupies a weaker position in employment contracts, these contracts have to be concluded by the parties before the so-called *sedi protette*²⁶ (bodies responsible for the effectiveness of the employee's will).

Such unilateral modification could also lead to the employee performing higher tasks and to his/her promotion if he does not refuse this modification in his employment contract (art. 2103, par. 7 c.c.). The provision has been criticised by some renowned scholars, who believe that the refusal to be assigned a higher job position should be communicated within a protected environment.²⁷

3.1. Increase of Skills as a Response to the Worker's Need to Improve His/her Set of Professional Competences

The lifeblood of art. 2103 c.c. is the employer's obligation to provide training if there are 'changes in job tasks' (par. 3). This innovation includes both horizontal and vertical mobility, notwithstanding the fact that the employer has unilaterally modified the contract or that the parties have signed an individual employment contract.

Nevertheless, the employer is obliged to provide training only 'where necessary'; in other words, the training is required only if assignment of new duties requires an expansion of employee's knowledge.

In this sense, the training represents an important tool to tackle the problem of worker's vulnerability, which is caused by the inadequacy of his/her skills in relation to organisational needs.

The most effective response to the employee's need to adapt himself/herself to new job assignments is improving knowledge and skills through training activities and lifelong learning programmes. Therefore, by increasing skills it is possible to tackle the problem of worker's precariousness. For this reason, the Jobs Act Reform

6, 2015, p. 1173.

26 The so-called *sedi protette* is the official body established by the Commission for the purpose of conciliation. It is represented by the Territorial Labour Office (Direzione Territoriale del Lavoro), a trade union's delegate or a certification office (as authorised universities and foundations, bilateral institutions) according to art. 76, Legislative Decree on the reform of employment system and the labour market, Official Gazette no. 235/2003., no. 276/2003. Workers may also give mandate to a lawyer or a labour consultant in this regard.

27 Brolo, M., *La disciplina ...*, cit., p. 1183; Liso, F., *Brevi osservazioni sulla revisione della disciplina delle mansioni contenuta nel decreto legislativo n. 81/2015 e su alcune recenti tendenze di politica legislativa in materia di rapporto di lavoro*, in Working Papers C.S.D.L.E. "Massimo D'Antona".IT - 257/15, 15, <<http://csdle.lex.unict.it/docs/workingpapers/Brevi-osservazioni-sulla-revisione-della-disciplina-delle-mansioni-contenuta-nel-decreto-legislativo/5416.aspx>>, 23th July 2015.

has embarked upon this issue in the right direction and it thus represents the first important step towards the development of a strengthened skill system.

On the other hand, the provision in art. 2103 par. 3 c.c. seems to be approximative. In fact, a breach of this obligation does not invalidate the new job assignment. Therefore, the deterrent effect of this provision should be called into question and the gap with respect to the sanctions needs to be filled, in order to effectively protect employee's interests and enforce his/her position within the employment relationship and in the labour market.

The analysed obligation therefore reflects the general principles of good faith.²⁸

4. PROTECTION OF SKILLS IN THE LABOUR MARKET: 'WORK-FIRST NEED' VS. HUMAN CAPITAL DEVELOPMENT

The need to reallocate workers as soon as possible in order to reduce unemployment could have negative influences on workers professional competences. In other words, the need to find a job in a short space of time could lead to shortage of skills.

For this purpose, the Jobs Act's Legislative Decree no. 150/2015 has introduced an important shift away from the passive to active measures, by strengthening the welfare system (e.g. unemployment benefits) on the one hand and creating passive benefits conditional on activation measures with respect to the so-called *principio di condizionalità* ('conditionality' or 'welfare to work' principle) on the other.

