THE RESOLUTION OF EMPLOYMENT DISPUTES IN ITALY

A legal system for minor labour disputes was created in Italy in 1893, with probiviri councils, composed by a panel of lay judges (a professional judge or civil servant retired and two reprentatives of social parties, one from the employer's side, the other one from the employee/worker's side); the main features of this trial were:
-conciliation attempt

-judgement of equity
-immediate enforceability
-no appeal.
This legal system, which worked well, was abolished in 1928, by the fascist regime, which wanted a pyramidal and gerarchical system composed by professional judges. Since then labour disputes are dealth with by professional judges.
After the Constitutional Chart of 1948 scholars, with a university degree in law, are engaged as judges by a public competition. The examination commission is composed by university professors and upper judges. No interference of the Government or of the Ministry of Justice is allowed.
After entering the judicial body judges's career is administrated by a body (Consiglio superiore della magistratura) composed by 16 members judges elected by all judges and 8 members nominated by the Parliement.
In their decisions, judges are submitted only to the law, and cannot be pursued for the decision taken.
Then Labour Court system in Italy, according to the last Act of 1973, is dealth with by judges belonging to the judiciary, specialized in labour and social security matters. No lay judges are at the present involved. Lay judges (Giudici di pace) have been introduced recently for the minor civil disputes, but not in labour and social security matters.
The proceedings rules for labour disputes are a specific part of the proceeding code for civil disputes; they obey to the same main principles:
-need of application of the plaintiff, usually written,
-burden of proof,
-adversarial principle,
-technical defense by a lawyer; in minor labour disputes personal defence is allowed, but it never occurs.
The main differences are in the system of statutory limitations, in concentration of hearings, in direct and personal approach of the judge with the litigants, with the attempt of conciliation, and in the power of the labour law judge to search the truth ex officio.

Judicial bodies:
There are 3 intances for each case, no matter the value:
Tribunal (single judge), 102 in all national territory,
Appellate Court (three judges), 28,
Supreme Court (Corte Suprema di Cassazione), social chamber (5 judges), just in Rome. As the corte di cassazione has to deal with up than 30.000 cases each year, whose 40% labour and social security cases, the social chamber is composed by 8 panels.
In case of contrasts in judicial precedents between different panels of the Supreme Court, or in case of willingness of the panel to change opinion on respect of the precedent, the case is dealth with by Sezioni Unite Civili, composed by 9 senior judges.

Individual disputes involved:

- employees-employers relationship (unfair dismissal, wages and rest disputes, overwiew in disciplinary decisions, etc.),
- self employed workers
- civil servants (except some categories as soldiers, policemen, firemen, magistrates, university professors, etc)
- agricultural workers
- social security (pensions, industrial accidents and deseases, unemployement, maternity and paternity leave payments, civil inabilities, blood transfusions or vaccinations damages, health care rights, etc.)

Collective disputes involved:

- Union's claims agains employer's acts against their freedom of acting in workink places
- Payments of union's contribution
- Reference for preliminary ruling to the Corte di Cassazione for direct interpretation of the collective agreements

Main features of Labour Trial:
Introduction of the dispute:

- plaintiff's application to the court vs writ of summons
- scheduling of the hearing
- defendant's pleading

defendant's pleading:

- deadlines and statutory limitations pursuant to wich defendant's rights will lapse if he/she does not in his/her first written pleading:
- make any counterclaim
- raise preliminary objections that cannot be raised by the judge on his/her own initiative
- identify relevant evidence
- contestg the facts specifically – burden of rebuttal

Hearing:

- Appearance of both parts, with their lawyers
- Free examination
- Conciliation attempt
- Admission of evidence
- Inquiry; the judge has the power to call for further evidence, inside the boundaries of the facts alleged by the parties.

Discussion and decision:

- immediate reading of operative part of judgement
- immediate enforceability of judgement, despite the appeal
- monetary revaluation

There is not court fee. In labour disputes the looser party is condamned to pay the lawyer fee of the winning party; in social security disputes the citizen, or the legal immigrant, even if looser, has no to pay anytinhg.

Appeals:

- free appeal without any filter or leave by the judge a quo (the limit of 20 Euro of value is becomed by the time insignificant),
- appeal judges will decide only on contested parts of the judgement appealed
- Cassazione will control both:
- the correct interpretation and application of the law,

and the reasoning of the judgement; but it doesn't reexamine questions of fact, only on questions of law. Interpretation of collective agreement was considered as question of fact. Since 1998 for civil servant disputes, and since 2006 for all the employees disputes, has been introduced the direct interpretation of the Corte di Cassazione on collective agreements, during individual disputes.

Assesment:

the italian labour procedure, compared with the ordinary civil trial, allows:

- shorter period time to reach a decision in first and second instance,
- a more in-depth knowledge of the case, and a better inquiry and quality of decision,
- but its realisation on the national territory is not homogeneous: there are Courts where first and second instance take together an year, and Courts where it takes more years;
- the judicial system is characterized by an individual and atomistic approach, wich let rise hundreds and thousand of equal cases in all the national territory, dealth with by many judicial bodies; we still miss and need a collective procedure for plant or category disputes, wich could ensure unique and equal decisions for all the employees of the plant or of the category.

The number of new labour law cases is heavy; in 2004 we had 404.000 new disputes in first instance, 56.000 in appellate courts, and 12.000 in Cassazione; they represent about the 43% of all civil disputes. The distribution on the national territory is extremely different: the regions with full employment have less disputes.

Nowdays there are new proposals for alternative dispute resolution, based on more involvement of lay men, both as recover of the old probiviri council of an old law of 1893 and foreigner experiences, and compulsory or voluntary arbitration.

By Aldo De Matteis

Member of Italian Corte suprema di cassazione – Social Chamber and Sezioni Unite Civili