

ITALY

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1. National court system

The judicial function in Italy is administered by ordinary and special judges: the ordinary judges have jurisdiction on the whole area of civil and criminal matters, whereas the special judges have jurisdiction according to their specialties.

In fact, the Italian Constitution (Article 102) provides that: “Judicial functions are exclusively exercised by ordinary courts regulated by rules regarding the organization of the judiciary” and prohibits the establishment of new “extraordinary or special” judges.

However, specialised institutions in specific sectors may be set up within the ordinary jurisdiction bodies, characterised by the concurrent presence in the same judicial body of ordinary judges and qualified citizens who are not members of the judiciary.

Special judges are, in any event, mentioned in the Constitution itself, such as administrative judges, the State Auditor's Court (Corte dei Conti) of Accounts as well as military judges: these, in fact, had already been established prior to Constitution (Art. 103.).

The different spheres of jurisdictions of the ordinary courts and the administrative courts regarding the controversies among citizens and public administration (and relating to administrative acts) are strictly connected to the dichotomy between the concepts of "rights" and "legitimate interests", which is also mentioned in the text of Constitution (Art. 24).

According to the Italian administrative doctrine, the "legitimate interest" is an individual interest closely connected with a public interest and protected by law only through the legal protection of the latter.

Generally, the ordinary courts have the jurisdiction over controversies in which a citizen claims the violation of a "right", whereas the administrative courts have the jurisdiction when a "legitimate interest" is violated.

Only the administrative courts can annul an administrative act (the ordinary judge cannot-apply the act to the case) and there are also cases of exclusive competence (e.g. the urban planning), in which the administrative judge is also a judge of rights.

Furthermore, there is one Constitutional Court, whose task is to ensure that any law provision complies with the Constitution, and is construed accordingly. Specifically, if a party believes that an existent and applicable law provision breaches any specific provision of the Constitution, a preliminary ruling can be brought before the Constitutional Court by the judge charged of the proceeding.

It is to be pointed out that, although not written in the text of the Constitution, the principle of double degree of jurisdiction is fully complied in the Italian legal system, so every judgement rendered by a first instance court (both ordinary and special judge) can be appealed before a judge of appeal; finally, every judgement rendered by an appeal court can be reviewed by the Court of Cassation (as third instance court), which deal only with issues of law.

A) Civil courts and civil proceedings

The rules of the civil proceedings are set in the Civil Procedure Code (C.P.C.); that Code has been approved in 1942, thus since then it has undergone several reforms (the most recent of which has been introduced by the Italy/Legge n. 69 of 18 June 2009¹).

The Italian civil proceeding is a party trial directed by a single judge (usually) or by a panel of judges; also, the decision is taken only by the judge (i.e. by a single judge or by a panel of judges) because there is no jury in the civil proceeding.

Ordinary jurisdiction is administered by “professional” judges and “honorary” judges, who form part of the judiciary (Italy/Regio decreto n. 12 of 30 January 1941, art. 4)².

The professional judges are appointed by way of a public exam, for taking of which a law degree is required. They can be assigned to one of the 386 Courts (“Tribunali ordinari”) which are located in the various districts, or to one of the 29 Courts of Appeal (“Corti d’appello”) - in the different Italian provinces, or, moreover, to the only Court of Cassation (“Corte di Cassazione”), the court of last resort, which has its seat in Rome.

Usually the Court is the first instance judge but, in some cases, the first instance judge is the Court of Appeal (as for the Pinto Law proceedings or the proceedings concerning the amount of the compensation for the expropriation).

The whole proceeding takes place before the judge, during non-public hearings.

The proceeding starts when the claimant serves the complaint upon the defendant; the defendant can file the answer within a specific time-limit, before the first hearing, if he intends to raise specific objections to the complaint which, otherwise, shall be considered as waived.

