

**Tenth Meeting of European Labour Court Judges
Stockholm, September 2, 2002**

**Lay Judges
Questionnaire**

ITALY

**General Reporter: Judge Peter Clark Employment Appeal Tribunal,
London, Great Britain**

**National Reporter: Judge Aldo de Matteis, Corte de Cassazione,
Labour Chamber**

1. Italian Appellate Labour Court (ALC) is comprised of professional judges only. We have two appeal instances: Corte d'Appello and Corte di Cassazione.
2. The composition of our first instance Labour Court is a single professional judge.
3. There are proposals currently in place to alter the entire legal system of our labour law trials: the so called Libro Bianco (White book). It has been laid according the plans of the present Government (coordinated by prof. Marco Biagi) to reform the labour market. It suggests the observation of foreign experiences, namely English industrial Tribunals and French conseils des prud'hommes, and to the increase of arbitration. This last suggestion has been put in a law draft now under discussion in Parliement which foresees an arbitration (on a voluntary basis and according our constitutional rule which ensures the right to present a suit to a national judge) of pure equity.

The present labour law disputes legal system has been in place since 1928, when the fascist regime abolished the previous arrangement. It was based on the conseils des prud'hommes, which were the basis for Italian labour trials born in 1893.

4. Lay members sit in our first instance court with professional judges in the following matters: criminal trials for most important crimes (two professional judges and six lay judges); agricultural disputes (three professional and two lay judges), which in many Courts are dealt with by labour judges; Minors Tribunals (three professional and two lay judges, psychologist and similar); in the above mentioned kind of disputes the Appellate Court has the same mixed composition; the Corte di Cassazione is instead composed of professional judges only.

- b) When the bench is composed of professional and lay judges, both have the same powers; of course in agricultural disputes (with which I have experience) the technical contribution of lay judges is most appreciated.
 - c) The lay members could outvote the professional judges in decision making, but it never happens.
There was a policy of appointing lay judges from each of the social partners until 1928, but only in the first instance.
7. Lay judges are selected for administrative appointment.
 8. Lay judges are appointed for 3 years (renewable).
 9. No training.
 10. The lay judges don't disagree; they give technical information professional judges don't have, and integrate the legal science of the professional judge for a common decision.
 11. I perceive there to be advantages.
 12. By studies on the historical experience of conseils des prud'hommes from 1893 to 1928, by my experience in agricultural disputes with lay judges, and by my experience as a single judge in first instance, 3 professional judges in Appellate Court, and five judges in Corte di Cassazione, I do believe that the administration of justice in our labour law disputes would be improved by the presence of lay judges, for the following reasons:
 - a) a better knowledge of the labour environment (particularly needed, for I instance, in disputes on job evaluation);
 - b) a better calibration of the decision that bears in mind justice within the context of the firm;
 - c) because an extension of the chamber to representatives of both parties should make the decision more acceptable, and reverse in this way the legal system from a piramidal system, in many instances, to an horizontal one.

The problem all of us have is to give a decision accepted as fair and authoritative, within a reasonable time. This result has been researched in continental countries, France, Germany, England, Spain, Italy, through a vertical model, which multiplies the number of instances, on the presumption that the court ultimately can amend the mistakes of the preceding court, and that the final judgement is perfect.

Sweden has chosen an horizontal model, in which the authoritativeness of the decision is reached by enlarging the bench with three professional judges and four lay men, taken from the work world. It rules in a unique instance for collective disputes, and in second and final instance for the individual ones.

The first model has many inconveniences: it takes a longer time; the further the trial goes from the first instance, the more the court loses the perception of the real facts; the legal system of appeals multiplies the technical requirements and the possibilities of losing the case for legal procedural reasons far from a fair solution to any case.

Nowdays when Italian labour judges need technical informations, they can appoint a “technical consultant” of the Court, or ask cross-informations to the Unions (of the employees and of the employers).

For these reasons I do believe that the administration of justice in our labour law disputes would be improved by the presence of lay judges