Extra-judicial resolution of collective disputes in Italy

National report by Professor M. Grandi

I. OUTLINE OF THE ITALIAN SYSTEM OF LABOUR RELATIONS

1.a. The Italian trade-union system is pluralist and complex. In formal terms, it is based on freedom of association as enshrined in Article 39 of the Constitution and on freedom of representation at both the general and the company level.
Freedom of association also applies to employers' organisations, although doubts have occasionally been expressed in the past: the constitutional provision, together with the ILO international conventions ratified by Italy, affords employers' associations the same freedom as workers' associations. Freedom of association is also extended to self-employed workers and workers belonging to cooperatives, to managerial staff in business and government and to agricultural smallholders (share-croppers, tenant farmers, independent farmers). Within limits, it also applies to the members of the national police, but not to armed forces personnel.

2.a. At the most widely representative level, organised labour is grouped in confederations. Through industry-wide and/or sectoral unions or federations, these cover most (non-managerial) employees in industry, agriculture and the service and public sectors.
Part of the workforce (especially in the public services and government) is represented by independent trade unions (which may also be confederated). These may represent (primarily) a single category or several categories. There are also independent unions organised by trade or profession (train drivers, pilots, air-traffic controllers, etc.). Both private and public-sector managers are organised in their own unions.

2.b. A feature of employers' organisations is also the predominance of confederal bodies, with affiliated sectoral federations covering the firms operating in each industry (metals and mechanical engineering, chemicals, textiles, etc.).
The employer representation system is also marked by pluralism, although to a lesser degree. It may depend on company size, type of production, ownership structure and legal status. In the industrial sector, private companies are represented by confederations, which may be organised e.g. according to size of firm (some small and medium-sized firms have their own representation), legal status (small businesses, which have a particular legal status, are separately represented) or ownership structure (there are special arrangements for representation of companies in which the state is the main shareholder, especially prior to privatisation). Farmers are organised in a confederal system, including independent farmers, as are firms operating in the commercial, distributive and tertiary sector. Banking and insurance companies have their own representation, as have those operating in the new economy sector, with various subdivisions.

2.c. Government departments and agencies, to which the same unionisation and collective bargaining arrangements apply as in private law (Legislative Decree No 165 of 30 March 2001), are legally represented by a public agency (ARAN), which performs all functions at national level relating to trade-labour relations, collective bargaining and assistance to government authorities in ensuring that collective agreements are uniformly applied.

3.a. The union and employer organisations are structured at regional and local level. At company level, union representation is based on election: the company-level union structures (which of late have tended to be unitary structures) are elected by all workers in production or administrative units (the system also applies to the government sector) with more than 15 employees. In the private sector, company-level representation is regulated by agreements (Protocol of 23 July 1993; Interconfederal Agreement of 20 December 1993), whereas in privatised public activities regulation is by law (Legislative Decree No 165/2001, Article 47).

4.a. The bargaining system is also pluralist and complex. Collective bargaining is conducted by both national and decentralised structures (i.e. structures at local and/or company or administrative unit level). Decentralised bargaining tends to supplement that at national level. On the union side, the parties involved in the bargaining process are:

– confederations;
– industry and/or sector federations and unions;
– local unions;
– company-level union structures.

The bargaining framework consists of:

– concertation agreements (generally tripartite: social partners and government);
– interconfederal agreements (between the union and employer confederations);
– national collective agreements for the various industries or sectors – or branches ("*comparti*")[1] in the government sector (between the industry-wide federations and the corresponding employer federations or confederations; in the government sector, between the branch federations and unions and ARAN);
– decentralised collective agreements at local and/or company level (in the private sector, between local trade unions and the corresponding local employer organisations or between the individual employer and the company-level union structures acting jointly with the local trade unions; in the public sector, between the union structures of administrative units and the government authorities concerned at decentralised level).

A feature of the Italian collective bargaining system is its vigorous approach to creating and extending standards of pay and conditions, whereas its dispute resolution procedures are somewhat lacking in effectiveness.

4.b. Collective agreements have no special legal status (Article 39 of the Constitution, which provides for them to be generally binding, has never been given effect). Only for the government sector does the law lay down requirements for the structure, parties, procedures and effect of collective agreements. In the private sector, for some types of collective agreement which generally flesh out or apply statutory standards of protection, the law requires the trade union organisations concluding the agreement to be representative. The following types of agreement may be distinguished according to the matters they regulate or the functions they perform:

– political/concertation agreements (on economic and social policy);
– procedural/organisational agreements (on union organisation and activity and industrial relations policy);

[1] Translator's note: examples of *"comparti"* in the public sector are: health, primary and secondary education, higher education, research establishments, local government.

