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LEGISLATION ON COLLECTIVE LABOR DISPUTE RESOLUTION OF VIETNAM AND ITALY IN COMPARISON

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LIST OF ABBREVIATIONS

CA: Collective Agreement

CCNL: National collective agreements (Contratto Collettivo Nazionale di Lavoro)

CFA: Committee on Freedom of Association

CGIL: General Confederation of Italian Workers (Confederazione Generale Italiana del Lavoro,

CISAL: the Italian Confederation of Autonomous Workers' Unions (Confederazione Italiana Sindacati Autonomi Lavoratori

CISL: Italian Confederation of Workers' Trade Unions (Confederazione Italiana Sindacati Lavoratori,)

CLD: Collective Labor Dispute

Confindustria: General Confederation of Italian Industry (Confederazione Generale dell'Industria Italiana)

DOLISA: Department of Labor Invalid and Social Affairs

DPC: District People's Committee

ETUC: European Trade Union Confederation

EU: European Union

ILD: Individual Labor Dispute

ILO: International Labor Organization

ITUC-CSI: International Trade Union Confederation

LAC: Labor Arbitration Council

MOLISA: Ministry of Labour, Invalids and Social Affairs

PPC: Provincial People's Committee

UGL: General Union of Workers (Unione General del Lavoro)

UIL: Union of Italian Workers (Unione Italiana del Lavoro,

INTRODUCTION

I. NECESSITY OF THE RESEARCH

Vietnam has moved its centralized and subsidized economy to the multi-sectorial socialist oriented economy since 1986, accordingly, the State manages the economy through legislation and macroeconomic policies. The change in economic policies and the diversification of ownership categories has created strong motivation for the country development especially in economy. However, along with the economic development, labor dispute in general and collective labor dispute in particular have been increasing in terms of quantity and become more complicated in nature. According to the statistic of MOLISA Vietnam, there were 1,384 strikes from the effect of Labor Code 2012 in 2013 to 2018[1], of which, almost did not follow legal procedures. As regulated in the revised Labor code 2012 of Vietnam, strike is not a solution for disputes of rights but for those of interests only and the labor collective can go on a strike only after failing to reach a solution at conciliation by a conciliator or a labor arbitration council or the arbitration council does not process the conciliation procedures within regulated time. However, the fact showed that, striking was always the first option selected by employees once the dispute arose instead of the last resort as regulated by law. Reasons for this may come from the low enforcement of relevant legal regulations, lack of guidance on the procedures of dispute resolution for workers, weak performance of trade union at enterprise level and inadequate strike resolution run by the government competent agencies. When a dispute happens, they only target to meet the workers' immediate requirements so as to stop the strike as soon as possible but not require them to follow the legal procedures of a dispute resolution as regulated. Though the Labor Code 2012 and labor its guidance documents have made significant changes concerning conciliation procedures and competence of relevant subjects, current Vietnamese legislation still shows limitations in the collective labor dispute resolution process. Such limitations have not only made bad impacts on the effectiveness of the dispute resolution but also depreciated the roles of the government competent organs to resolve the disputes and in addition, it

[1] MOLISA report No.124/BC-LDTBXH dated 18/10/2019 on Strike situation and resolution

has promoted the practice of breaking the agreements reached between disputing parties as they thought conciliation procedures are theoretical only with no practical values. This is one of the key reasons for unlawful strikes during the past years. In the context of the country's international economic integration where Vietnam has ratified a number of ILO's conventions concerning the international labor standards to protect the legitimate rights and interests of employees, it is essential to continue the improvement of Legislation on resolution of collective labor dispute. This will contribute to removing gaps and ensuring the feasibility of law, building stable and sound industrial relations between employers and employees in various enterprises. Taking a good model of labor dispute resolution from a developed country in comparison is a good approach to improve the current Legislation of Vietnam on collective labor dispute. Thus, I decided to select the thesis topic "*Legislation on collective labor dispute resolution of Vietnam and Italy in comparison*".

II. OBJECTIVES AND RESEARCH TASKS

This thesis aims to study theoretical issues on resolution of collective labor disputes and current status of Vietnamese Legislation on collective labor dispute resolution in comparison with that of Italy to find the gaps and provide recommendations for the improvement of Vietnamese Legislation on collective labor dispute resolution.

To obtain its objectives, the thesis focuses on following tasks:

- Conduct literature review on previous relevant researches and publications, through which, assess related points already covered in those researches and find out the gaps that should be addressed in the thesis;
- Study to clarify the basic theoretical issues of collective labor dispute and Legislation, which will be withdrawn from studying relevant regulations of Vietnam, Italy, International Labor Organization and some other countries;
- Analyze and assess current status of Legislation on collective labor dispute resolution and its enforcement in Vietnam in comparison with that of Italy to review the strengths and gaps in current legal regulations of Vietnam;

- Provide recommendations on the revision and supplements to improve the Legislation on collective labor dispute based on the results of the theoretical and current status research.

III. OBJECTS AND SCOPE OF THE RESEARCH

3.1. Objects of the research

The research object is collective labor dispute resolution under law perspective, which is limited to labor law and relevant regulations. Specifically, the research will focus on legal regulations on the resolution of collective labor disputes of Italy and Vietnam; Object contents include: Principles, methods and procedures to resolve collective labor disputes.

3.2. Scope of the research

This dissertation focuses on studying theoretical issues of collective labor dispute and legislation on collective labor dispute resolution of Italy and Vietnam taking the ILO's theoretical framework on CLD resolution as standard reference for analysis. Regulations of other countries may be studied where relevant.

IV. RESEARCH METHODOLOGIES

Different methodologies are used during the research process, which include:

- Literature review will be used to both detect the thesis-related issues which have been already researched, find research gaps and support the studying of theoretical issues of collective labor dispute and collective labor dispute resolution; accordingly, relevant local and international research projects/papers/documents and publications will be collected and reviewed.
- Comparison method will be used to compare different viewpoints of scientists/organizations in their researches, current legal regulations and the previous ones, the legislation of Vietnam and Italy, ILO or other countries.
- Analysis and proofing methods will be used to clarify the current status of legislation on collective labor dispute resolution of the two countries and to

justify the improvement needs of Vietnamese system with adequate evidences.

- Synthesis method will also be used to provide assessment comments and conclusion after the analysis process.

V. DISSERTATION STRUCTURE

In addition to the Introduction, Conclusion and Bibliography parts, the dissertation is structured with 3 chapters:

- *Chapter 1:* Theoretical issues of collective labor disputes and legislation on collective labor dispute resolution
- *Chapter 2:* Current status of legislation on collective labor dispute resolution of Vietnam and Italy
- *Chapter 3:* Recommendations for the improvement of Vietnamese legislation on collective labor dispute resolution

VI. LITERATURE REVIEW ON LEGISLATION OF COLLECTIVE LABOR DISPUTE RESOLUTION

6.1. Overview of previous related researches

Collective labor dispute is a quite popular issue in industrial relations between employers and employees, which is the concern of many organizations and researchers. There is a number of papers and researches about this topic, in which – as author's knowledge, following works should be considered:

First and for most, It's the book "*Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives"* published by the ILO in 2007. This book draws largely on ILO's conventions and recommendations related to labor dispute prevention and settlement such as Recommendation No.92 (1951) concerning Voluntary Conciliation and Arbitration; Convention No. 151 (1978) on Protection of the Right to Organize and Procedures for Determining Conditions of Employment in Public Services; Recommendation No.154 (1981) on Collective Bargaining; Recommendations No. 130 (1967) on

Examination of Grievances and some of the practices and experiences of the EU member states, especially the newest EU members to show how countries in economic transition often with limited experience in collective dispute resolution have built up their own dispute resolution frameworks. Some case studies on managing and preventing conflicts were given as examples of ways to run conciliation and arbitration services by Bradford Metropolitan District Council of UK. The book also provide normative frameworks for collective labor dispute resolution in some EU members including Bulgaria Unions, Cyprus Unions, Czech Republic Unions, Estonia Unions, Hungary Unions and different mechanisms and organizations engaged in settling CLDs in the states.

As an international institution working on labor issues, in 2015, ILO published the "*Practical guide on professional conciliation for collective labor disputes*" which introduces a framework on the role of mediators in assisting disputing parties during the collective bargaining process. The Guide essentially goes into forms of behavior, attitude, methods and techniques that enable mediators to implement their tasks effectively and efficiently. It also provides a roadmap to conciliators to establish their own effective ways when working as professional conciliators. This can be seen as the first conciliation framework for various countries to build their own regulations on CLD resolution including Italy and Vietnam. To enhance its supports for the labor dispute resolution of member countries, in 2011, ILO published the "*Manual on collective bargaining and dispute resolution in the Public Service"* which made a compilation of good practices in dispute prevention and resolution in public services with the aim at showcasing a range of mechanisms established by various country governments and social partners to minimize and settle CLD in public services. Especially, the manual focuses on determining international practices and applied approaches which have enabled the negotiations between unions and employers in public sector concerning wages and working conditions on a fair basic with the lowest interruption of public services. The manual has little impact on collective bargaining in Vietnam but may be a good reference for Italy given that strikes in public services quite often happen in Italy.

In their research on Mediation and Conciliation in Collective Labor Conflicts in Italy, Andrea Caputo & Giuseppe Valenza (2019) discussed the features of collective disputes in Italy, especially how the conflicts occur between employees and employers. According to this research, It can be withdrawn from the country history, tradition, politics and culture that the main instrument to lead a CLD in Italy is striking. The research aims at characteristics of collective conflicts in Italy but does not mention respective settlement methods. Concerning the labor dispute resolution of Italian system, Tiziano Treu (1989) discussed the role of neutrals in the resolution of interest disputes, where he gave out a set of examples of specific types of neutrals and their participation in particular categories of disputes, however, the article did not provide comprehensive procedures of settling a collective labor dispute with the involvement of a neutral. Behrens, M., Colvin, A. J. S., Dorigatti, L., & Pekarek, A. H. (2017) made a primary comparison in workplace dispute resolution of four countries including Germany, the United State, Italy and Australia. The paper investigated specific conflict settlement practices and regulations in those four countries and aimed at developing a categorization system that represents the differences among them. It also explored the linkages between the practices and regulations within the system of each country and analyze their supplementation in the resolution of workplace conflicts. The paper described a general picture of four national dispute resolution systems including that of Italy, which would be used as a valuable reference source for this thesis. In addition, concerning the Italian CLD resolution, during the period of 2005 – 2019, numbers of papers and articles have been written by other authors such as Luisa Corazza (2012) discussing the evolution of legislation and collective agreements in perspective of industrial self-regulation and arbitration reform; Maurizio Del Conte (2014) explained the cultural determinants of workplace arbitration, etc... however, those articles and papers only mentioned general alternative labor dispute resolution procedures but not deeply studied either of those procedures with comprehensive procedures from the beginning to the end of a collective labor dispute. Neither do they make a comparison of Italian legal regulations on collective labor dispute resolution with those of any Asian countries.

Concerning the Vietnamese labor dispute resolution, there are numbers of research papers, books, articles and master/doctoral thesis which have studied related issues. To the author's knowledge, a workshop paper "*Industrial relations and the resolution of labor disputes in Vietnam" by* Chang Hee Lee (2006) analyzed status of industrial relations in Vietnam before 2006 and provided some recommendations for the improvement of industrial relations including the enhancement of social dialogues and collective bargaining. Eladio Daya (1995) – an ILO expert of industrial relations and labor law published the book "*Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study*" which dealt with common issues in labor dispute and labor dispute resolution, the necessity of comprehensive policies in labor conflict resolution, the linkage between labor dispute resolution with the rights of trade union and the necessity of involvement of employees' and employers' organizations in developing and implementing respective national policies. The book mainly focused on the conciliation and arbitration as common approaches to settle collective labor dispute in different countries over the world but not directly address the issues of legal regulations on collective labor dispute settlement. Another book titled "*Law on resolution of collective labor dispute – international experiences for Vietnam"* was published by Tran Hong Hai (2011), which is directly related to law on collective labor dispute resolution. The research dealt with concepts of CLD in legal documents of Vietnam and other countries in the worlds, mechanism to settle collective labor disputes of the United State, Australia, Russia and the practices of South East Asia. It also provided some recommendations for the improvement of legal regulations on collective labor dispute resolution of Vietnam. This would be an useful reference for my research.

In addition to the books and research papers mentioned above, some relevant master/doctoral theses have been reviewed as previous reference sources for this dissertation. The first one is Master thesis by Luu Binh Nhuong (1996) with the topic "*Labor dispute and the resolution of labor dispute*" which discussed general issues of labor dispute in Vietnam, its status and causes as well as the legal regulations on labor dispute resolutions of Vietnam and some countries. The thesis mentioned both individual and collective labor disputes and the direction to address

the conflicts in general. Of the same author's, the doctoral thesis "*Labor arbitration in accordance with Vietnamese law*" provided the concept of labor arbitration, analyzed its political, social and economic foundations, nature, roles and its development process in Vietnam. The thesis also pointed out the limitations of existing legislation concerning labor arbitration such as the regulations on labor arbitration, court adjudication and strike resolution. In addition, It provided recommendations for the improvement of legislation on labor arbitration in Vietnam. Another doctoral thesis by Nguyen Xuan Thu (2008) with the title "*Tripartite mechanism in the resolution of labor dispute in Vietnam*" stated theoretical system of tripartite mechanism in general and the one for labor dispute resolution in particular. The thesis analyzed, assessed the concepts, formation, nature, foundation, organization and operation of the tripartite mechanism as well as its meaning in the resolution of labor dispute. A part from that, it analyzed strengths and limitations of law revision and enforcement in labor dispute resolution of Vietnam applying tripartite mechanism. Based on the analysis, the author recommended to establish agencies or institutions to resolve labor disputes, revised the procedures of labor dispute resolution and improve relevant legal regulations to make the tripartite mechanism work effectively in Vietnam. In the discussion of collective labor dispute resolution, the article "*Situation of interest collective labor dispute resolution by labor conciliator and recommendations for improvement*" posted on the websites of Democratic and Legal magazine by Vu Thi Thu Hien (2010) assessed the situation of the interest CLD resolution by labor conciliator, which covered: number of conciliators in each district, duration for the dispute resolution by conciliator, right to choose labor conciliators to solve the dispute, investigation and collection of evidence by the selected conciliators, participation in mediation meetings of disputed parties, recognition of mediating result and its legal values. The article ended with some recommendations for the improvement conciliation procedures in collective labor dispute resolution of Vietnam. In addition, to analyze the regulations on CLD resolution in the Vietnamese revised Labor Code 2012, Le Thi Hoai Thu (2015) pointed out the limitations of related regulations including those on mediation, required duration

and procedures of collective labor dispute resolution. These are all valuable reference sources for my thesis writing.

Some other master theses and articles researching labor dispute, labor dispute resolutions in Vietnam can be referred include: Master thesis by Nguyen Viet Hoang "*Law on labor dispute resolution of Vietnam in comparison with labor Law of Thailand*", master thesis by Nguyen Thi Bich (2007) "*Labor dispute and resolution in accordance with legal regulations of Vietnam*" and master thesis by Trinh Thu Ha (2009) "*Comparison of Vietnamese and Chinese legislation in the resolution of labor disputes*", etc... However, all those researches have not deeply focused on collective labor dispute and the legal regulations to deal with that but limited to issues of labor dispute only. Moreover, since 2006, after the significant revision of regulations on labor dispute and labor dispute resolution in the Labor Code of Vietnam, few articles on this issues were published. To date, no research has ever been carried out to review the legislation of Vietnam on collective labor dispute in comparison with respective Italy's system to get lessons for its improvement.

6.2. Focus of the research

Through the review of related previous research, it can be seen that despite a number of researches on labor dispute and labor dispute resolution, none of them intensively and comprehensively studied theoretical issues on collective labor dispute and collective labor dispute resolution. In addition, most of relevant researches were conducted before the publication of the revised Labor Code 2012, which are no longer suitable to the changed situation. Therefore, the focus of this research will include following contents:

- Theoretical issues of collective labor dispute and legislation on collective labor dispute resolution; applicable concepts in laws of Vietnam, Italy and by ILO.
- Assessment of existing legislation on collective labor dispute resolution of Vietnam and Italy. In this part, regulations of the Labor Code 2012, the Revised Labor Code 2019 of Vietnam and relevant regulations and the Act.

300 – 1973, the Act. 533-1973 of Italy will be used as the base for analysis. Comparison will be especially made in methods and procedures of collective labor dispute resolution.

- Provision of recommendations for the improvement of Vietnamese legislation on collective labor dispute resolution with the aim at establishing sound industrial relations, which meet international labor standard in the context of economic integration.

Chapter 1: THEORETICAL ISSUES OF COLLECTIVE LABOR DISPUTE AND LEGISLATION ON COLLECTIVE LABOR DISPUTE RESOLUTION

1.1. Theoretical issues of collective labor disputes

1.1.1. Concepts of collective labor dispute

1.1.1.1. Concept of labor dispute

Industrial relation is the one-side expression of production relations and subject to ownership relations. When participating in labor relations, both employees and employers aim to gain interests. Workers always want to work less with high wage while employers find ways to maximize the working capacity at the lowest cost. The interest opposition between parties is an objective characteristic of labor relations and a source of labor disputes.

In the world, the concept of labor disputes is understood and defined in different ways depending on the viewpoint of each country.

The International Labor Organization define labor dispute as "*disagreement and conflict between two or more parties concerning a matter of mutual interest"*[2].

Meanwhile, according to paragraph 1, Article 1, Indonesia's 2004 Labor Dispute Resolution Act, labor dispute is the difference in opinion leading to a dispute between an employer or an employer association with workers or trade unions due to the disagreements over rights, conflicts of interest, disputes over job termination,

[2] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p224;

or disputes between unions in an enterprise; Section 2.9 The US National Labor Relations Act of 1935 regulates labor dispute as any dispute about terms or conditions of employment, organization or representative in negotiation, decision, maintenance, changes or attempts to settle terms and conditions for employment regardless of whether the disputing parties are the "parties" of the industrial relations or not[3].

In the Labor Code 2012 of Vietnam, point 7, Article 3 regulates "*labor dispute shall mean a dispute on rights, obligations or interests which emerges between the parties in the labor relations*".

According to Italian Ministry of Labor and Social policies (Ministero del Lavoro e delle Politiche Sociali), "*labor dispute or dispute is the conflict arisen between a worker and an employer regarding certain aspects of their relationship, when the rights or expectations provided for by law and/or collective bargaining are presumed to be infringed, and may concern both economic and regulatory aspects*"[4]

From the regulations on labor disputed given in the laws of several countries including Vietnam, Italy and ILO's concept, below typical characteristics of labor disputes can be withdrawn:

+ Labor disputes must be the conflicts between the subjects of industrial relations (employers & employees);

+ The conflict between disputing parties must derive from their rights and interests related to the labor process but not other rights and interests out of the labor relations.

1.1.1.2. Concept of collective labor dispute

[3] Trần Hoàng Hải (CB) (2011) Pháp luật về giải quyết tranh chấp lao động tập thể - Kinh nghiệm của một số nước đối với Việt Nam, NXB Chính trị Quốc gia, p27-28;

[4] https://www.lavoro.gov.it/temi-e-priorita/rapporti-di-lavoro-e-relazioni-industriali/focus-on/Controversie-lavoro/Pagine/default.aspx

According to the ILO, "*collective labor dispute is a disagreement between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests"*[5].

In the world, many countries divide labor disputes into two types, namely the Individual Labor Dispute and Collective Labor Dispute. However, some countries only formulate the concept of ILD while the concept of CLD is understood by the method of exclusion. For instance, in France, the Labor Code 1952 regulates the establishment of labor court to "judge all the individual disputes relating the employment contract between employees and employers" and there is no definition of collective labor dispute[6]. Hence, the concept of collective labor dispute in France can be understood by the method of exclusion: all the labor disputes have the participation of many employees and are not directly related to the labor contract are considered collective labor disputes.

