Italy

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1.General regulations of labor law

1.1 Implementation of international legislation into domestic law

International laws to gain efficiency in the Italian internal judiciary must undergo a process of adaptation, which can be automatic or special. The automatic (or general) adjustment is scheduled for international custom by art. 10 of the Constitution, which states that «the Italian legal system conforms to the generally recognized norms of international law». The special adaptation, however, concerns the international treaty law, and it may consist simply in an execution order, or more frequently, in the so-called ordinary special adjustment, i.e., the approval of inner regulatory actions (usually of a legislative nature) needed to execute them.

The conventions of the International Labour Organisation (ILO) always require a legislative act to produce effects in the internal judiciary (so-called ratification). Italy joined the ILO since the beginning, and is committed, through the Constitution (article 35, paragraph 3) to work for the protection of the supra-national work. However, the conventions (and also the recommendations) of the ILO had a very limited influence on the evolution of the Italian labor judiciary, as the latter generally provided levels of protection qualitatively and quantitatively higher than those considered by the international Community.

In terms of industrial relations, in particular the Italian Republic is bound to protect freedom of association and the recognition of collective autonomy, as a result of ILO conventions No. 87/1948 and No. 98/1949, concerning trade union rights and anti-discrimination protection. Italy has not, however, ratified the ILO Convention No. 154/1981 concerning the promotion of collective bargaining. Italy has also implemented the main international conventions, such as the November 4, 1950 for the protection of human rights as well as fundamental freedoms (ratified by law August 4, 1955, No. 848), expressly referred to art. 117 of the Constitution, together with the constraints arising from the community judiciary.

The rules of community judiciary can be distinguished in those with immediate relevancy, such as rules contained in the treaties or in the legislations, and those that require a state act of reception, such as the directives. These have had an increasingly pervasive influence in the Italian labor judiciary. In fact many laws introduced recently in Italy concerning jobs are the results of EU directives

implementation, which are generally brought into effect in our country through the enactment of a law of ratification.
In the Italian judiciary collective agreements cannot serve as acts of reception of supra-national regulations (ILO or EU) since, given the failure to implement art. 39 of the Constitution and the consequent lack of erga omnes efficiency of collective agreements (see below), they do not affect all firms and workers and therefore they cannot be considered equivalent to legislative acts. Through negotiations, however, the social partners can anticipate the implementation of adjustments related to supra-national legislation. In this way, collective agreements may in fact play a significant role to pre-determine the content of subsequent acts, especially when concluded at an interconfederal level. These agreements, then, may also involve the Government, which can also assume the obligation to exercise its influence (and even its power to initiate legislation) to conform the adopting legislation act to the substance of the agreement between social partners.

1.2 Formation of union representation in order to subscribe collective agreements
The Constitution, art. 39, provides a structured mechanism for the conclusion of collective agreements with *erga omnes* efficiency, attributing this power only to those unions, that have a legal existence and are registered in the specific lists, with an internal arrangement of a democratic base.
Art. 39 of the Constitution, however, has not been implemented, and thus industrial relations have developed in a framework of legislative abstention, with a consequent enhancement, on one side, of the most representative associations that aggregate the majority of workers in various sectors and, on the other side, of the rules of common law related to unofficial associations and contracts. In addition, a particularly active and also quite creative role has been exercised by jurisprudence, especially in the enforcement of the minimum wage provided in the contracts. A further consequence of the failure to implement art. 39 of the Constitution is represented by the fact that the rules under which the unions delegations are formed to conclude national or territorial collective agreements are autonomous for the different trade unions, which are generally responsible for the appointment by the governing bodies at various levels. Increased worker participation is expected in the formation of the enterprise delegations that exercise collective bargaining inside their companies.

1.3 Trade union representation and activity in the workplace
The backbone principle of the entire Italian labor judiciary is the freedom of union association. This principle – which is reflected in the major international treaties – is contained in the first paragraph of art. 39 of the Constitution, which provides that «union association is free». The law grants to the workers the right

to organize freely and, in its breadth, involves not only the methods of organization but also the activities related to bargaining. On one side, it operates at the level of private inter-relationships inhibiting any interference by employers, while on the other it acts as a public right of freedom to prevent even the State from performing acts that may impair that freedom, so the Government is prevented from enforcing binding rules related to the unions tasks and methods.

In addition, freedom of trade union shall be understood also as the freedom of individuals to choose which union to join or even to chose not to join any association (called negative freedom).

The freedom of association and of trade union activity is subject to special protection in the Workers Statute (Law No. 300 of May 20, 1970), which contains a set of rules designed to ensure their effectiveness, in particular, the prohibition of discrimination against the workers for their union membership or their commitment in the trade union (art. 15 and art. 16); the rules intended to protect the privacy of the worker in the workplace (art. 2, 3, 4, 6 and 8); the right to enlist new affiliates and to collect membership fees in the workplace; the right to suspend the activities performed by those employees called to hold managerial positions within their own association (art. 31); the prohibition of «convenience» trade unions, meaning those workers associations promoted or supported by the employer himself (art. 17).

To this set of rules designed to protect any form of aggregation of workers in the workplace it should be added the support legislation contained in Title III of the Statute, which consists in granting special privileges (right of assembly, referendum, protection of union leaders, paid and unpaid permissions to leave, posting right, right to have an office inside the company) to the union representatives who meet certain criteria of representativeness dictated by art. 19 of the Statute. More specifically, if art. 14 of the Statute guarantees all workers the right to organize freely and to carry out trade union activities within the workplace, art. 19 allows workers to form, in industrial and commercial enterprises, business trade unions (RSA) in each production unit with more than fifteen employees. The law is silent regarding the structure of the RSA, so it is up to the workers themselves who take the initiative for their establishment to determine whether they should or should not have a membership and/or elective structure. Recently the corporate representations in art. 19 of the Statute have been shaped as decentralized parts of the associations as opposed to unitary representations (RSU) designated primarily by all the workers whether they are members or not of the trade unions.

According to the original formulation by art. 19 of the workers statute, the RSA could be constituted «in the ambit» of: a) the associations related to the confederations most representative nation-wide, b) the trade unions, not affiliated to such confederations, which are signatories of collective national or provincial

work contracts applied in the production unit». With the first selection criterion the legislature of 1970 had intended to link the trade unions to the umbrella organizations affiliated to the main confederations (so-called historical representation), believing that this connection would lead to a rationalization and coordination of union dynamics. The selection criteria defined in letter b) of art. 19 of the Statute, however, was intended to preserve an element of effectiveness focused on the stipulation of collective national or provincial contracts applied in the production unit (so-called technical representative), on the assumption that the contract activity was already satisfying the authenticity of trade union representativeness.