- agreements on pay and conditions of work;
- agreements on management issues (on the in-house labour market);
- agreements on maintenance of minimum levels of service (during strikes in the essential public services).

5.a. "Conflict" has a broader meaning than "dispute", although in practice the two terms tend to be used in the same way. "Conflict" is an essentially sociological concept, which may also involve political-economic or social interests and may arise between groupings other than the social partners (e.g. between the social partners and the state). "Dispute" is an essentially legally concept referring to a conflict of interest (defined in terms of a demand and opposition to that demand) over issues of labour protection and union rights. The "strike" is linked with the phenomenon of conflict but is not identical with it (nor is it identical with the concept of a dispute): it is a collective means of unilateral self-defence and is the formal expression of workers' right to react to an ongoing conflict in order to assert specific claims or interests in its resolution.

5.b. In Italy, the right to strike is constitutionally recognised (Article 40) and the established view is that it belongs to the individual worker; trade unions merely have the power to call a strike. Restrictions as to the persons enjoying this right concern military and national police personnel and the staff of nuclear power stations. There is no general legislation concerning restrictions on exercising the right to strike, although the Constitution provides that such restrictions may be imposed by law. Despite the legislative prerogative, which concerns the relationship between sources of externally imposed restrictions (laws and regulations), it is accepted that strike action may also be regulated by agreement, either unilaterally (union self-regulatory codes) or contractually (by rules laid down in collective agreements).

5.c. The Italian legal order includes legislation on strikes in the essential public services. This is based on the principle of balancing the right to strike against the constitutionally guaranteed rights of the individual (the right to life, health, freedom and security, freedom of movement, social assistance and social security, education and freedom of communication) (Act No 146 of 12 June 1990). In the essential public services, the following restrictions apply:

- not less than ten days' warning must be given;
- the withdrawal of labour must last for a limited time (indefinite strikes are forbidden);
- a minimum level of service must be assured.

It is left to the collective bargaining process to determine this minimum level. However, the agreements are subject to scrutiny by a special safeguards committee before they can be applied. A recent law (Act No 83 of 11 April 2000) has stipulated that such agreements must provide for "cooling off" and conciliation procedures, to be completed before the strike is called.

II. TYPES OF DISPUTE

1.a. The term collective dispute is widely used in Italian collective bargaining (and in the wording of collective agreements). It is formally defined as follows ((F. Santoro-Passarelli): a conflict relating to the indivisible interest of a collectivity (collective interest), whether this interest is prejudiced by another collectivity (bilaterally collective dispute) or by an individual (unilaterally collective dispute) and whether this prejudice directly affects the entire collectivity (collective dispute relating to the interests or rights of a group as such) or an individual belonging to the collectivity (collective dispute relating to the interests or rights of a member of the group).

However, the formal definition of a collective dispute, while certainly taken into account in jurisprudence, corresponds only partially and approximately to the technical concepts as found in the text of agreements.

1.b. A collective dispute is distinguished from an individual and/or class dispute, which is a conflict of interest (characterised by a demand or grievance) concerning the legal rights of an individual or a number of individuals (a dispute is a "class" dispute if the interest at issue is identical for a number of grievants). In the Italian procedural system, individual (and/or class) labour disputes are explicitly listed by the Code of Civil Procedure (Article 409) as being subject to a special judicial procedure within the sphere of ordinary jurisdiction. The distinction between individual and/or class disputes and collective disputes is also made in labour agreements (Interconfederal Agreement of 25 January 1990, Article 2.2). The concept of "class (multiple individual) disputes" also emerges from the case law.