Once the parties have exchanged the complaint and the answer, they appear before the judge, who asks them preliminary information about the case and then grants them time-limits to file additional pleadings, where they may specify the content of the respective claims and defence and request the judge to admit evidence; the pleadings are exchanged within the time-limits under article 183 par. 6 C.P.C.

Once the evidence pleadings have been filed by the parties, the judge decides which evidence is admissible; then, the judge schedules a hearing to give evidence (e.g. witnesses’ examinations, inspections, etc.). There may be more than one hearing to give evidence, depending on the type and amount of evidence.

¹ See: <http://www.parlamento.it/parlam/leggi/090691.htm> (07.09.2009)

² See: <http://www.csm.it/VPO/DOC/NormativaDiRiferimento.pdf> (07.09.2009)

At the end of the presentation of all evidence, the judges declare this stage closed and schedule a hearing, where the parties present their conclusions and final arguments and give them a time-limit for filing final pleadings and final pleadings in reply.

The judge shall then render the judgement within the following 30 days.

The judgment rendered by a first instance judge may be appealed before a Court of Appeal, which will review the entire decision making process of the first instance judge.

The losing party may appeal from the judgment rendered by the first instance judge by filing the appeal within 6 months, running from the publication of the judgment (long time-limit for appealing), or by 30 days running from the time of the service of the judgment by the winning party (short time-limit for appealing).

Issues of facts, as well as issues of law, may be reviewed by Court of Appeal. However, the Court of Appeal can not address new issues of facts or law which were not previously submitted to the first instance judge, unless in very few and specific cases.

Finally, the judgment rendered by the Court of Appeal may be reviewed by Court of Cassation only on the basis of the specific grounds under article 360 of the C.P.C., which deals only with issues of law. The losing party may challenge a judgment rendered by the Court of Appeal before Court of Cassation within 6 months running from the publication of the judgment rendered by the Court of Appeal (long time-limit for challenging), or by 60 days running from the service of the judgment by the winning party (short time-limit for challenging).

If any party fails to challenge the Court of Appeal judgement within the aforementioned terms, the judgement becomes definitive. However, in few special cases the following extraordinary remedies may be addressed to the competent judges: third party's opposition (Articles 404 to 408 C.P.C.) and the extraordinary review (Articles 395 to 403 C.P.C.).

Ad interim decisions are usually absorbed in the final judgement, although some of them may be immediately appealed. The following are the honorary judges who have jurisdiction in civil matters: a) justices of the peace (Italy/legge n. 374 of 21 November 91³), who are competent, both in the civil and criminal field, for matters previously dealt with by professional judges (at this moment is the first instance judge with jurisdiction over claims not exceeding €5,000); the justice of peace judgments maybe appealed before the Courts or to the Court of Cassation; b) honorary judges (Italy/legge n. 276 of 22 July 1997⁴; Italy/Decreto legge n. 328 of 21 July 98⁵); c) court

³ See: <http://www.padovanet.it/giudice/legge%20n.374.htm> (07.09.2009)

⁴ See: <http://www.parlamento.it/parlam/leggi/97276l.htm> (07.09.2009)

honorary judges attached to the judicial offices; d) experts attached as honorary judges to the Juvenile Courts.

An important role in the Italian civil court system is played by the labour judges, who deal with a wide range of labour matters involving social insurance and social welfare issues as well as civil servants disputes (see Article 409 of Italian Civil Procedure Code).

The Italy/legge n. 533 of 11 August 1973⁶ provided for special procedural rules for proceedings regarding labour matters: such rules are intended to reduce written material brought before the judge, increase litigants' participation and speed up the trial.

Such labour cases can be brought before labour judges only upon prior attempt to settle the dispute before a public commission of conciliation (Article No. 410 of Italian Civil Procedure Code).

The labour judges have been created as specialized chambers within major Courts whereas in smaller Courts - where the limited number of judges does not allow the creation of chambers - the same ordinary judges are also in charge of labour matters to which they apply the abovementioned special procedural rules.