Following the referendum of June, 11 1995 the entire letter a) and only the words «national or provincial» in letter b) were removed from the law text. Consequently, the access to the rights referred to in Title III of the Statute has been attributed to all (and only) the trade unions who signed a collective agreement applied in the company, even at the enterprise level.

In each production unit more than one RSA can be set, according to the existence of multiple trade unions meeting the requirements set by law. Over the years, several legal provisions have attributed various functions to the RSA, typically in terms of monitoring the application of working conditions and about information and consulting.

As mentioned, in addition to RSA, RSU (trade union unitary representatives) can also be constituted in the workplace. These bodies, of treaty origin, have been generalized by the Protocol of Agreement of July, 23 1993 signed by the main trade union confederations (CGIL, CISL and UIL) with the Government and Confindustria. With this agreement the main trade unions have established the possibility of instituting the RSU through elections open to all workers including non-members, recognizing that institution as their own unitary RSA and therefore renouncing the constitution of individual RSAs.

The RSU are formed, for two thirds of the seats, through election by universal suffrage and a secret ballot among competitive lists, while the remaining third is assigned to the lists submitted by the trade unions who signed the labor nation-wide collective contract applied to the production unit. The RSUs take the place of the RSAs in their entitlement to all the powers and in the exercise of all the duties conferred by law or collective agreement and the components of RSU also assume entitlement of the rights and prerogatives granted to the RSA executives by Title III of the Statute. To the RSU is also specifically recognized a true enterprise-level bargaining power «in the matters, with the procedures, the rules and according to the limits set by national collective agreement applied to the production unit», to be exercised jointly with the competent territorial structures of trade unions who are signatories of nation-wide labor collective

agreements.
In the public field, art. 42 of Legislative Decree March 30, 2001, No. 165, after repeating in Paragraph 1 the principle that in public administrations as with the private employers «freedom and union activities are protected in the manner required by the provisions of law No. 300/1970», specifies that each administration, organization or administrative structure having at least 15 employees, the unions that are admitted to the negotiations for the signing of collective agreements (i.e., those organizations which have a representation which is not less than 5% average of the membership and electoral support proxies, art. 43 of Legislative Decree No. 165/2001), can form an RSA in accordance with art. 19 of the Statute. The next paragraph goes on to say that regarding initiatives, including ones which are disjointed from the union organizations themselves «a unitary body is also formed [...] representing all the staff through elections in which the participation of all workers is ensured.» The composition and the specific practices of RSU elections in the public employment sector are defined by special agreements or national collective agreements and must include in any case a secret ballot, the proportional method and the periodic renewal, with the exclusion of the renewability of unitary representations.

1.4 Discipline/Regulation of the collective agreement
The failure to implement art. 39 of the Constitution meant that this rule, as it regulates the collective agreement with overall effectiveness, plays an obstructive role against any possible intervention aimed at regulating subjects, content, or the effects of collective bargaining, allowing it to develop in a basically independent manner.
The structure of collective bargaining can be described by examining the characteristics that it has historically taken. In the private sector the model develops from interconfederal agreements, national category contracts and decentralized level contracts (i.e., so-called second level, company or local); in the public sector, symmetrically, the bargaining structure is built on the framework contracts, national sector contracts and supplementary contracts.
Interconfederal agreements are contracts episodically concluded between opposed confederations (i.e., between horizontal structures, which incorporate the trade unions of the single categories), and are generally related to matters of general interest (such as, in retributive institutions, layoffs, constitution and operation of unitary labor unions in private companies, organization of bargaining). Sometimes in these agreements, especially where they concern matters of general economic and social impact, the Government takes part, assuming political commitments aimed at balancing, supporting and directing the agreements reached by the social partners (the so-called social partnership).

The tripartite agreements are commonly referred to as «Protocols of Agreement» and have an abnormal legal connotation for their publicistic relevance, such that they are considered an expression of neo-corporative tendencies.
Sectoral collective agreements (also known as national collective labor agreements, CCNL) are stipulated, on one side, by the trade unions of the single professional category concerned, and on the other side, by the opposed associations of enterprises operating in that specific productive sector. They are the backbone of the Italian bargaining system because at that level is achieved the regulation of labor relationships diversified in dependence on the specific commodity sector involved. The national collective agreement is the one mostly referred to from the actual legislation mainly when it refers to the collective bargaining for the integration of legal provisions and, according to some, the only one actually considered in art. 39 of the Constitution, Sections 2, 3, 4 (never implemented).
To integrate the discipline defined by the CCNL can then take a decentralized collective agreement (of an enterprise or, more rarely, for a precinct) that may relate primarily to matters delegated to it through specific postponement clauses contained in the referential CCNL.
Regarding the efficacy of the collective agreement, however, it should first be pointed out that in the collective agreement it is possible to distinguish a socalled normative part and a so-called mandatory part (some also speak of an institutional part). The legislation covers all the provisions aimed at regulating the employment relationship (e.g., the remuneration payable to workers, supervision of workers, working schedule, holidays, breaks and weekly rest, etc.) and is directly applicable to workers and employers represented by the signatory associations.
However, through various legislative techniques and exegetical operations by the labor judiciary, the collective agreement, either the category or the company agreement, ends up having an applicative efficacy that goes beyond the workers associated with the stipulating unions, and empowers the entire collectivity of reference. The mandatory part, however, relates to rules governing the relationship between workers organizations and associations of employers.
In other words, the mandatory part consists of those clauses of the collective agreement through which the policyholders assume mutual obligations, which do not relate to individual employment relationships. Specifically, these provisions may include: trade union information, the organization of the different levels of bargaining, the procedures to be adopted for the contract renewal, the methods of election of representative bodies, etc.
Many and complex are the issues affecting the efficiency of the regulatory part of the collective agreement, both objectively and subjectively. Objectively, under Italian law the relationship between the collective contract and the individual

contract is inflexible in a pejorative sense (so-called, inflexibility *in peius*). So the individual contract cannot establish treatments that are worse compared to those that are required by the collective agreement, but only ameliorative treatments. The pejorative terms that may be present in the individual contract will be automatically replaced by the more favorable laws of collective bargaining. The inflexibility, therefore, is called factual, and not merely obligatory. Subjectively, a non-legislative enforcement of art. 39 of the Constitution has meant that collective agreements in our regulations were effective only against the signatories parties (art. 1372 c.c.), i.e., against employers and workers who have given to their trade unions a mandate to enter into a term (so-called, collective agreement of common law). The collective agreement is called of «common law» since is stipulated by unrecognized associations and is considered a contract between private parties governed by the rules of common law of contracts (art. 1321 et seq.) concerning the situation of the regulatory contract.