2.a. In Italian doctrine, it is normal to distinguish between collective disputes of right and collective pay disputes: the former relate to conflicts arising from the interpretation and application of provisions of law or of agreements, while the latter concern conflicts arising from the changing of such provisions. Actual rules and contractual practice are more complex and varied than the established doctrine. In principle, the distinction between disputes of right and pay disputes remains valid, and also applies to the type of resolution procedure. A more detailed and up-to-date classification of collective disputes can be derived from the range of regimes applying:

- collective disputes concerning union interests or rights (disputes over infringement by the employer of union freedom and activity or of the right to strike, including infringement of the rights to information and consultation laid down by law or by collective agreements) (Act No 300 of 20 May 1970, Article 28);
- collective disputes concerning the interpretation and/or application of negotiation procedures; in some collective agreements, collective disputes over interpretation are distinguished from those over application, which are regarded as class disputes, but treated as collective disputes; in others, collective disputes over interpretation relate only to the "procedural part" of the collective agreement (disputes over the "substantive part" then being regarded as purely a matter of application and treated as class disputes);
- collective disputes over the authentic interpretation of the collective agreement or modification of a clause (these are provided for in the current legislation on government-sector labour relations – Legislative Decree No 165/2001, Articles 49 and 64 – and in various collective agreements in the private sector);
- special-issue collective disputes: recognition of the union structure as a bargaining agent; recognition of the representativeness of the union body; relations between bargaining levels, staff classification, etc.;
- collective pay disputes on renewal of the collective agreement; these may in turn be divided into disputes concerning the negotiation of a renewal agreement (for which there is a special cooling off procedure: Concertation Agreement of 28 July 1993) and disputes on failure to conclude a renewal agreement, which may be resolved with the help of an external conciliator and/or mediator.

3.a. In practice, the distinction between "individual and/or class disputes" and "collective disputes" is somewhat hazy. A "class" dispute (e.g. on the application of an agreement clause and entitlement to particular terms of pay and conditions) may lead to a collective dispute when the interests applying in multiple individual cases develop into a collective interest; an individual dispute may take on a collective dimension when the interests at stake involve the interpretation and/or application of a

collective provision and thus evolve into collective interests. There may thus be an overlap between individual and/or class conflict and collective conflict: this explains why some collective agreements restrict collective disputes of right to disputes of interpretation and exclude those which are rather a matter of "application", which in practice at company level are treated as individual or multi-individual grievances. Labour relations practice takes no account of the theoretical link between application and interpretation of a rule (application always implies interpretation, while interpretation is always linked to a hypothetical application).

3.b. An interesting case of a functional link between the individual and the collective dispute arises in the labour relations rules applying in the government sector (Legislative Decree No 165/2001, Article 64). When an individual dispute turns on a preliminary question concerning the effect, validity or interpretation of a collective agreement, the court invites the parties to that agreement to meet and explore the possibility of reaching an agreed authentic interpretation or changing the clause at issue. This arrangement highlights the link of logical sequentiality between the individual dispute before the court and the collective dispute on matters of interpretation or amendment, which is initially devolved to the parties to the agreement. It is also clear from the wording of the law that it does not apply solely to a collective dispute on interpretation, since the negotiations for its resolution may lead to changes in the disputed clause.

3.c. In some cases, class disputes are regarded as collective disputes, with conciliation to be attempted by the parties to the collective agreement. (Examples are the national agreements for post office employees and for the building industry.)

III. EXTRA-JUDICIAL PROCEDURES FOR RESOLVING LABOUR DISPUTES

1.a. The distinction between individual and/or class disputes and collective disputes must be borne in mind. The former are normally subject to the process of law regulated by the Code of Civil Procedure (Articles 409 et seq.). A compulsory attempt at out-of-court conciliation (Code of Civil Procedure, Article 410) is a precondition for admissibility of the application to the court. This may take place, at the discretion of the parties, either in accordance with the procedures laid down by collective agreements or before provincial boards consisting of worker and employer representatives and chaired by the head of the Provincial Labour Directorate. The conciliation attempt must be completed within 60 days from submission of the application. If the conciliation is successful, a record is produced and signed by the parties and the chairman of the conciliation board (even if the conciliation is conducted under procedures stipulated by collective agreements). The record is deposited with the court and acquires enforceable status by decision of the court. If the conciliation is unsuccessful, a record is again produced, stating the reasons for failure to reach agreement.

1.b. If the attempted conciliation is unsuccessful or is not brought to a successful conclusion within the time allowed, the parties may agree to refer the dispute to an arbitration panel, if the collective agreement so provides (see section VII, 1.a.).

1.c. In the most recent legislation on privatisation in the government sector, new rules have been introduced to reduce the number of (individual and/or class) disputes, with a compulsory conciliation process and contractual arbitration. These rules have changed the system governing extra-judicial settlement (which previously was based on the voluntary principle) and arbitration. They apply to all individual labour disputes in both the private and public sectors. Under the current regime, government-sector disputes,

apart from a few types which remain subject to administrative jurisdiction (Legislative Decree No 165/2001, Article 60), also fall within the competence of the ordinary courts. Recourse to the court must be preceded by a compulsory conciliation process following procedures laid down by collective agreement or before a panel set up by the Provincial Labour Directorate. This process must be completed within 90 days (Legislative Decree No 165/2001, Articles 65–66).