According to the Clause 7, Article 3, Labor Code 2012 of Vietnam: "*Labor dispute comprises of individual labor dispute between an employee and an employer, and collective labor dispute between a worker's collective and an employer*"

In Italy, "*Collective dispute is a dispute about the indivisible interest of a group (a collective interest), either when another group acts against that interest (bilateral trade-union collective dispute) or when an individual acts against that interest (unilateral trade union collective dispute), and both when that act against the group's interest affects the whole group immediately (collective disputes about a trade union's interest or rights) and when its immediate effect is on an individual within the group (collective disputes about a trade-union member's interests or rights"*[7]. Although it doesn't clearly state the subjects of collective labor dispute, the concept shows collective element for the dispute since the "indivisible group interests" in dispute are always those related to a labor collective and a collective agreement.

[5] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;
[6] Eladio Daya (1980), Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study, International Labor Office, p15;
[7] Mario Grandi (2003), Labor conciliation, mediation and arbitration in Italy, in Fernando Valdés Dal-Ré, Labor Conciliation, mediation and arbitration in European Countries, Subdirección General de Publicaciones, Madrid, p255;

Collective labor disputes are those arising between the labor collective and the employer. Many countries stipulate “labor collective" as a group of employees who work together in a business with the same motivation and purpose of performance, have ability to coordinate together closely, synchronously and effectively. However, there are also countries that define labor collective based on the participation of trade union as representative for workers. Accordingly, the labor collective includes not only a large number of participants in the dispute but also the participation of the union as an organization representing and protecting the workers' rights. Labor Collective is initially understood as those who work together for an employer. However, as collective labor disputes may not only happens within an enterprise but also occur in a broader scale as in an industry, region or country, the concept of labor collective should be understood in correlation with the scope of the dispute. If the collective labor dispute occurs within an enterprise, the concept of labor collective is understood as a set of employees working in an enterprise or in a part of an enterprise. If it occurs within an industry, the labor collective is considered a collection of employees working in that industry. Although the labor collective is understood as a collection of employees working in an enterprise or in a part of an enterprise, gathering of employees working in an industry, when collective labor disputes arise, not in all cases, there is the participation of 100% employees of such collective. It is important to identify the employees involved in the dispute as a labor collective if they have uniform requirements which relate to the interests or represent the interests of such labor collective.

1.1.4. Categories of collective labor disputes

Classification of collective labor disputes is aimed at assessing the nature of disputes for an effective resolution. Based on the causes of disputes, ILO’s documents and laws in many countries (Sweden, Norway, France, Austria, Denmark, Germany, Finland, Australia, New Zealand, Argentina, El Slvador, Guatemala, Panama, Peru, Venezuela, Japan, Taiwan, Hong Kong, Laos, Indonesia and Vietnam,) divide collective labor disputes into right disputes and interest

disputes. In some Italian legal documents, the terms "collective legal disputes" and "collective economic disputes" are used and their connotations are quite similar.

1.1.4.1. Right collective labor disputes

Right collective labor disputes arise when one party in the industrial relation believes that the other party violates its rights (as provided in the law or agreed in the Collective Agreement/other labor Agreements) or when there are different explanations and implementations of the provisions of labor law, collective agreement and working regulations. Therefore, the purpose of parties to enter a right collective labor dispute is to ensure proper implementation of the rights and obligations identified in the legal documents, internal working rules, collective agreement or other labor agreements.

According to the ILO, "*a right collective labor dispute is a disagreement between workers and their employer concerning the violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment"*[8].

In Vietnam, the law did not have a clear distinction between collective labor disputes and individual labor disputes until the issuance of the Revised Labor Code in 2006. According to the paragraph 8, Article 3 of Vietnam Labor Code 2012: *"A right collective labor dispute shall mean a dispute between a worker's collective and the employer arising out of different interpretation and implementation of provisions of labor laws, collective labor agreements, internal working regulations, and other lawful regulations and agreements*". This definition has some modifications and supplements comparing to the initial concept developed in the Revised Labor Code 2006. Accordingly, right collective labor disputes arises on the basis of the rights and obligations of the parties in an industrial relation, which have been recorded in relevant documents as stipulated by the Labor Code, provisions in collective labor agreements, working rules or by other legal regulations and agreements. It is a dispute over what has been determined or legally agreed by law such as minimum wage, overtime pay,

[8] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;

maximum working time, number of annual holidays, labor accident compensation. It can be understood as a collective of employees and employer have different ways of interpreting the contents recorded in the documents agreed or previously accepted by the parties, leading to the different ways of implementation that have negative impacts on the other party causing conflicts and disagreements. To ensure the collective bargaining principles under the ILO Convention No. 98 that Vietnam has just acceded to, the revised Labor Code 2019 provides additional contents of the right CLDs which include cases where the employer has discrimination against the employees, cadres of workers' representative organization for the reasons of their establishment, accession and operation in the workers' representative organizations; intervention, manipulation against workers' representative organizations or violating the obligation of collective bargaining with goodwill.

In Italian law, the distinction between collective labor dispute and collective right dispute/collective interest dispute does not exist. The term "collective labor dispute" is commonly used for both.

1.1.4.2. Interest collective labor disputes

Interest collective labor disputes arise from disagreements over the views of the parties concerning the change and establishment of new working conditions, extension of CA, continuation of the old CA or signing a new one in case of the enterprise's structure or ownership changes. Therefore, interest CLDs occur while neither party violates the provisions of the law, CA or other labor agreements. When an interest CLD arises, legitimate rights and interests of the parties in the collective labor relations have completely not been violated and affected. In addition, the purpose of parties towards entering into an interest CLD is to achieve common agreements for collective labor relations.

ILO defines an interest *dispute as a disagreement between workers and their employer concerning future rights and obligations under the employment contract*[9].

[9] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;

The views of nations on interest CLD have certain differences that are mainly related to the determination of the disputed contents and the subjects having the right to initiate a dispute. Some countries argue that an interest CLD is the disagreements arising between the labor collective and the employer in which, the labor collective requires to change or establish new working conditions compared to the provisions of labor law, existing CA or other labor agreements being in effect. For countries with this view, the contents of an interest CLD by law are recognized only as the labor collective's requirements concerning the improvement of working conditions of workers and as a result, the party initiating the dispute is always the labor collective. For instance, in Laos, an interest CLD is understood as a dispute involving the workers' claims regarding their new benefits that the employer must realize[10]. From other countries' point of view, interest CLDs not only derive from the labor collective's claims to improve their working conditions but may also occur when the employer wants to put a new content into the CA and/or other labor agreements or wants to change existing agreements. For example, in the United States' context, an interest CLD is construed as a dispute between an employer and a labor collective regarding the contents that will be included in a new collective agreement. This type of dispute occurs when the trade union or the employer wishes to include a provision in the CA but the other party does not agree[11]. In Indonesian law, the interest collective labor dispute is understood as a dispute arising in industrial relations due to the disagreements during the process of drafting and/or changing working the conditions specified in labor agreements, company regulations or collective labor agreement[12].

In Vietnam, the Labor Code 2012, Paragraph 3, Article 9 stipulates: "*an interest collective labor dispute shall mean a dispute arising out of the request of the worker collective on the establishment of new working conditions, as compared to the provisions of labor laws, collective agreements, internal working regulations,*

[10] Đỗ Ngân Bình (2007), "Một số ý kiến về Luật sửa đổi, bổ sung một số điều của Bộ luật Lao động về giải quyết tranh chấp lao động và đình công", Tạp chí Khoa học pháp lý, Art.61;
[11] Trần Hoàng Hải (CB) (2011) Pháp luật về giải quyết tranh chấp lao động tập thể - Kinh nghiệm của một số nước đối với Việt Nam, NXB Chính trị Quốc gia, p56-57;
[12] Indonesia (2004), Luật về giải quyết tranh chấp quan hệ lao động (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nxb Lao động – Xã hội), Art.1;

or other lawful regulations and agreements, in the negotiation process between the worker collective and the employer".

Through the above provisions, it can be understood that interest CLD is a dispute between the collective of employees and employer on the issues which have yet specified or agreed. Interest CLDs occur on such a basic that the collective of employees are not satisfied with their current working conditions, wishing to establish better conditions or new benefits, which haven't been regulated or more demanding than those prescribed in labor law, in existing agreements between parties and regulations of enterprises. The term "interest collective labor dispute", as earlier mentioned, does not exist in Italian labor law, instead, the right to strike that will be further discussed in section 2.2.2.4 is used as an instrument to defend and support collective interests.

1.1.3. Characteristics of collective labor disputes

1.1.3.1. Subjects of collective labor dispute

Unlike the individual labor dispute where its subjects are labor individual and his/her employer, subjects of collective labor disputes include labor collective, its employer and the trade union or labor collective's representative organization. Among these, labor collective and employer are two disputing parties while the trade union or other equal units work as the representative of labor collective to protect their rights and interests. If the collective labor dispute occurs within an enterprise, the concept of labor collective is understood as gatherings of workers working in such enterprise or in its departments. If the dispute occurs within the scope of one industry, the labor collective is understood as a collection of workers in that industry.

1.1.3.2. Contents of collective labor dispute

The contents of collective labor disputes not only include conflicts and disagreements between employer and the labor collective in the establishment and change of working conditions such as wages, working time, rest, labor safety, labor hygiene, signing collective agreements but also those related to the implementation

of occupational rights of either worker collective or employer such as the recognition of professional organizations within an enterprise or an industry, anti-trade union discrimination and the reduction of the trade union's rights.

1.1.3.3. Representativeness of Trade Union

The ILO defines "*Trade Union as an organization of workers/employees that associate together to achieve their common goals particularly related to the protection and improvement of the terms and conditions of employment"*[13]. Trade Unions may be the associations of employees working in the same occupational group or in different occupational groups but the same industry or sector such as construction workers or transportation workers. Some unions can also connect with each other to form federations or national councils.

Trade Union Law 2012 of Vietnam regulates Vietnamese Trade Union is the unique organization with the right to represent and protect legitimate rights and interests of workers at enterprise, which plays an important role in building and developing industrial relations. The participation of Trade Union as the labor collective's representative in a collective labor dispute is indispensable. Trade unions involve in collective bargaining, signing and monitoring the enforcement of CAs, building democratic regulations at enterprises and cooperating with employer to build harmonious, stable and progressive labor relations at enterprises. The engagement of trade unions in resolving CLDs aims to better ensure rights and interests of the labor collective when having disputes.

In Italy, "*Trade Union is defined as an association of workers established for the purpose of protecting occupational rights and interests of the workers in workplaces and within society"*[14]. It also plays the role of workers' representing in collective bargaining and dispute resolution. The Italian trade-union system is formally based on the freedom of association as stated in the Constitution (Art.39) and on the freedom of representation. The Workers' Statute (Art. 14) also

[13] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p234;
[14] https://dizionari.corriere.it/dizionario_italiano/S/sindacato_1.shtml

recognizes freedom of association and freedom of trade union activity at the workplace. At present, there exist three major labor confederations divided traditionally according to political and ideological positions including CGIL, CISL and UIL. Another less important neo-fascist confederation is UGL.

1.1.3.4. Impacts of labor disputes

Collective labor dispute can lead to strikes that as a consequence may affect the public security, life, economy and politics of the whole society in general, affect the workers and normal operations of enterprises in particular. As a collective labor dispute involves the labor collective, when it occurs, their income will be negatively impacted, which will affect their families' lives. On the other hand, for employers, whether such collective labor dispute occurs within the business sector or at the enterprise levels and even if they can accept the labor collective's requirements, the production and business activities will be still stalled, which causes significant damage to the business and if not overcome promptly, it can lead to the reputation reduction or even bankruptcy of the enterprises.

1.2. Theoretical issues of legislation on collective labor dispute resolution

1.2.1. Concepts of law on collective labor dispute resolution

Before discussing the law concept of collective labor dispute resolution, it is necessary to first understand the concept of Law and the concept of dispute resolution.

According to the Curricular of General Theory of State and Law, Hanoi University of Law, Vietnam: "*The law is a system of general compulsory rules issued or acknowledged and ensured the implementation by the State, expressing the will of the ruling class in society, which is a factor regulating social relations*"[15].

Dispute resolution means competent individuals, agencies and organizations consider, find solutions or make decisions to handle labor disputes in line with regulated principles, order and procedures. The settlement of labor disputes aims to

[15] Đại học luật Hà Nội (2008), Giáo trình lý luận chung về nhà nước và pháp luật, NXB Công an nhân dân;

ensure the exercise of the rights, obligations and interests of the two parties of industrial relations, restoring infringed legal rights and interests; abolishing the discontent and contradiction between the workers and employers, maintaining and strengthening labor relations to ensure the stable production.

According to the ILO, *dispute resolution is a situation where a dispute ends and an agreement is reached as a result of consensus-based behavior of the disputing parties with or without the assistance of a third-party conciliator. It also refers to the process or steps to be followed by the disputing parties to resolve their differences*[16].

To control the process of collective labor dispute resolution, the States promulgate legal regulations which stipulate the principles, methods, procedures and competent subjects of the dispute resolution. Synthesis of legal regulations issued by the state to moderate the process of resolving CLDs occurring within the country constitutes Legislation on CLD dispute resolution. Therefore, law on CLD resolution can be understood as "the collection of legal regulations on principles, competence, methods and procedures of collective labor dispute resolution".

Legal regulations moderating the process of CLD resolution can be stipulated in different legal documents depending on each country. Some countries regulate the procedures of CLD resolution as a part or a chapter of the Labor Code (Philippines, Canada, Vietnam, Cambodia, Cameroon, Laos, Russia); other countries prescribe in the Labor Relations Law or Law on labor relations adjustment (Thailand, Malaysia, America, Sweden, Singapore); Some countries have separate regulations in the Labor Dispute Settlement Law (Brunei; Indonesia; Australia, China), other countries concurrently stipulate those in different legal documents (Japan: procedures for CLD resolution are stipulated in both Law on moderating labor relations 1946 and Law on Trade Union 1949). Whereas, a formal legal framework for CLD resolution does not exist in Italian labor legislation. When collective conflicts arise, different solutions can be applied to reach a resolution using the collective agreements between the parties as the basic instrument to settle the

[16] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p225

disputes. Although there are certain differences, to moderate the process of collective labor dispute resolution, various countries have promulgated legal provisions to regulate the principles, methods, competent subjects and procedures for collective labor disputes resolution.

Legal regulations are used to control collective labor dispute resolution for the following purposes:

- Through moderating the process of collective labor dispute resolution by law, the state wants to resolve collective labor disputes in peace to minimize the occurrence of industrial actions. The prescribed CLD settlement procedures such as bargaining, conciliation and voluntary arbitration are not only considered to be the extension of collective bargaining but also to be considered the best alternative to strike or business block out. This purpose is in line with the ILO's Recommendation No. 92 of 1951 on voluntary conciliation and arbitration. Accordingly, if the CLD is resolved by voluntary conciliation or arbitration with the consent of all parties involved, the parties are encouraged not to go on a strike or close the business while the conciliation or arbitration is in process.
- Countries want to promote the development of collective bargaining to create stability and harmony in labor relations. In 1944, the International Labor Conference adopted the Philadelphia Declaration which recognized the ILO as obliged to "continue to develop international programs recognizing collective bargaining rights in various countries". This principle was defined in the Convention No. 98, 1949 on the application of principles of rights for association establishment and collective bargaining.
- The states want to harmonize the interests of disputed parties and the public interests of the whole society through its moderation of collective labor dispute resolution by law, thereby contributing to the national socio-economic development. Therefore, through the legal regulations, the states have had certain interventions in the mechanism of resolving collective labor disputes between parties. This is reflected in the regulation of mandatory

arbitration mechanisms and the legal limits of rights of strike of workers in essential areas or disputes that affect public interests in various countries.

1.2.2. Legislative principles of collective labor dispute resolution

To facilitate the resolution of collective labor dispute, the ILO has regulated a series of principles concerning collective bargaining, conciliation, arbitration and right to strike implementation. Of which, key principles may include[17]:

1.2.2.1. Collective bargaining must be held on a voluntary basic to ensure its effectiveness. Measures of compulsion, which would lead changes in the voluntary nature of such bargaining should not be applied; Recourse to the bodies appointed for the dispute resolution must be voluntary and those bodies should be independent from disputing parties;

1.2.2.2. Parties involved in collective bargaining should behave in a good faith and have mutual confidence. They should make their best efforts to reach agreements during the bargaining process. Positive attitudes towards each other are also important for the success of the bargaining;

1.2.2.3. Both employers and workers should be able to choose the representatives for their interests without any interference of public authorities in the collective bargaining process.

1.2.2.4. Free collective bargaining should be promoted by public authorities and made available for relevant parties. Collective agreements should be concluded based on mutual negotiation and voluntary consensus between parties without any interference of public authorities for the purpose of hindering or preventing the application of freely signed collective agreements especially when such authorities are employers or those who countersign the collective agreements;

[17] International Labor Organization, 2006, Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th edition, para. 564, 565, 926, 932; International Labor Organization, 2018, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association, 6th edition, para. 1480, 790, 795, 803 & 816.

1.2.2.5. Strike procedures should be simple enough to enable a legal strike declaration to happen in practice, which is to ensure the right to strike of workers and avoid illegal industrial actions;

1.2.2.6. The purpose of conciliation and mediation should only be facilitating the bargaining process and respective procedures should not be complex or too slow, which leads to the impossibility of a lawful strike in practice.

1.2.2.8. The information asked for in a strike notice should be reasonable, or interpreted in a reasonable manner, and any resulting injunctions should not be used in such a manner as to render legitimate trade union activity nearly impossible.

1.2.2.9. Compulsory arbitration is used as a resolution for a collective labor dispute or to stop a strike only when there is the request of both disputing parties or in cases such strike causes services interruption that may endanger life and safety of community people.

These principles are differently realized in the countries' laws. In Malaysia, when a collective labor dispute arises, disputing parties can request the Director of Industrial Relations Department to conduct conciliation. However, if the parties agree a settlement method, the Director of the Industrial Relations Department will leave them to resolve the dispute on their own unless that method has been applied but failed or he found that the method was unlikely to be successful[18]; In Cambodia, when a CLD arises, if the parties had a settlement mechanism agreed in the CA, the dispute will be resolved under that mechanism. The labor conciliator and arbitration council shall only resolve the dispute in accordance with the law if the parties can not reach a dispute resolution mechanism in the collective labor agreement[19]. In China, even when the application has been submitted, the parties can still arrange the settlement themselves. In case an agreement is reached, the parties can withdraw the request for arbitration. At the arbitration session, before issuing the dispute settlement judgment, the arbitration council/arbitrator will assist

[18] Malaysia (1967), Industrial Relations Act of Malaysia, Art.18

[19] Campuchia (1997), Bộ luật lao động (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nxb Lao động – Xã hội), Art.303&309;

disputing parties in mediation with the aim at helping them reach a mutual agreement on resolving the dispute[20].

Arbitration is not allowed in interest collective labor disputes resolution and not recommended for right disputes either mandatorily or voluntarily in Italy while Vietnam's Labor Code 2012 requires arbitration as compulsory procedures for interest disputes after the failures of conciliation and before the labor collective can move to strike procedures. In the revised labor Code 2019 which will be in effect on January 1, 2021, arbitration is voluntary procedures for both interest and right collective labor dispute resolution.

1.2.3. Methods of collective labor dispute resolution

As earlier mentioned in the item 1.1.3, collective labor disputes can be divided into right CLD and interest CLD. Depending on the nature of each type of disputes, different methods of resolution are legally regulated and applied in various countries, of which, the common ones include: collective bargaining, mediation/conciliation, arbitration, administrative decisions and court instances.

