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Global migration, public order, and collective bargaining operating on borders

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Abstract: *the article is a brief investigation over global migration policies, and gives a reflection over the main international and European employment sources, considering the urgency of the 2015 increasing flows and disputes at the frontiers. It gives a particular attention to collective bargaining as major tool to address labour of migrants within the legal system; a focus is set on the Italian scene for development of industrial relations, willing to have erga-omnes effects (including migrants) but suggested to take a tripartite approach (workers-state-employers) while dealing with such socially pressing matters.*
Keywords: global migration – public order – tripartite approach – collective bargaining

1. International legal frame for global migration and its tricky implementation; - **2.** Trade unions as policy makers; **3.** The Italian scene.

1. Europen Union is now facing the problem of migration of workers with an unprecedent urgency since its establishment. There is need to reflect over the role that collective bargaining, as a major source of regulation, shall play along the other sources called to cope with such a phenomenon. Therafter, a focus is set over the political nature of collective bargaining, which, theoretically, could be neutral rather than taking on political responsabilities.
As an ILO study clearly put it: "Labour migration is now a major arena for the struggle between labour and capital over the division of wealth, the extent of regulation (or deregulation) of working conditions and worker protection, and the ability of workers to organize themselves into unions. *What happens to migrant workers may well be the precedent for what happens more widely across working populations*"[1].

Many European countries are now adopting temporary measures to cope with the urgency of big migrations that are mainly coming by from the Middle East and North Africa and that are serioulsly stressing the European legal frame over migrations (particularly, the principle of free movement as provided by the Schengen treaty), which is in the power of national states according to the international legal frame ruling refugees since 1951[2] as I am going to report here below.

Yet in 2008 more than 191 million migrants, including migrant workers, refugees, asylum-seekers, permanent migrants and others, live and work in a country other than that of their
birth or citizenship; the ILO calculated that about 95 million of them have moved

[1] In search of decent work – migrant workers rights: a manual for trade unionists, International Labour Office, Geneva, ILO, 2008, p.9.
[2] See art. 9 Genevre convention on the status of refugees.

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with their families to find work[3].

Considering the case in its global relevance, we firstly need to bear in mind the international legal basement for migrations, starting by the 1951 Genevre Convention (as later integrated into the New York Protocol signed on 1967[4]); this is grounded on article 14 of the 1948 Universal Declaration on Human Rights, it recognizes the right of persons to seek asylum from persecution in other countries[5] in such a way to prevent from non discrimination, non penalization and non-refoulment - this latter principle acts against the risk that any refugee is persecuted again.

The Convention sets not only strict-civil rights for refugees (personal status, properties, access to courts, right to associate and so on) but it also sets rights related to what is called "gainfull employment" and social security: according to artt. 17-19, both wage earning employment and self employment, with a specific consideration to liberal professions, shall be possibile to refugees with no different treatment if compared to aliens. Particularly, art. 17, dealing wage-earning employment, states that any restrictive measures issued to protect national labour market shall not be applied to a refugee having already exempt from them at the time he/she entered the country, nor to a refugee having national residence since more then three years, nor to anyone having married a national, nor to anyone having children possessing the nationality of the coutry of residence. This is the result of a global-integrating type of ruling, including equal treatments, family-based rights (just like all the international ruling for migrations[6]), and it is in line with the ILO commitment to the migratory issue too[7].

Moreover, it agrees that, to refugees who are lawfully staying in a contracting state's territory, must be recognized the same treatment accorded to nationals in respect of "remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, enjoyment of the benefits of collective bargaining, legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any

[3] In search of decent work op. cit., p.1.

[4] The act has been ratified by 146 states (https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tid=2&mtdsg_no=V-5&chapter=5&lang=en#Participants) not including Libya.

[5] Art. 1 Genevre Convention reports: "For the purpose of the present Convention, the term "refugee" shall apply to any person who: (1) (….) (2) as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national". The 1967 Protocol extended the protection outside Europe and remove the deadline.

[6] Dealing particularly with liberal professionals, the Convention states that the contracting states "shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible".

[7] ILO Convention No. 97 (ratified by 47 member States as at 22 September 2008) is allocating similar guaranties as those provided in the Genevre Convention.

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other contingency which, according to national laws or regulations, is covered by a social security scheme"[8].
Nonetheless, the same article 24 provides the following limitations to such social security:
1) appropriate arrangements can be opportune for the maintenance of acquired rights and rights in course of acquisition;
2) "national laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds", and
3) concerning "allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension".
Hereabove it is stated the formal frame for a positive international solidarity to refugees, which goes on covering quite all the aspects of an employment relationship, considering family condition nonetheless, including the products of collective bargaining, but for being substatially limited by the conctracting states : 1) when the social right must be confirmed or is not acquired yet – clearly the states are keeping a discretional power for themselves in case the social right partecipates of a temporary nature; 2) when the social benefit is payble out of public funds – needing so the intervention of private funds, which precisation is essential in order to deal with equality of treatment just as far as public means are involved in social security benefits; 3)when the contribution requirement is disputable – consistently with the purpose of protecting someone in need without reaching discriminatory results on the reverse side.

