BOOK V
LABOUR

TITLE I

CHAPTER 1
GENERAL DISPOSITIONS

2060. Of work - Labour is regulated in all its organizational, executive, intellectual, tecnica and manual forms. (35 Cost.) [according to the principals of the work papers] (1).

(1)___Supressed by article. 3, D.Lvo Lgt 14 September 1944, n 287, provisions relative to the reform of the civil legislation.

2061. Order of the professional categories - Professional categories is established by the laws (2229), from regulations, from decisions of the governative authorities and from the statues of the professional associations (1).

(1)The expression << and from the statues of the professional associations>> is to be considered repealed from R.D.L 9 August 1943, n. 721, relatively to the corporations, and from D.L. va Lgt November 23 1944, n.269, relatively to trade unions.

2061. Professional exercise of economic activities - The professional exercise of economic activities (2082, 2247; 41 Cost.) is disciplined from laws, regulations and corporative norms.

(1)The expression <<and corporative norms>> is to be considered repealed from R.D.L 9 August 1943, n. 721.

CHAPTER II
OF CORPORATE STRUCTURES
AND ECONOMIC COLLECTIVE
AGREEMENTS

The whole chapter composed by the Articles 2063-2066, has to be considered repealed following the suppression of the fascist corporate law, disposed by R.D.L August 9 1943, n. 721, relatively to the central organs and corporations, and D.L vo Lgt 23 November 1944, n. 369. Relative to the trade unions.

2063. Object - The corporate orders (5, 6 prel.) for the coordination of production and of the exchanges can relate to:

١. unitary discipline of production
٢. regulation of reports between specific professional categories
٣. the tariffs for the performance and the consumer goods offered to the public with background privilege.

The modules identified in the n. 2 can also, in cases and in the manner laid down by law, form subject of collective economic agreements between the professional associations the represent the interested categories.

2064. Formation and publishing- The formation and publishing of corporate ordinances and of collective economic agreements are regulated by special laws (10 prel).

2065. Effectiveness - The corporate ordinances and economic agreements have effectiveness for everyone that exercise their activity in the production branch regulated by ordinances and by the same agreements.

2066. Non-derogative - The individual contracts cannot derogate corporate ordinances and at the collective economic agreements, unless he/she permits it.

The clauses of the individual contracts, not consonant with the mandatory laws set out by the bylaws and in the agreements laid down in the present chapter, are rightfully substituted by these rules. (1339, 2077)

The disposition of the preceding subparagraph is non applied to the contracts stipulated before the entry in force of the cooperative ordinance or of the collective economic agreement. Anyway, the ordinance and the agreement can establish that the norms contained in them are applied also to the ongoing contracts in continuous or periodic execution, for the part which has not been yet executed.