ILO recommends an effective labor dispute resolution system which begins with consensus-based processes (dialogue, negotiation, conciliation and mediation), proceeds to rights-based processes (arbitration & labor court) and ends with power measures that are only used where no other solutions can be found (strikes and lockouts). This system is described as below diagram:

[20] Trung Quốc (2007), Luật trung gian, hoà giải và trọng tài tranh chấp lao động (bản dịch tiếng Việt trong Vai trò của công đoàn và các nỗ lực của ba bên trong việc thúc đẩy thương lượng tập thể và đối thoại xã hội tại Trung Quốc, ILO Việt Nam xuất bản nội bộ), Art.41;

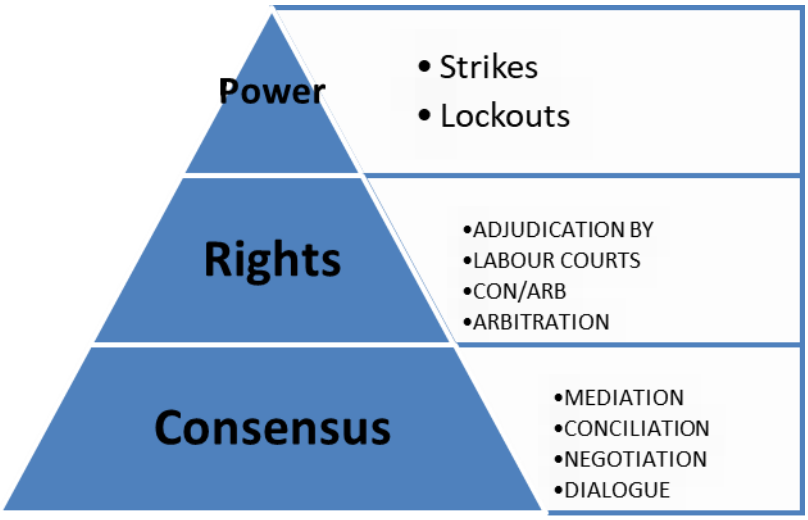


Figure 1: ILO's recommended labor dispute resolution system
Source: International Labor Organization (2013), *Labor dispute systems: Guidelines for improved performance;*

1.2.3.1. Collective bargaining

According to the Article 2, ILO's Convention No. 154 (June 19, 1981), the concept of collective bargaining covers all the negotiations taken place between an employer/a group of employers or their organizations and the workers' organizations or their representatives to determine working conditions, industrial relations and terms of employment.

With various advantages as simple, less expensive, maintaining the relationship between employer and labor collective, protecting the company's prestige and unbound by legal procedures. Collective bargaining is the earliest and most common method of dispute resolution, which is widely applied by the disputing parties to resolve both individual and collective labor disputes. Countries' laws always encourage the use of collective bargaining method in resolving labor disputes, especially for CLDs because employers and labor collective understand the disagreements and the causes of disputes, they are easier to understand and sympathize with each other to reach an agreement on optimal solutions as expected, which can not always be done by any other judicial agencies. The success of collective bargaining much depends on the knowledge, goodwill and cooperation of disputing parties and its results are often very fragile because they are not ensured by a legally binding mechanism. In case of unsuccessful bargaining, the parties

may continue to choose other methods to resolve the disputes arising between the employer and labor collective.

1.2.3.2. Conciliation

"Purpose of Conciliation is to convert a two dimensional fight into a three dimensional exploration leading to the design of an outcome"(Edward de Bono, 1986).

Although collective bargaining is the most appropriate method to resolve collective labor disputes, it is not always successful for different reasons. Therefore, most countries regulate, also in the ILO's perspective, in cases of unsuccessful bargaining, CLDs will be resolved by conciliation method with the involvement of a third person who acts as an intermediary.

According to the ILO, conciliation is "*a process in which an independent and impartial third party assists the disputing parties to reach a mutually acceptable agreement to resolve their dispute"*[21].

"Conciliation" and "Mediation" are two terms that are defined, interpreted and practiced differently in some countries whereas in others, there is no distinction between those two concepts. The ILO, Vietnam and Italy all use "*conciliation*" and "*mediation*" interchangeably.

Conciliation is different from collective bargaining in the presence of an intermediary, whereby the conciliator will intervene to facilitate and support employer and labor collective in reaching an acceptable agreement for both parties. A labor conciliator is not a judge, an arbitrator or a person imposing a decision or agreement between the parties. When conciliating a labor dispute, the most important task of the conciliator is to help the parties understand and come together to negotiate for a solution. He/she provides support to the parties in reaching consensus, but be fully aware that the final decision should be made by the parties themselves. A labor conciliator must be someone who does not have related interests to the dispute and must be completely neutral. His/her neutrality creates

[21] International Labor Organization (2013), *Labor dispute systems: Guidelines for improved performance, p223;*

the trust for disputing parties when requesting for help. The result of a successful conciliation process is an agreement reached by both parties and its execution entirely depends on the willingness of the parties without any legal guaranteed decision.

Below is the ILO's adapted model of Conciliation:

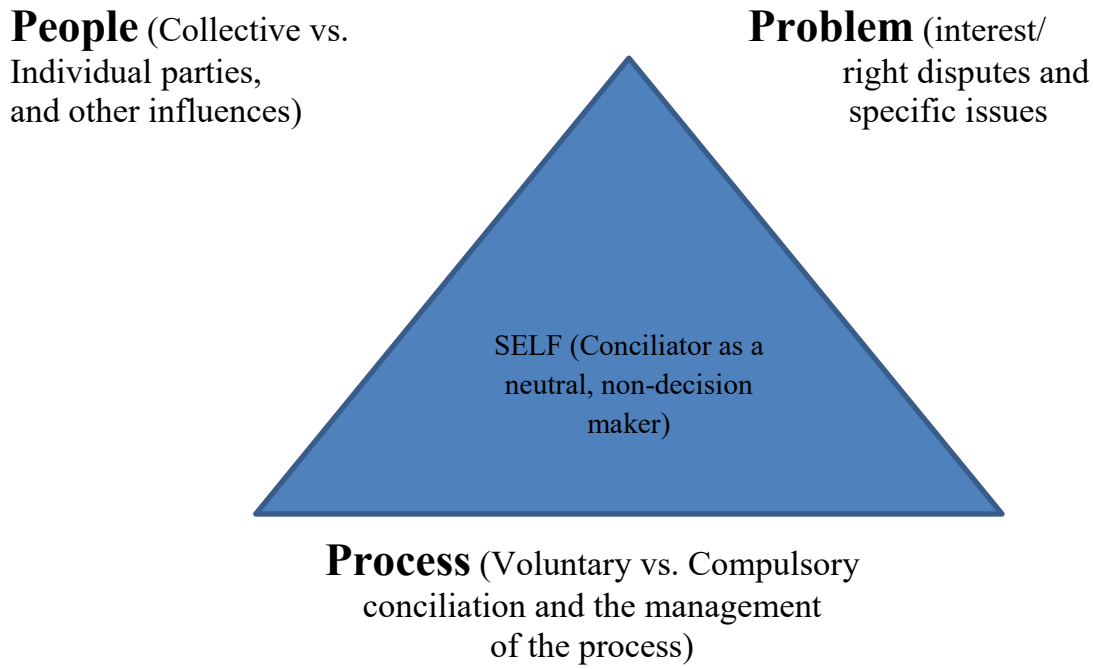


Figure 2: ILO's adapted model of Conciliation
Source: The Conciliator's Handbook, J.E. Beer and E. Stief, © 1997 Friends Conflict Resolution Program. Adapted by ILO

The model shows three main components involved in the dispute resolution including PEOPLE, PROBLEM and PROCESS. PEOPLE here refer to the disputing parties and other influences; PROBLEM contains the disputed issues and things that either parties is not satisfied with while PROCESS describes conciliation activities in both voluntary and mandatory manner. The fourth component stated in the model is the conciliator who facilitates the whole conciliation process with the neutral role of a non-decision maker.

Conciliation is a flexible and effective measure to help disputing parties find unified solutions to remove conflicts and disagreements. Conciliation can be considered a "disputing party-centered" process because it mainly focuses on the needs, rights and interests of employer and labor collective. The conciliator uses a

variety of techniques to guide, build and help parties communicate openly, create favorable conditions for finding optimal solutions to resolve CLDs. As the ILO's classification and depending on national policies on industrial relations and sizes of the dispute, conciliation may be voluntary or compulsory.

- *Voluntary conciliation* under the ILO's definition is a situation in which conciliation is set in motion only with the agreement of the disputing parties[22].

Voluntary conciliation is often applied in countries where the goal of national labor relations policy is to promote the development of collective bargaining. Countries applying this conciliation mechanism include Italy, Japan, Austria, Belgium, the United States, Kenya, Sri Lanka, Philippines, Ireland, Egypt, India, England, Ghana and Colombia.

- *Compulsory conciliation*: Collective labor disputes must be resolved by conciliation before the parties can use other methods. As defined by the ILO, this is a situation where the conciliation service is requested by law to be used by disputing parties. Their attendance at a mediation meeting is mandatory but reaching a resolution is not[23].

Compulsory conciliation is usually applied in the countries with a less developed collective bargaining system that may lead to the status of deadlocks and recourse to strikes. Under this method, the competent subject will accept to settle a collective labor dispute when receiving request from either disputing party. Conciliation is defined as a mandatory method to resolve collective labor disputes when countries want to create opportunities for resolving the dispute in peace before either party applies industrial actions. Most countries in Southeast Asia such as Singapore, Malaysia, Cambodia, Thailand and Vietnam stipulate the settlement of CLDs by conciliation as compulsory[24]. A part from Southeast Asia, many other

[22] International Labor Organization (2013), *Labor dispute systems: Guidelines for improved performance*, p235;
[23] International Labor Organization (2013), *Labor dispute systems: Guidelines for improved performance*, p222;
[24] Campuchia (1997), *Bộ luật lao động (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nxb Lao động – Xã hội)*, Art.304; Malaysia (1967), *Industrial Relations Act of Malaysia*, Art. 18-19; Singapore (1960), *Industrial Relations Act of Singapore*, Art.21&22; Thailand (1975), *Thailand Labor Relations Act*, Art. 21;

countries in the world such as Denmark, Canada, Finland, New Zealand, France, Australia, Sweden, also stipulate conciliation as a compulsory procedure before the disputing parties can adopt industrial actions. Under Finnish law, mediation is mandatory though disputing parties have no obligation to firmly reach a solution. Elsewhere in Malta, conciliation is mandatory but only when the parties' negotiation have failed. This is similar to the cases of Lithuania and Estonia where unsolved disputes must be sent to relevant public authorities and handled by a public mediator or committee[25]. This method is also applied in many countries (including those in the view of voluntary conciliation such as the US and Japan) to resolve interest CLDs with huge value and importance to the national socio-economy.

In addition to similar strengths of negotiation (simple, convenient, quick, flexible and less expensive), conciliation has other highlighted good points as followings:

- Conciliation has the participation of the third party with good mediating skills, knowledge of labor law and socio-economic conditions, which will help the disputing parties better understand the socio-economic situation of the country, salary of other enterprises of the same type to enable them to discuss and reach agreements easier.
- The conciliation process allows direct participation of employer and labor collective in the dispute settlement where they can express their views, exchange, negotiate and discuss the solutions in the whole process and as a result, they would respect the conclusions if they find their opinions are taken into account.
- Conciliation tends to be informal without ritual and hierarchical procedures like the trial activities. This makes the conciliation process more intimate and friendly to the disputing parties, which does not create anxiety and stress like a trial in the court, especially for the labor collective that is often considered weaker in industrial relations.

[25] International Labor Organization (2007), *Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives*; Eladio Daya (1995*), Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study*, International Labor Office;

However, the implementation of the conciliation results depends on the voluntary execution of the parties, but not guaranteed by the coercive power of the government. This can be regarded a weakness of conciliation as the unwilling disputing party may take advantage of the conciliation to delay the performance of its obligations, leading to the case where the infringing party loses the right to initiate a lawsuit at the court due to the time expiry and lead to an illegal strike. In addition, during the conciliation, disputing parties must provide their business data and information to the third party, which may make their prestige and knowhow negatively impacted.

1.2.3.3. Arbitration

Arbitration is an independent dispute resolution mechanism and is widely used in the practice of resolving disputes in various countries around the world especially in trade and industrial relations. Under the labor arbitration, a single arbitrator or a competent arbitral council will settle labor disputes based on certain principles regulated by law. The difference between the arbitration method versus collective bargaining and conciliation is that the competent subject (arbitrator or arbitral council) has rights to issue judgments on the dispute resolution. This judgment is final and once it is made, disputing parties can not require the court to re-settle the dispute in terms of disputing contents but consider the procedures to recognize or reject the judgment only[26].

The ILO defines arbitration as "*a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision which disposes of the dispute*"[27]. Labor arbitration includes voluntary arbitration and compulsory arbitration.

[26] Eladio Daya (1995), *Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study*, International Labor Office, p33;
[27] *https://www.ilo.org/ifpdial/areas-of-work/labor-dispute/lang--en/index.htm*

Voluntary arbitration is "*a situation in which arbitration is set in motion only with the agreement of the disputing parties*"[28]. Only when both parties decide to bring the dispute to arbitration, does the arbitration procedure actually exist.

- *Compulsory arbitration is "a situation in which arbitration is imposed by law or by the government authorities. It also covers situation where arbitration can be set in motion by either of the disputing parties without the agreement of the other, or invoked by the Government on its own initiative"*[29]. Under this method, collective labor disputes are regulated to be settled at arbitration without the consent of disputing parties and the arbitral judgment is legally bounded over the parties. In compulsory arbitration, CLDs must be resolved by arbitration after the parties have failed in applying other methods; the competent subject actively intervenes in the process of resolving the CLD by making a judgment without depending on the will of the parties. However, the State's intervention in resolving CLDs by arbitration varies in different countries. For countries where prevention of business strikes and closure is a top priority, compulsory arbitration is applied to deal with any collective labor disputes while in those with industrial relation policy is to promote collective bargaining, compulsory arbitration is only applied for the disputes occurring in essential service sector or the public interest-related disputes. Currently, the application of mandatory arbitration with all collective labor disputes is applied in Malaysia, Singapore, Australia, Greece, New Zealand, Brazil, India, Sri Lanka and Ghana.

In addition, labor arbitration can be divided into Ad-hoc arbitration (arbitration apparatus may be agreed and established by the parties themselves) and permanent labor arbitration (the arbitration apparatus is decided by a competent agency).

As argued by the ILO's supervisory bodies, compulsory arbitration system with general applicability, which is applied to resolve all interest collective labor disputes in some countries, is inconsistent with the collective bargaining standards

[28] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p235

[29] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p21

set forth in the ILO Convention 98. However, these agencies also acknowledge that the application of compulsory arbitration, including the prohibition against strikes, may still be appropriate with the collective labor disputes arising in essential service sector or public services because the suspension of work caused by strikes can lead to serious damage for the community[30]. According to the ILO's Committee on Freedom of Association, disputing parties should not be requested to move to arbitration as a compulsory procedure if they are not working in essential services. Effective arbitration requires the arbitrator to allow and motivate disputing parties to come back to conciliation even when the arbitration process has started. He/she is also required not to advocate or make the case for either of disputing parties.

In Europe, arbitration exists in almost EU Member States excluding Belgium and Estonia, but this method has not been widely applied in practice. For example, during the period of 2000 – 2004, there were 1072 collective labor disputes being settled through conciliation procedures while only 10 cases had recourse to arbitration. Over the same period, Romania had a total of 558 collective disputes, of which, only 18 cases were referred to arbitration for resolution while Slovakia had only two disputes settled through arbitration procedures out of 139 recorded[31]. This quasi-judicial process, in which the decision is made by a neutral party is generally applied as the last resort when the social partners can not settle their conflicts.

So far, arbitration has been viewed with following advantages:

Labor arbitration is a type of labor jurisdiction with brief and flexible procedures. When a dispute arises, both employer and labor collective expect the case to be resolved quickly with simple and convenient procedures so as not to affect their health, income, prestige, profit and production activities of the enterprise. However, this can hardly be met by proceedings at the court with many complicated

[30] Bộ Lao động, Thương binh và Xã hội (2006), Thủ tục hoà giải và trọng tài các tranh chấp lao động (bản dịch tiếng Việt của cuốn "Conciliation and Arbitration Procedures in Labour Disputes: A Comparative study" do Eladio Daya, chuyên gia của ILO xuất bản năm 1995), p296-297;

[31] International Labor Organization (2007), *Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives*, p17;

procedures from first instance, appellate to supervisory and retrial. Only the labor arbitration with a one-time trial principle can satisfy this demand of the parties.

When resolving disputes, arbitration can be closed without a public trial like the court if the parties request, so that the details, data and information can be kept confidential.

The judgment of labor arbitration is final and often valid while there is no judgment in either collective bargaining or conciliation method.

Arbitration is less expensive and takes less time than the court instance method.

However, the result of an arbitration hearing is not based on mutual consensus. The arbitrator can perform formal procedures to settle the dispute but the process does not necessarily satisfy both parties. The result is objective, not dependent on the wish of disputing parties, which may make one party feels being lost and the other feels they have won or in some cases, both parties may consider they have lost. Other issues include:

- There's limited right for disputing parties to petition the arbitrator's judgment and It's not in all cases that the arbitrator being in charge of the dispute resolution has relevant skills and experiences. In some cases, they tend to do advocacy work instead of arbitration;
- In the situation that disputing parties invite lawyers as their representatives and those lawyers may lack experience in arbitration processes, which possibly make the hearing become dominated by the legal arguments between the lawyers at the expense of substantive issues;

In general, labor arbitration is a method of collective labor dispute resolution that combines the advantages of collective bargaining, conciliation and courts, which is quite suitable for the application to resolve disputes arising from labor relations especially CLDs.

1.2.3.4. Administrative decision

Administrative decision is also a method to resolve CLDs, which enables administrative agencies to investigate and issue decisions to resolve CLDs at the request of the parties. However, this method is rarely recorded in the world and it is usually used to settle disputes related to trade union. In Vietnam, the settlement of CLDs by administrative decisions is only applied to the right disputes and to the interest disputes occurring in the enterprises where strikes are not allowed.

1.2.3.5. Adjudication

Adjudication run by a court or labor tribunal to settle a collective labor dispute is the most formal and legalistic approach whereby the disputing parties yield their problem to a third party with legal power to make a final judgment that may satisfy neither party. Meanwhile, such settlement process is much more formal, expensive and time-consuming than other methods of dispute resolution. Court's judgments or decisions on the dispute without voluntary compliance will be guaranteed to be enforced by state coercive power. Therefore, the litigants often seek the assistance of the court as a resort to effectively protect their rights and interests after failing to use the negotiation or mediation methods and nor do they want their dispute to be resolved by arbitration. Most countries in the world only use the court to resolve right collective labor disputes. In the United States, even for collective labor disputes over rights, court is rarely chosen but arbitration is often used instead[32].

Collective labor dispute resolution by court must comply with the court's judging principles such as public trial except special cases where the court considers that the request for a closed trial is legitimate, collective trial and decision made by majority and can be conducted at two levels of Court of first-instance and Court of Appeal, the legally effective judgment can be reviewed according to cassation review or re-trial procedures.

Some strengths of adjudication can be counted as followings:

[32] Trần Hoàng Hải (CB) (2011) *Pháp luật về giải quyết tranh chấp lao động tập thể - Kinh nghiệm của một số nước đối với Việt Nam*, NXB Chính trị Quốc gia, p89;

- The settlement of collective labor disputes by adjudication method is required to follow a strict and consistent proceeding, which leads to a fair and consistent judgments and decisions.
- Final decision makers of the dispute resolution - the Judges - are professionally trained and selected through a series of public and tight procedures to ensure they are qualified for the job, which is different from other methods such as conciliation where the conciliators are usually part-time and untrained. Nevertheless, adjudication can be conducted at two levels of first instance and appellate, the legally validated judgments and decisions of the Court can be reviewed according to cassation and re-trial procedures. These together ensure the accuracy and objectivity in the court's judging, protects the legitimate rights and interests of employer and labor collective.
- Unlike the other dispute resolution methods, the court’s judgment is the final decision that is ensured by state enforcement measures through judgment enforcement agency and the disputing parties are obliged to respect.

A part from its advantages, adjudication still remains some limitations including:

- Collective labor dispute resolution by court is implemented by a state-owned jurisdictional agency with strict procedures that make employer and worker’s collective feel confined and uncomfortable. This resolution approach often lasts too long due to complicated procedures or trial at many levels, which affects the business activities of employer and the lives of worker’s collective.
- Adjudication always applies principles of public trial, which leads to the disclosure of business secrets and impacts the prestige of the enterprise in the market. This as a consequence, can indirectly affect the labor collective in terms of wage, bonuses, holidays, etc. Moreover, the litigation process in the court often makes the parties far apart because of the opposition in litigation, which may cause other potential conflicts.