2.a. While the doctrine is not entirely clear, collective disputes are not subject to the process of law. The Code of Civil Procedure, Article 409, expressly provides that this process applies only to "individual" disputes. In principle, collective disputes of right could be the subject of court proceedings, e.g. as regards the right to strike. However, this cannot happen in practice for the following reasons:

- the Italian system has no specific form of process for such disputes which, since they involve collective interests, require a very different judicial approach from that adopted to individual interests;
- Italy lacks any specific legal regime for collective agreements with generally binding effect, whereas this is a precondition for any ruling with the same effect on the interpretation of such agreements;
- the fact that collective disputes of right are in practice resolved through extra-judicial machinery means that they are treated in the same way as pay disputes, i.e. settlement depends not on legal criteria for determining the meaning of the disputed clause as a court would do but on factual criteria (for solving problems rather than stating rights) applied in order to arrive at some pragmatic solution (even if this means changing or replacing the clause in question).

2.b. Exceptionally, the rules for individual labour disputes have been extended to disputes concerning the union's own interests or prerogatives (disputes concerning repression of anti-union activity on the part of the employer: Act No 300/1970, Article 28). These are comparable with collective disputes in that the conflict turns on the union's own "collective interests". A special fast-track procedure has been set up for such disputes, and is conducted very quickly on application by the local bodies of the national union associations (including the company-level union structures). It also applies to disputes concerning infringement of the rights of information and consultation in connection with transfers of undertakings (Legislative Decree No 18 of 2 February 2001). A similar procedure exists for collective disputes (i.e. disputes over a collective interest) concerning gender discrimination at work, when this is directly or indirectly of a collective nature, e.g. because it forms part of a collective agreement (Act No 125 of 10 April 1991, Article 4).

3.a. The normal machinery for settling collective disputes consists of extra-judicial mechanisms laid down mainly by collective agreements. These are self-resolution mechanisms in that they are set in motion and managed, directly or indirectly, by the parties to the agreement themselves. The following points arise with regard to the situation in Italy:

- no positive public policy on collective bargaining has ever been established with the aim of promoting forms of self-regulation of collective conflict (only in the area of essential public services has the law recently favoured cooling off and conciliation procedures);
- union and employer policy directed towards using collective bargaining constructively to promote such mechanisms has been slow to develop and is still rather uncommon;
- policy for the application of collective agreements depends almost exclusively on individual and/or class grievances' being dealt with by the courts.

IV. TYPES OF EXTRA-JUDICIAL SETTLEMENT MECHANISM

1.a. In the Italian legal system and in collective bargaining practice, a distinction may be made between self-resolution and external resolution procedures, given that collective disputes are not normally a matter for the courts (apart from disputes over the interests or institutional rights of trade unions, as already mentioned). The distinctive feature of the self-resolution modes, which are commonly described ambiguously as conciliation or mediation, is that the parties are involved directly or indirectly in settling the dispute (the "parties" being the trade union organisations or representative structures and the employer organisations or individual firms). The external resolution modes consist essentially of arbitration, though this is not used in collective disputes (see section VII, 1.a.).

1.b. Taking account of the practice followed in collective agreements (the terms of which are rather uninformative and ambiguous in this respect), one may distinguish the following types of self-resolution procedure for collective disputes:

- direct negotiation by the parties which drew up the agreement, especially when the issue is the interpretation of the text itself (procedures for establishing the authentic interpretation of the wording of the agreement);
- conciliation by parties other than those which drew up the agreement when the conflict arises at a level other than that at which the agreement was concluded (e.g. at the local or company level);
- conciliation by the parties in dispute, but with a third party (public or private) acting as a conciliator and/or mediator;
- cooling off in pay disputes (renewal of collective agreements); the dispute settlement process is linked to an obligation to "keep the peace" for a specified period (Interconfederal Agreement of 23 January 1990, Article 2.1; Concertation Agreement of 23 July 1993, section 2.4); this "truce" is bilateral and binds both parties.