Article 24 disposes, moreover, that the "contracting states shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question", which is what happens anytime the state acts, directly or indirectly, as representative or in the interest of those seeking asylum.

Continuing to figure out the international legal frame to the topic, it is also important to recall the ILO commitment for migrant workers[9]: ILO conventions and recommendations set more specific labour-right and related guaranties for those moving on employment purposes, for example the prohibition of expulsion in the event of incapacity to work, the right to transfer earning and savings, obtaining a written employment contract before leaving the country of origin, safty and health provisions and many more.
Art. 1 of the Migrant workers Convention n. 143 (supplementary provisions) dated 1975 affirms: "the general obligation for member states to respect the basic human

[8] Art. 24 on labour legislation and social security.
[9] See the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migrant Workers Recommendation, 1975 (No. 151). It is nonetheless important to remind that all the ILO Conventions, unless otherwise stated, apply to migrant workers, some are particularly relevant, such as those ILO standards in the areas of fundamental rights, social security, employment, conditions of work, and occupational safety and health. According to a Resolution concerning a fair deal for migrant workers in a global economy International Labour Conference, 2004, "the rising mobility of people in search of opportunities and Decent Work and human security has been commanding the attention of policy-makers and promoting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent Work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration."

rights of all migrant workers. In other words, the rights of all migrant workers, regardless of their status, are to be respected. The intention is to affirm, without challenging the right of states to regulate migratory flows, the right of migrant workers to be protected, whether or not they entered or remained the country on a regular basis, with or without official documents"[10], and affirms that any migrant worker should not be forced to leave the country for the only reason he lost the job[11].
According to most of the ILO conventions, reports from the contracting states are due every five years, but for the so-called "fundamental and priority conventions", which are due every two years. The duty to reports is also grounded on the Constitution of the ILO. What is here important to underline is that "in the countries that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the governments are obliged to consult employers' and workers' organizations in preparing their reports. But even in those countries that have not ratified Convention No. 144, the governments are required under Article 23(2) of the Constitution to submit a copy of their reports to representative trade union organizations, thus enabling them to make their own comments". To be noticed that "not a single year goes by without the (Ilo commettee of experts) deploring the paucity of comments received from trade union organizations in its general remarks" [12].

Going to the European legal frame, free movement of (working) people is one of the fundamental pillars according to art. 39 of the EC Treaty, grounding the essence of the European citizenship; nevertheless, the enlargment of the Union to eastern countries was the occasion to introduce restrictions regarding workers coming from the new member states as well as temporary measures aimed at mutually coordinating social security schemes are therin involved[13].
European member states have agreed on rules determining which is the state having jurisdiction over the status of a refugee, and consequent treatment of him or her – the so called Dublin Regulation. The Dublin system, originally, was an agreement staying ouside the European community[14] ; Regulation n. 604/2013 (Dublin III) is the latest adopted by both the EU Parliament and the EU Council to discipline substancially the asking for international protection and the following procedure: for example, in case the person seeking asylum is of minor age, it is going to be competent the state wherin a family member is legally present, keeping in mind the prevalent interest of the child (art. 8), while in case the seeking person illegally accessed a country, this latter country is entitled for recognizing the asylum itself, as well as to ask another country, retained to be competent, to take on responsability for that request (such a responsability terminates after 12 months since the illegal entrance). Competent for recognizing the asylum, as well as for the minimum rights therin involved, can also be the country wherin there is evidence of a continuing residence of at least 5 months of

[10] In search of decent work , op. cited, p. 69.
[11] Article 8 specifies that "On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit".
[12] In search of decent work , op. cit. p. 82
[13] B. Grandi, Diritti sociali e allargamento dell'Unione Europea; le problematiche connesse all'estensione dei diritti, in La Rivista del Diritto della Sicurezza Sociale n.2/3 -2005. See also In search of decent work, op. cit. p.54.
[14] The Dublin convention, or Schengen agreement, ruling the free movment of persons date is dated 1985, although starting to be operating 10 years later; it was integrated into the legal framework of the EU with the Treaty of Amsterdam in 1999. It includes a system of monitoring personal identity documentastions, the visa information system (VIS) and a system of larger information (SIS) which is a highly efficient large-scale information system that supports external border control and law enforcement cooperation in the Schengen states. The original signatories of the agreement were Belgium, France, Germany, Luxembourg and the Netherlands.

the person asking for refugee[15].