Through the above analysis, it can be seen that each method of collective labor dispute resolution has certain advantages and disadvantages. Therefore, method selection should depend on the nature and severity level of each dispute as well as the provisions of the country's law.

1.3. Legal framework of International Labor Organization on collective labor dispute resolution

The International Labor Organization was founded in 1919 with three main objectives: humanitarian, politics and economy. So far, it has issued 190 Conventions and 205 Recommendations[33] including 8 fundamental Conventions concerning international labor standards with labor dispute resolution regulations covered.

The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) is the key instrument of the ILO to handle with labor dispute prevention and settlement. According to this Recommendation, voluntary mediation should be made available for both employers and employees to assist the process of industrial conflict prevention and resolution. Disputing parties should be enabled to join the conciliation process voluntarily through the availability of free procedures and they should have equal right to nominate their representatives. The Recommendation also suggests disputing parties should abstain from various industrial actions such as lockouts and strikes during the on-going process of conciliation and arbitration while the right to strike is still ensured. Concerning conciliation results, the Recommendation stated "*All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner*"[34].

Other issues of labor dispute conciliation are also mentioned by ILO in Recommendation No.81 (June 19, 1947) on labor inspection. ILO emphasizes the need to ensure and preserve the integrity, impartiality and professional skills of

[33] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO:::

[34] International Labor Organization *(1951), Voluntary Conciliation and Arbitration Recommendation, No.92* *Http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REC,en,R092,/Document;*

conciliators. Although ILO's regulations on conciliation of labor disputes are just at recommended level, these standard provisions have a significant effect on the development and enactment of national laws including those on conciliation of labor disputes.

Dispute resolution is further addressed under a number of conventions and recommendations related to collective bargaining, such as (in addition to others): Convention No. 154 (June 19, 1981) on the promotion of collective bargaining; Convention No. 98 (July 1, 1949) on the rights to organize and collective bargaining; and Recommendation 163 (June 19, 1981) on collective bargaining. The Convention No. 154, states that competent agencies and procedures for labor dispute resolution should be established to strengthen collective bargaining (Article 5(2)(e)). Article 6 of the Convention shows that, conciliation and arbitration are not ruled out as a part of collective bargaining process provided such procedures are run with voluntary participation of disputing parties. The Convention also states one of the dispute settlement objective is to promote mutual agreement between disputing parties on the solution for their conflicts, which would as a result, promote the practice of collective bargaining and bipartite negotiation. The convention No. 98 is one of the eight ILO fundamental conventions ratified by 165 out of 187 ILO member countries as of January 2019 and is one of the very important conventions related to the organization and collective bargaining. In the spirit of the Convention, workers are protected against any acts of anti-union discrimination concerning their employments and their rights to join in workers' organizations; employers should not require workers not to join a union or to renounce their trade union membership as a condition for their employment and they can not dismiss the workers for the reason of union membership or because of their participation in union activities (Article 1). At the same time, article 2 affirms employers' and workers' organizations are protected against the interference of each other in their establishment, operation and management. The Convention also promotes voluntary negotiation between employees and employers to resolve their differences (Article 4).

Besides, the settlement of disputes at enterprise level including such of right disputes concerning the evidenced violation of CAs is addressed in the Recommendation No.130 (1967) on the Examination of Grievances. Number of suggestions on establishing and realizing mechanisms of dispute resolution at workplaces are provided in the Recommendation, of which preventative measures including mutual discussion on worker-affected decisions and continuous bargaining are strongly emphasized. It also states that in cases of failures after all efforts to settle the dispute, final resolution should be reached either through mediation, arbitration, court adjudication or other methods set out in the signed CAs depending on the national law and practical conditions (Para. 17).

The Convention No.151 (1978) on Labor Relations (Public Service) deals with the resolution of disputes over the employment conditions and the right to organize of those who work in public service. The Convention recommends that dispute settlement procedures should be carried out through various neutral apparatus such as conciliation and arbitration, which is established with a guarantee of the parties' confidence to the process.

Other ILO document demonstrates the role of labor governance in the dispute settlement process, which is the Recommendation No.158 (1978) on Labor Administration. It recommends that, competent agencies under the labor management system should be able to provide conciliation machinery in line with national law and conditions with the agreement of relevant organizations of workers' and employers' when collective labor disputes arise (Para.10).

Concerning striking, the ILO protects workers' right to strike on the basis of Convention No. 87 (July 9, 1948) on the right to freedom of association and the protection of the rights to organize. Under this Convention, both employees and employers have the right to establish and join organizations of their own choice without any discrimination and previous permission but only need to comply the rules of such organization (Article 2). Worker's and employer's organizations have the right to establish rules, management principles, freely elect representatives, organize the operation and draft their own working program while the public

authorities shall abstain from interference that may causes limitation of such right or hinder the legal practice thereof (Article 3).

To a great extent, ILO's supervisory bodies have dealt with the issues of CLD prevention and settlement along with the indemnity of the right to strike. They have pointed out that it's permissible to require disputing parties to take up mediation procedures before the occurrence of a strike if such process "*is not so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness*"[35]. Certain concerns have been put over the application of mandatory arbitration which would consequently engender a binding judgment because such resolution virtually makes strikes impossible or ended quickly. Some particular principles have been made for arbitration by these bodies, whereby, this procedure should be freely selected and the final judgment should be binding for parties involved in the process. In addition, mandatory arbitration enforced by the government agencies as stated by the ILO Committee of Experts is "*generally contrary to the principle of voluntary negotiation of collective agreements established in Convention No. 98, and thus the autonomy of bargaining partners*"[36].

ILO emphasizes that to ensure an efficacious system of labor dispute settlement, it's essential to have it amalgamated with the aspect of association freedom. Otherwise, workers may not have appropriate representatives during the dispute resolution, which may cause unsatisfactory results and continued labor conflicts. Similarly, where there is less freedom of association, concerns are also put on the lawfulness of the bipartite and tripartite settlement entities for their independence and neutrality in the dispute resolution process.

As the ILO's view, an effective labor dispute resolution system should be available and affordable for all worker classes including those who do not have union

[35] International Labor Organization (1994), *Freedom of association and collective bargaining*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labor Conference, 81st Session, Geneva, para. 171;
[36] International Labor Organization (1994), *Freedom of association and collective bargaining*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labor Conference, 81st Session, Geneva, para. 257;

membership and those working in informal economic sectors and in industrial zones. To help with this, there are some public dispute resolution agencies publicly funded providing free resolution services, which among others, include the United State's Federal Mediation (FMCS) or Conciliation Service the United Kingdom's Acas. Other bodies have fee sharing arrangements which may depend on whether the dispute resolution is involved and paid by a government body or the fee will be handled privately by the disputing parties. The Committee on Freedom of Association has declared that it is not a violation of freedom of association to require disputing parties to pay for services of conciliation and arbitration if the service cost is reasonable and does not impede the parties to access the services[37]. Knowledge and readiness of disputing parties are key factors contributing to an effective system of labor dispute settlement because they have great impact on how parties respond and function during the dispute settlement process. In addition, an appropriate legal framework including reliable enforcement mechanisms is also important, which make the social partners involving in the process confident that their negotiation results will be respected.

A part from the guidance provision on labor dispute settlement, ILO also intervene in different activities to support member States in the establishment of labor courts as well as settlement mechanisms to enable the disputes to be solved effectively. Such activities may include but not limited to capacity building, assessment of existing systems of dispute settlement and promoting the ratification and implementation of relevant international labor standards. Besides, the ILO also offers other professional support activities such as policy advice provision, organization of national conferences to raise awareness of parties on social dialogue and collective bargaining; provision of thematic training courses to meet specific needs.

[37] International Labor Organization (2006), *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition, Geneva, ("CFA Digest"), para. 602;

SUMMARIZATION OF CHAPTER 1

Through the study of theoretical issues on collective labor disputes and the law on collective labor dispute resolution, following conclusions can be withdrawn:

1. The States intervene in the process of collective labor dispute resolution through the issuance of legal regulations to control the process as their intention. The purpose of such intervention is to resolve the disputes in peace as well as promote the development of collective bargaining so as to strengthen a sound industrial relation and social stability.

2. Collective bargaining, conciliation, arbitration, administration and court adjudication are often used as methods of collective labor dispute resolution. Depending on the national labor relation policies and sectors the disputes occur, specific method will be selected and the application of conciliation and arbitration may be voluntary or mandatory.

3. The legislation governing the process of collective labor dispute resolution varies according to countries based on the ILO's guidance and international labor standards but in general, the key contents of such system include principles, methods, competent subjects and procedures of the collective labor dispute resolution.

4. The resolution of collective labor disputes must follow two fundamental principles among others: i) respect and guarantee the parties' right to self-determination in the process of dispute resolution; 2) encourage parties to use collective bargaining and conciliation for the dispute resolution on the basis of ensuring fairness for both parties and the public interests of the society.

Chapter 2: CURRENT LEGISLATION ON COLLECTIVE LABOR DISPUTE RESOLUTION OF VIETNAM AND ITALY

This chapter will focus on the status, practices, similarities and differences in the application of various dispute resolution methods of Italy and Vietnam. Conceptual

and theoretical contents concerning CLD and resolution methods have been mentioned and analyzed in the Chapter 1 and will not be repeated in this chapter.

2.1. Legislation on collective labor dispute resolution of Vietnam

2.1.1. Legal documents on collective labor dispute resolution

Vietnam has ratified 24/190 Conventions of the ILO including 6 out of its 8 fundamental ones, of which, 21 are in force, 1 has been denounced; 2 have been ratified in 2019. However, the two conventions that are most related to CLD resolution (C98 on the right to organization and collective bargaining and C87 on the rights to freedom of association) have not been working in Vietnam so far. The C98 has just been ratified and came into force in July 2020, which needs guidance documents for the implementation while the C87 has not been signed yet. Thus, workers' representative organizations have not been properly established and implemented the representing roles as required under those ILO's conventions, which results in the lack of effective and real collective bargaining in labor dispute resolution process.

At national level, the Constitution of the Socialist Republic of Vietnam 2013 affirmed in its clause 2, article 35: "*the State protects the legitimate rights and interests of workers and employers and facilitates the development of progressive and harmonious labor relations, peace and stability*"; "*Employees are guaranteed safe and fair working conditions; receive salary and rest regime*". At the same time, in its clause 3, article 35, the Constitution regulates "…*discrimination, forced labor, employment of workers below the minimum working age are prohibited; Citizens have the right to freedom of speech and freedom of accessing to information, meetings, association, protests…* "

Under such spirit of the constitution, a series of legal documents have been issued and implemented concerning the resolution of CLDs, which include:

2.1.1.1. Revised Labor Code No.45/2019/QH14 dated 20 November 2019, (Articles 63-74 & 170 – 178 & 191-211)

2.1.1.2. Civil Procedure Code No.92/2015/QH13, dated 25 November 2015;

2.1.1.3. Law on Employment No.38/2013/QH13, dated 16/11/2013;

2.1.1.4. Labor Code No. 10/2012/QH13, dated 18 June 2012 (Articles 194 – 234);

2.1.1.5. Trade Union Law No. 12/2012/QH13, dated 20 June 2012;

2.1.1.6. Government Decree No.43/2013/NĐ-CP dated 10/05/2013 detailing the implementation of the article 10 of the Trade Union Law concerning the rights and obligations of trade union in the representing and protecting adequate rights and interests of employees;

2.1.1.7. Government Decree 05/2015/ND-CP providing guidance on the implementation of several contents of the Labor Code 2012;

2.1.1.8. Government Decree 41/2013/ND-CP detailing the implementation of the article 220 of the Labor Code on the list of establishments which are not allowed to go on strike and the settlement of requests of labor collectives in those units;

2.1.1.9. Government Decree 46/2013/ND-CP detailing the implementation of a number of articles of the Labor Code 2012 regarding labor disputes;

2.1.1.10. MOLISA's Circular 29/2015 guiding the collective bargaining, collective bargaining agreements and settlement of labor disputes prescribed in the Decree No. 05/2015/ND-CP.

2.1.1.11. MOLISA's Circular 08/2013/TT-LDTBXH guiding the implementation of Government Decree 46/2013/ND-CP detailing the implementation of some articles of the Labor Code concerning labor disputes;

2.1.1.12. MOLISA's Circular 22/2007/TT-LDTBXH providing guidelines on the organization and operation of labor conciliation councils at enterprises and labor conciliators;

2.1.1.13. MOLISA's Circular 23/2007/TT-LDTBXH guiding the organization and operation of Labor Arbitration Councils;

2.1.2. Competent subjects for collective labor dispute resolution

According to the Labor Code 2012, the Government Decree No. 41/2013/NĐ-CP, the Government Decree No. 46/2013/NĐ-CP, the MOLISA's Circular No. 08/2013/TT- BLĐTBXH, competent individual/organizations for CLD resolution include: conciliator, labor arbitration council, chairman of district People's Committee, chairman of provincial People's Committee (for the interest CLDs arisen in the enterprises working in essential industries of the national economy where strikes are not allowed) and the courts. In addition, Trade Union though without authority to issue decisions or judgments, is considered an indispensible subject during the resolution of a CLD.

2.1.2.1. Labor conciliator

Under the provisions of Article 198 of the Labor Code 2012 and Clause 1, Article 3 of the Government Decree No. 46/2013/ND-CP dated May 10, 2013 detailing the enforcement of several articles of the Labor Code concerning labor disputes, labor conciliators are appointed for a term of five years by and subject to the management of the chairman of PPC and may be exempted, removed from office by him/her in accordance with the law. Before the Labor Code 2012, the authority to appoint and manage labor conciliators belongs to the DPC's chairperson. In fact, the revised provision in which conciliators are appointed and managed by provincial people's committee chairpersons will give them a higher social status, thereby encouraging qualified candidates for the position. In addition, the management of labor conciliators at the provincial level enables them to coordinate with relevant provincial agencies during their work as well as facilitate the mobilization of labor conciliators among districts when required. In the past, labor conciliators were managed by the chairpersons of DPCs so they can only resolve the labor disputes occurred within their district areas. This led the situation that, conciliators in some districts were overloaded while those in the others were idle and did not have conditions to improve professional knowledge and skills through practices.

Circular No. 08/2013/TT-BLDTBXH stipulates the procedures for appointing and dismissing labor conciliators include following steps: i) determination of the number of labor conciliators; ii) public the vacancy announcement; and iii) appoint the labor conciliator. The number of labor conciliators in each district will be determined by the Chairman of DPC based on the number of enterprises and status of labor disputes in the area. This number can be increased annually depending on the capacity of labor dispute resolution, number of enterprises located in the areas and existing number of conciliators[38]. There are usually 3 conciliators appointed for a district with less labor disputes and 10 for that with high quantity of disputes. Few districts have only 1 or 2 conciliators, which is not really optimal in cases that disputing parties request for changes of conciliators because they have reason not to believe in the appointed one. Concerning the conciliator dismissal, the chairman of PPC will consider and sign the decision on dismissal of the labor conciliator upon the receipt of the request from the chairman of DPC. In general, the procedures for the appointment and dismissal of labor conciliators are fairly clear, quick and suitable to the functions and tasks of the competent authority and relevant parties have sufficient time to handle necessary work.

Concerning the competence, conciliator is the only subject with authorization to conduct the resolution of CLDs at the conciliation stage. This is the main new point of the Labor code 2012 in terms of competent individual/organizations to settle labor disputes. From the issuance of the Labor code in 1994 till 2013, there existed two competent entities for CLD resolution including grassroots labor conciliation council and conciliator. The grassroots labor conciliation council was established in the enterprises with the existence of trade union and be responsible for solving all CLDs arisen within such enterprises[39]. Conciliator has authorization to resolve disputes in the enterprises with no existence of grassroots labor conciliation council or with a council but disputing parties choose to invite a conciliator for their

[38] Bộ Lao động, Thương binh và Xã hội (2013), *Thông tư số 08/2013/TT –BLĐTBXH ngày 10/6/2013 hướng dẫn Nghị định số 46/2013/NĐ – CP ngày 10/5/2013 của Chính phủ* quy định chi tiết thi hành một số điều của Bộ luật Lao động về tranh chấp lao động, Art.4;

[39] Chính phủ (2007), *Nghị định số 133/2007/NĐ – CP ngày 8/8/2007 quy định chi tiết và hướng dẫn thi hành một số điều của Luật sửa đổi, bổ sung một số điều của Bộ luật Lao động về tranh chấp lao động*, Art.4;

dispute settlement[40]. Grassroots labor conciliation council revealed many inadequacies during its practice. As it was established within the enterprise, the neutrality is not guaranteed and in the reality, virtually no collective bargaining has been conciliated by this organization. For example, in Dong Nai province of Vietnam, from July 2007 to October 2010, there were 404 collective labor disputes, of which 312 cases occurred in enterprises with grassroots trade unions and most of the enterprises have established a Grassroots Labor Conciliation Council but no dispute has ever been resolved at this council[41].

According to the prevailing laws, the conciliator's competence to conciliate CLDs is limited to disputes that arise in the enterprises where strikes are allowed. For the enterprises where strikes are prohibited or those operate in essential branches and domains of the national economy, the competence to conciliate labor disputes shall belong to the labor arbitration council[42]. In the first case, labor conciliators can only resolve the disputes when there is a request for conciliation from either disputing party and before that, the dispute has been resolved through collective bargaining but failed to reach a result as one party refused to negotiate, collective bargaining happened but failed or It was successful but one party didn't realize the results. However, in practice, the labor collective and employers in Vietnam have yet actively requested the competent entities to involve when a dispute arise. Labor collective tends to conduct strikes spontaneously to force the employers to accept their claims if there is a disagreement about their interests. In order to mitigate negative impacts of those unlawful strikes, some localities have used "situational methods" through the intervention of Inter-sectorial Task Force. However, the use of this "situational method" revealed many inadequacies such as: it may encourage workers to continue unlawful strikes because "when they go on strike, even in

[40] Chính phủ (2007), *Nghị định số 133/2007/NĐ – CP ngày 8/8/2007 quy định chi tiết và hướng dẫn thi hành một số điều của Luật sửa đổi, bổ sung một số điều của Bộ luật Lao động về tranh chấp lao động*, Art.7;

[41] Huỳnh Văn Tịnh (2010), *Thực trạng giải quyết TCLĐTT tại Đồng Nai – những kiến nghị, đề xuất,* kỷ yếu hội thảo "Cơ chế giải quyết tranh chấp lao động tập thể ở Việt Nam – những bất cập và hướng hoàn thiện", p2;

[42] Chính phủ (2013), *Nghị định số 41/2013/NĐ – CP ngày 8/5/2013 quy định chi tiết thi hành Điều 220* của Bộ luật Lao động Danh mục đơn vị sử dụng lao động không được đình công và giải quyết yêu cầu của tập thể lao động ở đơn vị sử dụng lao động không được đình công, Art.4;

contravention of the law, laborers "lose nothing but get more"[43]. The results of a CLD resolution is usually favorable to the employees, all their recommendations and requirements will be recorded by the Task Force to later "negotiate" with the employers and they are usually responded. The employees are still fully paid for the days off due to their unlawful strikes. Therefore, when they want to demand better working conditions, they continue to strike unexpectedly to put pressure on the employers. Nevertheless, it undermines the collective representation of the labor force. Most of the strikes that have taken place recently are not organized and led by the trade union. The roles of trade union are very faint in the process of the strike solving by the inter-sectorial task force. Whereas, the result of unlawful strikes is often beneficial to employees, that may lead to their disregard of the role of trade unions at the enterprises. In addition, this situational method does not completely resolve the conflicts and disagreements between the two sides and discourages the development of collective bargaining. The fact that the employers accept claims for the benefit of the labor collective is primarily due to the pressure from officials of the state administration of labor in separate meetings between the inter-sectorial Task Force and the employers. In fact, the inter-sectorial task force on behalf of the labor collective has used the strengths and advantages of state management agencies to "negotiate" with the employers and for many reasons, including a fear of being fined due to a violation of labor regulations, the employers have accepted the demands of the labor collective. Therefore, in many cases, after the strike ended, the employer did not implement the agreed agreement and strikes easily went on.