2.a. Self-resolution may have a statutory or contractual basis (collective agreement). The law provides for collective dispute conciliation by the following state bodies:

- The Ministry of Labour has the prerogative of conciliating in multi-regional collective disputes (Legislative Decree No 469 of 23 December 1997, Article 1(3)(c)).
- The Regional Labour Directorates are responsible for conciliating in collective disputes affecting several provinces (Act No 628 of 22 July 1961, Article 12(d); Ministerial Decree No 687 of 7 November 1996).
- The Provincial Labour Directorates are responsible for conciliating in collective disputes at provincial level (Act No 628/1961, Article 12(2)(d); Ministerial Decree No 687/1996). The procedure for establishing the "authentic interpretation" of collective agreements in the government sector is laid down by statute (Legislative Decree No 165/2001, Article 49). This is a process of "renegotiation" of the disputed term by the signatories to the collective agreement.

2.b. The contractual sources are represented by the various levels of the Italian collective bargaining system, which is a complex, polycentric system in terms of the areas, structures and contractual parties involved. Clauses on procedures for settling collective disputes may be contained in:

- interconfederal agreements;
- industry-wide or sectoral agreements;
- local and/or company agreements.

Generally speaking, the provisions in interconfederal (or concertation) agreements do not have direct effect but merely lay down guidelines to be taken over and put into practice in the industry or sector

agreements. The rules established by local and/or company-level bargaining do not always dovetail with industry-wide or sectoral procedures. Empirical (and sample) surveys of company-level bargaining do not yield any reliable picture in quantitative and qualitative terms of the settlement procedures at this level. Specifically for collective disputes relating to application, some major industry-wide agreements (e.g. in the metals and mechanical engineering, chemical, building and clothing industries) provide for settlement arrangements at company (or local) level and a second tier at national level.

3.a. The procedures for self-resolution of collective disputes are essentially voluntary and optional, in that it is the parties that decide whether they are carried out. Only the self-resolution procedures for individual and/or class disputes are compulsory to the extent that the courts cannot act (in either the contractual or the administrative sphere) unless an attempt at conciliation has been made.

4.a. In Italy, there are, generally speaking, no rules or figures on the funding of procedures for self-resolution of collective disputes. The "joint bodies" for conciliation are generally financed by the union and employer-side signatories to the collective agreement (cf. the national agreement in the tourist industry).

V. DISPUTE AVOIDANCE AND EXERCISE OF THE RIGHT TO STRIKE

1.a. A peculiarity of the Italian system is the link between self-resolution procedures and strike action in essential public services. The most recent legislation (Act No 83/2000) has stipulated that the right to strike in this sector may be exercised only after an attempt at conciliation, to be carried out as follows:

- in accordance with the procedures laid down by collective agreement for a minimum level of service to be maintained in the event of a strike;
- when the parties do not intend to adopt such procedures, they are required to attempt conciliation with assistance from the prefect or mayor, if the dispute is at local level, or the Minister for Labour, at national level.

1.b. The law requires collective agreements on minimum levels of service to contain clauses on conciliation and cooling off procedures. The special Safeguards Committee *(Commissione di garanzia)* which supervises the application of the law on strikes in the essential public services (Act No 146/1990), delivers its own assessment of the conciliation and cooling off procedures and its own "negative opinion" when the parties have failed to respect the clauses on early resolution procedures prior to strike action. Where there are no collective agreements on minimum service, the Safeguards Committee draws up its own provisional rules, which must also contain provisions for conciliation and cooling off procedures (a recent example being those in the air transport sector).

2.a. The most recent legislation on strikes in the essential public services (Act No 83/2000) reflects an approach to resolution procedures which had already become established with the inclusion of conciliation provisions in some minimum service agreements (e.g. for air transport). The Act represents a decisive step in the introduction of pre-strike dispute avoidance procedures in such agreements, since these procedures are now compulsory. In 1998, an "agreement on concertation policies and new industrial relations rules" was concluded in the transport sector, with a protocol on "rules for labour relations and dispute prevention". The protocol provides that collective disputes of right (on the interpretation and/or application of agreements) are to be settled by direct negotiation between the parties and, failing that, with the assistance of third parties acting as conciliators and/or mediators. (The

protocol does not specify who these "third parties" "assisting in settlement" are to be: the wording of the text is "third entities".)

Arrangements for the conciliation procedure are to be specified by collective agreements in the various transport sectors: air, urban, rail transport, etc. Recourse to the conciliation procedure implies an obligation not to take direct action or to suspend any direct action taken (the "industrial truce" clause).