Many more specific provisions, within and out of the Dublin system, are set for the survaillance of the migration phenomenon but all of these are set toward a cooperation perspective amongst member states and others, including the European institutions like the EU Commission: pillars of the European border policy in order to prevent irregular migration, meant as both smuggler and trafficking contrast, are told to be 1) intensifying co-operation with transit countries and countries of origin of migrants and 2) strengthening joint border control missions and the European border agency Frontex[16].
While it is certain, from a United nation organitation and relative agencies perspective, that any state member, whenever it is exercising jurisdiction over the migrant, is responsible for receiving and treating asylum seeker according to social and human rights basic principles, there is large uncertainity as to where and when it can be told that such a jurisdiction is actually existing and actually exercized – especially when migrants are found at high sea – and this is the most hard issue to cope with at the political level. This is leading to the crisis of the Dublin/Schengen agreement, which is worldwide recognized, while application of the principle of 'non refoulment' turns to be at risk.

It is news of these days that Great Britain decided to connect the permanence in the European Union to the provision of suspending allocation of social benefits to refugees entering for a period of seven years[17]. Italy and Germany remains pretty isolated in declaring a continuing policy of unlimited hosting – which is what is formally provided by the United Nations Organitation legal system – but for the pressing on the need of adoption of a common European commitment as soon as possible, both for the sharing of the responsability of ruling over migrants coming into the contintent illegally and for according a system of material re-destribution of those seeking asylum amongst all the European countries. Proposals have been handled to the EU Parliament for a unique procedure to ask for asylum at the European Institutions rather than to the country where the illegal migrant is found to be staying in according to the existing treaties[18].

It must finally be put a special focus on the United Nation Convention on the protection of all migrant workers and their families[19], entered into force in 2003 and ratifed by only many developing countries to this day[20] , which is innovating insofar it provides protection of migrants and their human rights independently from their status, and whose application is monitored by a panel composed of ten experts elected by the states. The importance of this document is clear from its art. 1 defining the scope of the discipline: " the present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without

[15] M.De Stefano, I diritti umani degli immigrati clandestini, in La Previdenza Forense, 3/2015, p. 265.
[16] S. KLEPP, A Contested Asylum System: The European Union between Refugee Protection and Border Control in the Mediterranean Sea, European Journal of Migration and Law 12 (2010) 1–21.
[17] Newspaper 20-21 febbraio (to be detailed)
[18] L'Unità, Tuesday, March the 1st 2016, pp. 3-5.
[19] http://www.un.org/documents/ga/res/45/a45r158.htm
[20] According to wikipedia web page https://en.wikipedia.org/wiki/International_Convention_on_the_Protection_of_the_Rights_of_All_Migrant_Workers_and_Members_of_Their_Families , as of May 2015, the following 48 states have ratified the Convention: Albania, Argentina, Algeria, Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guyana, Guinea, Honduras, Indonesia, Jamaica, Kyrgyzstan, Lesotho, Libya, Madagascar, Mali, Mauritania, Mexico, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Saint Vincent and the Grenadines, Syria, Tajikistan, Turkey, Uganda and Uruguay.

distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status". The fact that no European country has ratified it yet, can be a demonstration that, behind many opening declarations, member states keep in seeing migration policy as a striclty national issue, and they tend to think about their econonomic/employment deficits by just giving precendence to national workers[21].

2. Here we come to the matter of trade unions, and collective bargaining, as global migrations policy- makers.
Trade unionism is a tool for delivering replies to the matter of migration and its complexities before the governament do it itself – both at the national level and at the European level – . Replies other then governative are not only possibile, they are expressly provided in the international legal frame, where we find procedural norms stating that employers and trade union organizations have the right of initiative in the field of combating abusive conditions in labour migrations (art. 7 of the ILO Convention n. 143/1975). Trade unions are then involved in the procedure that oblige every contracting state to report to the ILO about the conventions implementation (especially in case of fundamental conventions), procedure wherein they can play a part.
Trade unions can be also directly involved in the implementation of these ILO conventions, especially in each case where there is evidence of an infringment: firstly, it is laid down a representation procedure concerning the dispute between an organization and a contracting state (art. 24-25 ILO Constitution) that can lead to a deliberation by the ILO governing body on the appropriateness of publishing the representation and any answer from the government (concluding with a communication of the decision to organizations and to the government[22]). Secondly, there is the possibility to refer to the ILO for cases of denial of the free association right to workers, even independently from the ratification by the interested states; entitled to take a decision, here, is going to be the special Committee for the freedom of association[23]. Amongst the cases arrived to the Committee, the most famous is the Hoffman case, regarding mexican undocumented workers, whose case for lost wages arrived to the Supreme Court of the US, that ruled by stating that immigration policies and labour law was at conflict and that immigration policies took precendence. The labour unions reported the case to the ILO, by saing that freedom of association was there violated and that such a precedent annulled labour rights and granted employers an impunity to hire illegal migrants.