2.1.2.2. Labor arbitration Council

According to the Article 199, Labor Code 2012, Labor Arbitration Council is an agency resolving CLDs, which is established in each province and central-run cities by the chairman of PPCe with members coming from different local agencies: Council chairman is the head of provincial DOLISA, Secretary is the officer of provincial DOLISA and the rest members are representatives from provincial trade

[43] Trương Lâm Danh (2010), *Đánh giá phương pháp giải quyết tình thế đối với các cuộc đình công trên địa bàn thành phố Hồ Chí Minh*, Kỷ yếu hội thảo "Cơ chế giải quyết tranh chấp lao động tập thể ở Việt Nam – những bất cập và hướng hoàn thiện", p33;

union and enterprises. Member quantity of LAC is an odd number and does not exceed 7 persons. Where necessary, the chairman of council can invite representatives from relevant agencies or local senior experts in industrial relations[44]. The chairman and members of the labor arbitration council work on a part-time basis for a term of five years. The council secretary shall work on a full-time basis and be entitled equivalent to the position of a Division Head of provincial DOLISA. Accordingly, the composition of the LAC in Vietnam is established under a tripartite mechanism: representatives of the State (DOLISA); representatives of employees and representatives of employers. This structure will enable the LAC to have a comprehensive and multifaceted view of CLDs. However, unlike other countries in the world and in the region, members of the LAC in Vietnam are not appointed but nominated. Therefore, the law does not stipulate criteria for appointment of arbitrators. Furthermore, except for the full-time Council Secretary, members of the LAC all work concurrently, which will cause certain difficulties for the operation of the LAC in practice and limit the opportunity to accumulate experience, improve professional skills of the council members.

Apart from that, the maintenance of LAC in each province and city also causes a financial waste to the state budget as collective labor disputes only occur in some provinces and cities with high number of enterprises based. The regulations that require all the members of LAC to participate in addressing a CLD are unnecessary that may lead to the case when either disputing party wants to change members of the council as they don't believe such person is impartial or objective during the dispute settlement as allowed by law, their request may not be realized as the council doesn't have alternate arbitrators to replace meanwhile the chairman of provincial People's committee can not mobilize the arbitrators from other provinces/cities as they are under their own provincial management.

Concerning the competence of labor arbitration council, as regulated in the clause 2, article 199, Labor Code 2012, LAC has authority to mediate various interest CLDs in all enterprises and the CLDs occurring in the establishments where strikes

[44] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art. 199;

are not allowed as stated in the Government Decree No. 41/2013/NĐ– CP. However, in the latter case, the Decree only mentions the procedures of interest collective labor disputes settlement without mentioning about right disputes. This implicates right CLDs are not allowed in these enterprises and therefore, no regulations on this are currently available. Thus, it can be concluded that, according to the labor code 2012, the LAC has authority to conciliate interest CLDs arising in enterprises with strikes prohibited but it doesn't have competence in resolving right disputes.

Competence of the LAC in the resolution of interest collective labor disputes varies from different types of enterprises where the disputes arise, detailed as followings:

- For the interest CLDs arising in the enterprises with strikes allowed, LAC has competence to mediate the dispute upon the request of either disputing parties after the dispute has been unsuccessfully mediated by the conciliator or successfully but one party did not implement the agreements recorded in the mediation minute or either disputing party has submitted the request for mediation but was not handled by the labor conciliator within 5 working days (Article 199, Labor Code 2012).
- For the interest collective labor disputes occurring in the enterprises with strikes prohibited or those operate in essential areas of the national economy, LAC is the first unit with competence to mediate the dispute after receiving the request from either disputing parties in accordance with the provisions of the Government Decree No. 41/2013/NĐ – CP.

It can be found that, the arbitration procedure is mandatory for all CLDs of interest. This is not really in line with the voluntary requirement of collective bargaining under the ILO Convention 98, whereby the settlement of interest CLDs by arbitration must be on the voluntary basis of the disputing parties themselves. Mandatory arbitration is only applied to the CLDs of interests arising in the essential service area (where workers may not be entitled to strike). However, it is worth noting that, despite being named the "Labor Arbitration Council", its function essentially only mediates such disputes. Meanwhile, the nature of

arbitration is a process in which the final result must be an arbitral award, rather than merely the task of reconciling the disputes that have been unsuccessfully mediated by the labor conciliator before.

It practice, regulations on the competence of LAC in resolving interest labor disputes keep changing over time. Article 71, Labor Code 1994 regulated that LAC had authority to resolve all CLDs after being unsuccessfully conciliated by the grassroots labor conciliation council or conciliator. In the revised Labor Code 2006, LAC has competence to resolve the CLDs occurring in enterprises with strikes prohibited.[45] For the interest CLDs occurring in enterprises with strikes allowed, the LAC has competence to mediate the case. By the valid date of 2012 Labor Code, LAC only has competence to mediate interest CLDs in both types of the aforementioned enterprises. And in the 2019 revised Labor Code which will come into effect on January 1, 2021, arbitration becomes voluntary procedures applied in both interest and right CLD resolution.

2.1.2.3. Chairman of district People's Committee

Unlike the other subjects competent to resolve CLDs, the chairman of DPC is an administrative title. In case, a right CLD has been mediated by the labor conciliator but failed or either of disputing parties refuses to realize the agreement in the minutes of successful conciliation, or after 05 working days of the request submission, the conciliator does not hold the conciliation meeting, the disputing parties have the right to file a petition to the chairperson of DPC for resolution[46].

If disputing parties do not agree with the decision of the DPC's chairman or after the regulated deadline, the chairman of DPC does not resolve the dispute, the parties have rights to appeal the Court for the case settlement. In the revised Labor Code 2019, the resolution of right CLDs by the chairman of DPC is no longer applied, instead, disputing parties may choose to address their disputes either by arbitration council or court after the application of mediation method fails.

[45] Chính phủ (2007), *Nghị định số 133/2007/NĐ – CP ngày 8/8/2007 quy định chi tiết và hướng dẫn thi hành một số điều của Luật sửa đổi, bổ sung một số điều của Bộ luật Lao động về tranh chấp lao động*, Art.12;
[46] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.204;

2.1.2.4. Chairman of provincial People's Committee

The chairman of PPC is competent to resolve interest CLDs in the enterprises where strikes are not allowed, working in essential services of the national economy if the disputes have been unsuccessfully settled or successfully solved by the labor arbitration council but one disputing party didn't implement the recorded agreements[47]. The chairman of PPCe will realize this competence when receiving the petitions of labor collective through the report of DOLISA.

The regulations that allow the chairman of PPC to resolve interest collective labor disputes are new in Labor Code 2012. In the past, once the interest CLDs have been resolved by the LAC but either of disputing parties did not agree with the results, they had rights to request the Court to handle the case in compliance with the Civil Procedure Code. The new regulation reveals certain strengths as the chairman of PPC usually has good knowledge of his local socio-economic situation and industrial relations, he/she can promptly approach and assess the case. As the head of the state management agency at provincial level, the chairman of PPC can collaborate with relevant agencies such as provincial trade union's chairman and representatives of the enterprises with strikes prohibited located in the province during the process of dispute settlement.

However, the practice of these procedures is not really a sound solution. According to the law on the organization of People's Committee and People's Council, the chairman of PPC doesn't have either obligation or rights in labor dispute resolution whereas, when issuing the decision to resolve the interest CLDs, the chairman of PPC has already implemented the function which is only regulated for the agencies with competence to arbitrate labor disputes including labor arbitrators and supreme court. In addition, as a head of an administrative apparatus at provincial level, he/she can hardly meet the technical requirements to deal with interest collective labor disputes.

[47] Chính phủ (2013), *Nghị định số 41/2013/NĐ – CP ngày 8/5/2013 quy định chi tiết thi hành Điều 220 của Bộ luật Lao động* Danh mục đơn vị sử dụng lao động không được đình công và giải quyết yêu cầu của tập thể lao động ở đơn vị sử dụng lao động không được đình công, Art.4;

2.1.2.5. People's courts

Court instance is a method of resolving disputes at a judicial body with the state power, which is carried out in strict procedures. Court's judgments or decisions are guaranteed to be enforced by coercive power of the state. According to the Vietnamese Labor Code 2012 and the Clause 2, Article 32 of the Civil Procedure Code 2015, courts have the right to settle right collective labor disputes between the worker collective and employer, which have been resolved by the chairperson of the DPC (or by labor arbitrator as in revised Labor Code 2019), but the labor collective or the employer disagrees with his/her decision or after the required deadline, the DPC's chairperson does not resolve the dispute.

2.1.2.6. Trade union

The Vietnam Labor Code 2012 and Vietnam Trade Union Law only recognize the freedom to form and join trade unions of Vietnamese workers with the only choice: trade union under the Vietnam General Confederation of Labor (VGCL). In 2019, Vietnam joined the ILO Convention No. 98 on "Right to organize and Collective Bargaining" and amended its Labor Code, whereby the revised Labor Code 2019 changed the name of Chapter XIII "Trade Union" to "Employees' Representative Organization at grassroots level", to which workers have the right to choose to join either a trade union or other non-trade union workers' representative organizations.

The reality shows that union activities in resolving labor disputes and strikes are still very limited. Grassroots trade union officials have not yet shown their capacity and bravery in labor relations at enterprises. In fact, many grassroots trade union cadres concurrently hold managerial positions in enterprises, even human resource officers, although qualified but do not dare to protect the interests of workers. Grassroots trade union officials are often subject to deep influence and interference from employers. They dare not to negotiate with their employers due to the fear of affecting their jobs, incomes and lives of themselves and their families. Other officials, who are workers, although strong in attitude and motivation, have limited trade union skills and qualifications Therefore, it is difficult to build the trust of workers for unions and they are hard to attract their members. The representative

functions of trade unions, especially at grassroots level, in labor relations at enterprises have not been promoted in taking care of and protecting the legitimate rights and interests of laborers; Their participation in dialogues and collective bargaining to establish working conditions is largely for procedures, lacking in substance, which affects the protection of workers' rights and yet practice the role of leading and organizing strikes in accordance with the law; In many enterprises where trade unions exist, strikes still occur because workers could not raise their voices and do not trust the trade unions.

The revised Labor Code 2019 amended and supplemented the provisions on anti-union discrimination and anti-discrimination for joining workers' representative organizations including trade unions in the recruitment process; Amended and supplemented regulations on some several typical acts of employers intervening in trade unions such as interference in organization, finance and work plans of workers' representative organizations or unions (Article 157). The revised Labor Code 2019 also added provisions towards better protecting the members of the management board of the grassroots labor representative organizations, ensuring conditions for union activities in enterprises, especially in terms of access to workers and employers at workplaces, ensuring the working time and employment of the workers' representative organizations' cadres (Article 176). In addition, the Code adds a provision on employers' responsibilities to create favorable conditions for trade unions' activities (Article 177). It is expected that, with these changes in law, the trade union and workers' representative organizations will perform better with their roles of protecting workers' adequate rights and interests.

2.1.3. Methods to resolve collective labor disputes

As analyzed in the Chapter 1, CLDs are categorized into interest disputes and right disputes. To match the nature of each type of disputes, different methods of resolution are applied. According to Vietnamese existing law, following methods of CLD resolutions are regulated: collective bargaining, conciliation, arbitration, administrative decisions and court adjudication.

2.1.3.1. Collective bargaining

CLD resolution by collective bargaining is regulated through various principles to settle labor disputes. As stipulated at clauses 5&6, article 194, Labor Code 2012 of Vietnam, when a CLD arises, collective bargaining is the first mandatory procedures for both disputing parties. Also according to these clauses, bargaining process needs to ensure following requirements: i) disputing parties are equal in terms of rights and obligations during the bargaining process; ii) Collective bargaining results must be obtained with the agreement of both parties; iii) the bargaining agreements must not violate the tradition, ethnic, custom and benefits of the state and society and iv) the bargaining results must be recorded as common agreement and implemented by both parties. The article 194 also regulates that, in case either of the parties refuses to negotiate, negotiation is not successful or successful but backs out the agreement and requests for resolution, the dispute shall be handled by a competent entity.

The fact showed that, despite having been institutionalized in legal documents for long time, collective bargaining has not been fully developed with its real meaning. Collective bargaining in Vietnam is still similar to a human resource management model rather than a collective bargaining one. The current trade union model in Vietnam with the grassroots trade union executive committee has almost the participation of employees with managerial positions, which makes it difficult to perform real collective bargaining as their role of workers' representative. On 5 July 2019, Vietnam submitted the dossier to ratify the ILO Convention 98 (1949) on the Right to Organize and Collective Bargaining. According to the Convention, there are 3 main factors which play an extremely important role in the real and effective implementation of collective bargaining, which include: i) Workers are protected against anti-union discrimination actions concerning their employment; ii) Workers' organization is not interfered by the employers; iii) Governments must have adequate legal and institutional measures to promote collective bargaining. One significant change that should be made to make local practices to be complied with the Convention is to move away from the current prevalent situation where grassroots trade unions are dominated by administration.

The Labor Code 2012 sets aside a chapter (Chapter V) for the regulations of workplace dialogue, collective bargaining, collective bargaining agreements. This chapter has clearly defined the purpose, principles, contents and procedures of collective bargaining, the right to request for collective bargaining, representation in collective bargaining and the responsibilities of trade unions, employers' representative organizations and relevant state management agency in collective bargaining in Article 72. The Labour Code 2012 also reserves section 1 of Chapter XIV general provisions for labour dispute resolution. One of the principles of labour dispute resolution is to respect and ensure the parties themselves to negotiate and make decision on the dispute resolution; assure the engagement of representatives of parties during the resolution process. Beside the Labor Code, Law on Trade Union 2012 also has regulations to promote and ensure the effective operation of trade unions in the process of collective bargaining.

It can be seen that Vietnamese law has many provisions related to collective bargaining. However, the practice of collective bargaining in Vietnam is not really effective and complied with the spirit of the ILO Convention 98. Specifically:

- *Regarding the principle of voluntary collective bargaining:* One of the important principles of collective bargaining under the requirements of the Convention 98 is that collective bargaining is conducted on the principle of voluntariness. This principle is not stipulated in Article 67 of the Labor Code 2012. The Labor Code 2012 determined the principles of collective bargaining include equality, goodwill, cooperation, transparency and publicity; either party has the right to call for collective bargaining while the other party can not refuse the negotiation. However, practically, in the labor relations, the worker side is still weaker; the bargaining proposals from the labor collective usually do not receive goodwill and cooperation from the employer while there hasn't been a mechanism available to promote the bargaining.

- *Regarding the regular collective bargaining stipulated in the Article 67 of the Labor Code 2012, whereby collective bargaining is regulated to be conducted periodically or ad hoc.* To provide detailed guidance for the implementation of this

content of the Labor Code 2012, the Government Decree No. 05/2015/ND-CP dated 12/01/2015 stipulates that regular collective bargaining should be conducted at least once a year. Under the provisions of the ILO Convention 98, the voluntariness of collective bargaining includes the parties' right to decide when the collective bargaining happens, which comes from their own needs. Therefore, the fact that the law requires the parties to conduct collective bargaining once a year, regardless of the parties' needs or necessity is not suitable to the principle of voluntary collective bargaining under the spirit of such Convention. Also according to this principle, workers have rights to choose the organization to represent them in collective bargaining. Thus, the provisions of Article 188 of the Labor Code 2012, which grants the upper-level trade union with the right to automatically represent workers in collective bargaining in the enterprises where grassroots-level trade unions do not exist, is incompatible with the voluntary principle in collective bargaining required by the Convention.

- *Concerning the contents of collective bargaining:* the voluntariness in collective bargaining under the ILO Convention 98 includes the voluntary contents of collective bargaining. It is up to the parties to decide what contents are to be negotiated based on their needs, not imposed by law. The article 70 of the Labor Code 2012 details the contents of collective bargaining, which can be construed as the contents that the parties are required to negotiate, and it’s inconsistent with the voluntary principle of collective bargaining of the Convention.

- *Regarding the levels of collective bargaining,* the Labor Code 2012 does not directly contain restrictions on collective bargaining levels, but it only provides procedures for enterprise-level and industry-level collective bargaining. However, as the spirit of the ILO Convention 98, the parties concerned are free to choose the bargaining level, including the national, regional, sectorial or whatever level they wish.

The revised Labor Code 2019 (Article 67) has added the provision where collective bargaining is conducted on a voluntary basis and removed the regulation of regular or ad hoc collective bargaining.; Abolish the regulation on the automatic

representative role of the upper-level trade union in representing workers to conduct collective bargaining in the enterprises without grassroots trade unions. About the anti-discrimination, interference and manipulation of trade union activities, the revised Labor Code 2019 has provided more specific contents based on the regulations of the ILO Convention 98. However, the Code still stipulates the contents of collective bargaining for the parties to choose among (article 67).

2.1.3.2. Conciliation

According to Vietnam Labor Code 2012, conciliation is a mandatory procedure applied for both right and interest CLDs[48].

To enable a conciliation process, one of the disputing parties needs to submit the request to district-level DOLISA in the area where the dispute occurs. The requester has rights to select a labor conciliator and require the district-level DOLISA to appoint that conciliator to handle the dispute[49]. Within one working day from the date of receiving the report of district DOLISA, the chairman of DPC will issue the decision appointing the conciliator for the dispute settlement. This regulation respects the self-determination rights of parties during the dispute settlement. However, it may create the other party's disbelief in the conciliation work of the only labor conciliator selected by the requester and consequently affects the conciliation results. In addition, though the vacancy announcement is publicly posted, labor conciliators are mainly appointed among the staff of district DOLISA and Trade Union, thus, the local labor conciliators are not diversified and representatives of employers are not included.

Before the conciliation meeting, the appointed conciliator has to do quite a lot of preparation work to promote the quality and effectiveness of the conciliation, which may include: review of legal document, CAs and internal statute of enterprise; identification and collection of relevant data and evidences to have good knowledge of the disputed contents and practical industrial relations between

[48] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.201&204;
[49] Bộ Lao động, Thương binh và Xã hội (2013), *Thông tư số 08/2013/TT –BLĐTBXH ngày 10/6/2013 hướng dẫn Nghị định số 46/2013/NĐ – CP ngày 10/5/2013 của Chính phủ* quy định chi tiết thi hành một số điều của Bộ luật Lao động về tranh chấp lao động, Art.7;

the two parties based on the information concerning their business situation, effectiveness, obstacles, advantages and priorities among recommendations of each party, development direction of the enterprise, income of employees and other data to compare with those of other enterprises working in the same industry in the same region. This would enable the conciliator to have sufficient information for an appropriate method development and ensure better effectiveness of the conciliation work. In order to get those data and information, apart from the documents provided by the disputing parties, the labor conciliator should have rights to conduct activities to identify and collect data and information related to the enterprise and employees and should have rights to require technical assistance from other agencies or experts such as finance, accounting and auditing. However, the existing law does not specifically regulate these rights of labor conciliator while identifying and collecting evidences but generally regulate the rights for all subjects that have competence to resolve labor disputes instead. Although It is regulated at the point a, clause 2, Article 196, Labor Code 2012 that the disputing parties have obligations to "sufficiently and timely provide the documents and evidences as proof for their request", the law does not regulate the sanctions in such cases that these parties or relevant agencies refuse to provide required document or evidences to the labor conciliator. Hence, when one of the two parties or relevant agencies don't want to cooperate, the labor conciliator will not be able to access important data to resolve the dispute. Another concerning issue is that, given such a lot of work needs to be done before the conciliation, the conciliator is required to inform disputing parties the date, venue and agenda of the mediation meeting within one working day from the date of receiving the decision to be assigned to resolve the dispute as regulated at the Article 7, Circular No. 08/2013/TT – BLĐTBXH. This means, even when the dispute has not been clearly understood and not sure if necessary data will be collected, the labor conciliator still need to inform disputing parties the schedule of conciliation meeting, which doesn't seem to promise a firmly effective session. Moreover, the existing law also does not regulate the responsibilities of the labor conciliator to keep secret the data got during the settlement of the dispute as well as the sanctions if the conciliator violates. This may affect the benefits of disputing parties, that make them especially the

employers hesitate to provide information related to their business know-how to the labor conciliator.