In the current regulatory framework, therefore, at least formally, the national collective labor agreement applies only to workers and employers participating in their respective trade unions that have signed the same contract as a result of the conferred representative mandate (also implicitly) by the employee and the employer at the time of enrollment. In many cases, the employer member of a union stipulating a collective agreement, applies that contract to all his employees. However, the law, as mentioned above, shows a clear trend for extending the effectiveness of collective agreements to non-members of the trade union policyholders as well, through various types of reception at an individual level, whether explicit or implied: explicit when the parties in the category contract of employment call for a specific category contract that will then become applicable even in subsequent contract renewals; implied when the parties are willing to submit to the contractual arrangements in fact consistently applied. Another fundamental technique of extension of the subjective effectiveness of collective agreements is a recognized reference to the minimum wage. Since the 1950s, in fact, the law recognizes a full relevancy to the constitutional provision (art. 36 of the Constitution) which gives the worker the right of a wage in proportion to the quality and the quantity of work done and sufficient to ensure him and his family a decent standard of living, and identifies the salary set by the collective bargaining (through the equitable use of the criterion in art. 2099, paragraph 2, c.c.) as an objective reference parameter, for the judicial determination of extent remuneration. Other than that the law in most cases requires the application of collective agreements, for example, when companies are entitled to public facilities and benefits, when working under public procurement (in which specifications must be explicitly added the constraint of respecting collective agreements). In more general terms, the law links the contribution to be paid to

social security institutions to the remuneration provided for by national regulatory agreements concluded by comparatively more representational trade unions, even if different from the remuneration actually paid.
In the public sector, unlike what happens in the private sector, a procedure of collective bargaining is analytically regulated that actually assigns efficiency *erga omnes* to collective agreements. In particular, the law provides a method of selection of persons who may participate in the collective bargaining based on a mixed associative and elective criterion. Thereafter, the contract will be valid only if prepared by the majority of the participants. The law, in fact, requires public authorities to comply with all the obligations laid down in collective agreements (art. 40, paragraph 4 of Legislative Decree No. 165/2001) ensuring equal treatment to its employees and in any case treatments not worst than those covered by collective agreement of reference (art. 45, paragraph 2 of Legislative Decree No. 165/2001). On the other side, collective agreements, which by law are all signed on behalf of a government agency (ARAN) with legal representation, provide the obligation to include in the clauses of the individual contract the clause specifying that the employment relationship is governed by collective agreements in force over time, a clause that becomes binding for the parties of the individual contract when hiring with the signing of the contract by the worker.
In private sector, the bargaining argument has been largely governed by the interconfederal Agreement of July 23, 1993, an agreement between government and social partners, modified and innovated by the interconfederal agreement of April, 15 2009 which implements the framework agreement on the reform of the contractual system, signed on January 22, 2009 by the government and social partners (with the notable exception of the CGIL). The new protocol has substantially if experimentally reformed (until April 15, 2013) the structure of collective bargaining, with a number of important new features including: simplifying and reducing the number of CCNL; the foreshadowing of a general restructuring of the bargaining on two levels (national and local/business); three-year period contracts, both the national (with a connection between the economic part and the legislative part) and for the second level model; the allocation of the national contract function to recover the purchasing power of wages by adjusting to a new index (so-called, IPCA index of consumer prices adjusted for the imported energy goods); the allocation of the second-level bargaining function to introduce remuneration linked to productivity; the opportunity for second-level contracts to reduce even *in peius* national contracts to deal with business crises or to promote business development and employment.
With regard to the renewal of contracts, in particular, the new agreement of 2009 provides that every collective agreement redefines the timing and procedures for the submission of union demands, the initiation and the progress of

the negotiations themselves. In any case, the proposals for the renewal of the CCNL should be submitted in sufficient time to allow the opening of negotiations at least six months before the expiry of the contract. In this way the socalled period of trade union ceasefire has been increased to 7 months (extending from six months prior to the month after the expiration of the contract) from the date of submission of the proposals for renewal. If the parties during this period will proceed to take unilateral actions or direct actions, the other party may exercise the right to require the withdrawal or suspension of that action. The Agreement of 2009 also abolished the so-called contractual holiday allowance, which in term of the Protocol of 1993 had guaranteed (albeit only partially) the automatic revaluation of salaries in the absence of renewal of the contract, foreseeing the possibility in its place to include in the individual national contract a financial coverage for the workers in service on the achievement of the renewal agreement.

Finally, after a period of conflict and controversy between the main confederations, a joint agreement on the regulation of industrial relations was resigned, the agreement of June 28, 2011. It has a fundamental value, not only because it is the sign of a new-found unity of action of the main trade unions after a long period of conflict, but also because it continues the tradition of a self-regulatory system for the main trade union confederations. Also, the agreement is of particular importance because it establishes a method of certification of the effective representation of each union based on a mixed system, associative and elective, that will reflect not only the members of various trade unions, but also the votes received in the regular elections of the RSU. This verification is preliminary in order to conclude corporate contracts with a general effectiveness for the entire corporate collectivity, assuming they are approved by most members of RSU. A quite different method is contemplated when instead of the RSU, RSA governed by the Statute of workers are operative. The agreement does not directly affect the efficaciousness of the national collective agreement, the regulation of which is remitted to the category unions; however, it defines the criteria that can be used for the signing of an agreement valid for the entire unit category: on one side, the possibility of participation allowed to all the unions that have reached a minimum threshold of representation, on the other the approval of the agreement by a majority of the representatives. The agreement has also introduced some rules on the effectiveness of trade union ceasefire clauses established at the enterprise-level bargaining and, taking what was defined in the Agreement of January 22, 2009, envisaged the possibility that corporative agreements can establish modifying agreements in institutions of the national collective agreement, in accordance with procedures set in the same national contracts and, if not provided, also through the collective bargaining agreement entered into by the union representatives inside

the company, in accord with regional category trade unions, in case of business crisis or of new and relatively significant investments, and in relation to the institutions that regulate the schedule, performance and organization of work.

1.5 Reflection on the Viking and Laval judgments

The Viking (ECJ C-438/05) and Laval (ECJ C-341/05) decisions have caused concern and alarm in the Italian trade unions. Indeed, if art. 36 of the Constitution, by judicial intervention, in Italy would have resulted in the obligation for the companies Viking and Laval to comply with the minimum wage set by sectoral collective agreements, it seemed that the two rulings limited, or at least questioned the main instrument of union pressure, i.e., the strike.

For the first time, in fact, the European Court of Justice, despite that the Treaties have no competence regarding strikes, intervened on the right of trade unions to declare strikes, through seeking to balance potentially conflicting rights that are all recognized at the European level as fundamental, that is, the right to strike and the freedom of establishment and movement.