2.b. For pay disputes, the 1998 agreement provides for cooling off procedures at the various bargaining levels, with a corresponding moratorium on direct action. The industrial truce is to run for four months in all: three months before and one month after the expiry of the collective agreement (Concertation Agreement of 23 July 1998). For urban and local transport, a general agreement in 1999 took over the procedural rules of the 1998 agreement, both for conciliation (disputes of right) and cooling off (pay disputes). A protocol of agreement between the trade union organisations and the National Flight Assistance Authority (ENAV) also covers dispute prevention procedures. Here again, a distinction is made between conciliation procedures in disputes of right and cooling off procedures in pay disputes. Self-resolution procedures are also being adopted in other major sectors providing essential public services (railways, post office, banks, hospitals, etc.) as a counterpart to strike action.

3.a. A problematic aspect of negotiated dispute avoidance procedures is that they do not bind parties other than the signatories to the collective agreements by which they were instituted. In the Italian system – as already mentioned – collective agreements do not have general binding effect since the constitutional provision (Article 39) providing for such effect has never been made operational. Dispute resolution procedures fall within the "procedural part" of collective agreements, which are not regarded as applying beyond the parties concerned. This is why the recent Act made provision, as an alternative to procedures arising from the bargaining process, for an "administrative conciliation procedure" before the prefect or mayor at local level or the Minister for Labour at national level. This procedure can be used by parties which are not subject to the negotiated procedures, since they have not signed the collective agreements establishing them. However, if conciliation procedures are contained in a minimum level of service agreement and are an integral part of the minimum service rules, they should be regarded as compulsory for all parties required to maintain the minimum service.

VI. SELF-RESOLUTION PROCEDURE

1.a. The parties involved in conciliation procedures may be associative bodies or public institutions. The procedures described in section IV, 1.b. concern union bodies on the worker representation side. On the employer representation side, the procedures may apply to:

- the individual firm, for collective disputes arising at company level (these generally concern application of the collective agreement);
- the employers' organisation at local level;
- the employers' organisation at national level.

At company level, the associative body concerned is generally the company-level union structure (which in its most recent form is a unitary structure) sometimes together with the local industry or sector union organisation. The level of the parties involved in the procedure depends on the level at which the dispute arises. In some cases, collective agreements provide for the dispute to be dealt with initially at company or local level and subsequently at national level.

1.b. In some sectors such as the food industry, a "joint body" *(commissione paritetica)*, with equal numbers of union and employer representatives, is set up at national level with a watching brief to avoid

collective and class disputes. At the request of the parties, this body may deal with interpretation of agreement clauses. Where class grievances are concerned, it provides support to the union and employer associations involved in the conciliation efforts. A national "joint body" is provided for in the national agreement for workers in the distributive trades and services sector, acting as a guarantor for compliance with collective agreements and any changes in them. This body may deal with all disputes on interpretation and application of the collective agreement (both individual clauses and sections of the agreement), including those relating to compliance with the arrangements, procedures and rules for the system of labour relations. The national joint body for land improvement cooperatives has the task of "examining" collective disputes on matters of interpretation; it takes the final decision on disputes (acting virtually as an arbitrator).

1.c. The parties involved in the procedures may also be public (public bodies or authorities). "Administrative" conciliation of collective disputes has already been discussed in section IV, 2.a. and compulsory pre-strike conciliation in the essential public services in section V, 1.a. In Italy, the local or central government authorities (mayors, prefects, regional chief executives, central government ministers) may in practice conciliate and/or mediate in labour disputes even when the law does not provide for them to do so, acting either on their own initiative or at the request of the parties. This is now recognised government practice for safeguarding major public or collective interests at local or national level.

2.a. In the Italian system of labour relations, procedures for self-resolution of collective disputes are on an informal basis. Procedures are formalised only for individual and/or class grievances: the procedural rules for "administrative" conciliation are outlined in the Code of Civil Procedure, while the rules for conciliation "by means of joint machinery" (as provided for in collective agreements) are set out in the text of the agreement, though this is rather uncommon. For "administrative" conciliation of collective disputes (see section IV, 2.a.), there are again no formalised procedural rules, but only rules of administrative or political/administrative practice.

2.b. Only in a few cases (e.g. for post office employees) does the collective agreement lay down procedural rules for:

- the parties authorised to start the procedure;
- the requirement for the procedure to be initiated in writing and for reasons to be stated;
- the times for convening of the parties;
- the time within which the procedure must be completed (or must be regarded as completed, irrespective of the outcome).