For the practice of the conciliation meeting, Clause 3, article 201, Labor Code 2012 regulates that the meeting can be held only with the presence of both disputing parties or the persons authorized. The law does not regulate the solution for the cases where disputing parties or their representatives are not present at the first conciliation meeting. It only regulates that the case where one disputing party summoned for the second time but is still not present without adequate reason will be the basic for the labor conciliator to record "unsuccessful mediation". This can be interpreted that in case one of the disputing parties is not present at the first meeting regardless having adequate or inadequate reason, the labor conciliator will postpone the meeting and call for the second one. If one of the disputing parties is summoned for the second time but still absent without an adequate reason, the labor conciliator will record as unsuccessful mediation. Then, if there is an adequate reason for the second absence of either disputing parties, the labor conciliator has to again postpone the meeting and call for the third one. However, as the existing law does not regulate which case can be considered that the absent party has "adequate reason", the employers may take advantage of this gap to delay their presence at the mediation meeting.

Procedures of conciliation

According to existing legal regulations, before applying the conciliation method, the labor conciliator needs to guide disputing parties to negotiate themselves with the aim at achieving common agreement. If they themselves can find solutions for the dispute, the conciliator will record as successful mediation. Where the solutions are not reached by the two parties, the conciliator will suggest an option for their consideration. If they both accept, the conciliator will record as successful mediation. If they are both not satisfied with the suggested solution or one of the party is not present for the second summoning without an adequate reason, the conciliator will record as unsuccessful mediation. The mediation minutes will be recorded with the signatures of the present party and mediator, copied and sent to

both parties within one working day from the date of the minutes. The law does not regulate sanctions if either party does not realize the conciliated results, which may make all the mediation attempt mean nothing.

In case that the conciliation has failed or when one of the parties does not realize the results of the successful conciliation stated in the written record, the other party has the right to request the Chairman of DPC to settle the dispute if it is a right CLD. If It is an interest CLD, either party can appeal the LAC Council for resolution[50].

Duration of conciliation

The maximum duration to settle a collective labor dispute by conciliation as regulated is 5 working days counting from the date of receiving the request for conciliation. After this period, if the labor conciliator does not conduct the mediation, the disputing parties have rights to bring the case to the LAC (for interest disputes) and to the Chairman of DPC (for the right disputes)[51]. Although the law regulates 05 working days as the duration for the labor conciliator to finish a dispute mediation work, the conciliator in fact does not have full five days to do it. As stipulated, within one working day after receiving the letter of request from disputing party, district DOLISA must report to the Chairman of DPC for appointing a conciliator to resolve the dispute and within one working day after receiving the report from district DOLISA, the decision of conciliator appointment can be issued by the Chairman of DPC[52]. Thus, actual duration for all types of work that the conciliator needs to do to resolve the dispute remains 3 days only, which is too short for him/her to at the same time identify, collect relevant data and evidences, develop plan and complete the mediation process.

[50] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.204;
[51] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.201;
[52] Bộ Lao động, Thương binh và Xã hội (2013), *Thông tư số 08/2013/TT –BLĐTBXH ngày 10/6/2013 hướng dẫn Nghị định số 46/2013/NĐ – CP ngày 10/5/2013 của Chính phủ* quy định chi tiết thi hành một số điều của Bộ luật Lao động về tranh chấp lao động, Art.4;

2.1.3.3. Labor Arbitration

As regulated at the clause 2&3, article 204, Labor Code 2012, mediation at the LAC is mandatory for an interest collective labor dispute after failing to be conciliated by the labor conciliator or successfully mediated but one of the party does not realize the contents agreed or after 5 working days of the mediation request submission but the labor conciliator does not resolve the dispute. In the latter case where the conciliator does not resolve the case within 5 working days from the date of receiving the request, disputing parties have rights to send the request to the Chairman of DPC for resolution. Within two working days, the Chairman of DPC must identify if it is a right dispute or an interest dispute. If it's the first case, he/she will immediately resolve. If it is the second one, he/she will guide disputing parties to submit request for the dispute settlement at the Labor Arbitration Council[53].

Procedures of labor arbitration to resolve a collective labor dispute in the enterprises with strikes allowed

As earlier mentioned, for the enterprises with strikes allowed, labor arbitrator only has competence to resolve interest CLDs but not right disputes. Like at the meeting run by the labor conciliator, there must be presence of representatives of disputing parties. If one of the disputing parties is not present at the first meeting, the LAC will have to postpone the meeting for the second appeal. Apart from the presence of disputing parties, the LAC may invite additional representatives from relevant agencies, organizations and individuals to the meeting. The dispute resolution at this stage is conducted with following orders:

+ Before applying the conciliation method, the LAC encourages the disputing parties to negotiate themselves with the aim at reaching mutual agreement. If the they themselves can find solutions for their dispute, the LAC will record as successful mediation and issue a judgment to acknowledge the results of their negotiation.

[53] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.204;

+ If the disputing parties themselves can not find solutions, the LAC will provide an option for their consideration. If they both accept, the LAC will record as successful mediation. If they are not satisfied with the suggested solution or either of the parties is not present for the second summons without an adequate reason, the LAC will record as unsuccessful mediation. The mediation minutes will be recorded with the signatures of present parties, chairman of the LAC and the secretary, copies of the minutes will then be sent to both parties within one working day from the date of the minutes. The implementation of resolved results is based on the voluntary spirit. There is currently no regulations on the sanctions of the violation of the successful mediation minutes.

Within 5 working days from the date of the successful mediation minute, if the employer does not realize the agreement, labor collective can start procedures for a strike; 3 days after the date of unsuccessful mediation minute recorded by the LAC, the labor collective has rights to start procedures for a strike.[54]

Maximum duration for the LAC to resolve an interest CLD as regulated in the clause 1, article 206, Labor Code 2012 is 7 working days counting from the date of receiving the request from disputing parties. This duration does not seem to be sufficient for the LAC to conduct various activities to verify, collect data and evidences as well as to meet disputing parties or relevant persons and develop the mediation plan.

Procedures to resolve a collective labor dispute by arbitration in the enterprises with strikes prohibited

Current law of Vietnam regulates the enterprises working in following areas are not allowed to go on striking: Production, transmission and moderation of electricity system; Exploitation, extraction, production and provision of oil, gas, clean water, drainage in the central-run cities; Telecommunication network and postal services provision for state agencies only; Assurance of air and maritime safety; production and trading of explosives, military explosives; Production of chemicals and specialized chemicals for defense; production of radioactive substances;

[54] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.206;

manufacturing and repairing weapons and ammunition, technical equipment in service of national defense and security; Researching, producing, repairing equipment and technical documents, specialized technical equipment and facilities; Researching and producing products, supplies, materials and armaments of special use in service of national defense and security; Production and supply of military and special-use telecommunication products, specialized technical means for special use in service of national defense and security; exploiting minerals in strategic areas; Producing and printing professional documents, political books and special-use military documents subject to state security requirements; Designing, executing and repairing struggling works, professional and specialized works, security cipher infrastructures with secret contents in service of national defense and security; Managing and providing services of military seaports, operating military aircraft in service of national defense and security tasks; Managing and maintaining petroleum depots, seaports, airports and gathering yards in service of defense and security tasks; Performing tasks and operation in important strategic areas in border areas, islands, sea areas and other localities under the decisions of the Prime Minister. The procedures of resolving collective labor disputes in the enterprises which are not allowed to go on strikes are regulated in the Government Decree No. 41/2013/NĐ – CP whereby, the procedures varies in working fields of the enterprises.

In general, when receiving the request from grassroots trade union concerning the interests of employees, the employers have responsibility to organize a collective bargaining meeting with the grassroots level trade union and at the same time, inform the district DOLISA in the area where the enterprise is located for labor conciliator appointment or sending persons to directly assist the collective bargaining. If the bargaining is successful, the labor collective and employers must implement the agreed contents right after the meeting finishes. In case of failed bargaining, each party sends letter of request to the local LAC for resolution. However, the Labor Code 2012 only regulates that disputing parties must implement the agreed contents “right after the bargaining meeting finishes” but not specify the deadline for their implementation. In addition, the law also does neither

stipulate the legal value of the successful bargaining minute nor sanctions for the party especially the employer who do not implement the agreed contents. Thus, if the employers do not realize the agreement, the labor collective will not have rights to request for resolution at the LAC as the dispute has been regarded as successfully bargained.

For the CLDs arisen in the undertakings working in essential industries of the national economy, LAC is the first competent subject to settle the dispute after the failed collective bargaining or after receiving the "letter of request" of each disputing party[55]. At the dispute resolution meeting, the LAC will conduct the resolution in compliance with relevant regulations. If disputing parties can reach an agreement on the solution, the LAC will record as successful mediation and the disputing parties must implement the agreed contents right after the meeting. The implementation of the resolved results in the undertakings working in essential industries of the national economy is based on the voluntary spirit. There is currently no regulations on the sanctions of the violation of the successful mediation minutes. Within 5 working days from the date of the successful mediation minute, if one of the parties does not implement the agreed contents or within 3 working days from the failed mediation meeting, the grassroots trade union can send the letter of request to local DOLISA where the headquarter of the enterprise is located and to trade union at higher level for reporting the Chairman of PPC for resolution.

+ Duration of the dispute resolution

Clause 2, article 4 of the Government Decree No. 41/2013/ND-CP regulates two-day shorter duration to settle the dispute in the undertakings working in essential industries of the national economy than that in other normal enterprises. Accordingly, within 3 working days from the receipt of the request from employers or grassroots trade unions, the LAC must finish the resolution of the dispute, which

[55] Chính phủ (2013), *Nghị định số 41/2013/NĐ – CP ngày 8/5/2013 quy định chi tiết thi hành Điều 220 của Bộ luật Lao động* Danh mục đơn vị sử dụng lao động không được đình công và giải quyết yêu cầu của tập thể lao động ở đơn vị sử dụng lao động không được đình công, Art.4

is the same as the duration for the labor conciliator to settle a dispute. This is absolutely not sufficient for the LAC to handle with the dispute especially in such cases the first meeting is postponed due to the absence of one of the disputing parties.

2.1.3.4. Administrative decision

In cases where the conciliator does not settle the dispute within regulated duration, either of disputing parties has rights to send the request to the Chairman of DPC for resolution. Within two working days, the Chairman of DPC must identify if it is a right dispute or an interest dispute. If it's the first case, he/she will be in charge of the resolution under administrative procedures[56].

Resolution of a right collective labor dispute by the Chairperson of DPC

The Labor Code 2012 identifies a mechanism for resolving right CLDs in the following order: (i) Mediation; (ii) Procedures by Chairman of the DPC; (iii) Court instances. To which, strike is not stipulated as a form of resolution for this type of labor dispute.

In case a right collective labor dispute has been conciliated by labor conciliator but failed or one of the parties refuses to realize the successfully conciliated results or after the regulated duration, the conciliator does not conduct the conciliation, disputing parties have rights to file a petition to the Chairperson of DPC for resolution. The time allowed to resolve the dispute is 5 working days from the date of request. To enable the dispute resolution, he/she needs to collect documents and evidence from disputing parties, other organizations and individuals, prepare documents, study files, assess the reliability of evidences, develop solutions and arrange the meeting to settle disputes in compliance with the labor law. During this process, the Chairperson of DPC can get technical consultation from district DOLISA and other related divisions and work with various organizations representing for worker collective and employers located in the district to have the best solution. The dispute resolution session must have the presence of

[56] Quốc hội (2012), *Bộ luật lao động số 10/2012/QH13* ngày 18/6/2012, Art.204;

representatives of both disputing parties. Where necessary, the Chairperson of DPC will call for the participation of other relevant agencies' representative. He/she will consider the decision based on labor law regulations, collective agreements, registered rules and other legal agreements. If either disputing parties do not agree with the judgment of the DPC's Chairperson, or after the allowed duration, he/she does not settle the dispute, disputing parties have rights to request for a court instance.

The procedures of dispute resolution by Chairpersons of DPCs are still controversial as it is not clear if it is mediation, arbitration or judgment. In fact, the chairpersons are using administrative decision to resolve a civil dispute, while the competence and procedures for sanctioning administrative violations are prescribed in legal documents on handling administrative violations, not in the labor law.

Resolution of an interest collective labor dispute by the chairman of PPC.

Within 5 working days from the date of the successful arbitration mediation minute, if one of the parties does not realize the agreement, the grassroots trade union can send a letter of request to local DOLISA where the headquarter of the enterprise is located and trade union at higher level to report to the Chairman of PPC for resolution. Within 5 working days from the date of receiving the report of DOLISA and request of the labor collective, the Chairman of PPC chairs in collaboration with the chairman of trade union at the same level, relevant provincial agencies and ministries representing the undertakings that are not allowed to go on strike located in the area to resolve the requests of the labor collective. The decision of the Chairman of PPC is the final judgment that the disputing parties must follow. However, there are still no regulations to force disputing parties to implement such decisions of the chairmen of both district and provincial people's committees.

For the enterprises directly serving the national defense and security tasks, current law regulates a special mechanism to resolve the disputes occurring in these enterprises, which states, in cases that the employer and grassroots trade union committee fail to negotiate, the employer immediately report to the higher level competent agency that can be the ministry in respective area for resolution. Within

5 working days from the date of receiving the employer's report, the competent agency will issue the document to settle the recommendations of the labor collective. The decision of the higher level competent agency will be the final conclusion that both parties have to follow. This regulation seems to be adequate because the activities of these enterprises must be completely kept secret and therefore, there should be no intervention of an external subject in the dispute resolution.

2.1.3.5. Court adjudication

The process of the dispute resolution at Courts is not stipulated in the labor law but in the civil procedure legislation because labor disputes are defined as a type of civil dispute in a broad sense. In addition, the competence to settle right collective labor disputes of People's Courts is prescribed in Clause 2, Article 32 of the Vietnamese Civil Procedure Code 2015.

In the Court of first instance, the court receives the petition and recognize the case upon the lawsuit. It then notifies the disputing parties about the case acceptance and at the same time, conduct the verification and evidence collection to ensure the fairness and accuracy of the case settlement. Before the first instance, the court will conduct the conciliation meeting where the disputing parties can negotiate and reach common solution. This is a mandatory procedure before the court instance session. If the conciliation is successful, the case will be resolved without having to open a court instance session. If not, a trial of first instance will be applied, which is conducted publicly, continuously, directly and verbally. Proceedings at the trial, especially the right to request, present and debate are absolutely guaranteed. All judgments of the Trial Panel must be based on the results of litigation at the trial. Based on the litigation result at the trial, the Trial Panel entered the deliberation room to discuss the decision of the case. After the deliberation, the judge will proclaim the full sentence and explain to the litigant the right to appeal and the duty to execute the judgment when it takes effect.

The first-instance trial judgment and decision of the court does not immediately take effective but may be appealed or protested against in line with appellate

procedures. The Court of Appeal will proceed the dispute settlement if there is an appeal of the litigants or a decision of the Procuracy.

From the above analysis, it can be seen that, despite the revision and addition, the procedures of collective labor dispute resolution of Vietnam still remain limitations:

- When a collective labor dispute arises, disputing parties are mandatory to follow the steps regulated at competent agencies and individuals. In addition, the regulations that require disputing parties to be mediated twice by labor conciliator and LAC are prolix and inefficient.
- Conciliation and arbitration are two important procedures to resolve conflicts to reduce strikes. However, these institutions do not have opportunities to operate. In practice, conciliator only appears when strikes occur, not as a conciliator but under the title of a government officer (for example: officer of district DOLISA) so that the employers agree to let the conciliator get in the enterprise and cooperate). The labor arbitration council is established at provincial level, but according to MOLISA's statistics, none of collective labor disputes has ever been settled at this council. Thus, mediation and arbitration institutions which are usually active and effective in the development of sound industrial relations in the countries with developed industrial relations, do not work properly in Vietnam as expected by law makers.
- Arbitration method has been applied but not as its nature, mandatory in procedures but the arbitrator does not have rights to issue decisions to recognize the agreements achieved by disputing parties or if it does in the undertakings strikes prohibited, such decisions do not have bounding values to parties;
- The Labor Code 2012 has added the article 222 on the resolution of unlawful strikes. This means, in addition to the regulations on the procedures for statutory strike implementation, the law has recognized the illegal or spontaneous strikes.

2.1.3.6 – Procedures of strike

General procedures

The Labor Code 2012 distinguishes right CLD and interest CLD, whereby, for right disputes, strikes are not allowed; for interest disputes, after going through mediation (5 days) and arbitration (7 days), a strike may be held. Strikes must be led by grassroots trade unions, in the enterprises without grassroots trade unions, it is organized by upper-level trade unions at the request of laborers. Procedures of strikes include 3 steps:

- Collecting opinions of the labor collective: If the enterprise has a grassroots trade union, opinions of the members of the grassroots trade union executive committee and production team leaders will be collected. If the workplace has no grassroots trade union, opinions of production leaders or workers are collected.
- The executive committee of the trade union issues the decision to go on strike if more than 50% of people agree.
- Go on a strike.

Situation of strikes

According to MOLISA (2019), the number of strikes was low in the early years of the Labor Code 1994, peaking in the period of 2006-2013 and decreasing in recent years. From 1995 - when the right to strike was first recognized in the Labor Code the till the end of 2018, there were 6,011 strikes nationwide, 250 strikes per year on average. From the force of Labor Code 1994 till 2002, the number of strikes was not high, less than 100 cases per year. The number of strikes has increased gradually since 2003, peaking in 2008 with 720 cases and in 2011 with 885 cases. In recent years, the number of strikes has been decreasing: there were 245 cases in 2015, 242 cases in 2016, 167 cases in 2017 and 106 cases in 2018 *(see Appendix 1 – Number of strikes from 1995 - 2018).*

Strikes occur in all types of business but most in FDI enterprises, then in private and least in state-owned enterprises. Out of 6,011 strikes occurred in the period of 1995-2018, the FDI sector accounted for the highest proportion of 75% with 4,513 cases, which were mainly in enterprises with investment from Korea, Taiwan, Japan and China. Private enterprises sector recorded 1,420 strikes, accounting for 23.6%; The remaining 78 cases (1.3%) occurred in state-owned enterprises. For the period of 2007 - 2018 alone, 77.4% of strikes occurred in FDI enterprises, 22.5% in private enterprises and 0.1% in state-owned enterprises. *(See Appendix II: Strikes by type of business)*

Strikes occurred in almost all occupations but concentrated in labor-intensive industries. The strike data from 2007 to 2018 shows that there were 3,590 cases, accounting for 86.5% occurring in labor-intensive industries and businesses. The industries with the highest number of strikes were garments (1,744 cases, accounting for 37.2%); leather and shoes (569 cases, equivalent to 12.2%); wood (578 cases, accounting for 12.3%); mechanical engineering (419 cases accounting for 8.9%); electronics (252 cases, accounting for 5.4%); plastic (176 cases, accounting for 3.8%); food processing (137 cases, accounting for 2.9%); textile (129 cases, accounting for 2.8%). The remaining national economic sectors had 678 strikes (11.5%) (*See Appendix III: Strikes by occupation*).

Characteristics of strikes

All the strikes that have occurred so far did not follow the legal procedures (not led by trade unions; not go through the steps of collective disputes resolution procedures from conciliation, arbitration or administrative procedures, not follow the required steps for strike). They often occurred unexpectedly without warning and with no official leaders. Despite not following the order and legal procedures, the majority of strikes were conducted methodically and in an organized manner (with mobilization; jointly stop work; have clear demands; stop strikes when part of the claims has been met or resolved by a competent authority).

The nature of strikes has shifted from the requirements of resolving right disputes to interest disputes: before 2009, the main cause of strikes was labor law violations

of employers while since 2010, the main causes of strikes have stemmed from collective labor disputes over interests or intermingling both rights and interests, especially those related to the increase of salary, bonus, allowances, shift work and working conditions improvement.

There are spillover effects of strikes in reality. Strikes spread quickly between enterprises, especially in the period of 2006-2012, concentrated in industrial zones in the Southeastern provinces, mostly in FDI enterprises, in simple labor-intensive industries such as textiles, footwear, wood, plastic, electronics, which affected the social security, production and business of enterprises.