Trade unions can also sustain the ratification and implementation of international standards at the level where they are actually operating. Much has been done in this perspective in the course of the years, both at the international level and at the national level, and many associations now provide for special section of bargaining and representation for migrants.

Institutional procedural steps of which trade unions are capable are not the only path

[21] Italian and Irish national trade union confederation are campaining for ratification of it (In search of decent work , op. cit. p. 101).
[22] There is also a complaining procedure concerning a dispute between two states, where a state governament is alleging that the other is not duly recognizing effective observance of a ratified convention (art. 26 ILO Constitution).
[23] Many other cases have been brought before the Committee for freedom of association, cases from both European, American, developed and less developed countries.

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to follow in order to investigating the nature, neutral rather than policy-maker, of any collective bargaining acting over the issue of migrant workers.
Much space for action is also to be found within the many substantial norms, as partially reported above (for example, the flexible legal frame that determines the relevant time and place of residence of a worker in relation to the recognition of him or her as a refugee is giving a wide range of possibile legal actions): in such spaces, the intervention of any volunteer, be this an employer, a representative or trade union representative, or an administrator, an NGO's activits or similar, can be of precious help in the legal managment of working migrants.

It is known, and officially reported as well, that very often migrant workers are allowed to be employed illegally in a country, while no decision is taken over their status, which thing put them in a rather vulnerable position[24]. In the shadow of irregular migrations, national restrictions justified on the basis of public order and social security, can be easily taken as a justification against the implementation of minimum human and labour standards. In addition to this, it has been observed, particularly in relation to the Italian strategy to cope with illegal migration from Libya, as well as in relation to the German strategy with Turkey, that international organization and non governative organizations that intervened by adopting ad-hoc-politics on an administrative level "can be very productive (but, n.d.r.) leaving the democratic decision process out or behind"[25]. Here is why a sort of jungle-like situation is not only possibile but even suggested in order to achieve results that would have not been achieved otherwise.

I have just tried to explain, here above, that the main originary and political issue preventing from a plain application of the international, world wide accepted, standards for working migrants, is the nationalist approach, rather than a common-European one, to the flows of migrants. Nationalism is leading to continuing disputes over the competent jurisdiction at the detriment of those seeking asylum. In other words, to this day, the most struggling matter for any operator acting, also at his own risk, at the borders, is whether the action must ultimately be coherent:

1) within the EU/Dublin system – that is based on the superior appreciation of national states and governaments (wherin final implementation of norms is certain insofar the national jurisdiction is accepted), or

2) within the international conventions for working migrants and refugees (wherein final implementation ultimately relies upon the many uncertainties that traditionally remains for the execution of international laws – the above mentioned Hoffman case regarding right to payback for undocumented mexican workers is a plain example to this).

On the one side, to the purpose of determining the national jurisdiction (and therfor the effective implementation of rights), the intervention of any voluntary representative or non governative organization cannot be of any help; on the other side, to the purpose of directly implement the human and labour rights of any working

[24] In search of decent work, op.cit., p. 72.
[25] S. Klepp, op.cit., who – as an on camp researcher - added that It was used by the Italian Minister of Interior Giuseppe Pisanu and his German counterpart Otto Schily to promote the idea of Regional Protection Zones and Transit Processing Centres in Northern Africa, which had been brought up by Tony Blair in 2003. This "external solution" was presented as putting an end to the humanitarian problem of so many migrants drowning in the Mediterranean.

migrant and his or her family, each positive action turns to be of great utility in the perspective of approaching the matter as a simple rights-based one (rather than a matter of law and order issue).

The confusion over work-related issues and collapsing law and order once (which is a confusion often just provoked from those choosing a more conservative policy), has *de facto* lead to several misunderstandings and violent reactions on many borders and local sites of transit for huge masses of migrants. Borders are where and when the international rules for refugees is actually implemented and so developed, they are where the legal scenario, which is just shadowed by different national approaches, make the public order borderlines far from clear: there is a situation that sets many stoppings on those possibly operating in fear of doing the right thing to help, and, at the same time, it opens to opportunities for those intentioned to persue illegal smugglering and trafficking.

The situation is one that can be easily strumentalized to the detriment of the more vulnerable once, since missions aimed at protecting refugees, also those relying upon a common European policy for fighting illegal migration, are ultimately enahnched by local bourocrats and operators that enanche that policy according to also their own interests, as well as to possible irrational reactions and neighboroods influences.

This makes opportune a special survaillance as well as analyis over development of the law in the special local context[26].