This principle has to be considered a milestone of the most important remedies introduced by the Legislative Decree no. 150/2015 and, as figuratively highlighted by some authors, it has nowadays become "a core element of the legislator's D.N.A."²⁹

From this perspective, in order to achieve a 'workfare system', the Jobs Act envisages a new model of personalised support for job seekers,³⁰ the so-called *patto di servizio personalizzato* ('customized service agreement', art. 20 Legislative Decree no. 150/2015), which foresees a contract between the employment agency and the job seeker. The conditionality mechanisms are strengthened by means of gradual sanctions in case the job seeker fails to respect the 'customized service agreement' (i.e., he/she does not participate in the proposed orientation or training measures or refuses a job offer).³¹

This agreement will oblige the agency to provide a range of opportunities tailored to the job seeker and the job seeker to accept them, where appropriate. The definition

28 Amendola, F., Commento all'art. 2103 c.c., in Amoroso, G., Di Cerbo, V., Maresca, A., (a cura di), *Diritto del Lavoro*, vol. 1, Milano, Giuffrè, 2017, p. 924.

29 Filì, V., L'inclusione da diritto a obbligo, in Brollo, M., Cester, C., Menghini, L., (a cura di), *Legalità e rapporti di lavoro. Incentivi e sanzioni*, Trieste, EUT Edizioni Università di Trieste, 2016, p. 118.

30 Olivieri, A., La condizionalità nel d.lgs. 150/2015: luci e ombre, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Acts 2*, Bari, Cacucci Editore, 2016, p. 187.

31 Filì, V., Il patto di servizio personalizzato, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, p. 175.

of an ‘adequate job offer’ (art. 25 Legislative Decree no. 150/2015), introduced by the Monti-Fornero Reform³² (Law 28 of June 2012, No. 92), will be replaced by a ministerial decree and will take into account several criteria. In particular, it will consider the appropriateness of the duties for the job seeker, the distance between home and workplace, the duration of the unemployment period, the minimum level of proposed wage (at least 20% more than the amount of the latest unemployment allowance received).

In this regard, the main issue concerns the effectiveness of the protection of worker’s skills offered by art. 25 Legislative Decree no. 150/2015. Considering that the definition of ‘adequate job offer’ enshrined in the mentioned article does not depend exclusively on the job seeker’s previous work experience or his/her set of professional competences, but is accompanied by the other three analysed criteria, we can assume that the norm lacks in skills protection.

As pointed out elsewhere in this paper, although job seeker reallocation job could prevent negative economic consequences for the welfare system, the rapidness of this process could also bring negative consequences in terms of a loss of professionalism.

More attention to the protection of skills is paid by art. 21, which regulates the mechanism of conditionality for the beneficiaries of social insurance,³³ by art. 22, which describes the conditionality of wage supplement schemes for industrial crises (Italian: *cassa integrazione guadagni*) and by art. 23, which is dedicated to the so-called *assegno di ricollocazione*, an employment service voucher.³⁴ In these cases, the worker is obliged to attend special learning and training programmes to preserve and improve his/her level of professionalisation.³⁵

Additionally, by limiting the scope and duration of wage supplement schemes for industrial crises (*Cassa Integrazione Guadagni*), the Jobs Act intends to decrease the loss of skills and promote quick reallocation of workers in the labour market.

In order to achieve those goals, the Jobs Act introduces the National Agency for Active Labour Market Policies (Italian: *Agenzia Nazionale per le Politiche Attive*, hereinafter: ANPAL), the first-ever national agency for the provision of active labour market policies,³⁶ which has been fully active since December 2016. The national agency is expected to provide guidance to the regions as well as homogenising standards and practices across the country.³⁷

32 Law on the Reform of the Labour Market, Official Gazette no. 153/2012., 28/2012.

33 As the so-called *Nuova Assicurazione Sociale per l’Impiego - NASpi* reserved to the employees, or the *DIS-COLL*, directed to the self-employed.

34 This voucher allows the worker to attend specific training and learning programmes directed to the requalification of his/her skills, in order to adapt him to the new job position.

35 Garofalo, D., *Le politiche del lavoro nel Jobs Act*, in Carinci, F., (a cura di), *Jobs Act: un primo bilancio*. Atti del convegno di Bertinoro–Bologna, Adapt University Press, e-book series no. 54, (2015) p. 165 <https://moodle.adaptland.it/pluginfile.php/26830/mod_resource/content/1/ebook_vol_54.pdf>.

36 Alaimo, A., *L’Agenzia Nazionale per le Politiche Attive del Lavoro (ANPAL)*, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, p. 19 ff.