In the Viking case, the Court of Justice configured the strike as a last resort in resolving collective disputes, i.e., as an instrument of which legitimate use can be made – under the principle of proportionality – only when all other avenues of dispute resolution have been exhausted without effect. Looking at the Italian legal system, it could then be considered that a breach of the arbitration or conciliation procedures prescribed by law (in the field of essential public services) and by collective agreements (private sector) may affect the legality of the strike, stepping over sanctions prepared, respectively, by law No. 146/1990 and collective autonomy, and laying claims for damages against companies that undergo collective abstention. Further uncertainties, then, could involve the legality of strikes when not promoted for purposes of contract (e.g., for political reasons or protest) that, though present for a great length of time in the Italian legal system (see below), seems to be now questioned at a community level, given the requirements of necessity and proportionality identified by the Court.

As for the Laval case, at first it might be argued that, if similar events occur in Italy, the union could legitimately call a sympathy strike that the Italian court could not repress. However, a careful examination of the decision may lead to results that are not very reassuring. In fact, as interpreted by the Court of Justice, directive about the posting of workers sets rules of protection applicable to posted workers beyond which an unjustified restriction may configure itself on the freedom to provide services, and foreign companies may be required to maintain the mandatory rules for minimum protection dictated (as well as by law) only by national collective agreements applied in the host

Country with generalized effect, and therefore capable of binding all companies in the related sector. In Italy, since the collective agreement is devoid of *erga omnes* effectiveness, it could therefore be concluded that foreign companies are required to meet only the minimum tariff clauses (due to art. 36 of the Constitution) and not the others. It could involve an indirect, but very pervasive limitation to the right to strike, which would not be legally enforceable when union action was intended to impose the application of collective agreements: since the institutional and industrial relations system in Italy allows domestic firms not to apply the collective agreement, this requirement could not be imposed by means of the strike on companies from other member countries.

1.6 Means of protection in case of violation of the collective agreement

To describe the means of protection conferred to the social partners in the event of breach of the collective agreement, it is necessary to distinguish whether or not that breach relates to the mandatory, that is the normative part of the same agreement. In fact, in the case of violation of a type required contractual provision, the union that is a contracting party is entitled to legal action for breach of the contract (art. 1453 of the Civil Code) or to anti-union repression of conduct (art. 28 of the Statute of Workers) where necessary conditions are met (for example, this occurs when the employer violates the obligation specifically provided for by the collective agreement, to inform or consult the union, or to regulate a particular matter only after agreement with the union and not unilaterally. Therefore in such cases the trade union could take legal action to obtain the verification of the anti-union nature of that conduct and the removal of the effects that follow it).

While, in case of violation by the employer of the contractual provisions related to normative content, the trade union signing the agreement is not entitled to legal action as, in such cases, the infringed right does not belong to the union, but to the individual worker, since such clauses regulate the employment relationship (except in the case where the circumstances are such anti-union conduct – art. 28 art. 28 Workers' Statute).

1.7 Consultation of workers for signing the collective agreement or for the strike call

In the Italian legislation does not exist, except for the choice of trade unions (when they intend to submit the agreement to the opinion of workers), a mechanism for validation of the collective agreement by workers, that are those interested by the effects of the same agreement (for example, the referendum). Although frequently the trade unions before signing a collective agreement submit the proposed agreement to the employees concerned. Neither it is expected a referendum to call a strike, which remains a prerogative reserved for the trade

unions. However, recent government proposals, which would reduce the use of the strike, particularly in the transport sector, require forms of prior verification by workers and their unions before the proclamation of a strike. Currently these proposals are frozen and remain hotly contested by at least some trade unions.

2. Regulation of the right to strike

2.1 The right to strike as a fundamental right

Our system gives special attention to the collective conflict, and grants workers the right to strike which is the most effective form of self-defense.
Article. 40 of the Constitution states that «the right to strike is exercised within the laws that regulate it».
In this statement, art. 40 of the Constitution gives constitutional protection to the strike, describing it not as a mere freedom but as a subjective right.
In the absence of a legal concept of strike and, until 1990, of any legislative regulation, the content of the right to strike has long been sought in doctrine and jurisprudence, with the conclusion established since the 1960s, that it has the nature of an absolute and fundamental right. It is an instrument used by workers to remove the economic obstacles that prevent the effective participation in the political, economic and social development of the country (art. 3 of the Constitution). The nature of the strike as a fundamental right acts in both the relations between the State and citizen (for this reason any action contrasting with the right to strike can not be issued) and in private inter-subjective relationships (for this reason in case of strike the employment relationship is suspended; the employee is not liable for breach of the contract nor can any disciplinary sanctions be imposed to him; the employee is protected against any behaviour of the employer intended to discriminate against the workers on strike).
Moreover the strike does not have to be practiced necessarily for contractual reasons. The right to strike is recognized for any kind of employee, regardless of the nature of the working relationship and the nature of the performance provided, and can be used to pursue any interest (except for subverting the constitutional order).
Doctrine and jurisprudence have allowed the identification of the constituent elements and the scope of action of this right.
The most authoritative legal doctrine has identified two qualifying aspects of the strike: the strike is collective with regard to the proclamation and the exercise, while the right remains the exclusive property of the worker as a fundamental human right.
The Court of Cassation, referring to the concept used in the common sense, described the strike as «*a collective abstention from work, prepared by a variety of workers, to achieve a common aim.».* However it must be said that such a traditional

approach is being increasingly questioned by a part of the doctrine.
In its essence the strike consists in abstaining from work, that is the adoption of an opposite behavior to that resulting from the bond of employment: perform the work activity. Meanwhile, the absence from work may assert as a form of conflict because there is an agreement among the participants, without which the absence from work cannot be considered socially a strike: there is no strike without solidarity among the participants.

2.2 Sources
As just mentioned, the fundamental rule in this matter is contained in art. 40 of the Constitution.
Several rules were also contained in the Criminal Code (in force since 1930). These rules, designed to prohibit the exercise of the right to strike, have gradually been demolished by the jurisprudence of the Constitutional Court, which – especially in the post-constitutional period – has played a key role in setting the rules and the limits of the right to strike.
Only in 1990 has a regulation governing the exercise of the right to strike been adopted which, however, is not general but has an ambit restricted to the essential public services (Law No 146/1990, as amended by Law No. 83/2000). Moreover, for certain categories of workers some special disciplines also apply. Among these are flight attendants, for whom the services to be considered essential are identified directly by law (art. 4, l. n. 242 of 1980), and workers at in nuclear facilities (article 49 of 13 February 1964, No. 185). Even after the intervention of Law 146/1990, the provisions of the laws of 1 April 1981, No. 121, and July 11, 1978, No 382 still remain, which respectively concern police and army.