In such borderline cases we need to reflex upon how far can collective bargaining intervene by staying within a given jurisdiction, or else by applying a simple but broader rights-based approach - like a matter of positively operating in areas wherin collapsing jurisdictions, local interests, and real needs of the involved people do meet, calling for for a delicate but realiable reply being ultimately coherent with the legal system. This is the urgency: a matter of relationship of trade unionsim and political power.

In order to investigate the political attitude of trade unions towards global migration, it is important to depart from the confusion just mentioned on public order issues and nationalism. Nationalism is not at the basement of the public order ruling: the defence of a national interest, which is generally an economic interest, is conceptually other than the defence of public security.

Rules of public order, both national and international, are essentially set for I) preventing harms on safe and security of people – particularly before the threat of terrorist attacks – as well as for II) preventing untollerable disregard on social security, insofar a massive and uncontrolled flow of people in need could be told to threat the economic balance of the social security system of a nation. Labour law is called to play a key role in any migration policy because of its crossing health and safety issues with economic and civil liberties.

Facing the terrorist threat, we can see that to paint a migration with the tint of a real perspective of employment, does exclude the terrorist perspective, because both the parties to an employment relationship are supposed to be interested in a movement that is considered socially beneficial and productively opportune.

[26] S. KLEPP, op.cit., p. 18.

Facing social security, the reality of an employment relation, having bilateral duties that includes contribution to public or private social assistance as well as tax deductions, exclude a disbalance on the social security system. In other words: regular contribution and tax payments by migrants do not allow to consider the migration as a passive attitude ultimately going to steal what is there for nationals. In addition to this, reality shows that much of the income as received by immigrant workers are remitted to the countries of origins and benefits the social security of family members keeping there their residence (Indian people on top of the list[27]). To say it more simply, if we consider migration as a legal phenomenon, we must conclude by saying that it actually emproves all the involved social security system.

Let's do a scholar example. There could be an Italian employer who, preliminary to the real migration[28], or when the refugees have entered the country already, whished to employ a group of foreigners because of their specific skills: the interested workers could be syrian and wanted to be hired for their specific language skills, they could be american and wanted to be hired for their specific capability in businness, or, independently from their nationality, they could be appreciated for their experience in peacekeeping.

The example requires to be considered differently, to the purpose of this paper, if the migrants are already in Italy – and so documented by the central/local officers – or if they still need to legally enter the country, since the latter case is the only one where collective bargaining can intervene in policy-making, rather than neutrally managing a phenomen that is already identified and ruled by the government.

So let's go analysing the situation where trade unions are still in position to play as policy makers. Whenever the refugees still need to be documented as such, a controversy could arise because of competition with Italian workers having the same skills and availability, but not wanted to be hired: the Italians could so be disappointed, or even they could complain on ground of discrimination. In such a case, the matter would be classified as a political one, and analysed accordingly within the civil system. More precisely, Italians who thinks to be treated unjustfully, would have two main options to persue their own undone interest: they could claim it as a civil right before the competent authorites – arguing to be discriminated and to have the same level of ability and availability – or, let's keep the school hypotesis of a unique employer in the labour market – they could choose to negotiate their job position in a more convenient manner by relying upon different workers'representatives (whose strenght should be that of finding better alternatives and adjustments in the job management, comparing the chances of the migrants).

Given such an example, no issue of public order nor of social security might be put on the table: any matter of health and safty is actually in point, nor any matter of social security balance, because no terrorist intentions, nor threat on the balance of the social benefits as already set in place, can be told to be on the horizon. This can be said with a certain self confidence in the particular consideration of the Italian social security

[27] In search of decent work , reporting a World Bank data, op.cit. p. 56.

[28] In Italy, any single person being not a European national who is asking to enter needs a permit to do it, that can be released by the governalmental authorities both for dependent employment (art. 5, 5bis, 21, 22,24 L. 289/2012) or self employment (artt. 21, 26, 37, in which cases the person is asked to prove his or her ability to rely upon private means), family re-junction (art. 28) or for asylum (art. 18, 18 bis, 19, 20, 42 L. 289/2002), in accordance to ministerial guidelines and available resources. A special "long permit" to stay is realeased to Europeans.

system, which is one of a contributory type of benefits, just so progressively accomplished since 1995[29].

The case would turn to be a fully different one in case of descovery of an illegittimate purpose standing behind the employment agreement: whenever the employment would result in being the cover for an illegitimate aim, for example the will of realizing terrorist attacks, or the will of achieving other fraudolent goals, then, the mere fact that Syrian rather then American or Italian workers are involved wouldn't mean anything. It is so clear that nationalism is a different concern, while those who are competent for the keeping of the public order would need to go well beyond the employment contract to find the relevant truth. On this path, it happens that preventional type of controls, at the deteriment of the privacy of especially the moving people, are a price to be paid while inquiring on criminal actions[30].