37 ANPAL Decision, 20th February 2018, no. 1, <http://www.anpal.gov.it/Normative/delibera-1-2018-cdv-approvazione-linee-indirizzo.pdf>. See Garofalo, D., *Riforma del mercato del lavoro*

The rejection of the constitutional reform proposed through the national referendum held in December 2016 has, however, modified the initial plan for ANPAL to centralise the responsibility for the delivery of Active Labour Market Policies (ALMP) in Italy. At the moment ALMP remains a competence shared between ANPAL and the regions.

5. CONCLUSIONS

The issue of protecting and developing skills has been tackled by the Jobs Act through a fundamental reform of the Italian labour law system. On the one hand, by making employment relationships more flexible, for art. 2103 c.c. allows modification of employee's duties in order for the employee to adapt to the new tasks. Since human workforce is one of the least adaptable production factors, the Jobs Act aims to link human workforce capacities to technological innovations by obliging the employer to provide learning and training programmes to the employee.

On the other hand, from the labour market perspective, the development of the so-called 'welfare to work' principle leads to the strengthening of the welfare system. This mechanism, in fact, increases the means of gradual sanctions if the job seeker does not actively participate in the learning and training programmes and it consequently contributes to the protection of worker's skills.

These are all considerable positive steps that bring Italy closer to the practices already implemented in many OECD countries.³⁸

LITERATURE

Books and articles

1. Alaimo, Anna, L'Agenzia Nazionale per le Politiche Attive del Lavoro (ANPAL), in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, 19 - 35.
2. Amendola, Fabrizio, Commento all'art. 2103 c.c., in Amoroso, G., Di Cerbo, V., Maresca, A. (a cura di), *Diritto del Lavoro*, vol. 1, Milano, Giuffrè, 2017, 892 - 944.
3. Bonaccorsi, Francesca, I percorsi del danno non patrimoniale da demansionamento tra dottrina e giurisprudenza, in *Responsabilità civile e previdenza*, 2007, pp. 839 - 856.
4. Brollo, Marina, La mobilità interna del lavoratore. Mutamento di mansioni e trasferimento. Art. 2103 c.c., in *Codice civile commentato*, diretto da Schlesinger, Milano, Giuffrè, 1997.
5. Brollo, Marina, *Disciplina delle mansioni*, (art. 3), in Carinci, Franco (a cura di), *Commento al d.lgs. 15 giugno 2015, n. 81: tipologie contrattuali e lo ius variandi*, Bergamo, Adapt University Press, e-book series no. 48, (2015), pp. 29 - 90. <https://moodle.adaptland.it/pluginfile.php/24135/mod_resource/content/1/ebook_vol_48.pdf>.
6. Brollo, Marina, La disciplina delle mansioni dopo il "Jobs Act", in *ADL Argomenti di Diritto del Lavoro*, 2015, 6, pp. 1156 - 1185.
7. Caiafa, Livia, Demansionamento: onere della prova e risarcimento del danno, in *Il Diritto del lavoro*, 2004, pp. 53 - 57.

e ricentralizzazione delle competenze, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, p. 12.

38 OECD Skills Strategy Diagnostic Report: Italy 2017, in <http://www.oecd.org/italy/oecd-skills-strategy-diagnostic-report-italy-2017-9789264298644-en.htm>Report, p. 21.