2.3 Persons authorized to proclaim a strike (legal ownership)
The configuration of the strike as an «individual right to collective exercise» is still dominant in the doctrine and in case law. This phrase sums up the view that, *on the one hand*, the right to strike is for individual employees and not for unions or other organized groups, *on the other hand*, as this right concerns the protection of a collective interest, its exercise must necessarily assume a collective dimension. From this point of view it is not necessary that the number of workers participating in the abstention is significant, as an event that involves a small number of workers (at limit even just one) can be also considered a strike, when the nature of the interest pursued is collective. In this regard it should be highlighted that trade unions, while not being holders of the right to strike, in practice assume its political control and determine its specific exercise by proclamation and management of conflicting actions.
Any trade union may call for a strike. In this regard it may be added that, being the strike an individual right to collective exercise, on the one hand, the

proclamation has only the value of a call for strike and does not represent a condition of legitimacy, on the other hand the declaration of a strike by a trade union is a significant indication of the collective importance of the interests related.

2.4 Procedures and proclamations

In general there are no special procedures that must be followed for a strike to be considered lawful.

Special procedural mechanisms are provided for the exercise of the right to strike in essential public services only. The law No. 146/1990 states some substantial principles, leaving to union agreements or to regulations of the Guarantee Commission, the individuation of the rules that affect the people who promote or participate in a strike, the workers and the companies or the administrations that provide essential public services.

Addressees of the law 146/1990 are all those companies and individuals who work in essential public services «even if carried out in form of allowance or by agreement» «regardless of the legal nature of the employment relationship». Essential public services are services, run by private entrepreneurs or public entities, of which the public is the direct addressee and that furnish services essential to the citizens. The law no 83/2000 has extended the scope of the discipline even to the «collective abstention of work, for purposes of protest or category demands, by self-employed professionals and small entrepreneurs». Thus, lawyers, doctors, veterinarians, pharmacists and, as small business owners, taxi drivers and holders of licenses such as gas stations and truck drivers are required to respect the regulation. The law no 146/1990 merely lists the fundamental rights to which the legal regulation of the strike is applied, without distinction, on the one hand, between independent and dependent working relationships, and on the other hand, between public or private arrangements of the management of essential services. The list has a mandatory nature and includes: the right to life, health, freedom, safety, freedom of movement, welfare and social security, education and freedom of communication. The law, then, specifically establishes in what services special rules and procedures must be complied with in the event of a strike.

a) *Period of notice*: the individuals who call for a strike are obliged to communicate in writing to companies or to administrations dispensing service – as well as to the authority competent to enact the provisions of article. 8, Law No. 146/1990, which should take care of the immediate communication to the Guarantee Commission – at least ten days before the strike, the duration, modality, and reasons for the collective abstention from work. The period of notice is intended not only to carry out the attempt to settle the conflict, but also to allow the administration or the enterprise dispensing service to prepare the

necessary measures to ensure the required performance, and allow users to make use of alternative services.

b) *The cooling and conciliation procedures*: before the proclamation of the strike cooling and conciliation procedures must be carried out, mandatory for both parties. With the provision for the compulsory completion of the procedures, the law no 83/2000 will essentially aim to avoid the strike, which should be used only when all possibilities have failed to find an agreed solution to the dispute. The law leaves it their identification to the contracts or collective agreements (or interim regulations). It allows the parties, who do not intend to adopt the procedures set out in the agreements, however, to use those provided directly by the law (in front of the Mayor or the Municipality, or in front of the Ministry of Labour, according to the local or national relevance of the strike).

c) *The essential services*: the law requires compliance with the performance necessary to ensure, in their essence, the constitutionally protected individual rights, as defined by the same law n. 146/1990, and defers its identification to the collective agreements or interim regulations. It is also expected that the measures to enable the delivery of essential services can have «abstention from the strike of strictly necessary quotas of workers required to carry out the services ». The Commission shall evaluate the suitability of the agreements entered into by the parties to ensure «the balancing exercise of the right to strike with the enjoyment of constitutionally protected individual rights». For this purpose, it directly seeks the opinion of recognized organizations of consumers and users. In the procedure for the determination of essential services, the Commission may offer the parties «a proposal on all the essential services, procedures and measures to be considered indispensable» on which the parties must rule within fifteen days of notification. If the parties are silent on the proposal, the Commission – if there are indications of the unwillingness of the parties to reach an agreement – shall adopt a temporary regulation, which indicates the essential services, the procedures for cooling and conciliation and other measures of reconciliation, communicated to all parties who are obliged to observe it until they reach an agreement considered appropriate.

d) *The minimum intervals*: the law n. 83/2000 introduced the provision for a minimum interval to be observed between the carrying out of a strike and the proclamation of a successive strike even if by different trade unions.
The Commission of guarantee has made the provisions of law regarding the indication of the minimum intervals to be observed between the effectuation of a strike and the proclamation of a successive one, immediately injunctive.

e) *Labour injunction*: by law, the Prefect, with regard to conflicts of local importance, or to the Prime Minister (or a Minister appointed by him) regarding conflicts of national or inter-regional relevance, are conferred the power to adopt by ordinance «the measures necessary to prevent infringement to the constitutionally protected individual rights under article 1, paragraph 1» in the event that the strike, because of an interruption or alteration of the functioning of public service, is likely to impair those rights.
Finally, in order to avoid the so-called announcement effect (i.e. the negative impact on the service already at the time of the proclamation of a strike that may or may not take place or not be successful), the law n. 83/2000 provided that the revoking of the strike in essential public services is permissible only until information has been given to users: otherwise it is considered a trade union misconduct and as such is assessed by the Commission to guarantee the application of sanctions to those trade unions.

2.5 Limitations on the right to strike
The right to strike is recognized to the generality of employees, regardless of the nature of the relationship and the nature of the service. A strike can be made to realize any interest, except for subversion of the constitutional order.
However, the jurisprudence has admitted the existence of *external* limits of the strike, in the sense that this can not be legitimately exercised when it affects other basic rights, guaranteed by the Constitution or provided by ordinary legislation. It thus cannot affect the fundamental interests (such as, for example, freedom of movement, health, safety, etc.) or prevent the exercise of sovereign functions. In this context, it is believed that the procedures for exercising the strike may cause damage to production but not to facilities. To avoid such damage agreements are often stipulated according to which, in the event of a strike, a group of workers (controlled), at times chosen by the same union, does not abstain from work. When such agreements are not achieved, it is legitimate to close the facilities for their safety, with consequent futility of the work performance in the aftermath of the strike and until the resumption of production.
As mentioned above, in the event of a strike in essential public services, in order to ensure the balancing of the right to strike with the enjoyment of constitutionally protected rights of the person, the law No. 146/1990 requires of the unions wishing to declare a strike, a number of obligations (notice period, the completion of the procedures of cooling and reconciliation, respect for minimum intervals, essential services, periods of exemption identified in the agreements and regulations of the sector).