The judgements rendered by labour judges in first instance can be appealed before a special chamber of the Court of Appeal, with a possible further challenge before the Court of Cassation Labour Chamber.

B) Specialised judicial institutions

A Juvenile Court ("Tribunale per i minorenni") is established in every Court of Appeal; it is a specialised institution which functions as a court of first instance for all civil and administrative matters concerning minors (under 18 years of age). The collegiate court is made up of four members, two career judges and two citizens who are experts in the relevant area. The Juvenile Court has jurisdiction for the following matters: cases relating to parental rights, the authorisation of minors to marry, adoption, the recognition of natural children, excluding a parent from managing the estate of a minor etc. On appeal or judicial review of the Juvenile Court's decision, a division of the court of appeal adjudicates with the participation of two experts.

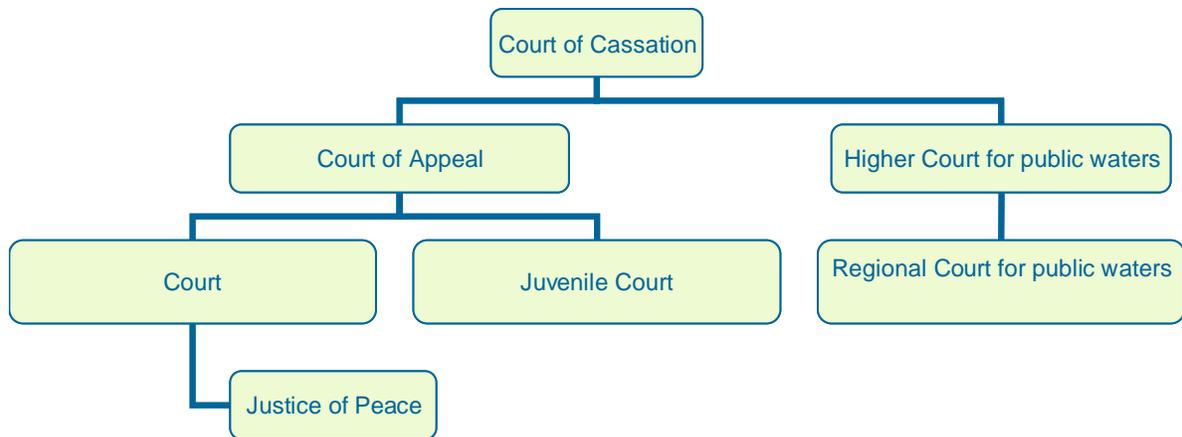
⁵ See: http://www.italggiure.giustizia.it/nir/1998/lexs_170794.html (07.09/2009)

⁶ See: <http://normativo.inail.it/bdninternet/docs/153373.htm> (07.09.2009)

Specialised agricultural sections (“Sezioni specializzate agrarie”): these have very limited jurisdiction in the case of disputes relating to agricultural contracts; they are established in the Courts and in the Courts of Appeals and adjudicate with the participation of experts.

Regional courts for public waters (“Tribunale regionale delle acque pubbliche”): these are housed in only eight appeal courts. They adjudicate with three members, one of whom must by law be a civil engineer. They have jurisdiction for questions relating to the state ownership of waters, the exclusive use of public waters, the carrying out the construction of waterworks, underground water and fees paid by consortiums for the use of public waters. Decisions may be appealed before the Higher Court for public waters (“Tribunale Superiore delle Acque Pubbliche”).

Figure 1: System of appeals: civil courts and specialized judicial institutions



C) Special Courts and administrative proceedings

Jurisdiction over administrative matters is exercised by Regional Administrative Courts (“Tribunali Amministrativi Regionali - T.A.R.”) and by the Council of State (“Consiglio di Stato”).

Any citizen, who claims to have a direct and personal interest in a certain activity of an administrative authority, can seek justice from the Administrative Courts.

