National Labour Law Profile: Italy

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General legal framework

The Italian Republic (Repubblica italiana) came into being in 1946, after the fall of the fascist regime in 1943, and as a result of a referendum on the Monarchy in 1946. The Italian Constitution was approved by the Parliament in December 1947 and came into effect on 1st January, 1948.

The Country is organized as a centralized State, divided into Regions, Provinces and Municipalities. Sicily, Sardinia, Alto Adige (German-speaking region) Valle d'Aosta (French-speaking region) and Friuli (a region with Slavic minorities) have special statutes.

In recent years a political debate took place, to change the form of the State into a Federal one. Some ordinary laws have already decentralized more power to the Regions.

The Head of the State is the President of the Republic. He or she is elected by the Parliament in joint session, for 7 years.

The Legislative is composed of two chambers, namely the *Senato* (315 seats) and the *Camera* (630 seats), without any substantial difference in competence. Furthermore, anyone who has been President of the Republic is a senator by right and for life unless he renounces the nomination. Also, the President of the Republic may nominate as senators for life five citizens *who have brought honour to the Fatherland through their outstanding achievements in social, scientific, artistic and literary fields* (art. 59 of the Constitution). Both the Chamber of Deputies and the Senate of the Republic are elected for five years.

The government of the Republic is made up of the President of the Council and the ministers, who together form the Council of Ministers. The President of the Republic nominates the President of the Council of Ministers, and on the latter's proposal, the Ministers. The government must have the confidence of both houses of Parliament.

All laws must be approved by both Chambers; but some less important laws can be approved by Commissions of both Chambers, not in plenary Assembly. According to Sect. 10 of the Constitution,

Italy's legal system shall conform with the generally recognized principles of international law. Treaties must be ratified by Parliament.

European Community Acts and Regulations, as well as European Court of Justice judgements, are applied directly in the Italian legal system.

The Judiciary is a professional and pyramidal body, composed of three instances. Judges are appointed after a competitive state exam; their career depends on the *Consiglio Superiore della Magistratura*, an administrative body composed of 33 members, the Head of State, the first President of the Supreme Court, the General Prosecutor, 20 members elected by judges, and 10 by Parliament. Normally there is one judge in first instance, three in the second, and five in the Supreme Court of Cassazione. Aa recent law - Act 374 of 1991 - has established that lower cases are ruled in first instance by a non professional judge, called "giudice di pace".

For jurisdiction on labour issues see number 16, settlement of labour disputes.

Labour rights in the Constitution

The Constitution contains some declarations of principles (e.g. Sect. 1 - Italy is a democratic Republic founded on labour; Sect. 4: the Republic recognises to every citizen the right to work; Sect. 35 - the Republic protects work in all its forms and applications), and some more effective rules, largely employed in case-law: Sect. 36 - on fair pay, the maximum working hours, the weekly and annual paid vacation (see number 5, 6 and 11); Sect. 37 - on the protection of women and of minors on the job (see number 7 and 9); Sect. 38 - on the social insurance for old age, illness, invalidity, industrial diseases and accidents, etc.; Sect. 39 - on Freedom of Association (see number 12); Sect. 40 - on the right to strike (see number 15).

Contract of employment

The contract of employment is considered indefinite except in cases specified by legislation (Act 230 of 1962). Fixed-term contracts of employment are permitted to the extent that they are justified on grounds such as seasonal work, replacement of employees on sick leave or maternity leave, and extraordinary and occasional work. Pursuant to Act 56 of 1987, collective agreements may authorize other cases of recourse to fixed-term contracts of employment. Until recently, a breach of legislative requirements on fixed-term contracts led to employers typically being required to employ the employee indefinitely. Recently, however, Act 196 of 1997 (the "Treu Act") has limited this sanction to ongoing violations. If employment continues for ten days beyond the expiry date, the employer is liable to pay 20 per cent extra remuneration; for 20 days beyond the end date, 40 per cent extra; and only then is the contract required to be converted into an indefinite one. A fixed-term contract will also be deemed to be indefinite if the employee is rehired in less than either ten or 20 days from its expiry (ten days for contracts of less than six months' duration; 20 days for contracts of six months' duration or more).