8. Carinci, Franco, Il tramonto dello Statuto dei lavoratori (dalla L. n. 300/1970 al Jobs Act), Adapt University Press, e-book series no. 41, (2015) <https://moodle.adaptland.it/pluginfile.php/21449/mod_resource/content/4/ebook_vol_41.pdf>.
9. Fili, Valeria, Il patto di servizio personalizzato, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, 175 - 184.
10. Fili, Valeria, L'inclusione da diritto a obbligo, in Brollo, Marina, Cester, Carlo, Menghini, Luigi, (a cura di), *Legalità e rapporti di lavoro. Incentivi e sanzioni*, Trieste, EUT Edizioni Università di Trieste, 2016, 117 - 132.
11. Garofalo, Domenico, Le politiche del lavoro nel Jobs Act, in Carinci, F., (a cura di), *Jobs Act: un primo bilancio. Atti del convegno di Bertinoro–Bologna*, Adapt University Press, e-book series no. 54, (2015) pp. 89 – 193 <https://moodle.adaptland.it/pluginfile.php/26830/mod_resource/content/1/ebook_vol_54.pdf>.
12. Garofalo, Domenico, Riforma del mercato del lavoro e ricentralizzazione delle competenze, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Act 2*, Bari, Cacucci Editore, 2016, 9 - 17.
13. Liso, Franco, Brevi osservazioni sulla revisione della disciplina delle mansioni contenuta nel decreto legislativo n. 81/2015 e su alcune recenti tendenze di politica legislativa in materia di rapporto di lavoro, in Working Papers C.S.D.L.E. “Massimo D’Antona”. IT - 257/2015, 23th July 2015, in <<http://csdle.lex.unict.it/docs/workingpapers/Brevi-osservazioni-sulla-revisione-della-disciplina-delle-mansioni-contenuta-nel-decreto-legislativo/5416.aspx>>.
14. Miscione, Michele, Jobs Act: le mansioni e la loro modificazione, in *Il Lavoro nella giurisprudenza*, 2015, 5, pp. 437 - 455.
15. Morone, Andrea, Alcune considerazioni sulla giurisprudenza in tema di prova e di quantificazione del c.d. danno alla professionalità, in *ADL Argomenti di diritto del lavoro*, 2000, pp. 747 - 759.
16. Olivieri, Antonello, La condizionalità nel d.lgs. 150/2015: luci e ombre, in Ghera, E., Garofalo, D., (a cura di), *Organizzazione e disciplina del mercato del lavoro nel Jobs Acts 2*, Bari, Cacucci Editore, 2016, 185 - 215.
17. Pisani, Carlo, *La nuova disciplina del mutamento delle mansioni*, Torino, Giappichelli, 2015
18. Pisani, Carlo, Lo “jus variandi”, la scomparsa dell’equivalenza, il ruolo dell’autonomia collettiva e la centralità della formazione nel nuovo art. 2103, in *ADL Argomenti di diritto del lavoro*, 2016, 6, pp. 1114 - 1146.

Internet sources:

1. ANPAL Decision, 20th February 2018, no. 1, <http://www.anpal.gov.it/Normative/delibera-1-2018-cdv-approvazione-linee-indirizzo.pdf>.
2. Henning Kagermann, Wolf-Dieter Lukas and Wolfgang Wahlster. See Kagermann, H., Lukas, W.D., Wahlster, W., *Industrie 4.0: Mit dem Internet der Dinge auf dem Weg zur 4. industriellen Revolution*, in *VDI Nachrichten*, Ausgabe 13, <<https://www.vdi-nachrichten.com/Technik-Gesellschaft/Industrie-40-Mit-Internet-Dinge-Weg-4-industriellen-Revolution>>, 1st April 2011.
3. OECD Skills Strategy Diagnostic Report: Italy 2017, <<http://www.oecd.org/italy/oecd-skills-strategy-diagnostic-report-italy-2017-9789264298644-en.htm>>, (2018), 2nd April 2018.

Marina Brollo*
Caterina Mazzanti**

Sažetak

ZAŠTITA VJEŠTINA U RADNIM ODNOSIMA I U OKVIRU TRŽIŠTA RADA: TALIJANSKO ZAKONODAVSTVO I PRAKSA

Globalizacija i tehnološke promjene dramatično utječu na tržište rada. Zbog toga je potrebno ojačati i zaštititi vještine radnika koji moraju odgovoriti na takve velike promjene unaprjeđujući svoje profesionalne kvalifikacije. U radu se daje pregled promjena u talijanskom zakonodavstvu, analiziraju se inovacije koje donosi nova reforma, posebno zaštita vještina s aspekta ugovora o radu i tržišta rada. S time u vezi u istraživanju se analizira utjecaj zakona *Jobs Acta* u jačanju zaštite vještina. S jedne strane, ovaj zakon utvrđuje da u slučaju „promjene zadataka radnog mjesta” poslodavac mora osigurati osposobljavanje kako bi se omogućio razvoj radnikovih vještina (čl. 2103. Građanskog zakonika). S druge strane, iz perspektive tržišta rada, on je temelj za aktivne politike tržišta rada koje mogu biti učinkovite u zaštiti vještina radnika. Reforma povezana s donošenjem *Jobs Acta* važan je korak u pravom smjeru i za razvoj naprednog sustava vještina.