The administrative Law-suit starts in an Administrative Regional Tribunal; it can be pursued, as a matter of right, by any party who did not completely win his case, by way of appeal to the judicial chambers of the Council of State.

The judgment rendered by the Council of State may be reviewed by Court of Cassation only on the basis of the specific grounds of jurisdiction.

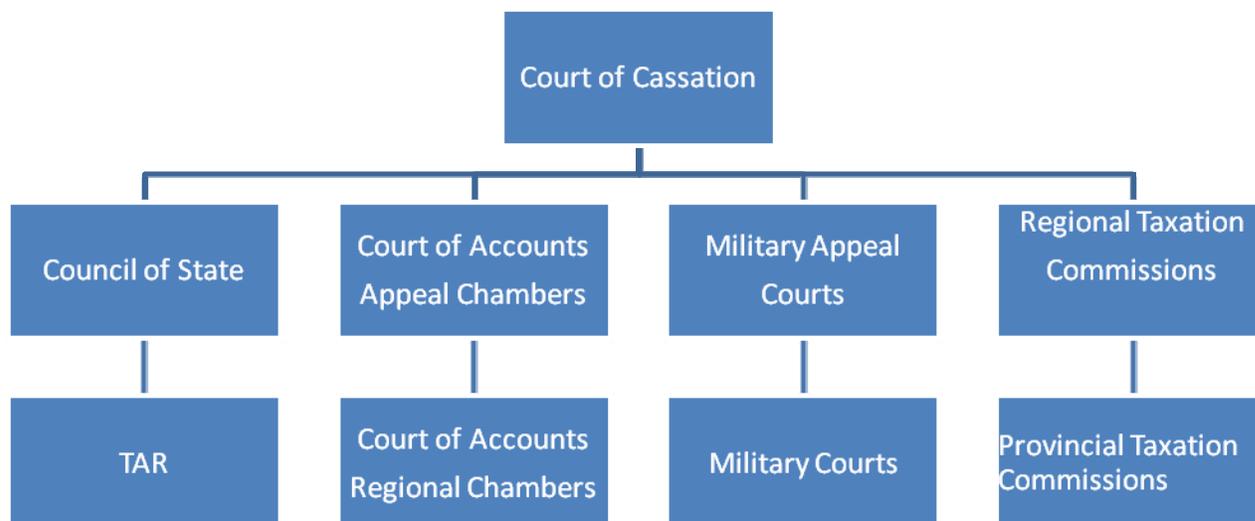
Administrative procedure differs from civil procedure mostly in two aspects: a) a more limited range of possible evidence because, as a rule, the facts of the case are established through documents and there is never an examination of the parties and of the witnesses; b) the fact that administrative Law-suits are normally decided after a single hearing.

Jurisdiction over public accounting matters is exercised by the Court of Accounts (“Corte dei Conti”), which can judge accounting agents, public administrators and executives, for all the issues involving the management of public resources. The organizational arrangement of the jurisdiction is as follows: twenty-one regional jurisdictional chambers as judge of first instance and three Jurisdictional appeal chambers located in Rome.

Jurisdiction over taxation matters is exercised by the Provincial Taxation Commissions and the Regional Taxation Commissions as judge of appeal.

Jurisdiction in military affairs is exercised by: Military Courts (as first instance judge), Military Appeal Courts, Surveillance Military Courts, Military Prosecutors based at the military courts, and General Military Prosecutors based at the Military Appeal Courts, and the General Military Prosecutor based at the Court of Cassation.

Figure 2: System of appeals: special courts



2. Restrictions regarding access to justice

The right of access to justice recognized by Article 24 of Constitution is an inviolable and non disposable right and a fundamental principle of Constitution. No relevant restriction can limit the right to access to justice in discrimination cases, as a matter of law.

