

Lexellent: Confronting Labour Reform in Italy

Milan, February 5th, 2014: A recent court case in Italy in which Lexellent Partner Giulietta Bergamaschi defended a pharmaceutical company (against claims by a former employee that their dismissal was unjust and that they should be reinstated) may lead to a change in the Italian Fornero Labour Reform which was introduced only 18 months ago.

The Fornero Labour Reform, of July 18, 2012, introduced a new mandatory 2 step hearing procedure for appeals against dismissals tied to Article 18 of the Italian Workers' Statute. Under the new system:

1 st Hearing:	Part 1 – Summary Proceeding Part 2 – Ordinary Proceeding disputing ordinance
2 nd Hearing:	Court of Appeal
3 rd Hearing:	Supreme Court

The recently introduced Part 1- Summary Proceeding (of the 1st Hearing) consists of 3 phases in which the judge: (i) hears the parties without adhering to specific formalities; (ii) completes a preliminary phase considering evidence at the judge's discretion; and (iii) upholds or rejects the complaint with an immediate and enforceable ordinance regarding the employee's reinstatement. The ordinance is definitive unless it is challenged within 30 days.

In the Part 2 – Ordinary Proceeding (of the 1st Hearing) the judge listens to the parties arguments and issues a judgment that upholds or rejects the ordinance given in Part 1. Both parties may subsequently appeal the judgment which would take the case to the 2nd Hearing level at the Court of Appeals. An appeal decision can once again be challenged in a 3rd Hearing before the Supreme Court.

During this particular trial the constitutionality of the new Fornero system was questioned when the same judge for Part 1 of the 1st Hearing procedure was also assigned as the judge for Part 2 of the procedure – thus having to uphold or reject the ordinance which they had initially ruled on.

Under Italian law, a judge cannot preside over a case in which he /she has previously ruled, advised, assisted, or arbitrated on (as per the Code of Civil Procedure - Art. 51, para I n. 4).

The application of this law becomes complex, however, when considering whether or not Part 1 and Part 2 of the 1st Hearing constitute separate and distinct 'cases'.

As a result of different interpretations proposed by the Italian courts, a decision by the Constitutional Court, expected later this year, will finally put an end to the legal question in this case – can a judge judge their own judgment?

The final ruling on this matter will impact not only the Labour Courts throughout the nation, but also all parties who will pass through them in the years to come.

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GIULIETTA BERGAMASCHI is a Founding Partner of Lexellent. She works closely with executives and personnel directors providing counsel on strategic workforce management, trade union negotiations, and discrimination in the workplace.

Giulietta regularly speaks at professional and academic seminars on the topics of Discrimination and Industrial Relations in Italy. This is in addition to publishing numerous articles on diverse employment and labour law topics in the national and trade press.

Giulietta is a member of the European Employment Lawyers Associations (EELA), the Italian Employment Lawyers Association (AGI), and the Italian Bar Association. She also represents the firm at the National Association of Italian Law Firms (ASLA) and is a very active member of the firm's international legal network ELLINT – Employment & Labour Lawyers International. (www.ellint.net).

She speaks English and Italian



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