2.6 The exercise of the right to strike in different sectors and categories of workers
In the context of employment, no differences regarding the ownership and

exercise of the right to strike, nor in relation to different types of employment contracts (e. g. work-term or part-time, apprenticeship, working from home) or to professional categories, whether they are legal (workers, employees, executives, managers) or contractual are found. The importance and uniqueness of the functions and duties assigned to certain categories of employees (both public and private), can determine situations that are incompatible with the interruption of work. In this perspective, for example, the legislature has stated the prohibition of strikes of military service (article 8, l. No. 382/1978) and of the state police (art. 84, l. n. 121/1981) and limits to strikes by workers engaged at nuclear facilities (articles 49 and 129 of DPR No. 185/1964) and by flight attendants (article 4, l. n. 242/1980).
The upward trend of case law has clearly expressed itself in relation to the recognition of entitlement to the right to strike in favor of categories of workers different from the «employees», on the grounds that, given that the right to strike is functional toward improving the life and work of underprotected persons, it is necessary to look to real social and economic conditions of weakness rather than to the formal classification of employment. First, referring to the artisans and small traders with no employees, the Constitutional Court declared unconstitutional (in contrast with art. 40 of the Constitution) the Penal Code law which equated their absence from work with a lock-out, which is criminally sanctioned. Subsequently, the Court of Cassation recognized the entitlement of the right to strike on the part of the self-employed, so-called parasubordinate, workers: in this case contractual medical doctors had undertaken their action against the public entity of reference in order to obtain a modification of the convention. Subsequently, the above mentioned trend has slowed, and, even if confirmed by law (the article 8, paragraph 2, l. n. 146/1990 provided for the issuance of the order of injunction also for self-employed workers), has suffered a sharp reversal from the Constitutional Court ruling of May 16, 1996, No. 171, in which lawyers' abstention from hearings could not be qualified as a strike.

3. Trade union and strike

3.1 Reasons for the strike
According to the traditional view, the strike, first of all, is permitted to protect the professional collective interest of those who strike, and, therefore as a means of struggle to influence the employer in order to gain economic and regulatory improvements. It is exercised as a protest action, or for reasons of solidarity or also for the resolution of legal disputes that are relevant to the interpretation or the same application of the legal discipline or of the trade union legislation.
3.1.1 The political strike
The Constitutional Court has distinguished between the collective suspension

of the performance of work for obtaining or preventing regulations of a political or economic nature, which leads us back to the right to strike, and the protest of workers who instead attempt to influence the management of the general interests of the country, with particular regard to the form of government and domestic or international policy, in which is recognized a simple manifestation of the freedom to strike, not punishable under art. Code 503. pen., or a purely political strike. While, in the opinion of the Court, criminal law continues to maintain a residual scope of application against insurrectional actions directed at the unlawful objectives of subverting the constitutional order and preventing or impeding the exercise of lawful powers, through which it expresses popular sovereignty.
The Constitutional Court has admitted that the strike may have the purpose of requesting the enactment of political acts, but this does not by any means imply influencing the constitutional powers with the involvement of the trade unions, nor does it mean to give workers a privileged position compared to other citizens; it means only to confirm what is already in the Constitution: that the strike is a suitable means, necessarily considered in the context of all the instruments of pressure used by various social groups, of enabling the pursuit of the purposes of art. 3 of the Constitution.

3.1.2 The solidarity strike
The solidarity strike is the strike exercised not in the direct interests of the workers on strike, but to support the claims of other groups of workers or to protest against the violation of the interests or rights of a worker. According to the Constitutional Court, the solidarity (or sympathy) strike is legitimate whenever the court finds that «the affinity of the needs that motivate the agitation is such as to indicate that, without the involvement of all in a common effort, they are likely to remain unmet».

3.2 Methods of the strike
There are, within our legal system, procedures for exercising the strike with anomalous characteristics compared to the mere stoppage of work performance. In the 1960s the prevailing opinion was that the so-called abnormal forms of strike (such as a sudden strike, that is, without notice, or the chessboard strike) did not fall within the constitutional guarantee, thus configuring themselves as examples of illegal conduct instead. According to this approach, in fact, the illegality was rooted in the attitude of using the modalities of the suspension of work performance to cause damage considered as unfair, because greater than that caused by the ongoing and integral termination of work performance. Case law too, in an early phase, considered these forms of struggle as illegal, justifying this approach based on an a priori notion of the strike (such as a

stoppage, i.e., contextual and continuous); or by an assessment of the injustice or of the disproportion of the damage caused by the strike.
Subsequently, however, the Court of Cassation abandoned this evaluation, affirming that the strikes implemented in anomalous ways are not necessarily illegal: according to the methods used, in fact, there should be a case-by caseanalysis to evaluate whether the strike has resulted in damage to persons or to the company's productivity or not.

3.2.1 Anomalous forms of striking
Among the many anomalous forms of the strike are:
a) the wildcat strike, which takes place at the same time as its proclamation and implementation, with the cessation of work performance without prior notice;
b) the hiccup strike, which is carried out through a sequence of short periods, during the day, of cessation and resumption of work performance;
c) the chessboard strike, which consists in the subsequent suspension of the job performance of workers in different sectors, or offices or departments, who are independent or linked in business organization, and is above all carried out by the workers engaged in productive activities in order to hinder their execution across a wider area and for a longer period of time than that of abstaining from work.
As already mentioned, the legitimacy of these forms of strike must be assessed on a case by case basis, depending on the modalities of their implementation. The stoppage of overtime or of a part thereof, then, is considered legitimate during a strike. There is in fact no rule that limits the amplitude of the strike to the normal time only. With regard to the overtime strike in essential public services, the Commission of guarantee stated that it constitutes a form of strike to which apply the rules laid down in law No. 146/1990. In this case, the Commission clarified that its duration may not exceed thirty days; that the requirement of period of notice must be observed as well as the predetermination of length. The law No. 146/1990 is not applicable to stoppages of overtime work that are specifically motivated as a collective refusal of work performance that the employees have considered as not justly required.