The main types of special contracts of employment are as follows: apprenticeships, part-time, solidarity contracts (these are intended to assist in maintaining employment during periods of business difficulties), "work-training" contracts, fixed-term contracts, domestic work, work undertaken by building caretakers, work with temporary agencies, and contracts for managers (dirigenti).

Suspension of the contract of employment is pemitted under Sect. 2110 of the Civil Code in case of industrial accident, illness, maternity (two months before and three months after childbirth); in these cases the employee is entitled to an allowance from social insurance (paid in advance by the employer) which covers about 2/3 of the salary; collective agreements frequently provide for the employer paying the remaining 1/3 of the employee's salary.

As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task (Act 230 of 1962). Nevertheless, the employer may terminate the contract earlier for "just cause" (Sect. 2119, Civil Code).

The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected (Sect. 2118), or without any notice in case of just cause (sec 2119). However, Act 604 of 1966 (which implemented a collective agreement on the issue) introduced limitations on the employer's freedom to dismiss, for companies employing more than 35 people. This was then extended to all organizations regardless of size by Act 108 in 1990; now termination by the employer is only possible for a "justified reason" and provided that the notice period is respected; or without notice for a just cause (Sect. 2119, CC). Collective agreements frequently list the grounds for dismissal.

Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following the cessation of their duties on the committee without the authorization of the relevant regional trade union organization (Sect. 3, Act 108; this law also applies to directors and domestic workers). Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited. Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers employing more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers employing more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five months' pay. Alternatively, the employee can refuse reinstatement and request payment of damages equal to 15 months' pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated.

Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2,5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Sect. 4 Act 108 of 1990).

The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected. However, an employee may resign with immediate effect in circumstances specified in Sect. 2119 of the CC (such as non-payment of wages or social security contributions, closure of the enterprise, failure to be included within the category or grade corresponding to the work effectively being undertaken, refusal to grant holidays, the unilateral changing of the employee's duties with a corresponding reduction in wages, offences by the employer against the duty to

safeguard the physical and psychological well-being of the employee (under Sect. 2087 of the Civil Code).

Act 223/1991, on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

Severance payment

For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment (*trattamento di fine rapporto*) which is considered to be a part of salary, set aside every year and kept by the employer (for whom it is an important source of self-financing), based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5% (Act 297 of 1982, the "Giugni Act").

The *trattamento di fine rapporto* may be partially (i.e. up to 70 per cent) paid in advance, provided two conditions are met: a) the employee has reached eight years of service, and b) he/she intends to purchase his/her household's residence, or needs to withdraw the *trattamento di fine rapporto* for health care (Act 297 of 1982), extended leave for child care or educational leave (Act 53 of 2000, Sect. 7, see number 7 and 8).

Hours of work

Article 36 of the Constitution establishes that maximum working time must be fixed by law.

The old Act no.692 of March 1923, still partly in force, provided that the hours worked by employees ought not to exceed 8 hours a day or 48 hours a week (later changed to 40 by Act n. 196/1997, Sect. 13).

All these limitations are applicable for effective working time. Surveillance jobs and waiting time can have a different evaluation.

Of course self-executing limitations of EEC Directive no.14/93 (and in the near future of EC Directive no.34/2000) must be taken into account in the domestic law.

Collective agreements determine the normal weekly working time (never more than 40 hours).

Some enterprise-level agreements provide for a more substantial reduction in weekly working time in connection with a new shift system which allows a more intensive use of machinery and thus increased productivity.

Work performed in excess of 40 hours a week is overtime. Different overtime limits can be fixed by collective agreements. In principle, overtime should be occasional or due to exceptional reasons which cannot be met by the hiring of new workers.

Act 196/1997 requires a specific authorisation by the Department of Labour (Inspectorate) for work exceeding 48 hours a week (in practice: more than 8 hours overtime).

Under Act 623, of 1923, still in force, overtime must be paid with an increase of not less than 10 per cent over the regular rate. However, the italian courts have ruled that such provision applies to all the remuneration an employee earns from his/her employer (i.e. basic pay plus any bonus such as cost of living bonus, allowances for night work or shif work, etc), so that in practice overtime pay is worth about 30 per cent over the basic rate. Many collective agreements provide that overtime pay will be not less than 30 per cent, but they can also provide – and they often do – that this bonus will be calculated on the basis of a narrower definition that the above. There are also extra costs (e.g. a higher rate of compulsory contributions to The Public Fund for Unemployment Benefits).