The nature of collective bargaining is going to be self evident only in its concreate attitude to achieve goals affering the managment of labour administration: if we use the scholar example above, we see that labour unions having taken an active role of pro-migrations policy, by dealing directly with migrant workers comining from outside Europe (for direct hiring or promise to be hired before a migration) would give a progressive impact on reality. On the reverse, a conservative policy by trade unions (restrictions on migrations and preference on nationals as for hiring and global treatment) would give a conservative impact, which is more easy to be coherent with national governament policies.

It is here to underline the fact that, independently from the nature of a trade union action on migrant workers, we witness to a limited or null power of trade uninists once the situation would result in presenting criminal offences. The sad case of the Italian researcher who was in Egypt investigating over independent trade unions on behalf of an English university, murdered, is laudly calling for an investigation over the relevant matter of (criminal) facts that goes far beyond the nature of the unionism being possibly operative, whether indipendent or "dipendent" on national governaments.

3. As for the Italian scene, some preliminary remarks about the historical nature of trade unionism might help in catching its changing nature in turbolent times. And, what is more important for the migrants issue (their involvement in a legal working context is also a matter of representation), historical changes in approaching the matter of workers'representation is to be remarked nonetheless. This is rising the more basic issue as to what extent immigration can be told to be a national bipartite (labour-state) question, rather then a tripartite (labour-state-employer) relation.

[29] Italian reform of social security in 1995 disposed that pensions will be delivered on the ground of what actually paid in deduction of one's remuneration; before the reform, pensions where delivered on the base of what was received in remuneration in the last years of employment.

[30] G.DE MINICO, Internet and fundamental rights in time of terrorism, Associazione Italiana dei Costituzionalisti, rivista n. 4/2015 pubblicato il 6 novembre 2015 argues that ""This difference in weight between costs and benefits suggested the judges to set the proportionality not in the usual terms of equivalence, but in those of reasonable inequality: the advantage to the protected value (security), because of its uncertainty, must exceed the certain damage caused to the compressed right (the right to freedom susceptible of being attacked). In a constitutional State, the injury to basic rights is acceptable only if necessary for the defence of a value equal to or greater than that concretely threatened by aggression".

The Italian "reformist" trade unionism, meant as a movement tending to the economic and social progress of society rather then to organizing and preserve the status and privileges of the involved working classes, is born together with the rising of the its political involvement in the country life.

Scholars report that, differently from Great Britain[31], where it was the experience of trade unions, in the first place, which lead to the establishment of the labour party (and differently from also Germany, where national trade unions were established upon a first will of the social democratic party instead), the evolution of the workers' representation in Italy stepped *simultaneously* into the political dimention: this happened because of the early '900 years experience of the labour chambers, which became the main organizational model for workers' representation[32].

The establishment and widespread operation of labour chambers signed the abandon of a strictly oppositive approach against the employers'interests by the early workers'representative; it was opted to look for understataments with the local governments, as well as for meeting the ideals of the more illuminated bourgeoisie and democratic leaders. There is when economic and political interests started to be inestricably locked together and needed to be dealt so, as for the workers' perspective.

In the early mutual collective agreements, workers were professionally protected and solidarity was limited to those who were associated and represented, while the passing to new big corporations – of which the labour chambers represented the preceeding historical step – witnessed an epoch of representation without a direct mandate; corporations were declaring to have the purpose of negotiating price and working conditions for any worker – including those not represented – coping, therefor, not only with employers, but the outstanding economic system and public entities as well[33].

Trade unionism in Italy has then progressed into the constitutional period since January the 1st 1948. The Constitution set a ground of principles meant to profoundly maintain the country in peace within and through all the international legal system, wherin liberty in collective representation of workers and individual labour rights are mixed and, procedurally, the way to enanche them is left to unions themselves, or, ultimately, to judges.

The constitutional charter is based upon an art. 1 that states: "*Italy is a democratic Republic, grounded on labour*". Art. 4 is meant to recognize to every *citizen* his right to work, and promote conditions to actually make it concrete. Art. 35 remarks the commitment of the Republic to protect work in all its form and applications. Art. 36 does recognize the individual right to a remuneration being sufficient and proportionate to the work done. Art. 37 expressely affirms equal treatments to men and woman at work, as well as protection of the motherwood. Art. art. 38 states the commitment to social security for those who are unable to work.