Practical resolution of strikes

As all strikes occurred did not follow legal regulations, procedures to resolve collective labor disputes under the requirement of statutory institutions (mediation, arbitration, administrative procedures, court adjudication) have not been able to be applied.

Before the Labor Code 2012, the procedures of resolving a wildcat strike was not regulated by law. After several times of revising regulations on the resolution of labor dispute and strike but no improvement was achieved and strikes continue occurring without following statutory procedures, these procedures are currently regulated at the article 222, Labor Code 2012 and the Government Decree No. 05/2015/NĐ-CP. The Article 222 states that, when detecting a strike that is not led and organized in compliance with the regulations at the article 212 & 213 of the Labor Code 2012, the PPC's Chairperson shall issue a declaration of an unlawful strike and immediately inform the DPC's chairman about the case. Within 12 hours from being notified, the DPC's chairman will work with the district DOLISA, trade union and various relevant units at the same level to run a meeting with the employer and workers' representatives (either the grassroots level trade union or upper-level trade union) to find out the problems and assist disputing parties to settle their conflict so as to enable the enterprise's business back to normal.

According to these regulations, the declaration of an unlawful strike will be implemented within 2 working days after being reported about the case by the employer to the DPC's chairman and to upper-level trade union. Within 12 hours from receiving the Decision of PPC's chairman, the DPC's chairman must direct the district DOLISA to coordinate with relevant agencies to assist parties to resolve the dispute and the inter-sectorial task force starts their engagement in the resolution process.

However, in practice, not in all cases that the employer informs the chairperson of DPC and most of the time, competent agencies won't wait for the notification from the PPC's chairman to have action. Instead, when a strike occurs, there may be different channels that the competent agencies can get information, for example: (i) workers or grassroots trade union inform the upper-level trade union; (ii) employers inform the police to ensure the enterprise securities and to prevent factory destroying or violence; (iii) one of the disputing parties inform DOLISA. Thus, relevant agencies under the title of the inter-sectorial Task Force are usually present at the workplace where the strike occurs right after receiving the information.

The inter-sectorial Task Force is established by the chairperson of PPC. Participants of the Task Force come from different agencies and organizations located in the province/city of which, DOLISA, Trade Federation, Management Unit of industrial zones and police are the key institutions in the strike resolution. Main tasks of the inter-sectorial Task Force include:

- Control the situation to ensure the strike not to negatively impact on the social order and security. This is mainly led by the group member coming from police agency.
- Resolve the law violation activities of the enterprise if any. This will be chaired by the members coming from provincial DOLISA, labor inspection and district people's committee.
- Conduct the mediation between employees and employer. Except the police with the typical function carried in the first task, other members of the group seem to involve in both the second and third tasks: directly or indirectly

collect information, investigate, suggest solutions, etc… and participate in the mediation and support disputing parties in their negotiation.

The conciliation by inter-sectorial Task Force is conducted with 5 steps:

- *Step 1:* Identify the representative of the striking labor collective: This is considered the first important step. As it is a spontaneous strike which does not follow statutory procedures, in principles, there will be no official strike leader, however, in practice there always exists one leading individual or one group of leading persons. In many cases, the strike leaders don't want to appear or work as the representative of the labor collective for collective bargaining. Whereas, in order to find out the strike claims, negotiation, mediation or acceptance of ending strike agreement, it is essential to have a representative of the striking labor collective.
- *Step 2:* Identify the labor collective's claims: This step consists of 4 actions: collect – screen – summarize and classify the claims. After collecting the claims, members of the inter-sectorial Task Force will screen "inappropriate and excessive claims" to explain with the employees, and then summarize the list of claims to avoid the addition by employees and finally classify types of claims. All claims regarding rights will be investigated and settled or recommended to competent agencies for resolution while the interest claims will be included in the collective bargaining.
- *Step 3:* Establish communication channels among various institutions: After identifying the representative and claims of the labor collective, the inter-sectorial Task Force will discuss with the disputing parties and facilitate the discussion between the two parties.
- *Step 4*: Organize the mediation meeting: This is the key stage of the whole working process as one strike can be ended only when both parties achieve agreements which are normally the employer's acceptance or concession over the employees' claims but it's not always a must. The final agreement mainly depends on the two parties' mediation and bargaining. During this process, the inter-sectorial Task Force will facilitate the disputing parties to reach agreements but not directly intervene the agreed results

- *Step 5:* Record mediation results.

Although the mechanism of handling unlawful strikes by local inter-sectorial Task Forces may soon stabilize the social situation, it seems to be with heavily administrative procedures, where the Task Force does the roles of the two parties, fails to strictly comply with industrial relation principles and fails to fully solve the root causes of the problems. It in turn could be the trigger of the strike because most of the demands from the workers' collective are being worked out by the Inter-sectorial Task Force.

Below figures illustrate the legal model of collective labor dispute resolution in Vietnam:

Figure 3: Legal model of collective labor dispute resolution in Vietnam (According to the Labor Code 2012)

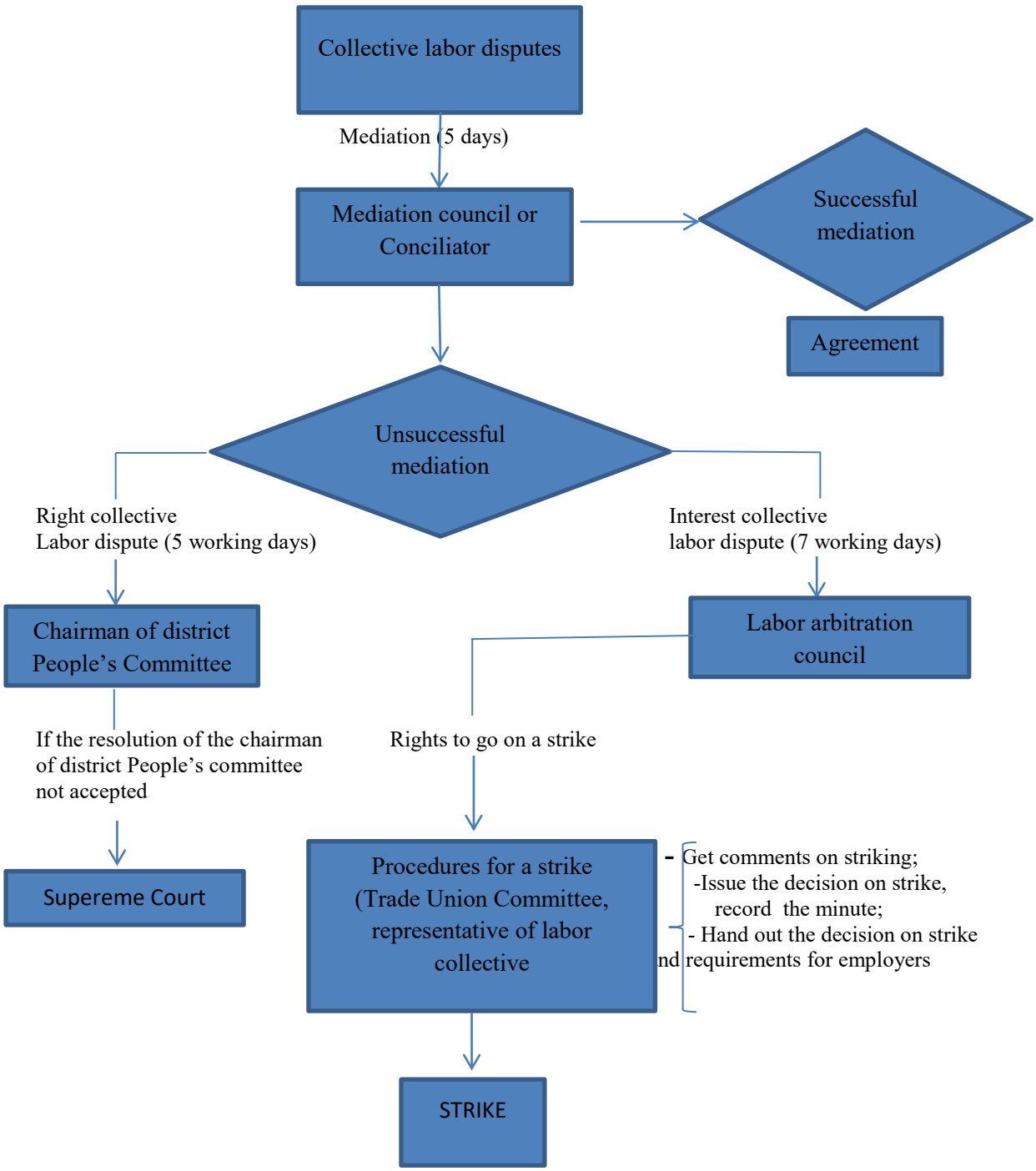
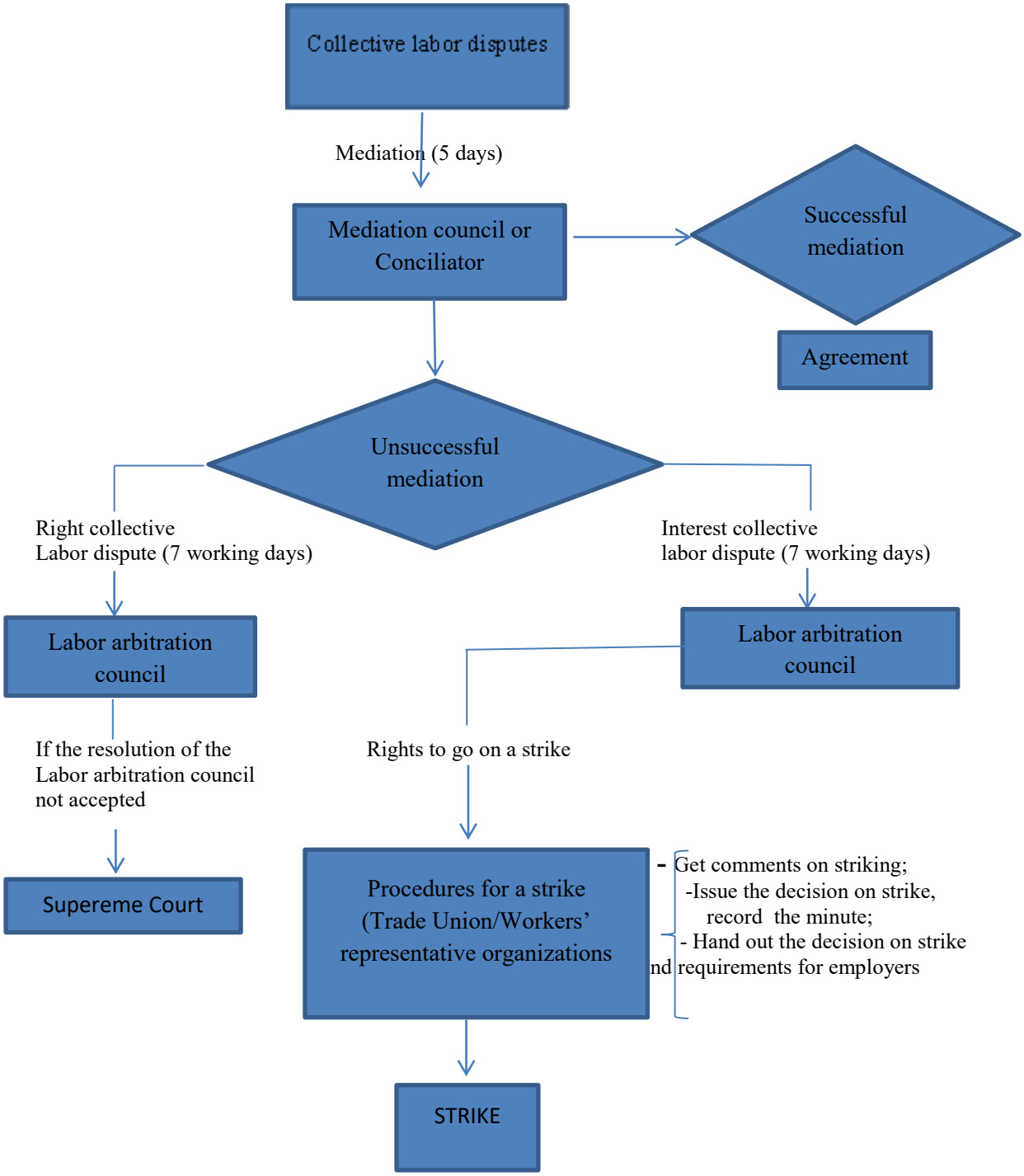


Figure 4: Legal model of collective labor dispute resolution in Vietnam (According to the revised Labor Code 2019)



2.2. Legislation of collective labor dispute resolution of Italy

2.2.1. Legal documents on collective labor dispute resolution

Italy has ratified 113 out of 190 Conventions of the ILO including all the 8 fundamental ones which have been all in force since their ratification. This

facilitates the procedures of collective labor dispute resolution taking collective bargaining as the main remedy in the process, which is absolutely in line with the requirements under the ILO's related conventions.

At national level, Italian Constitution (Art.39 & Art.40) affirmed the freedom of association and the right to strike of workers. To realize the spirit of the country Constitution, a number of Acts, Decrees and legal documents, guidance have been issued and implemented concerning labor dispute resolution with the aim at promoting the sound industrial relation between workers and employers, which may include:

2.2.1.1. Act No. 300 dated 20/5/1970 on Workers' Protection, also known as the Workers' Statute (Statuto dei Lavoratori);

2.2.1.2. Act No. 533 dated 11/8/1973 on Discipline of individual labor disputes and disputes concerning social security and compulsory assistance (Disciplina delle controversie individuali di lavoro e delle controversie in materia di previdenza e di assistenza obbligatorie);

2.2.1.3. Act No. 146 dated 12/6/1990, Rules on the exercise of the right to strike in essential public services and on protecting the constitutionally protected rights of people. Establishment of the Commission to guarantee the implementation of the Act (Norme sull'esercizio del diritto di sciopero nei servizi pubblici essenziali e sulla salvaguardia dei diritti della persona costituzionalmente tutelati. Istituzione della Commissione di garanzia dell'attuazione della legge);

2.2.1.4. Act No. 83 dated 11/4/2000 on Amendments and additions to the Act No. 146 dated 12/6/1990 on the exercise of the right to strike in essential public services and on protecting the constitutionally protected rights of people (Modifiche ed integrazioni della legge 12 giugno 1990, n. 146, in materia di esercizio del diritto di sciopero nei servizi pubblici essenziali e di salvaguardia dei diritti della persona costituzionalmente tutelati);

2.2.1.5. Legislative Decree No.165 dated 30/3/2001 on General regulations on the organization of work employed by public administrations (LEGISLATIVE

DECREE No.165 dated 30/3/2001); (Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (DECRETO LEGISLATIVO 30 marzo 2001, n. 165);

2.2.1.6. Law No.183 dated 04/11/2010 on Delegations to the Government concerning arduous jobs, reorganization of entities, leave, expectations and permits, social safety nets, employment services, employment incentives, apprenticeships, female employment, as well as measures against the undeclared work and provisions on public work and labor disputes (Deleghe al Governo in materia di lavori usuranti, di riorganizzazione di enti, di congedi, aspettative e permessi, di ammortizzatori sociali, di servizi per l'impiego, di incentivi all'occupazione, di apprendistato, di occupazione femminile, nonche' misure contro il lavoro sommerso e disposizioni in tema di lavoro pubblico e di controversie di lavoro);

2.2.1.7. Inter-sectorial Collective Agreement on Representativeness dated January 10, 2014 (Testo unico sulla rappresentanza, 10.1.2014)

2.2.2. Resolution procedures for collective labor disputes

In Italy, as in other European countries, labor disputes are traditionally classified into two major categories: individual disputes, also called disputes of rights, and collective disputes, also called disputes of interests[57]. The legislation does not have a general framework to control various complications of collective labor disputes. Whereas, individual labor conflicts are determined and regulated in the Code of Civil Procedure, under the provisions of the Chapter 1, Title IV, Book II[58]. Methods to settle ILDs including mediation, court adjudication and appeals are all stipulated under an organic regulation framework. Nevertheless, there isn't such a system for CLD resolution but a normative structure of general application only. When a CLD arises, different methods can be applied to reach a solution. The dispute is commonly settled based on the power relations among the parties

[57] Tiziano Treu (1992), *The Neutral and Public Interests in Resolving Disputes in Italy*, in Comparative Labor Law & Policy Journal, Vol. 13, No.470

[58] Andrea Caputo and Giuseppe Valenza (2019), *Mediation and Conciliation in Collective Labor Conflicts in Italy*, in M. Euwema et al. (eds.), Mediation in Collective Labor Conflicts, Industrial Relations & Conflict Management, Springer Nature Switzerland AG, pp. 118;

involved. Collective agreement between the parties is the basic instrument to settle labor disputes, thus there have been no fixed procedures defined for dispute settlement by either the Government or the bargaining partners in Italy.

In 2008, the European Union promulgated the Directive 2008/52/EC that has been realized by its Member States in different ways. The Directive provided particular regulations on conciliation in civil and commercial conflicts. The EU aimed to motivate Member States to take up different measures to settle conflicts among the parties without having to recourse to the court adjudication. Italy did realize the Directive through the issuance of the Legislative Decree no. 28/2010, expressing its absorption to this legal Document. Later, a new Decree D.L. no. 69/2013 was promulgated, which stated that conciliation is compulsory in some types of conflicts but not in labor disputes. As conflict is considered to be possibly settled by itself, unions have assumed that the role of conciliator is unnecessary and in general, mediation by a third party seems to be reluctantly accepted and arbitration is very rare in collective labor conflict resolution because for unions, using such instruments, they resign themselves from resolving their labor disputes but delegate the task to a third party. Thus, no formal and institutional entities do exist in practice to officially act as conciliator for the labor-matter related disputes, a figure of professional conciliator in collective labor disputes is still missing and conciliation is not available at the institutional level, leaving it to occur on a voluntary basis. If somewhere, there are “rules” for guiding the mediation procedures, they are often done based on “praxis” but not binding formal legislation or systems. In fact, conciliators do exist, but they are informal and vary according to the circumstances, who may be mayors, prefects, ministers, or political actors.

Arbitration in Italy, both formal and informal, is contemplated by Civil Procedure Code only for individual disputes and it is instituted and governed by CAs. Parties are not prohibited to involve the third party in their collective dispute resolution provided that such arbitration is optional. Mandatory arbitration is not allowed because it is considered incompatible with striking rights. When a labor collective conflict arises between the parties, there may be “cooling procedures”, but the

resolution arrangement is on a voluntary basis. In fact, official provisions of conciliation are usually covered in CAs. Those provisions may include union dialogues with different topics selected by two parties, which can be about conflict settlement or interpretation of the signed CAs. As a result, CAs commonly include non-conflicting mechanisms of dispute settlement which originally based on the conciliation principles. Since the CLDs are mainly resolved on a voluntary basis, figures of conciliation are not fixed but vary case by case. In serious cases, engagement of ministries or institutions at regional and prefecture levels can be mobilized.

In general, the mediation procedures given in most of national CAs work with the resolution of majority of disputes arising out of the implementation of such CAs themselves and also of the laws governing the individual labor relations. Some improvement and increased formalization of grievance procedure have been provided in a few national agreements. In the disputes relating major technological and organizational innovations, the parties commit not to have direct actions until the conciliation procedures stated in the agreement have been tried out. In the past decades, public conciliation has played an important role in the resolution of both disputes of right under the Act 533/1973 and conflicts of interest. However, only the mediation and arbitration activity of labor offices in right disputes has been recently regulated by law. The intervention of national, provincial and regional labor agencies in interest disputes have not been officially regulated but rests merely on the vague provision of Act 520/1955, which offers these public officials a general task of conciliation in industrial disputes. Conciliation by prefects and regional public officials lack legal basis and purely rest on the political or personal authority of the conciliator. A significant effort has been made to improve the Italian mediation and industrial relations system through the Act 146/1990 and latter modified by the Act 83/2000 on strikes in essential public services. A national evaluation commission on industrial relations has been set up under the Act with a composition of experts, which has the task of monitoring the behavior of disputing parties during their industrial conflicts, providing consultation on the formulation of codes of conduct, and conciliating serious disputes. When there is a

disagreement on the minimum services to be guaranteed during strikes, disputing parties must ask for the commission's opinion although such opinion is only binding on the issue of minimum services, not on the merit of the dispute. This is recognized as a limitation of the Act.