Special pay increases are fixed by collective agreements for overtime worked on Sundays, on other holidays and night work. Night work has been recently settled by Act no.25 of 1999.

Working time is normally established by the employer, within the limitations cited above, and can be changed.

For *part-time work***,** the distribution of the working hours is established by an individually written contract which cannot be changed by the employer. Act 63/2000 gives the employer the right to change the part-time scheduled hours, under two conditions: the prior consent of the worker, and the increase in hourly wage.

Special provisions in favour of student workers are established by Sect. 10 of Act 300/1970 (Statute of the Workers' Rights). Workers attending regular courses, in State or publicly certified schools or in schools issuing officially recognised study certificates, are entitled to a working schedule which favours attending courses and the preparation of examinations. Student workers are not obliged to work overtime or on Sundays and must be given paid days off work to take exams.

Paid leave

All workers have the right to rest one day a week (art.36 of the Constitution) normally on Sunday (Sect. 2109 Civil Code).

The 24 hour weekly rest period can be shifted only for special activities, dealt with by Act 370/1934 (article 5). Workers are entitled to a compensatory rest.

Act 260/1949 and 90/1954 recognises four national holidays and other holidays. During these festive days, workers receive regular pay. If for technical reasons they have to work, they receive double pay and a further increase (about 50% of normal pay).

All workers have the right to annual paid leave (art. 36 of the Constitution). The Civil Code provides for a statutory minimum leave of eight days, for domestic workers only. Minimum leave of all other workers is determined by collective agreements, which generally provide for paid annual leave of not less than four weeks per year. Some agreements foresee additional vacation on the ground of seniority. During their vacation, employees receive normal pay, excluding only indemnities connected to the actual work. Italy has ratified the ILO Holidays with Pay Convention (Revised), 1970 (no. 132) which provides for a minimum leave of not less than three working weeks for one year of service.

The time at which the holiday is taken is in principle chosen by the employee. However, the employer may determine a different date for the employee to take his/her vacation, if the dates chosen by the latter are incompatible with the requirements of the enterprise.

Maternity leave and maternity protection

Female workers have special protection in case of pregnancy and maternity (Sect. 2110 Civil Code, Act 1204 of 30 December 1971).

From the beginning of pregnancy to one year after the child's birth, the employee cannot be dismissed (except for just cause) and during this period, a woman who resigns has the right to the same indemnities due for dismissals (provided she gives due notice).

Maternity leave is compulsory for female workers, from two months before until three months after childbirth. Pre childbirth leave can start at an earlier date than two months, if the worker's work is dangerous for her health or that of the unborn child. On the other hand it is possible to postpone pre-childbirth leave in order to increase the leave granted after childbirth.

Some rights, reserved for the mother by Act 1204/1971, have been gradually extended to the father, at first only in case of the mother's impediment, but more recently with many alternative choices being made available to both parents.

In 1987, for the first time, the Constitutional Court (decision no.1/1987) extended to the father the right to leave for three months after birth, where the mother's caring for the child had become impossible due to illness or death.

It is also possible for both parents of an adopted child to obtain paid leave for three months after the effective introduction of the child into the family (Act no.903 of 1977, Act no. 184 of 1983, Constitutional Court no. 322/1998).

But only with Act no .53/ 2000 has Italian Legislation really improved in considering parental leave as a right of the family in order to protect children.

Both parents have the right to leave for no more than a total of 10 months during the first eight years of a child's life. A longer period is possible (up to two years) in case of children with handicaps (Act 388/2000).

During compulsory maternity leave, the mother is entitled to 80% of her regular pay from Social Security and the period is counted as actual work time. Collective agreements usually oblige the employer to make up the difference to the regular wage.

Subsequent parental leave has now the same economic consequences for both parents: 30% of regular pay (form Social security) for six months. For additional time there are different indemnities depending on the family income.