In such a frame for individual labour rights, the charter does affirm that trade unions' activity is free (art. 39), that no obligation can be imposed on trade unions but for

[31] Heather Connolly, Miguel Martinez Lucio and Stefania Marino, Trade Unions and Migration in the UK: Equality and Migrant Worker Engagement without Collective Rights, University of Manchester, businness school – Project funded by the Leverhulme Trust 2012.
[32] I. Barbadoro, Storia del sindacalismo italiano dalla nascita al fascismo, 2 Voll, Firenze, 1973.
[33] S.Musso, Accountability e organizzazioni sindacali: una analisi storica, in Responsabilità e trasparenza nelle organizzazioni sindacali, a cura di A.Grandori, Egea, 2001.

their public registration and their democratic internal structure; on the other side, the charter states that trade unions can sign agreements that will bind any worker belonging to the professional category that is unitarily represented by the bargaining union. It is from this very sophisticated compromise in defining the link between trade unions' bargaining power and the involvement of workers in the baragining process that we find more than half of a century of history of Italian labour law.

The sophistication of the compromise stays in the fact that no clear mention of the worker's consensus in negotiatiating, bargaining, signing, enjoying as well as desregarding the collective agreement is present (neither a fast-easy transposition of the rules for private agreements fully applies, because of the public interests regarding both employees and employers, affering social and tax legal deductions for example).

It has so begun a long period of time where the "workers' representativness" (*rappresentatività*), meant as the capability of the main trade unions to be recognized by employers, as well as by the state, for speaking and acting in the name of any workers, has been walking aside from the concept of "effective representation of workers" (*rappresentanza effettiva*), meant as inclusion of the workers' individual consensus in collective agreements; this fact established a sort of double track possibility for the workers' interests to be spoken out. It has been like a mirror for reality, wherein any "collective labour right", like the right to strike, or the right to be represented by a trade union whether by direct vote or by association, can be interpreted differently insofar a discrepancy arise in considering the individual rather then the collective aspects. Whether any labour right is a matter of collective/general interest or just an individual matter, is a question far from being finally replied.

The Italian 1970 main reform for labour relations, was moved by the so called "autunno caldo" of 1969, and lead to the most important statute on labour law an unions activity that is Act n. 300/1970. This opened a period of collective labour ruling that was essentially based on a principle of "unions' formal" autonomy, recognized from the state and its governamental agencies. Such a formal autonomy was theoretically based over the idea of "the plurality of legal systems" as meant by Santi Romano and transposed into labour law – admittedly by taking it easy[34] – by Gino Giugni.

In that perspective, later statutory laws mentioned collective agreements in order to reach some specific policy goals just occasionally, for example when determining the level of social security contributions[35].

Internal rules for the exercising of the collective power in representing workers and facing employers, instead, was kept out from the statutory consideration. Art. 19 of the 1970 statute ruled the presence of trade unions in the work place without introducing any procedural norm: it only stated a generic "legitimacy" of those having a major representativness at the national level, as well as those having signed collective agreement with the employer already. The statute provided the opportunity for workers, just unitarily represented by the unionists, to call a referendum out from working time, it granted – and still grants today – labour unions leaves and fees to be allowed by the employer (art. 23, 24, 26), it recognized protections to trade

[34] G.Pino, Uno studio su Gino Giugni e il conflitto collettivo, Giappichelli, 2014, 56.
[35] See art. 1 D.L. 338/1989, converted L.389/1989, stating that the base for calculation of social security contribution is that provided by statutory law or by collective bargaining, as well as the individual labour contract as far as it is granting a remuneration higher that that accorded by collective bargaining.

unions'representatives, and spaces for unions proselytism, but no referrence was made to collective bargaining procedures, nor to its objectives and topics.

The only procedural tool introduced in the 1970 statute is the one protecting trade unions' freedom of activity: art. 28 stated that, whenever the employer would prevent a union from "exercising freedom and statutory rights, as well as strikes", then the major, nationally representative, trade unions, are in power to activate a fast track procedure before the employment tribunal in order to stop it. The employer that would insist in preventing trade unions freedom of action and rights, even against the order of the employment tribunal, shall be condamned according to criminal law.

This legal frame is giving the picture of the social role that the Italian system was recognizing to trade unions in the Seventies: after a couple of decade (1950-1970) when industries and lobbies growed in the context of a world divided in two blocks, the likely capitalist and the likely communist, it arrived the time when Italian trade unions were settled to clearly limit the employers' power, politically and economically. This finds substantial confirmation in a provision like that of art. 41 of the 1970 statute, where we read that any act or documentation as needed to exercise rights and liberties therin accorded, is out of tax purposes (which formally means that those managing working rights and liberties have full economic power over such a management – but for the contrary substantial consideration that all workers and employers are called to contribute to the revenue system with incomes just derived from both labour and businness).

It has been observed, later on, considering the Eighties', that "*instead of directely rule the social behaviour, the law has ruled organization, procedures, and re-distribution of 'individual right to be oriented*""[36] and, to the purpose of this study, let's underline it is meant an organization and procedure internal to trade unions – thus a typically private king of ruling – although not peacefully transposable into civil law and civil procedure.