Chapter III
COLLECTIVE LABOUR CONTRACT AND EQUATED NORMS

2067. Subjects - The collective labour contacts stipulated by professional associations. (39⁴ Cost,; 5 prel.).

- The relationship between the collective national and the corporate contract, regulated not according to hierarchical principles or speciality of own legislative sources, but on the basis of effective willingness of the social partners, is characterized on account of a mutual autonomy of the two disciplines (and of their distinct application), which has been reflected in the trade union world, also in the aspect of industrial relationship. It follows from that, although the economic and normative treatment of the single workers as a whole is constituted by all the arrangements of the two different contractual levels, the national and corporate discipline, they differ from each other for their distinct nature and negotiating source with the consequence that the respective constituent and extinctive event do not interact, each discipline responding with own rules on account of the different contractual agents and of their different territorial scope. (*Omissis*) * Cass. civ., sez. lav., 18 September 2007, n. 19351, Az. Trasp. Bergamo Spa and other c. Mariano and other. [RV599932]
- The report between collective bargaining agreements - as it is to qualify also the corporate contracts of different level has to be resolved under not at the principle of the subordination of the local collective contract to the national one (unless the expressed prevision of deferral postponement), neither of chronological ones (of the prevalence of the contract in the past), but in the case of the effective willingness of the working parties in the closest area to the arrangements governing. (*Omissis*) * Cass. civ., sez. lav. 19 April 2006, n. 9052, Francese c. Inesa Riscossione Tributi Spa. [RV588665]
- With regard to the theme of collective negotiation, the so called <<hypothesis of agreement>> may not represent the mere documentation of the final stage reached from the negotiations, but can constitute an expression of an effective contractual willingness, by finding justification, in this case, the adoption of the term <<hypothesis>> arises because a phase of ratification of the final negotiation should not be affected, especially for the party representing the workers. It is for the court to ascertain which nature can concretely be attributed to an hypothesis of agreement, on the basis of the willingness of both parties, which can also be implicit and be deduced per policy - corporate, sectoral and possibly also national - sufficiently conclusive (*Omissis*) * Cass. civ., sez. lav., 6 April 2005, n. 7115, Limonta c. Monti paschi siena spa. [RV580375]
- In the case of a succession of collective bargaining agreements of different level (national, provincial, corporate) the possible contrast between the relative projections cannot be solved according to hierarchical or speciality principles, specific to legislative sources, but based on the identification of the effective willingness of of both parties indicated by the coordination of the various dispositions, of equal decency, of the national and local bargaining, notwithstanding that a new collective contract (wether it be national or corporate) can also amend *in pejus* the previous collective discipline (of wether level it might be), just limited by the respect of the presence of actual rights (and not of mere expectations) permanently acquired by workers as thought it were normative and then surpassed by the pejorative, * Cass. civ., sez. lav., October 6, 2000, n. 13300, Milillo c. Amtab Az. mun. trasp. autofiloviari di Bari.
- In the absence of norms that require, for collective bargaining agreements, the written form, and in application of the general principle of the freedom of form - on the basis of which the norms that require that determinate contracts or documents must be made with specific forms are strictly interpreted, insusceptible, namely, of analogical applicazione, the corporate deal is valide also if not concluded in writing. *Cass. civ., **Court Cassation**, 22 March 1995, n. 3318, Società Esselunga c. Meda and other.

2068. Labour relations exempted from collective bargaining agreements - Labour relations cannot be regulated by collective bargaining agreements, in so far as they are regulated with public authority acts in accordance with the law.
Labour relations concerning personal or domestic performance are also exempted from the discipline of the collective contract (2240 ss.) ([1]).

([1]) The constitutional court, by judgment n. 68 of 9 April 1969, has declared constitutional unlawfulness of the second subparagraph, in relazione to article 3 Cost., in the part I which it is stated that labour relations concerning domestic performance are exempted from the discipline of the collective contract.

2069. Effectiveness - The collective contract shall contain the identification of the category of entrepreneur and of their working performance, namely the business (2082) to which it refers, and of the area where it's effective.

In the absence of such particulars, the collective contract is mandatory for all entrepreneurs and personnel hired represented by the stipulating associations (2075).

- In the area of collective bargaining agreements of common right, the documents instituting the proceedings, proposed by a worker non associated to the contracting trade-union organizations, aimed to achieve an application of the same clause, shall be understood like an implicit adhesion to the collective contract. * Cass. civ., sez. lav., 13 October 2015, n. 20504, Cottone and other c. Ministero *Infra*strutture Trasporti Gestione Governativa Ferrovia. [RV637738]
- The collective bargaining cannot affect, in relation to the rule on the intangibility of acquired rights, in the pejorative sense on already consolidated positions or on rights which have already entered in the heritage of the workers in lack of a specific mandate or of a successive ratification by the operators themselves, but only by rights of the not yet acquired single worker. The adhesions of the interest party - subscribed or not to the contracting association - to a collective contract or agreement can be, moreover, not only explicit, but also implicit, for conclusive factors, which are generally discernible in the practical application of the clauses. (*Omissis*) * Cass. civ., sez. lav. 1 July 2014, n. 14944, Le Fauci c. So.Ge.Ser. Spa [Rv631602]
- The contrast between collective bargaining agreements of different territorial scope (in the present case, national and regional) has to ne resolved not according to hierarchical or own specialties principles of the legislative sources but on the basis of effective willingness of the social parties, to be inferred through the coordination of the various disposition of the collective bargaining, having both equal dignity and binding force, so that also the territorial contract can, by virtue of the principle of negotiating autonomy referred to in Article 1322 c.c, extend the efficacy of the national contractor and derogate, also "in pejus" without that publicans referred to in Article. 2077 c.c., subject to the safeguarding of the rights already acquired in the heritage of workers which cannot receive a way that is inferior because of the previous normative of equal or different level. (*Omissis*) * Cass. civ., sez. lav 18 May 2010, n. 12098, Sos Lav. Edili DI Serra Martino Mario c. Melon [RV613901]
- Also in the area of privatized public workforce, the contast between collective bargaining agreements of different territorial scope (national, regional, provincial, corporate) has to be solved not in basis of the hierarchical criterion (which would imply the prevalence of the discipline of higher level) and not for the temporal criterion (which would always imply the prevalence of the most recent contract and which is determinant only in the hypothetical succession of collective bargaining agreements with identity of stipulating subjects, namely of the same level), but according to the principle of autonomy (and mutually, of competence) like the functional connection that the trade unions (in the exercise of their autonomy) pose through statutes or other suitable acts of limitation, between the various degrees or level of the organizational structure and of the corresponding activity. (*Omissis*) * Cass. civ., sez. lav., 26 May 2008, n. 13544, Angioni and other c. Ente Foreste Sardegna [RV603288]
- The territorial scope of the labour collective contract's effectiveness is non necessarily or even limited to national territory, but has to be ascertained on the basis of an interpretation of the single contract terms, directed to establish which are neutral compared to the place of submission. (*Omissis*) * Cass. civ., sez. lav., 3 October 1996, n. 8668, Lavia c. Ferrovie dello Stato spa. [RV499905]