Both parents have equal right to leave in case of a child's illness; without limitation for the first three years of age and for five days a year until age eight.

More flexibility in the working time schedule for both parents is now foreseen in article 9 of Act 53 /2000.

The working mother, during the first year, has the additional right to two hours of daily rest, initially intended for breast-feeding. Supplementary time is also foreseen in case of twins or multiple births.

A recently approved law (Act 151 of 26 March 2001) has consolidated most of the above provisions into a single text.

Act no.196 of 1997 provides for specific incentives (i.e. reduction of social security contributions) directed at favouring part-time work for women who want to re-enter the labour market after at least two years of inactivity.

Other permitted leave

Sick leave

In case of sickness, the employee's protection has been remarkably improved, mainly through collective bargaining. During sickness, suspension of the contract, with job protection, lasts for periods usually determined by collective agreements, according to the employee's seniority. The average period is about one year. During this time, the worker is fully paid (by the employer or by the Social Security). Beyond this period an employee is usually entitled, under collective agreements, to a further period of unpaid leave.

Educational Leave

Student workers have the right to paid days off work to take exams.

Now Act 53/2000 accords great consideration to general and professional education. Workers with a minimum of 5 years seniority can request a maximum of 11 months unpaid leave (all together or at intervals) to attend schools, universities or other educational training.

Many benefits promoting the education of workers have been introduced since 1973 by national collective agreements. Workers are entitled to a number of paid hours off work (150 in general, up to a maximum of 250 for employees who have to obtain a basic level of compulsory education) to attend, at public or certified schools, courses related or not to their professional activity.

In case of military service, job security and seniority are guaranteed to all workers (Sect. 2111 of Civil Code, Act no.653/1940, 303/1946, 370/1955).

The Civil Service of Conscientious Objectors and Service in Underdeveloped Countries have the same consideration (Acts no.230/1998 and no.49/1987).

Act no. 300/70 accords (unpaid) leave for persons elected to public office (during the time of mandate) or for elected trade union representatives. Act 300/70 also guarantees to trade union officials and union members different possibilities of leave, with or without pay, in order to fulfil their duties, tasks or rights.

Special leave (with or without pay) or unpaid absences are granted to workers by collective agreements on the occasion of important family events.

For his/her wedding a worker usually has the right to 15 days of paid leave.

Minimum age and protection of young workers

Article 37, second paragraph, of the Constitution provides that the minimum age must be settled by Statutory Law.

Act no.345/99 implementing the EC Directive no.33/1994 and Act 262/2000, establish the minimum age at which a person may be employed at the end of compulsory schooling, however not less than 15 years of age (ILO Minimum Age Convention, 1973 no. 138).

The capacity to conclude a labour contract is related to the age of capacity in civil law (settled by Act no.39 /1975 at 18 years). But where the minimum age of employment is inferior, the minor can also exercise the rights and actions deriving from a labour relationship (Sect. 2 of Civil Code).

Act no. 977 of 1967 and no.345/1999 introduced a special regulation to protect the work of minors, such as special medical certificates guaranteeing their physical fitness for work, periodical medical check-ups, limits on working hours, prohibition of night work and so on.

Act no.148/2000 is intended to meet the obligations arising out of the ILO Worst Forms of Child Labour Convention, 1999 (no.182) in the fight against the exploitation of minors. It also draw guidance from ILO Recommendation no.190/1999, which supplements the said Convention.

Equality

The Italian Constitution (art. 3) provides for the concept of equality of all citizens before the law *without difference of sex, race, language, religion, political views, personal and social position.* This is a fundamental concept of the Italian legal system. Italy has also ratified the *International Agreement of Economic, Social and Cultural Rights* (New York, 16 December 1966, national Act 881, 25 October 1977). The Workers' Statute (Act 300, 20 May 1970) invalidates any agreement or action of the employer which constitutes discrimination for reasons of sex, race, language, religion, political opinion (Sect. 15). Equality between men and women at work is specifically recognised and guaranteed by Act 903, 9 December 1977. Act 125, 10 April 1991 provides for *affirmative action* to encourage true equal opportunity for women in access to employment and during employment. Act 604, 15 July 1966 prohibits dismissal for discriminatory reasons such as political and union views, religion, participation in union activities (Sect. 4). Act 108, 11 May 1990 invalidates dismissal for discriminatory reasons, such as race, sex, language, political and union views, religion, and requires always the reinstatement of the dismissed worker.