3.2.2 Forms of collective action different from the strike
Those means of struggle, which at times are used and do not consist in an abstention from work, are alien to the very notion of strike. This concerns forms of struggle different from the suspension from work, but which are frequently carried out to support it, such as the marches and rallies held within or in close proximity of corporate structures; the stays and assemblies of strikers for longer or shorter periods within the workplace structures; and the presence and/or pressure of unionists and strikers outside the workplace premises to explain the

reasons for the dispute and to encourage undecided workers to join the struggle. Such initiatives may fall within the exercise of freedom of association and in principle should be considered entirely legitimate.
The occupation of company property instead constitutes an unlawful conduct, which also provides for criminal penalties. The Constitutional Court declared constitutionally legitimate the criminal law provisions, highlighting, however, that to configure the crime of occupation of a company, there must be specific intent constituted by the sole intention «to prevent or disrupt the normal flow of work», from the existence of a crime derives, when the occupation is taking place on company premises in which production activities have already been interrupted for several reasons. In any case, the employer may resort to the ordinary possessory actions (art. 1168 and 1170 civil code) to regain access to the company buildings. Similarly illegitimate is the so-called retention of goods, that is, the behavior with which, during a labor struggle, workers prevent goods present at the company from being transported away from the company, in order to prevent the employer from continuing to feed the market.
Obstructionism (niggling application of the rules of business or of the instructions of the employer) and non-cooperation (execution of the work performance without care and without taking any initiative) are also illegal.
With reference to so-called picketing, namely the action of workers on strike aimed at preventing access to the workplace to those not wanting to strike, this action may be considered legitimate or even constitute a crime depending on the mode of its execution. When the picketing remains within limits of trying to convince the dissenters, albeit using strong and decisive actions, it must be considered lawful because falling within the constitutionally afforded protection to freedom of expression (article 21 of the Constitution). If, however, the action of the strikers goes beyond, becoming physically violent or verbally threatening behavior, it results in specific crimes (e.g., private violence).

3.2.3 The virtual strike

The virtual strike, which has many times been carried out, especially in essential services, up to now has gone unrecognized by our legal system. By virtual strike one here intends the continued performance of the work, but by virtue of special agreements with the unions, the devolution of the salaries of striking workers as well as a further sum to be paid by the employer towards a fund for purposes of solidarity.
It is doubtful that this figure can be assimilated to the strike in the proper sense with the consequent extension of the coverage of protection under article. 40 of the Constitution, since the virtual strike provides the normal course of work and involves no organizational or productive discomfort for the employer. Therefore without the express consent of the individual employee concerned,

the suspension of his salary and the deposit into a specific fund cannot be justified.

3.3 Unlawful strikes

As already mentioned, in general in the Italian Common Law, strike illegitimacy can only come from the eventual aim of subverting the constitutional order, or from a specific mode of operation that causes damage to people or to company equipment. In the field of essential public services, illegal strikes are those that violate the provisions laid down by Law No. 146/1990.

3.4 Sanctions in collective conflicts

In general, civil and/or criminal liability for trade unions as well as individual participants can result in cases of illegal strikes.

In the sector of essential public services, Law No. 146/1990 establishes specific civil penalties or administrative fines for unions that do not comply with the procedures. Also, in cases of failure to comply with the order to resume work (see above), the same authority that issued the order may impose additional administrative fines.

4. Adhesion to the strike

4.1 Modalities of adhesion

Although the strike is a collective phenomenon, it is actuated by the individual workers: it is the individual worker's abstention from work that assumes the status of the constitutive element of the strike.

4.2 Effects of the lawful strikes on the employment relationship

Common Law ascribes the details of the present case to the implementing behavior of the strike, to which it connects a real suspension of the employment relationship. Since it is the exercise of an individual right, the actuation of a strike cannot be considered breach of contract, since the interest of the self-defense of the worker prevails over the employer's right to the performance of work. Thus the exercise of the right to strike produces the suspension of the two fundamental obligations of the employment relationship: the failure to provide work and the elimination of the obligation of the employer to pay remuneration.

According to consolidated jurisprudence, the strike falls within the hypotheses that involve the suspension of pay. Such a suspension extends to accessory elements of pay such as bonuses, as well as the wage provided for public holidays that fall during the days of strike.

A problematic aspect of the consequences of the strike on the obligation for

retribution is raised in the case of short or articulated strikes. Against the argument that in such cases the withholding of wages should not be made in proportion to the duration of the strike but in relation to the decreased utility of the work performance, the prevailing jurisprudence holds that, in view of the fact that the of the work performance depends on the type of productive organization, the remuneration is to be devolved to the employee not only when the working performance, as a result of the short or articulated strike, has fallen below a certain level of technical normalcy, without which it loses its own original identity.

Other problematical aspects addressed by case law regard the effects of the strike with respect to the additional month's salary, and other wage institutions. On the basis of the general principle of performance allowance set forth in the employment contract, the deductibility of such payments in proportion to the period of strike was established. Also the paid leave introduced by the so-called collective regulation to compensate for the so-called suppressed holidays are not to be granted, when due to the exercising of the right to strike on one of these days the work is not performed, and consequently no daily remuneration is paid.

For some so-called anomalous forms of strikes (e.g., the hiccup strike and chessboard strike) it is possible that the employer is exempted from the obligation to pay during the «breaks from work» only if the work performance, even if offered in accordance with the commitments and contractual obligations of good faith and fairness, is not effectively and profitably utilizable for the productive organization.

Unlike the obligation to work and the right to remuneration, the other personal and union rights and some obligations of the workers remain in place. In particular, the remuneration rights related to the pending suit of the relationship and/or length of service, such as seniority, salary increases and career advancement continue to accrue. The employee on strike still remains bound to the compliance of obligations that not concern an immediate execution of the performance of the service, as the duties of cooperation and compliance and the obligation of loyalty.

4.3 Consequences of the unlawful strike

If the strike is unlawful, it does not fall under the full protection guaranteed by article. 40 of the Constitution. It follows the configurability of responsibility at both the civil and, where appropriate, the criminal proceedings against the employee who has participated in an unlawful strike. In essential public services, Law 146/1990 provides for disciplinary sanctions proportionate to the seriousness of the offense (with the exception of measures to settle the relationship) to the workers who refrain from work without complying with the

terms contained therein. In this regard should be highlighted that in the event of an illegal strike the Commission of Guarantee, while not empowered to approve sanctions against individual employees, may request the application to the employer, being able to inflict upon him, in case of default, an administrative fine.

4.4 Wildcat strikes and strikes called by occasionally organized workers

In the Italian Common Law, except in the essential public services, a formal resolution prior to the strike call is not required, with a resulting legality of spontaneous strikes.

On the contrary, in essential public services the proclamation must necessarily precede the collective abstention, at the risk of sanctions against both the trade unions and the workers. It should be emphasized that the application of sanctions is somewhat problematic when it is not possible to identify the promoter, that is when the collective abstention in essential public services is made by coalitions of odd workers deprived of any organizational structures, since the spontaneous committees cannot qualify as trade unions. In such cases the Commission of Guarantee, once the illegality of abstention is found, can only invite the employer to take the provided for disciplinary measures.