While the conciliation procedures are in progress, a "status quo clause" almost always applies. However, this is a two-way obligation, committing both parties. The employers' organisations and the employers belonging to them undertake to refrain from unilateral action and the trade unions to refrain from direct action (strikes) or legal proceedings.

2.c. The "direct negotiation" (authentic interpretation) procedure for resolving collective disputes on the interpretation of collective agreements within branches of the government sector is subject to the same rules as for negotiation of the agreements (Legislative Decree No 165/2001, Articles 47 and 49).

3.a. If the settlement procedure has a negative outcome (no agreement), the parties resume their freedom of action. The "status quo" truce is a temporary commitment, only for the time required to complete the

procedure. In the case of collective disputes on "application", failure to agree may lead to multiple individual disputes' being referred to the labour court.
In this case, conciliation must be attempted before recourse to the court, in accordance with the Code of Civil Procedure (Article 410 for the private sector) or the general rules for conditions of service in the government sector (Legislative Decree No 165/2001, Article 65).

3.b. When a preliminary decision is required in a government-sector labour dispute (see section II, 3.b.), since resolution depends on determining the effect, validity and interpretation of the collective agreement (Legislative Decree No 165/2001, Article 64) and a collective interest is at issue, the prescribed procedure is as follows:
- the court refers the question to the signatory parties with the aim of reaching an understanding on the "authentic interpretation" or amendment of the collective agreement;
- if no such understanding can be reached, the court delivers a preliminary ruling;
- the court's ruling may be appealed to the Court of Cassation, the appeal having the effect of suspending proceedings;
- the union organisations and ARAN may intervene in the proceedings at first instance and before the Court of Cassation.

This is an anomalous case of referral to a court of a collective dispute of right (on the effect, validity or interpretation of the collective agreement). It is explained by the particular nature of government-sector collective agreements, which have the form of a negotiated agreement but the effect of an externally imposed statute.

4.a. If the conciliation procedure ends in an agreement, this has the same effect in contract law as a collective agreement. If the dispute is a collective dispute of right, conciliation (whether or not in the form of "direct negotiation"), results not so much in a finding (which in the Italian system is the exclusive prerogative of the court) as in a decision on the action to be taken, i.e. the rewording of the clause in dispute. Even where the parties or the law refer to an "authentic interpretation", what is really taking place is the formulation of a new clause which is substituted *in toto* for that at issue, sometimes with retroactive force (as is the case for government-sector collective disputes of interpretation: Legislative Decree No 165/2001, Article 49). In the case of pay disputes, the outcome is normally an agreement on renewal of the collective agreement.

VII. ARBITRATION

1.a. There have been very few cases of arbitration in collective disputes. Arbitration, whether formal or informal, is designed only for individual disputes. Formal arbitration *(arbitrato rituale)* is that provided for and regulated by the Code of Civil Procedure (Article 808); informal arbitration *(arbitrato irrituale)* is that which is only provided for by the Code (Articles 412 *ter* and 412 *quater*) but is instituted and regulated by collective agreement. External resolution of collective disputes, with referral to a neutral party, is not forbidden provided it is voluntary; compulsory arbitration is not permitted since it is regarded as incompatible with the right to strike.

2.a. A form of external resolution which is close to arbitration is stipulated in the 1999 ENAV air traffic controllers' agreement for collective disputes of right (interpretation and application of the collective agreement). At the request of either of the signatory parties, the dispute may be referred to a "committee of independent experts" *(comitato di saggi)*, consisting of three members from outside the Authority (one member being nominated by each party and the chairman by common consent). After hearing the

parties, the committee tries to effect conciliation. If this is unsuccessful, it proposes an interpretation of the agreement and states what action should be taken by the parties. The parties undertake to apply the committee's interpretation in good faith and to act accordingly.

3.a. An arbitration procedure was proposed by the social partners in the 1996 Interconfederal Agreement pursuant to Directive 94/45/EC on European works councils, which contains a "joint opinion" of the signatories on how Article 11 of the Directive should be applied. For disputes concerning breaches of the information and consultation duties of Community-scale undertakings and groups (i.e. collective disputes), this opinion proposes that the Ministry of Labour set up an "arbitration board" *(commissione arbitrale)* composed of equal numbers of members nominated by each of the parties and chaired by a senior Ministry official. The board should rule on the dispute within 30 days and its decision should be final. (This also constitutes a response to section V, 1. of the outline for this study.)