Other illegal kinds of discrimination are AIDS discrimination (Act 135, 5 June 1990), age discrimination (Sect. 37 of Constitution) and handicap discrimination (Act 104, 5 February 1992).

A law on sexual harassment at work does not exist; however, there is case law on unfair dismissal on this ground.

The Constitutional Court has ruled that equality is a fundamental right of foreigners as well. For citizens of European Union countries, Sect. 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Act 40, of 6 March 1998 affirms equality between other foreign workers legally resident in Italy and Italian workers.

Legal procedure for individual labour disputes is applied to combat discrimination at work. There is a fast track procedure on following grounds: (i) discrimination for union views (Sect. 28 Workers' statute); (ii) race, ethnical, national or religious discrimination (Sect. 44 of Act286 of 1998); (iii) men-women discrimination at work (Sect. 15 of Act 903 of 1977). For other kinds of discrimination there is the general fast track procedure (Sect. 700 of Civil procedure Code).

Pay issues

Sect. 36 of the Italian Constitution includes the right of the worker to a liveable wage for himself and his/her family.

Under Italian law there is not a statutory minimum wage.Yet most workers are actually covered by a minimum wage agreement, established through collective bargaining (see no. 13). Upon request, judges can also fix a minimum wage, though it would be binding only on the parties to an individual contract of employment.

Cassa Integrazione Guadagni

The *Cassa Integrazione Guadagni* is a state fund within the scope of the National Social Security Institute . It was established by Act 788 of 1954, with a view to protecting the workers' earnings in the event the enterprise has difficulties. While initially it covered only industrial enterprises, its scope was progressively enlarged, so that it now also covers small building enterprises (as of 1963), agricultural enterprises (1972), the marketing sector of industrial enteprises in economic difficulties (1978), contracting catering companies in industrial enterprises in economic difficulties (1978), journalists in press and TV activities in economic difficulties (1993), employees in commercial enterprises with more than 200 employees (1991), some categories of self-employed workers (e.g. workers in workers' cooperatives), and in general other specific categories of workers in specific events such as natural disasters or regional or sectoral economic crisis.

The *Cassa Integrazione Guadagni* operates mostly in cases of suspension or temporary reduction of activity due to causes beyond the will of the enterprise or the workers, or market fluctuations, and includes suspension of activity in the building industry due to bad weather. Workers whose contracts of employment have been suspended on these grounds can be paid 80% (sometimes up to 100 %) of their previous earnings within a prescribed ceiling (in 2001 it was Lit. 1.471.235 per month, and Lit. 1.768.283 for earnings of more than Lit.3.182.908 per month). This benefit can be paid for up to 13 weeks, with possible renewal for up to 12 months (in some territorial areas it can be paid for up to 24 months).

Protection of workers' claims in case of insolvency of the employer

In the event of insolvency of the enterprise, the employer-employee relationship is not interrupted due to bankruptcy (provided the enterprise continues to operate). Under Section 2777 of the Civil Code workers' claims are second in order of priority (after taxes and court fees) over the employer's estate. However, secured creditors are paid before workers in respect of the employer's assets that are affected by mortgage or liens. Only for employees of shipping and aviation companies the Navigation Code provides that shipping and flying personnel have priority even over mortgage creditors, after court fees (Sect. 552, 575 for ship crew members, and 1023, 1036 for flying crew members).

Sect. 1676 of the Civil Code gives direct action to the contractor's employees towards the employer within the limit of the sums he is in debt towards the contractor.

Act 80 of 1992 implemented EU Directive 80/987 on the protection of workers' claims in case of insolvency of their employer. Under this law there is a Wage Guarantee Fund administered under the National Social Security Institute, which takes up the payment of some specified workers' claims in the event that they have been left outstanding because of the insolvency of the employer. Workers' claims so protected are the salaries corresponding to the three final months of the employment relationship, within a time limit of one year before the declaration of insolvency. Such payment is, however, limited to three times the ceiling of the *Cassa Integrazione Guadagni Straordinaria*. The insolvency is defined as in the bankruptcy law, which calls for a formal declaration of insolvency being made by the competent judge. However, the Guarantee Fund also pays in case of non enforcement of a judgement (for small enterprises that in Italian law cannot go bankrupt).