3. Length of judicial proceedings

It's difficult to provide detailed analytical conclusion on the length of judicial proceedings in non-discrimination cases: the reason is that decisions are only partially published on judicial reviews. As such, only reasons for judgement are available, without precise reference to the development of proceeding decision (only in few cases information about the length of proceedings from the beginning till the decision are available: see n. 1- Tribunale di Roma 25 gennaio 2001 – first instance 11 months; n. 3 Tribunale di Ariano Irpino 3 febbraio 2004 f.i. 1 month; n. 11- Tribunale di Pistoia 3 dicembre 2005 3 months; n. 18 Cassazione n. 6172/2008- 3 years, from the first to the third instance; n. 20 Tar Venezia 5 maggio 2008 f.i. 2 months.).

Evaluating the length of each judicial proceeding is not always easy, since many judgments are published in legal journals in a curtailed version, or do not quote the precise date of the

application. In addition, the great majority of cases are decisions of courts of first instance and we do not know if an appeal was lodged.

4. Are procedures concluded within a reasonable time?

Even if most of the non-discrimination cases examined do not offer information about duration of the proceeding, broadly speaking there did not appear to be excessive delays. Remedies offered at national level for the breach of equality right are faster than those available for “normal” actions, taken on the grounds of article 163 of the Italian civil procedure code.

5. Does provision exist for speedy resolution of particular cases?

Decreto legislativo 215/2003 (implementing Racial Equality Directive 2000/43/EC) and decreto legislativo 216/2003 (implementing the Employment Framework Directive 2000/78/EC), provide for simplified and expedited procedures that should grant that the case is decided within a reasonable time (see art. 4 Decreto Legislativo 215/200 and art. 4 of decreto legislativo 216/2003 with reference to art. 44 of 1998 Immigration Act, art. 37, 1-3 Equal Opportunity Code). Art. 44 par. V of 1998 Immigration Act, art 37 par. IV, and 38 of Equal Opportunity Code provide for special procedure on the grounds of urgency. All these procedures (the simplified ones as well the ones expressly to be brought on the grounds of urgency) seem to reduce the length of these proceedings which are generally speaking more expedited than normal action brought according to ordinary proceeding established by civil procedure.

Corte di Cassazione, 7 marzo 2008 has established that Art. 44 Italy/Decreto legislativo n. 286/1998 (referred to in art. 4 of Italy/Decreto legislativo n.215/2003 and in art. 4 of Italy/Decreto legislativo n. 216/2003) is a legal proceeding on grounds of urgency.

Indeed, in a case of discrimination the victim can file a “simplified” civil suit for which the following conditions apply. Legal assistance by a lawyer is not necessary; formalities at the hearing are reduced to the minimum; the competent judge comes from the same region as the victim (contrary to normal procedures, in which the judge is from the same region as the

defendant). In cases where the judge upholds the victim's petition, he can order that the discriminatory conduct stop, that the effects of the discrimination be removed, that the decision be published in a national newspaper, that a company which commits an act of discrimination be denied financial and credit facilities or excluded from contract work for up to two years, that patrimonial and non-patrimonial (the so called non-pecuniary damage) compensation be paid. In particular cases in which it is important to act promptly, there is a provision for an interim injunction to be granted. As regards the award of compensation for 'moral damage' in particular, to date an absolute majority of judicial decisions have rejected this remedy. It is not possible to foresee whether the recognition of compensation for 'moral damage' on the grounds of the mere evidence of the discrimination, regardless of any real economic loss, will be widely recognised by judges.

6. Is it possible to waive the right of access to a judicial body?

The right to have a dispute settled by a judge is defined inviolable and non disposable by the Constitution Art. 806 of civil procedure code states that the parties may have disputes which have arisen between them decided by arbitrators provided the subject matter does not concern rights which may not be disposed of. Labour disputes (art. 409 civil procedure code) may be decided by arbitrators only if so provided by law or by collective labour contracts or agreements.