Ključne riječi: Jobs Act; ius variandi; zaštita vještina; osposobljavanje; aktivne politike tržišta rada.

Zusammenfassung

SCHUTZ VON KOMPETENZEN IN ARBEITSVERHÄLTNISSEN UND AM ARBEITSMARKT: EIN ÜBERBLICK ÜBER DIE SITUATION IN ITALIEN

Der Arbeitsmarkt wird stark von der Globalisierung und dem Technologiewandel beeinflusst. Deshalb müssen Kompetenzen gestärkt werden. Arbeitnehmer müssen auf diese großen Transformationen reagieren, indem sie ihre Professionalisierung verbessern. Mit Schwerpunkt auf die Arbeitsrechtreform mit Namen „Jobs Act“ bietet dieser Beitrag ein Überblick über die von Italien vorgenommenen Änderungen.

* Dr. sc. Marina Brollo, redovita profesorica, Sveučilište u Udinama, Italija; marina.brollo@uniud.it.

** Caterina Mazzanti, doktorandica, Sveučilište u Udinama, Italija; mazzanticaterina@gmail.com.

Ebenfalls werden die innovativsten Aspekte dieser neuen Reform, insbesondere der Schutz von Kompetenzen im Arbeitsvertrag und am Arbeitsmarkt, analysiert. Diesbezüglich wird in diesem Beitrag betont, wie man mit diesem Jobs Act den Schutz von Kompetenzen gestärkt hat. Einerseits legt das Gesetz fest, dass im Falle der „Änderungen von Arbeitsaufgaben“ der Arbeitgeber die Ausbildungsaktivitäten sichern muss, um die Kompetenzen von Arbeitnehmern zu entwickeln (Art. 2103 Bürgerliches Gesetzbuch). Andererseits bietet die Reform effiziente aktive Arbeitsmarktpolitik, um den Mangel an Kompetenzschutz in Angriff zu nehmen. Diese Änderungen stellen bemerkenswerte positive Schritte dar. Sie zeugen davor, dass die Arbeitsrechtreform den richtigen Weg und den ersten wichtigsten Schritt zur Entwicklung eines verbesserten Kompetenzsystems darstellt.

Schlüsselwörter: *Jobs Act; ius variandi; Schutz von Kompetenzen; Ausbildungsaktivitäten; aktive Arbeitsmarktpolitik.*

Riassunto

LA TUTELA DELLA PROFESSIONALITÀ NEL RAPPORTO DI LAVORO E NEL MERCATO DEL LAVORO: UNO SGUARDO ALL'ORDINAMENTO ITALIANO

La globalizzazione e l'evoluzione tecnologica hanno effetti radicali sul mercato del lavoro. Per questo motivo, se da una parte è necessario che i lavoratori adeguino le proprie competenze a questi grandi mutamenti, dall'altro la professionalità è un bene che necessita di essere protetto. La presente ricerca, incentrata sull'analisi del *Jobs Act*, intende mettere in luce il percorso di profondo cambiamento intrapreso dall'Italia, ponendo l'accento sul tema della tutela della professionalità all'interno del contratto di lavoro e del mercato del lavoro. Sotto questi profili, la recente riforma ha rafforzato gli strumenti protettivi a favore del lavoratore. Da un lato, infatti, il *Jobs Act* prevede che il mutamento di mansioni del lavoratore è accompagnato da un obbligo formativo in capo al datore di lavoro (art. 2103 Codice civile). Dall'altro lato, per quanto concerne la tutela della professionalità nel mercato del lavoro, la recente riforma ha introdotto una serie di misure di politica attiva volte a contrastare il problema del vuoto di tutele. In considerazione di ciò, il *Jobs Act* deve essere accolto positivamente.

Parole chiave: *Jobs Act; ius variandi; tutela della professionalità; formazione; strumenti di politica attiva e passiva.*