Pursuant to Sect. 2 of Act 297 of 29 May 1982, the Guarantee Fund also protects severance pay (trattamento di fine rapporto), in case it cannot be paid due to the insolvency of the employer.

Trade union regulation

The Italian Constitution recognises the right of citizens to associate freely (Sect. 19) and the right of employers and employees to join associations or unions.

Sect. 39 of the Constitution regulates trade unions and specifies that only the *registered* ones can obtain legal status and can make collective agreements valid *erga omnes* (for all employers and employees). This provision, however, has not been enforced because a bill regulating the registration of unions has never been adopted. Therefore, in Italy unions do not need any recognition and can organize themselves without any pre-established legal model. They can conclude collective agreements, which are legally enforceable under civil law rules, i.e. on the assumption that the parties to a collective agreement have stipulated on behalf of their respective membership. Usually the employers abide by the collective agreements concluded by the most important unions and employers' associations and pay wages in accordance with them for all their employees.

The Workers' Statute (Sect. 14) recognises freedom of association and freedom of trade union activity at the workplace. The same rights are also guaranteed to public employees (except military staff, who have representatives not belonging to the unions). Act 121, 1 April 1981 also guarantees union freedom and activity to the Italian Police *(Polizia di Stato,* that is not a military force), except for the right to strike and union activities which may compromise public security (Sect. 84).

The law does not fix any model of union organization either for the unions or for the employers' associations.

For workers the most frequent pattern is the industry-wide union, which has local, provincial, regional and national organs (vertical organization). The national unions join together in trade union federations (horizontal organization).

For the employers there is a similar model of organization, with provincial, regional and national associations, that join to form federations. There are three employers' federations: industrial, commercial and artisan.

Recently local unions have been formed, which do not join the traditional federations, but have their own coordinating organs.

Unions are financed by the workers' dues. Sect. 26 of the Workers' statute authorizes the unions to deduct union dues from the employee's wages (check-off).

Protection against anti-union practices

Sect. 28 of Act 300 of 1970 (Workers' statute) provides that whenever the employer indulges in behaviour designed to hinder or limit the exercise of freedom of association and trade union activities, or the right to strike, the local organs of the relevant national trade unions can demand that the judge (within whose jurisdiction the anti-union conduct complained against has taken place) order the employer to cease and desist from his illegal conduct and to redress any grievances or obviate the effects thereof.

Under case law a number of employers' actions have been deemed to be *anti-union behaviour*, and are therefore prohibited. These include dismissal of workers on strike; the hiring of third parties to replace workers on strike; retaliation against workers that undertake legal strike action; failure to inform the unions on issues regulated by collective agreements; direct bargaining with the workers, thus bypassing the unions; to infringement of union rights fixed by law, e.g.. not to reserve a room for union meetings inside the factory; not to permit the union to have a board to post union information, to interfere with union proselytism, etc.

Under Section 28, the judge must summon the parties within the following two days and take a summary deposition of the facts at issue. If he is satisfied that there has been anti-union behaviour on the part of the employer he shall order the latter by an immediate executory judgement to stop such behaviour. This order is immediately enforceable, and shall remain in force unless and until it is reversed by a higher court decision.

An employer who does not comply with an order to cease anti-union behaviour shall be liable to penalties under section 650 of the penal code, (i.e. up to 3 months of arrest or a fine of 400.000 Lire).

Collective bargaining and agreements

Unions can freely negotiate collective agreements at provincial, regional and national levels. Trade union security clauses such as *union shop, closed shop,* etc. are unknown in the Italian legal system. Under Art. 17 of Law 936/86, which reorganized the National Council of Economy and Labour (CNEL), collective agreements and accords must be registered with the CNEL within 30 days after they have been concluded. The so-called *economic accords* are agreements that cover some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as *lavoratori parasubordinati*).