2070. Criteria for application - The membership to the professional category, for the purpose of the application of the collective contract, is determined according to the actual activity exercised by the entrepreneur. (2082).

If the entrepreneur exercises distinct activities displaying autonomous character, the norms of the collective bargaining agreements corresponding to the single activities are applied to the respective labour relations.

When the employer exercise a non professional organized activity, the collective contract regarding the regulation of work relationships relative to the companies undertaking the same activities is applied. (13 prel,).

SUMMARY

a) Generally

b) Exercise of distant businesses

a) Generally

- The first paragraph of Article 2070 cod. civ. (under which the membership of the professional category, for the purposes of applying the collective bargaining agreements, is determined according to the activity pursued by the entrepreneur) is not active in regards to the collective bargaining of common right, which its binding force is limited to the individual subscribed to the stipulating trade unions and to those that have explicitly or implicitly adhered. Therefore, in the event of a labour contract regulated by the collective bargaining agreement of common right in a sector which does not correspond to that of the activity carried out by the entrepreneur, the workers cannot aspire to the application of a different collective contract, if the employer is not obliged for trade union belonging, but only possibly recall such discipline as a term of referral for the determination of the retribution ex Article 36 Cost., deducing the non-conformity to the constitutional precepts of the economic treatment provided by the applied contract. * Cass. civ., sez. L, 18 December 2014, n. 26742, Ericsson Telecomunicazioni Spa c. Ferri A. Idem, Cass. Court Cassation, 26 March 1997, n. 2666 [RV633684}
- In the existing subordinate institutional framework, regulated by collective bargaining agreements, identification of the collective agreement that regulates the labour relationship shall be made solely through the inquiry of the willingness of the resulting parties, as well as by expressed agreement, also implicitly of the extended and not contested application of a specific collective agreement. Recourse to the criterion of the economic category of belonging of the employer, referred to in Article 2070 c.c, is allowed for the sole purpose of identifying the appropriate of retribution *ex* Article 36 Cost., until it does not result applied any collective agreement, namely it is deducted the inadequacy of the contractual remuneration *ex* art. 36 Cost. Compared tot the effective exercised business activity. * Cass. civ., sez. lav., 8 May 2008, n. 11372 Lo Verde and other c. Amg Energia Spa. [RV603084]
- The industrial or agricultural nature of the business activity, relevant to the applicability of Article. 18 of the law n. 300 of 1970 in relationship to Article 35 of the same law, it has to be ascertained not on the basis of other abstract general criterions like those established in social security schemes, from Articles 33 of D.P.R. n 797 of 1955 and 6, lett. *b*) of the law n. 92 of 1979 or in the area of calculation of agricultural income, of art. 28 of D.P.R. n 597 of 1973 but, in conformity to the declaration of the first subparagraph of Article 2070 c.c., put in necessary connection with Articles 2195 and 2135 of the same Code, on the basis of the business activity exercised by the entrepreneur, moreover to consider, after the suppression of the corporate legislation, not merely the same as the product criterions, but taking account of the assessment operating from the collective agreement. (*Omissis*) * Cass. civ., sez. lav. 20 May 2002, n 7316, compensation that could presumably be required to concede his/her consensus to the publication, determining this amount on an equitable basis, having regards for the economic advantage obtained by the author of the illicit publication and of any other congruent circumstance with the purpose of the liquidation, taking into special account the criterions set out by Article 128, subparagraph two, of the law n. 633 1941 on the protection of copyright. * Cass. civ., sez. III, 16 May 2008, n. 12433, Zanotti c. Cesco Ciapanna Ed Srl. Conforme, Cass III May 2010, n. 11353 [RV603320]