VIII. STATISTICS

1.a. Over the long term, there has been a steady reduction in collective labour disputes in Italy. This is illustrated by the number of hours lost through industrial action in the period 1981–2000: the average of 78 million hours for the five years 1981–85 fell to 32.4 million for 1986–90, 18.8 million for 1991–96, and 7.7 million for the most recent period, 1996–2000 (Source: *35° Rapporto CENSIS sulla situazione sociale del Paese 2001*). The situation in Italy bears out the prediction made by the North American academics A.M. Ross and P.T. Hartman in the early 1960s that there would be a progressive long-term decline in labour disputes in western industrial countries.

1.b. The most recent statistics show that the number of hours lost through labour disputes rose to 6.4 million in 1999 – 56.6% higher than the 4.1 million hours lost in 1998 (Source: *Italian Statistical Yearbook 2000*, p. 235). This mainly affected manufacturing industry (64.4%) and is explained by pay disputes in connection with the renewal of some important collective agreements (e.g. in the metals and mechanical engineering sector). A breakdown, again for 1999, indicates that collective disputes on the renewal of agreements accounted for about 16% of all disputes but 67% of workers, while pay-and-conditions disputes accounted for 39% of disputes and affected 14% of workers (Source: *Italian Statistical Yearbook 2000*, p. 243).

2.a. Since Act No 146/1990 came into effect, there has been a steady decline in disputes in the essential public services. There are no statistics on the numbers of extra-judicial conciliation and cooling off procedures or their effect on the overall level of disputes.

3.a. Given the lack of significant data, it is very difficult to make an assessment, either overall or separately by type of procedure or sector, of the operation of collective dispute resolution mechanisms, and especially those which are provided for in collective agreements. The general impression is that they have a fairly modest effect: the long-term decline in industrial conflict apparent from the statistics is explained less by wider use of settlement procedures than by objective factors arising from changes in the social environment, the influence of public opinion, changes in the nature of work, reduced union density (especially in the industrial sector) and the impact of legislation (essential public services).

IX. Resolution procedures and Community-level negotiation

1.a. In the Italian system, the courts of general jurisdiction become involved when conflicts arise from the implementation of Community legislation (regulations and directives). In Italy, Community directives are transposed by means of delegated legislation (legislative decrees) (see Act No 183 of 18 April 1987). Collective bargaining is not recognised as a means of transposing the directives, since it has no adequate legal framework, especially since its outcomes are not generally binding, but apply only to members of the organisations which sign the collective agreements. The employer/union agreements which sometimes precede legislative transposal of directives (e.g. Directive 1999/70/EC on fixed-term work) are intended to shape the content of the delegated legislation. They have no effect in themselves but form part of the practice of "negotiated legislation", which is a feature of the most recent developments in Italian labour law.

2.a. Mention has already been made of the sole example of an extra-judicial procedure for implementation of a Community directive: that provided for in the "joint opinion" of the social partners attached to the 1996 Interconfederal Agreement on implementation of Directive 94/45/EC on the establishment of a European Works Council. This Directive has only recently been transposed into Italian law. It is therefore difficult to predict what the future holds for this procedural proposal, which poses problems in some areas of legal doctrine since it is an anomalous form of binding "informal arbitration" hitherto unknown in Italian procedural law.

2.b. The legislative decrees transposing the Community directives on fixed-term and part-time work contain no provisions for disputes, although the European Agreements to which these directives gave effect (in accordance with Article 4(2) of the Agreement on Social Policy annexed to the Maastricht Treaty) provided for "prevention and settlement of disputes and grievances" to be dealt with in accordance with national law, collective agreements and practice. However, the directives' recitals do not refer to these clauses. The content of the European Agreement on parental leave was given effect by ordinary law (Act No 53 of 8 March 2000; Legislative Decree No 151 of 26 March 2001).

3.a. One cannot but welcome the proposal to promote European-level measures to encourage peaceful resolution of disputes by suitable conciliation, mediation and voluntary arbitration procedures. These measures should preferably be adopted within the social dialogue procedure and the social partners at European level should be asked to try to negotiate an agreement on:

a) possible forms and procedures for extra-judicial settlement of disputes to be brought into play within the area covered by Community-level negotiations (in accordance with the spirit of Article 139 of the Treaty);
b) principles and guidelines for the organisation and operation of such forms and procedures;
c) arrangements for implementation, with reference to disputes at both Community and trans-national level.

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