7. Access to non-judicial procedures

Broadly speaking national laws against discrimination provides also access to non-judicial procedures in order to obtain redress. These procedures are complementary to other legal remedies. In implementation of the Council Directive 2000/43/EC, the *Ufficio Nazionale Antidiscriminazioni Razziali* (UNAR) [National Office Against Racial Discrimination] was created by Italy/decreto legislativo 215/2003 (09.07.2003) to promote the principles of equal treatment of individuals, regardless of race or ethnic origin. UNAR, established in 2003, is made up of a director, 13 functionaries and 9 experts.

Italy/decreto legislativo, 215/2003 (09.07.2003) and the related Italy/decreto del Presidente del Consiglio dei Ministri, (11.12.2003) detail UNAR's mandate, outlining its various tasks and functions. UNAR's mandate consists mainly in prevention and elimination of discrimination, in promoting the adoption of positive action, in carrying out studies and research, and in provision of training courses. This mandate is carried out through activities grouped in the four general categories below.

- Prevention of all behaviour or acts that cause a discriminatory effect, by raising awareness both in the general public and among those working in the sector.
- Elimination of discriminatory situations through the provision of legal support and assistance to victims, and by conducting investigations and inquiries into the phenomena of discrimination.
- Promotion of positive action, studies, training courses and exchanges of experience in partnership with associations and entities operating in the sector and with institutes specialising in statistical analysis to establish specific guidelines for the fight against discrimination.
- Monitoring the application and effectiveness of the principle of equal treatment and mechanisms to safeguard this. UNAR also participates in consultations and exchanges promoted by the European Commission and by international bodies engaged in the fight against racial discrimination.

The UNAR provides support to victims of discrimination in judicial and administrative proceedings in several ways. It examines complaints from victims; conducts inquiries to confirm the existence of discriminatory phenomena, and promotes the adoption of positive action intended to compensate for situations of disadvantage connected to race or ethnicity. In December 2004, UNAR launched a telephone Contact Centre that works on different levels, collecting reports and complaints about discrimination from victims. It is run in conjunction with the *Associazioni Cristiane Lavoratori Italiani* (Christian Association of Italian Workers, ACLI), with whom collaboration has been extended until 2009. The Contact Centre collects reports and testimonials on facts, procedures and actions concerning discrimination. It offers immediate assistance to victims of discrimination, providing them with information, guidance and psychological support, and assists the victims of discrimination through judicial proceedings. The Centre operates through the toll-free number 800-90-10-10, which operates daily (the Contact Centre received

approximately 8,000 phone calls in 2007). The Centre's telephone operators are given training in cultural and linguistic mediation. Operators are available to respond in many languages, including Hindi, Urdu, German, Kurdish, Farsi, Turkish, Azeri, Dari, Pashto, and Punjabi. The Contact Centre represents the first point of contact and support for victims of discrimination. The Contact Centre receives complaints and collects information on different cases of discrimination. The case is sent to a group of experts in judicial and social sciences, who conduct the first phase of the preliminary investigation in order to obtain key information and speak with witnesses, if there are any. This procedure is known as 'call back'. If there are no witnesses, the experts try to gather information from the police, trade unions, and associations, or by what is known as testing, i.e. sending operatives to verify the discriminatory situation personally. If it is possible to respond immediately and provide information or a resolution, the Contact Centre and the first-level experts resolve the case there and then. Resolution of the case can mean either that there is no confirmation for the complaint of discrimination, or that it could be resolved through providing information or suggestions. When resolution at this stage is not possible, the complaint is examined by second-level experts (usually a legal expert and a functionary). In general, following these investigations, UNAR contacts the perpetrator of the discrimination, requesting removal of the discrimination, or (e.g. if the perpetrator is a company) an internal investigation. If a complaint is judged to be real and relevant, it is forwarded for evaluation by the Director and possibly assigned to the relevant officer or magistrate at the second level for the next phase of the investigation. In order to tackle cases considered to be urgent, civil action can be taken against those committing acts of discrimination on grounds of race, ethnicity, nationality, or religion.⁷