5. Employers during the strike

5.1 Anti-union conduct

The right to strike may not imply any limitation on the freedom of economic initiative of the employer (article 41 of the Constitution). In fact, the right to strike may not be exercised so to affect the productivity of the company, that is the possibility for the entrepreneur to continue to carry out that economic initiative recognized as his right by art. 41 of the Constitution.

A problem dealt with by the Court of Cassation has been the replacement of striking workers. In particular, the Supreme Court was asked to consider whether the conduct of the employer intended to replace workers on strike integrates the extreme anti-union conduct pursued by art. 28 of the Workers Statute (Law 300/1970). The Court of Cassation ruled that it is not an antiunion conduct if the employer, to limit the negative effects of the strike on the economic activity of his company, uses the personnel who have remained in service, to carry out the tasks of the strikers, given that according to the necessary balancing between the right of economic initiative of the entrepreneur (art. 41 of the Constitution) and the right of workers to strike (article 40 of the Constitution), the latter is not infringed when the former is exercised without violating the law or the collective agreement for the protection of workers. In this regard, the Supreme Court stated that the replacement of striking workers does

not constitute anti-union conduct and may also occur with higher qualification workers or temporary workers, provided that: 1) the assignment of lower tasks to workers who have remained in service occurs exceptionally and marginally for specific business needs; 2) the use of temporary workers has been prepared in compliance with the program expected prior to the strike call and, if so, to an extent corresponding to the productive and organizational needs of the company.
In essential public services, the Law 146/1990 provides that the authorities and the public services provisioning companies are required to provide users with the publication of the timetable of ordinary services, and along with it the list of those guaranteed in the event of a strike and its times, defined by collective agreements. The government and companies must also notify users at least five days before the starting of the strike, the manner and timing of service delivery during its implementation and the measures prearranged for the immediate reactivation of the service, after the end of the absence from work. Adequate and timely information must be provided by public service broadcasters and newspapers, and radio and television broadcasters.

5.2 Lock-out

In our legal system the lock-out has no constitutional protection. The Constitutional Court declaring the unconstitutionality of art. 502, paragraph 1, of the Penal Code, derived from the principle of freedom of association, under article. 39 of the Constitution, the lawfulness of the lock-out for contractual purposes. It is, however, regulated by a much less favorable regulation than the one dictated for the strike and it is protected only as a freedom towards the State, with the continuation of civil tort. In fact with reference to the protest lock-out, the Constitutional Court observes that the freedom of union action, of which the freedom of the lockout is the corollary, only affects «relations between employers and workers», while the interests contemplated by Title III of Part I of the Constitution that refer directly to the qualification of the subject striking as a worker, legitimating the strike, do not inhere to the position of the employer as such (but at most to the widest position as an entrepreneur). Thus the action of the so-called lockout cannot be included in the protection provided by art. 39 of the Constitution.
The protest lockout carried out by operators with no employees, assimilated to the strike, is deemed lawful because it does not violate the principle of equality under article 3 of the Constitution, while the lockout made by operators with few employees is deemed unlawful.
A rather uncertain border line exists between the lockout and the freeing of the non-striking personnel in the event of an articulated strike, justified by the employer not in lockout terms but with the statement of the non-utility of the

services offered, and suitable, if then proven in court, to exclude any liability or pay any compensation and any prospects in anti-union terms.
The Court has considered the lockout fully legitimate in situations in which «the trade union struggle does not consist in the mere abstention from collective work, but takes a different form from the mere strike characterized by the violence of the events that affect, directly and immediately, the integrity of equipment and workers in charge of them. In these circumstances the reaction of the employer who closes all departments of the industrial plant and administrative offices is considered justified».

5.3 Consequence of the strike on non-striking workers
With respect to non-striking workers, the performance of work by these can be lawfully refused, in cases where the employer considers it unnecessary and, therefore, their salaries can not be paid. In fact, in the event of a strike with a partial adhesion, the refusal of the employer to accept the work performance offered by the non-striking worker is justified (the entrepreneur is thereby exempt from the effects of default by the creditor with the consequent legitimacy of non-payment of wages) by the impossibility to use the provision itself in any way.

6. External elements linked to the effectiveness of the strike

6.1 External elements impeding the strike
In some cases, a factor that could obstruct the exercise of the right to strike and its effectiveness is the lack of correct information about the reasons that led a trade union to call for a strike by the press and the news media in general. In fact, the reasons for abstention are not always disclosed by the media. This creates a lack of information that might discourage the workers to take part in the abstention.

6.2 External elements supporting the strike
Differently from other countries, in Italy there are no funds to support the organization of a strike. Any costs of organizing the strikes fall on the budget of the union proclaiming.

6.3 Forms of international support for union activity
Very often during strikes, general strikes, category strikes of significant importance, or national events of particular importance, domestic labour unions receive the support of international and European trade unions, in order to develop and enhance the dialogue between them. Usually this support is expressed through a letter of support and participation in agreement with the reasons for the protest. This letter is usually addressed by the international

trade union to the same trade union proclaiming abstention and to the government of the country where the struggle action takes place.
It also happens very often that the ETUC itself promotes days of action at the supranational level, involving all trade unions affiliated to it. These events are usually in direct opposition to the economic and social policies adopted by different governments of EU member states that damage the rights of workers. In such cases, the ETUC after proclaiming mobilization calls on its member unions to mobilize their own country and to organize information campaigns to workers to let them know the reasons for mobilization, strikes, demonstrations (which can be performed on the same day or on different days), in compliance with and in support of the reasons for the protest.

7. Alternative means of dispute resolution

Specific terms of cooling and dispute resolution may be contained in the domestic collective agreements.
As we have seen, then, in the field of essential public services, Law 146/1990 imposes the obligation to carry out cooling and conciliation procedures before the strike call. The parties may invoke the procedures of cooling and conciliation provided for in the specific implementation agreements. Alternatively they can choose a prior conciliation attempt at the administrative level (i.e., as appropriate, at the prefecture or municipality or, if the strike has national importance, at the Ministry of Labour, art. 2, paragraph 2). The law does not stipulate a time limit within which the mediation, at the administrative level, must be experienced.
The Guarantee Commission has attempted to remedy this gap to prevent that the exercise of the right to strike has an excessive delay because of inaction or delay by the competent authority. It held that, if the conciliation meeting of the parties has not occurred within five working days following notification of the request of the union, the Commission considers that the union has fulfilled its obligation to precede the announcement of the strike with cooling and conciliation procedures. Therefore, the strike can lawfully be held when five days have passed from the conciliation request.