TITLE II
LEGAL ENTITIES

CHAPTER 1
GENERAL DISPOSITIONS

Consult the D.P.R. 10 February 2000 n 361 indicating the name for the simplification of procedures for recognition of private legal entities and of approval of changes of instrument of incorporation and of the statute.

11. Public legal entities

- The provinces and municipality, as well as public bodies recognized as legal entities shall enjoy the rights under the law and the uses recognized as public rights (822, 824, 826, 828, 830, 831, 862,863,2093, 2201; 115, 128Cost).

- In case of a constitution held in place by a Municipality body for a theatrical manifestations, the public nature of the first in not sufficient to give public-law power or privileges to the second and also does not detect - to esclude the private nature - that this pursues non-profit purposes, while instead beyond of the variation of each figure, the distinctive characters of the public bodies are to be found, more than for the purposes of public interests pursued by, the special legal regime that sets the apart and in the institutional inclusion, variously arranged, of the public legal entities in the organization of P.A. like subsidiary bodies for the achievement of general interest, with consequent collocation of the same in a legal position involving, on one side, the allocation of powers and prerogatives analogous to those of the State and of territorial bodies, and on the other the subjugation of a system of control inversely proportional to the autonomy of the body in question, but in any case of a certain degree of intensity, as well of interference with the management of the body. *Cass. civ, sez. I, July 26, 2007, n. 16600, Com. Marsala c. Gitur Srl. [RV599106]
- The public nature of the bodies that concur to form a new body is not sufficient to attribute public-law power or privileges to the last, although it results to constitute to pursue purposes regarding the subjects that compose it; also it cannot be considered indicative of the public nature of an association the participation to its representative bodies of the public subjects which have formed it. Therefore, the controversy relating to the ratio of work employed by the Association of Professional Orders (Association of certified public accountants of the constituency of the courts of Perugia and Spoleto, Provincial council of the employment advisors of the Province of Perugia), having the Association such a (constituted for the management of common services) not of nature of public entity but of association (non recognized) of private law, shall be added to the jurisdiction of the ordinary judge. *Cass. civ., **Court Cassation**, 23 November 1993, n. 11541, Ass, Professional Orders c. Barbieri and others.
- The circumstance in which a private legal entity carries out, albeit with public controls, tasks and activities - like the managing of schools or educational-scientific activities - to the compliance with the State purposes and of other entities is not sufficient to attribute public-law power or privileges to the legal entity. *Cass. civ., **Court Cassation**, 12 June 1990, n. 5720, Institute A. De Gasperi c. Formica.
- The regional and infra-regional institutions of assistance and charity, for effect of the declaratory of partial constitutional illegitimacy pursuant to art. I of I.. June 17 1890, n 6972 (sent. of the Constitutional Court, n 396 of 1988) do not, in any case, the nature of public entities also in regards to public-law power of employment relationship with the employees and of the exclusive jurisdiction of the administrative judge on the controversies inherent to him, but can be public entities o privates, according to the municipalities parameters that distinguish from one another, in relation to structural and functional requirements, as well as the inclusion or not in the scopo of the organization P.A *Cass. civ., **Court Cassation**, 23 June 1989, n. 2995, Institute As. Ciechi c. Rabatti.
- In fault of recognizing the judicial personality of public law, a foundation is not qualifiable as a public entity (non economic), rather than private entity, for the sole reason that pursues non-profit purposes and that is subject to controls of interference with the governative authorities, considering it's specific characteristics also in the foundations of private law, neither for that operates in the sector of recovery and attention to the invalid (in the present case, since it is the foundations <<Clinica del Lavoro>> of Pavia), since this activity is carried out also by private firms, (art. 42 of L. 23 December 1978, n. 833) *Cass. Civ **Court Cassation**, 23 November 1985 n. 5812

12. Private legal entities

- The organizations, foundations and other private institutions