The Collective Agreements Archives can be consulted online.

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that are regulated by law (for the effects of collective agreements see no. 12).

Most categories of workers (roughly 95 per cent) in Italy are covered by a collective agreement. However this does not mean that collective agreeements actually cover 95 per cent of all contracts of employment, because they are binding only on the parties that have signed the agreement, as well as the employers and workers legally represented by such parties under Civil Code rules (i.e. they apply only to members of the organizations that have signed the agreement). So it would be necessary to verify if at least the employer is a member of the employers' association that has signed the agreement, in which case the agreement would cover his/her employees, whether or not they are members of the relevant trade union. Should the employer not be a member of such an association the agreement would not be binding on him or her. Nonetheless, the judges can take into account the

minimum wage that has been fixed in the agreement as a parameter in view of fixing a *fair salary* pursuant to Sect. 36 of the Constitution (see Section 11, above). The judge may therefore rule that an employee not covered by an agreement shall, however, be paid at a rate not less than the one established under the agreement that applies to his/her category and industry.

Workers' representation in the enterprise

The unions joining the biggest federations have a very important function in collective bargaining in public employment and receive protection in view of trade union activity at the plant level. The Workers' Statute, 1970, regulates plant level union activity. The Statute has been an important means of support of the unions at plant level.

The Workers' Statute (Sect. 19) specifies that workers can choose representatives, who form plant level union bodies. These representatives have particular rights fixed by the Workers' Statute, like the right to call meetings and *referendums* of workers, Sect. 20-21; protection from the relocation of their leaders, Sect. 22; permission for union activity, paid or not, Sect. 23-24; bill-posting rights (Sect. 25); right to obtain a representative's room (Sect. 27).

For public employees there is a different system of workers' representation (Act 29, 3 February 1993), but the rights are the same. Collective agreements regulate election and duration of office of workers' representatives. A change of the representatives follows after the signing of a new collective agreement.

Collective agreements do not recognise for the workers' representatives any co-determination right, but only the right to be informed and consulted on the most important decisions of the company.

Strikes and lockouts

Strikes

The Italian Constitution recognises the right to strike, which must be exercised within the limits fixed by the law (Art. 40). However, only one law exists, that regulates the right to strike, and that is for the public essential services (Act 146, 12 June 1990); thereforethere is a large freedom to strike.

Under the law of 1990 the notion of *public essential services* relates to certain rights protected by the Constitution referring to the life, health, freedom, safety, freedom to circulate, social assistance and provident fund (*previdenza*), instruction and freedom of communication of the persons. The law further specifies which services or activities are to be included in the definition of *public essential service.* It foresees that where a strike occurs in such services, a minimum service shall be guaranteed, the modalities of which shall be agreed upon by the administration (or the enterprise that administers the essential service) and the union's representation at the enterprise level (or the workers' representatives where appropriate). Furthermore, the party that goes on strike must give strike notice of not less than ten days, and must indicate the duration of the strike action.

Act 83, of 11 April 2000 has extended the above law to the public essential services fulfilled by a number of categories of self-employed workers, professionals and artisans, such as lawyers, doctors, taxi-drivers, petrol stations, lorry-drivers and so on.

Some workers cannot strike (military personnel and policemen); for others the right to strike has some limits (for example seamen cannot strike during navigation).

Unions have a self-regulation code of strike.

Lock-outs (serrate)

A specific regulation does not exist in the Italian legal system. When the employer locks out the workers he/she breaches the contract of employment and must pay wages. However, under case law there is not a breach when the lockout is a consequence of a strike by the workers and the industry is unable to continue production.

Settlement of labour disputes

Labour Courts are integrated into the organization of the general civil court system, but follow special procedure.

A special jurisdiction on labour issues was established in 1893, with an Act which introduced a "consiglio di probiviri", composed of representatives of employers and employees, for lower cases.

The fascist reform of 1926 transferred all cases to professional judges, and so it remained till now. Act 533 of 1973 provides special procedural rules, which reduces the amount of written material at a labour trial, increase participation by the litigants, and speed up the trial. There is one professional judge in the first instance, whatever the monetary amount of the case, whose decisions can be appealed before a Tribunal of three judges, with a possible further appeal before the five member Supreme Court Labour Chamber.