Since its second year of activity, UNAR, with the support of the Christian Association of Italian Workers, has established 14 national Focal Points in Turin, Milan, Padua, Rome, Naples, Catania, Varese, Venice, Treviso, Macerata, Modena, Forlì, Arezzo and Perugia. These Focal Points allow UNAR to intervene locally and provide immediate support. The data received through the Contact Centre is also extremely useful, in that it provides a snapshot of racial discrimination in Italy. The operators of the telephone service enter data in a database that represents an important source for studying discrimination. This information is not publicly accessible, except by special request.

Trade unions play a procedural role in fighting discrimination, both as regards legal representation and in conciliation procedures. On the one hand, Article 44.10 of the Consolidated

⁷ Italy/decreto legislativo 286/1998 (25.07.1998) and in Italy/decreto legislativo 215/2003.

Text on Immigration states that trade unions have an autonomous right to act in cases of 'collective discrimination'. On the other hand, anti-discrimination legislation does not provide for mandatory preventive conciliation attempts, except within employment jurisdiction. It is important to note that national conciliation committees, set up by collective employment agreements and composed equally of representatives of the employers and the trade unions, have no specific competence in regard to anti-discrimination measures. In particular, it appears that these committees are not empowered to consider any cases that fall outside the field of employment, such as discrimination related to access to goods and services. In general, it can be stated that the national conciliation committees do not play any significant role. In contrast, the role that trade unions play in assisting victims of discrimination at work appears to be more effective.

Through their various local territorial divisions trade unions provide individual and collective assistance and support to workers who have been discriminated against. They can provide access either to mediation (this is informal mediation between worker and employer) or to legal services. They are also involved in projects aimed at developing a strategy against racial and multiple discrimination in the field of employment and work through various kinds of activity (monitoring, publications, seminars, etc.). The role of the unions in prevention and monitoring of racial and ethnic discrimination has increased steadily in recent years, both independently and in conjunction with NGOs and the regional authorities (e.g. the agreement concluded with Emilia-Romagna in 2007).⁸

Based on the experience of the trade unions, only 2 to 3 per cent of discrimination cases are resolved through conciliation or mediation. However, the experience of the National Office Against Racial Discrimination (UNAR) is different. Since UNAR does not have the legal standing to sue on behalf of victims of discrimination in any kind of judicial procedure (along with its inability to impose sanctions, this lack is one of UNAR's greatest weaknesses), the vast majority of cases are resolved through informal mediation. In these cases, UNAR uses moral arguments and the power of persuasion derived from its institutional role to intervene and put pressure on the parties concerned to obtain effective and socially responsible behaviour without resorting to the law.

Art. 4, par. 3 of Italy/Decreto legislativo n. 216/2003, art. 4 par. 2 Italy/Decreto legislativo nr. 215/2003 and art. 36 of Equal Opportunities Code make reference also to art. 410 of civil

⁸ See <http://www.emiliaromagnasociale.it/wcm/emiliaromagnasociale/home/antidiscriminazioni/protocollo.htm> (13.03.2009).

procedure code which provides a mediation attempt before a conciliation body. Mediation helps the parties to reach an agreement, without power to decide who is right and who is wrong. The parties are encouraged to initiate a dialogue and to work together to reach an agreement. This agreement can be enforceable (see art. 411 Italian civil procedure). If the mediation attempt fails the parties can refer the dispute to the Court. These procedures are complementary to other legal remedies.

Finally, art. 37 of Equal Opportunity code provides with reference to collective discrimination the possibility to ask the employer to plan measures necessary to remove discriminations. If the proposed measures are considered appropriate, the plan can be enforceable. This proceeding is complementary to actions brought before the Court.

8. Legal aid

Legal aid is a constitutional right in Italy (Art. 24 of the Constitution). People have right to free legal assistance. According to Italy/Decreto del Presidente della Repubblica n.115/2002 (Expenses Act), applicants are entitled to legal aid for their representation in civil cases, which would include discrimination cases. Applicants' eligibility is assessed according to annual income (income less than €10.628,16).