No need for democratic rules to measure the trade unions "effective representation" has been satisfied untill the Ninethies', when the public sector was ruled by statutory intervention (D.lgs 29/1993, now D.lgs 165/2001), while in the private sector we can find a first express regulation in 1991, when the three main Confederation signed an unserstatement having the purpose of "*protecting workers more effinciently and giving trade unionism a bigger impact on the life of the country*". On March the 31st 1991 the three main Italian trade unions, GCIL, CISL, UIL, there stressed the need for a unitary vision of trade unionism as the most preferable way to represent workers'interests, expressly stating that this does not mean any waiving to identity, sovranity or entitlement of the single union. This is coming up in the premise, as well as in many other points of the procedures ruling the bargaining unit (B, b.2), representativeness (E), workers'representation in the premises (Part. IV, ruling the unitary representative of workers) and different premises interacting as well (Part. IV, lett. m).

Now, going back to nowadays, in winter 2015-2016 there has been a proliferation of new statues and new charters for labour rights in Italy, aimed at extending the scope of minimum labour rights as well as to defive new rules for workers'representation – but none of these documents are directly coping with the problem of global migration,

[36] G.Teubner, "Dilemmas of law in the Walfare State", Gruyter 1984.

although they all stress the will of making collective bargaining effective and applying its effect erga-omnes. Meanwhile, the Italian central governament is struggling to face the problem of migration at the European level.

Italian newspapers lack in reporting about any particular, politically relevant, position by the main Italian trade unions to the specific urgency rised by global migrations in 2015; such a neutral attitude requires special attention.

The political role played by trade unions is always related to the economic situation: an empoyment perspective, be it for nationals or aliens, cannot be given whenever the interested economy is in crises. Datas are showing that public supports to Italian enterprises in crisis have been delivered in 2015 with an appreciable decreasing (34% less then the year before), but it is questionated by the unions whether such a positive result is depending on a real economic growth or upon bureocratic obstacles in actually obtaining the benefits from those entitled[37].

It is thus going to be up to trade unions in their specific sector and operational sites and workplaces to choose whether to take on a political responsability, pro or contra, progressive rather than conservative, while facing migrant workers in the likely event that their economies are promising; moreover, the case of migration for economic purposes turns to be particularly relevant in the consideration of the developing Italian labour law being progressively extended to self employed[38].

Given the possibility of hiring or employing migrant workers, the attitude of keeping of a "neutral position" by unions representatives who are in position to operate otherwise, would not appear to be consistent with any policy, not progressive and pro migrants, nor conservative and contra migrants; theoretically, such a lack of intervention, one way or the other, is going to be easly strumentalized for illegal purposes, like that of increasing a climate of suspect over the risk of terrorist attacks.

The reflection about possible policies adoptable by unions, immediatly recall our tradition of pro "united" unionism, which is one operating for all workers, and not just for some of them. As the international legal frame do recall, as well as the Italian Constitution seems to suggest in art. 39, trade unions are in the business to represent not only those workers being already trade unions'members, but any worker, and migrant workers are recognized worldwide as a possible source of young strenght to a movement that is nowadays perceived as referring and doing the exclusive interest of the elder workers. By the way, in Italy it is now achieved a national unitary approach again within the three main confederations, after the separation that happened in 2008 because of the Fiat-Chrysler case – which lead the multinational enterprise to resign from collective bargaining at the national level. At the same time, since we are dealing with a terrorist threat that is now assumed to come together with migrant workers, it is worthy to remind that the first time unity of trade unionism collapsed in the story of Italy was right after the terrorist attack on 1948, July the 14th, to the person of Palmiro Togliatti[39], militant of the communist party and ministry of the Italian democratic government, newely established after fascism; precisely, trade unionism collapsed because of disagreement about the opportune

[37] La Repubblica, Frena l'industria, Cig ai minimi, Contratti, lite imprese-sindacati, 15 gennaio 2016, 31.
[38] The national government announced the introduction of a statutory measure to protect self employment, in connection to the annual act for financial stability.
[39] http://www.ilsole24ore.com/art/SoleOnLine4/Tempo%20libero%20e%20Cultura/2008/07/Storia-storie-togliatti-14-luglio.shtml?uuid=ffa605fe-4db5-11dd-a728-37a811b9dd49

reaction to that attack, perhaps because it is not easy to state whether such an extremism have roots in a right or left orientation.

This is suggesting a deeper analysis about uniformity of policies, as well as on the need to maintain a distance between ruling powers. Institutional equilibrium appears to be the better policy achievement in a changing society, werein development do comprehend both fundamental human and labour rights as well as repression of criminal offences.

Such a perspective in facing the high social pressure of global migration is a strong argument for the states to systematically prefer a tripartite approach (workers-state-employers) whenever employment or self employment of migrant workers must be legally addressed.