Act 80 of 1998 transferred to the labour courts the competence to hear cases brought by civil servants, which were previously dealt by the administrative courts. The same law now requires the plaintiff, before he/she sues in the Court, to try to resolve his/her dispute through conciliation before a public labour office, or through a union dispute resolution procedure.

There is not a procedure for collective disputes, except for the possibility, introduced by the Act 80 of 1998, of asking the Supreme Court for the immediate interpretation of a collective agreement signed by the union of civil servants.

Links

- Ministry of Justice (from which it is possible to connect to the CED Cassazione (an individual code number is needed) which contains all State laws since 1865, and Regional laws since their institution in 1948; constitutional, civil, penal and administrative case-law of Upper Courts since 1970.)
- The Senate (Includes bills under discussion)
- The Chamber of Deputies (Includes bills under discussion)

- The Ministry of Labour
- National Labour and Economy Council (where all collective agreements, in force and expired, are filed)
- National Institute of Insurance Against Industrial Injuries
- The Administrative Tribunals
- The Constitutional Court
- Presidency of the Council of Ministers
- The Ministry of Finance
- Italian Labour Law Journal
- Legge e giustizia (a free web site rich in up-to-date case law in labour issues)
- ILO Conventions ratified by Italy
- Comments of the ILO Supervisory Bodies on Italy
- NATLEX ILO Database of National Legislation

Selected Publications

- The bibliography on labour law issues is boundless.
- Just a few names of the main general textbooks on labour law and on labour procedure:
- Carinci, Franco e D'Antona, Massimo, Il lavoro alle dipendenze delle amministrazioni pubbliche, Milano, Giuffrè, 2000, 3 voll.
- Galantino, Luisa, Diritto del lavoro, Torino. Giappichelli, 1995;
- Galantino, Luisa, Diritto sindacale, Torino. Giappichelli, 1996;
- Galantino, Luisa, Diritto comuniatrio del lavoro, Torino. Giappichelli, 1999;
- Ghera, Edoardo, Diritto del Lavoro, Bari, Cacucci, 1998
- Giugni, Gino, Diritto sindacale, Bari, Cacucci, 1993
- Ianniruberto, Giuseppe, Il processo del lavoro rinnovato, Padova, Cedam, 1999
- Luiso Francesco P., Il processo del lavoro, Torno, Utet, 1992
- Pera, Giuseppe, Manuale di diritto del lavoro, PadOVA, Cedam, 2000,
- Pera, Giuseppe, Compendio di diritto del lavoro, Milano Giuffré, 2000,
- Pera, Giuseppe, Codice del lavoro, Milano Giuffré, 1997,
- Mazziotti, Fabio, Diritto del lavoro, Napoli, Liguori, 1998
- Proto Pisani, Andrea, Le controversie individuali di lavoro, Torino, Utet, 1993
- Proto Pisani, Andrea, Lezioni di diritto processuale civile, Napoli, Jovene, 1999

[1] Aldo De Matteis , Judge of the Supreme Court of Cassation, Labour Chamber. Visiting Professor at the University of Siena, on Labour Procedure. Author of the following books: L' assicurazione

obbligatoria contro gli infortuni sul lavoro e le malattie professionali (Public Insurance for Industrial Accidents and Diseases), Torino, 1996, pp.XIX-798; La trasferta del lavoratore (The Transfer of the Employee), Milano, 1988, pp. 288; Il trattamento di fine rapporto (The Severance Pay), in Commentario al codice civile, Torino, 1993.

[2] Paola Accardo Judge of Court of Appeals, Labour Chamber, Milano; expert in comparative Labour Law and Social Security.

[3] Giovanni Mammone; Judge appointed to the Supreme Court of Cassation, Labour Chamber. Author of the following books: I provvedimenti di urgenza nel diritto processuale civile e nel diritto del lavoro (Fast-track procedure in civil procedure code and in the labour courts), Milano, 1997, pp. XIX-968 (written with Enrico Dini); Igiene e sicurezza nell'ambiente di lavoro (Industrial Safety), Milano 1993; Salute, territorio e ambiente, Padova, 1985.