Legal assistance and support can also be obtained through the *Ufficio Nazionale Antidiscriminazioni Razziali* (National Office Against Racial Discrimination, UNAR). The UNAR can intervene in judicial proceedings through oral or written observations (on the basis of Art. 425, Code of Civil Procedure). During 2007, UNAR set up several agreements with lawyers' associations willing to grant legal assistance.

In cases of judicial or administrative action, UNAR can propose that a national Focal Point or an appropriate association on the National Register provides support to the victim (the National Register, as provided by Art. 6 Italy/decreto legislativo 215/2003, includes associations and entities belonging to civil society, e.g. NGOs, voluntary sector associations, private social organisations). These entities enrolled in the National Register, have the right to provide legal

assistance and representation before the courts in discrimination cases. NGOs are heavily involved in supporting complainants in judicial and administrative procedures, in particular in explaining the legislation and bringing the victim into contact with the defending counsel. These registered associations also have legal standing before the courts in ‘collective discrimination’ actions in the event that an individual who has experienced discrimination cannot be immediately identified. In other cases they must have legal authorisation from the victims. In such cases registered associations can engage autonomously in proceedings on behalf of or in support of the victims (Art. 5 Italy/decreto legislativo 215/2003).

Moreover, trade unions provide individual and collective assistance as well as support to workers who have been discriminated against, and to this end they are active at local level. In recent years, the role of the unions in prevention and monitoring of racial and ethnic discrimination has steadily increased, both independently and in conjunction with NGOs and the regional authorities.

9. Forms of satisfaction available to a vindicated party

In non-discrimination cases, the National Discrimination Law foresees that compensation shall be paid out if requested. Other remedies available, as supported by landmark cases, include an order to reinstate an individual or an order to publish the measure adopted by the judge.

Regarding non judicial procedure the vindicated party can obtain either compensation or reinstatement in office. However, it is quite clear that in regard to discrimination within the field of work and employment, sanctions may not always be fully effective. For example, where a candidate has been excluded from a public competitive application process on the basis of a discriminatory condition, the time necessary to remedy that situation would make it almost impossible for the candidate to be readmitted to the application process. Non judicial procedures are not exclusive but complementary to other legal. If the vindicated party is not satisfied with the result of non judicial procedure can file a lawsuit

10. Adequacy of compensation

The level of compensation set in consideration of the damage caused to the individual does not seem to be proportionate to the damage actually suffered.

Courts do not usually order any compensation, preferring other forms of satisfactions (like reinstating of the employee unlawfully discharged).⁹

Most of the cases examined refer to unlawfully discharge of employees: the Court ordered a) to reinstate the aggrieved individual who was unlawfully discharged, b) payment of back pay from the date of discriminatory discharge to the date of the court judgment, including social and pension benefits. Only a minority of the cases examined provide for a compensation, which is neither adequate nor has a deterrent or punitive effect.

11. Rules relating to the payment of legal costs

According to art. 91 of Italian civil procedure code the court order the payment of costs by the losing party. However, art. 92 permits the ordering of payment of costs by each side for their own costs in serious and exceptional circumstances.

12. Rules on burden of proof

Italy has recently transposed the shift of the burden of proof required in Article 8 of Directive 2000/43/EC, with Italy/legge 101/2008 (06/06/2008), after the European Commission initiated an infringement procedure.¹⁰ It is too early to assess the effect of this emendation.

In general, the victims of discrimination can use statistical data and other factual elements to support the case.

⁹ E.g. In Tribunale di Varese 2 luglio 2008 the Court order to pay a compensation amount of 2000 euro which seems to be not proportionate to the damage actually suffered by the employees not hired.

¹⁰ See also RAXEN Annual Report 2007-Italy.