In short, the collective labor dispute resolution in Italy is much informal, non-institutional and the related procedures are almost regulated in collective agreements. There are specific cases of labor conflicts in which mediation can be applied however the manners of conciliation are freely decided among the parties within the CAs. In serious cases of disputes at workplace such as collective dismissal, third party such as prefects, ministers, political organizations, or institutions may be involved depending on circumstances. The only case in which a mandatory collective conciliation is required before a strike occurs is the one concerning essential public services. In this regard, to avoid harm to the community, disputing parties must try out conciliation under the order of the Prefect. Below table shows the main types of collective conflicts in Italy and respective requirements for conciliation procedures:

Table 1: Main types of collective conflicts in Italy and requirements for conciliation

Typology	**Regimentation**	**Attempt of conciliation between the parties**	**Attempt of conciliation with third parties**	**Conciliator**
Essential public Services	Act No. 146/1990	Compulsory	Compulsory	Generally, the Prefect or the Ministry of Labor
Collective redundancies	Act No. 223/1991	Compulsory	Optional	Institutions, Local governments, or competent Ministers
Collective conflicts in general	Identified by the parts in the national collective agreements	Optional, established in collective agreements	Optional	Institutions, Local governments, or competent Ministers

Source: Andrea Caputo and Giuseppe Valenza (2019), *Mediation and Conciliation in Collective Labor Conflicts in Italy*, in M. Euwema et al. (eds.), Mediation in Collective Labor Conflicts, Industrial Relations & Conflict Management, Springer Nature Switzerland AG, pp. 122;

2.2.2.1- Collective bargaining system

The existing structure of Italian collective bargaining system consists of three levels including: i) inter-confederal bargaining which covers large sectors of the economy like industry, services, agriculture; ii) industry-wide bargaining which covers the areas of metal-mechanic, textile, chemical, banking, insurance; and iii) enterprise and plant bargaining. The scope of collective bargaining at the national level varies from mostly economic matters in the past to organizational and normative matters nowadays such as job security, job classification, control of overtime, subcontracting, organization of work, information procedures, environment, control of investment policies, and industrial restructuring. Collective bargaining at enterprise and plant implements and clarifies the issues already bargained at the national level, It can even add new issues concerning work of the firm. To avoid the duplication in bargaining contents at the two levels, some national agreements regulate that issues already defined at the national level cannot be renegotiated at the enterprise level. This aims to make enterprise bargaining a specialized level with respect to national bargaining but in the reality, enterprise bargaining is often not only applicative but also integrative of the national level, even on the same issues. The other popular issues raised for bargaining at enterprise and plant level are those related to wages which can be under different names such as productivity bonuses, fringe benefits and piecework rates.

In the private sector, the bargaining system lacks specific legal provisions concerning procedures, scope, content and provisions for the bargaining and application of CAs. The only exceptions are the civil law provisions related to contracts in general. Collective agreements have the status of a private law contract, and are binding only for the bargaining parties under the obligatory part of the agreement and for workers and employers adhering to the relevant organization. There is no distinction between collective bargaining and consultation in the private sector as in principle, all matters are negotiable, and the competent agents are the union representatives at various levels (confederation at the top level; the affiliated federations of the given sector at the industry-wide level; and at the enterprise

level, this role is played by the delegates and factory council, assisted by territorial unions).

In general, collective bargaining is regarded to be the main instrument governing industrial relations in Italy and be used to deal with matters that are in the other countries handled by an institutionalized system of co-determination.

2.2.2.2. Self-regulation procedures of Trade Unions

The Italian trade-union system is formally based on the freedom of association as stated in the Constitution (Art.39) and on the freedom of representation. The Workers' Statute (Art. 14) also recognizes freedom of association and freedom of trade union activity at the workplace. Trade unions are complex organizations structured on both vertical and horizontal lines which converge at the top into the confederation. The system is established at different levels including: Confederations; Craft and/or industry-wide federations and trade unions; Local trade unions and Shop stewards at enterprise level. At present, there exists three major labor confederations divided traditionally according to political and ideological positions: the largest one is CGIL organizing communist and socialist workers; CISL organizes traditionally Catholic workers linked to the Christian Democratic Party and UIL is mainly composed of socialist workers plus Social Democrats and Republicans. Another less important neo-fascist confederation is UGL. Accordingly, there are several vertical unions affiliated to each of the three major confederations. Italian unions are not organized on a craft or occupational basis excluding some independent unions in the public services such as school, railway, postal service and the confederation of managerial employees. Horizontal or territorial structures aggregate all workers in each geographic areas: national, regional, provincial, and sometimes local areas.

At the plant and enterprise level, representation of employees is the local union or the shop delegates, elected by all workers, but in fact controlled by the unions. The shop delegates of each plant make up the factory committees, which have been recognized by both the unions and the management as the bargaining agent at the plant and enterprise level. In multi-plant companies, there could be a coordinating

body among the various factory committees. Delegates and factory committees acquire the dual nature of being both direct representatives of the workers and representatives of the first level of union organization.

In Italy, there is no legislation regulating the administration and functioning of the trade unions and their internal structure follows the common patterns of most associations. Trade unions and employers' associations are connected at the local and regional levels. Within each enterprise, shop stewards are elected, some workers, especially in public services and public administrations are represented by self-ruling trade unions which can represent one or more craft categories. Self-ruling trade unions can also be organized by occupation such as train drivers, pilots, air-traffic controllers; public and private-sector managers also associate in self-ruling trade unions[59]. Public administrations covered by private-law trade union rules and collective employment agreements in line with Legislative Decree No. 165 are represented by a specific public agency (ARAN). This agency deals with all the issues related to trade-union relations, collective-bargaining agreements and consultation with public administrations at the national level to ensure the uniform enforcement of collective agreements.

Self-regulation procedures

Union standards, also known as codes of self-regulation, have been traditionally important in setting the limits of strikes, particularly in the essential public services. Act 146/1990 gives these codes transitory legal effect until the minimum services are settled by CAs[60].

The union codes of self-regulation are complementary for collective agreements, but not irrelevant. The contents of the codes existed prior to the Act 146/1990 appeared inadequate in the issues of "essential public services" which should be guaranteed in cases of strikes. On the other respects, the codes set a number of rules

[59] Mario Grandi (2003), *Labor conciliation, mediation and arbitration in Italy*, in Fernando Valdés Dal-Ré, *Labor Conciliation, mediation and arbitration in European Countries*, Subdirección General de Publicaciones, Madrid, pp.252;
[60] Tiziano Treu (1992), *The Neutral and Public Interests in Resolving Disputes in Italy*, in Comparative Labor Law & Policy Journal, Vol. 13, No.470, pp.473;

designed to prevent strikes or ensure the protection of consumers during the strikes, of which, the most common are: provisions fixing certain days or periods of time during which strikes are excluded, for instance, major holidays, vacations, electoral days; conciliation and cooling-off procedures in the event of labor disputes; rules limiting or excluding specific forms of strikes or simultaneous strikes in supplementary sectors of a service such as railways and airlines; and provisions regulating the calling of strikes, which mainly stipulate the approval or consultation from central agencies prior to local strikes and those from horizontal unions prior to strikes by sectorial unions. These rules originally included in unilateral union codes of self-regulation, have been basically transferred into the CAs that help to enrich their contents and have more effective legal force.

In a direct dispute negotiation by the draft parties of the contract, dispute conciliation by parties other than the direct of the contract or in "Cooling-off" procedures, trade unions act as the workers' representatives to work with employers when the collective dispute arises relating the enforcement of a CA. The level of the parties handling with the procedures depends on the level of the collective dispute, for example, if the dispute arises at the enterprise level, the trade union concerned will be the union shop-stewardship. In some cases, CAs establish an initial level of discussion of collective dispute within the enterprise and a next level of discussion at national level. In some industries such as food industry, a national "joint committee" is established with a joint membership of trade-union and employer representatives with the aim to prevent and supervise collective and plural disputes. This committee intervenes in the issues related to the interpretation of contract clauses upon the request of the parties and when a dispute arises, It provides support to trade unions and employer associations in the attempt of a conciliation.

Collective dispute self-regulation procedures in the Italian trade-union relation system are informal. Formal procedures are applied only to individual and plural disputes. For the conciliation by administrative action, the procedural rules are stipulated in the Civil Procedure Code, for the conciliation by trade-union action stipulated in collective agreements, the rules are set down in the contract text.

2.2.2.3. Procedures under Collective Agreements

In Italy, there have been four types of collective agreements recognized by the national law including: i) The collective agreements provided under the fascist regime, which have been kept in force by Article 43 of the Act 369/1944; ii) The collective agreements, generally binding, established in line with the Article 39 of the Italian Constitution, which are not operative in practice because there is no legislation regulating the implementation of such constitutional provision; iii) The collective agreements incorporated in special statutes under the Act 741/1959 which was followed with a number of government decrees but held unconstitutional by the Constitutional Court as the Court recognized that it practically amounted to an extension of collective agreements outside the procedure prescribed by the Article 39 (T.Treu, 2016); and iv) The only fully operative collective agreements are those provided according to the general principles of civil law concerning contracts. Under the Art. 17 of Law 936/86, which reorganized the Economy and Labor National Council (CNEL), collective agreements and accords must be registered with the CNEL within 30 days since their conclusion[61].

With the legal status of Italian collective agreements, it seems to be a feature that they only bind on the parties to the agreements such as employers' organizations, trade unions, and the individual employer and employee who belong to the associations negotiating the CAs. An employer whose affiliation to an organization stipulating the agreement terms and the employers who take over the enterprises after the transfer are also bound by the agreement throughout its duration. The Italian collective agreement system is based on national and decentralized structures. Decentralized CAs are integrated with the agreements made at national level.

In the matters of governance or function performance, there are different types of CAs which include: i) Framework agreements concerning economic and social policy; ii) Instrumental/organizational agreements regarding the organization and

[61] http://www.ilo.org/ifpdial/information-resources/national-labor-law-profiles/WCMS_158903/lang--en/index.htm

activity of trade and labor relations policy; iii) Agreements on the economic and legal aspects of labor; iv) Management agreements regarding the job market within enterprises, and v) Agreements on essential services (regarding the exercise of striking rights in essential public services). Collective agreements at various levels are the sources of contractual system making up the Italian system of contractual relations which is complex and multi-central in terms of scope, structure and contract parties.

CAs are not governed by a specific legal statute because the Article 39 of the Constitution which provides compulsory general enforceability for collective agreements, has never been implemented[62]. However, by law, collective agreements and contracts regarding essential services are required to set forth clauses about conciliation and "cooling off" procedures, and issues a "negative vote" if the parties have infringed the clauses about settlement procedures prior to exercise of striking rights. In cases of having no collective agreement concerning essential services, the Guarantor Committee sets out a provisional set of rules that must cover conciliation and "cooling-off" procedures. Even it is voluntary, Italian sectorial collective agreements are widely applied by Italian companies. In fact, collective bargaining coverage is estimated at 80% in 2010 and shows a remarkable stability over time (ICTWSS 2016)[63].

Collective agreement design

A collective agreement consists of Normative Part and Obligatory Part. The Normative Part contains norms which regulate the content and conditions of the individual relations of employment. Almost collective agreement stipulations including those related to wages, benefits, allowances, job classification, working-time and holidays belong to this group. The content and format of these provisions in particular and of the whole CA in general, are not pre-determined by legislation

[62] Mario Grandi (2003), Labor conciliation, mediation and arbitration in Italy, in Fernando Valdés Dal-Ré, *Labor Conciliation, mediation and arbitration in European Countries*, Subdirección General de Publicaciones, Madrid, pp.253;

[63] Alexander Colvin, Andreas H. Pekarek, Lisa Dorigatti, Martin Behrens (2017), *Systems for Conflict Resolution in Comparative Perspective*, in David B. Lipsky, Conflict and its Resolution in the Changing World of Work: A Conference and Special Issue Honoring;

but rest on the contractual autonomy of the parties, all the CA provisions contrary to imperative legal regulations are null and void. A collective agreement can be applicable to, and have normative effects on the content of the individual labor relationship. Meanwhile, the Obligatory Part of a collective agreement lays down obligations between the contracting parties, which were traditionally classified with three types of obligation including: i) execution duty; ii) influence duty; and iii) the peace obligation. The execution duty is very the nature of the agreement, because, to stipulate an obligation also means to assume the duty to implement it. The influence duty requires that the parties use their means and ways to induce their members to fulfill the requirements of the agreement, for example, not to sign individual contracts which are contrary to the agreement. This does not imply that they guarantee the behavior of their members. The peace obligation so far has been the most interested in Italy. It requires the parties of the agreement to abstain from industrial action aiming at modifying the collective agreement as long as it remains in force. The binding effects of the peace clause implies that the peace obligation is violated only if the unions have promoted an illegal strike or have not done within their power, including threatening legal sanctions to stop their members or their decentralized structures from organizing or joining an illegal wild-cat strike. In such cases, the consequence and responsibility will fall not on the strikers but on the unions and the employer can be entitled to recover damages from the unions.

The distinction between the normative and obligatory parts of collective agreements is not completely clear since some clauses contain both normative and obligatory stipulations, whose effects can not be always absolutely separated because they work together. For example, the clauses regulating conciliation and arbitration procedures in the event of individual or mass dismissals, give obligations to the collective parties to handle the grievances, and at the same time, govern the individual employment relationship by stating the rights and obligations of the employer and worker concerning the dismissal.

Procedure and Duration

As there are no legal regulations on the procedures, scope and duration of the collective agreement, the parties themselves determined these aspects that in practice are handled differently depending on the circumstances. National collective agreements are usually established for a specific duration, traditionally three years with no reopening clause provided. Normative part and wages are to be adapted to the variations in economic and productive conditions following the sliding scale mechanism. The framework agreement of January 2009 states that decentralized agreement will also have the duration of three years. Before the termination of the national agreement, the unions prepare the claims which will be submitted to the employers' association, advance notice required for termination varies case by case. Recently, some employers' associations do the same. The claims are debated in general meetings held at plant level (in line with the Article 20 of the Act 300/1970) and examined by the territorial governing bodies of the unions for the final decision and the platform draft. The claims prepared for national negotiation are often influenced by the outcomes of the preceding negotiation round at plant level. The claims decided to be submitted to the employers' associations are often rigid, which bind the committee of union delegates and those who will do bargaining in either plenary or thematic meetings. Recently, the platform beyond the plant level have been prepared separately by the unions affiliated to three major confederations, but the final planning is the same, and the bargaining delegation itself is unitary. The national agreements signed by unions representing at least 51 per cent of the representatives are binding after a certified consultation of all the employees concerned. The length of the bargaining process is not fixed and sometimes considerable. The July 1993 agreement has attempted to rationalize the bargaining process by fixing time for unions to present their demands and a cooling-off period of three months before and one month after the previous agreement expires. Given their private nature, collective agreements do not produce effects after the cessation, the effects can continue beyond these limits only with the agreement of the parties themselves. The framework agreement of January 2009 commits the national bargainers to fixed timing and procedures for the renewal of collective agreements, in any cases, the demands for renewal must be presented in due time to allow the starting of bargaining six months before the

expiration of the previous agreement. In all major bargaining disputes, mediation (either on the request of disputing parties or on the scheme of public officials) is conducted by the Ministry of Labor, its peripheral bodies, regional governments or by the prefects.

Enforcement of collective agreements

The legal enforcement of CAs is basically assured in a similar way to that of a private contract. CA is interpreted in compliance with the general rules of interpretation of private law contracts (Article 1362, Civil Code) and of those concerning the interpretation of the law. Individual employee and/or employer can bring questions arising out of the interpretation or implementation of a company or plant CA to an ordinary court if it is about its normative part whereas, if it concerns the obligatory part, such questions can be raised to the court by the individual employers, their organizations or trade unions[64]. However, most of the grievances have been resolved by the parties themselves in the first place through a given solution and continuous bargaining. Almost nation-wide collective agreements establish conciliation procedures to resolve disputes on the interpretation and application of the agreement, which normally follow a standardized pattern. Collective disputes can be resolved at the shop level, especially if they are related to the application of a company agreement; otherwise they are addressed by the organization at the provincial level or at the national level if it failed at the former level. In general, those procedures are followed and informally formulated. Some agreements even provide more specific steps such as time limits for claim submission.

Clauses on collective labor dispute resolution procedures

Although the Italian collective agreement system is highly developed, the legal regulations for settling disputes are very underdeveloped. The law only provide specific rules for the structure, parties, procedures and enforceability of collective

[64] T. Treu, *Part II. Collective Labor Relations* (2016), pp. 229, in Roger Blanpain (Volume Editor), Frank Hendrickx (Volume Editor), Roger Blanpain (General Editor), Frank Hendrickx (General Editor), Italy, IEL Labor Law (Kluwer Law International BV, The Netherlands);

agreements in public-sector employment whereas in private sector, collective agreements generally integrate, specify or apply standards of legal protection. Since the late 1950s, Italian CAs have included no-strike clauses that obliged unions not to call a strike during the valid duration of an agreement if it is a right dispute or during the negotiation process for the renewal of the CA if it is an interest dispute[65]. Collective disputes are normally settled out of the court, and this is the preferred remedy under collective agreements. They are "self-solving" in which, the resolutions are directly or indirectly initiated or handled by the collective agreement parties themselves. Clauses on collective dispute settlement procedures may be set forth under framework agreements, national craft or industry-wide agreements and local/enterprise-level agreements. However, those clauses in framework agreements are generally not effective. Instead, they seem only set the guidelines that will be developed and implemented in craft/industry-wide collective agreements meanwhile craft or industry-wide procedural rules are not always absolutely similar to those under the local/enterprise-level contracts. This will not secure a reliable prediction on the features of settlement procedures at this level. Some important craft-wide collective agreements such as metallurgy, mechanics, chemicals, construction, textiles contemplate settlement especially for collective disputes at the local/enterprise or national levels. For a dispute about ordinary labor relations with claimed rights or specific working conditions stated, which is not about essential public services, the relations between workers and employers are legally stipulated by national CAs (Contratto Collettivo Nazionale di Lavoro - CCNL). These CAs are considered collective framework contracts signed by various enterprises and labor unions in particular industries, which set the working conditions within the industries. Given the loose material which constitutes collective bargaining, the modes to solve collective disputes between workers and employers are freely adjusted by the CCNL. Consequently, it is impossible to set out the details of all national CAs. Nevertheless, one thing can be observed is that mediation is not compulsory, which can be prescribed based on those voluntary

[65] Luisa Corazza (2012), *In search of industrial self-regulation or efficient settlement of employment disputes? The case of Italian arbitration reform*, in Comparative Labor Law & Policy Journal, Volume 33, No. 235;

agreements between parties and thus, conciliators may also be engaged if contractually made allowable.

It can be pointed out that, in Italy, there has not existed an effective public policy on contractual relations which fosters the self-management of collective disputes except that the law has recently regulated "cooling-off" and conciliation procedures in essential public services. In addition, trade-union and employer policies to promote conciliation through the use of collective agreements take time to process and are still not widespread. The classification of conciliation forms in the actual practice of collective agreement also needs to distinguish between the following types of collective disputes settlement procedures:

- Direct dispute negotiation by the direct parties of the contract, especially where the dispute is concerning the interpretation of the contract text;
- Dispute conciliation by parties other than the direct parties of the contract, where the disputes arises at a different level from that of the creation of the contract;
- Conciliation by the disputing parties, but with the intervention of a third party as a conciliator.
- "Cooling-off" procedures in collective disputes regarding the renewal of collective agreements: dispute resolution involves a commitment to "peace" for a given time as stated in the article 2.1 of the Inter-Confederate Agreement of 23/1/1990 and point 2.4 of the Framework Agreement of 23/7/1993. The "peace" obligation is bilateral and binding upon both parties.

The source of conciliation procedures in practice can be legal or contractual. The law contemplates conciliation activities in collective disputes performed by the following state bodies[66]: i) The ministry of labor, with powers of conciliation in multi regional collective disputes (art.1.3c of Legislative Decree 469/1997); ii) Regional labor authorities with powers of conciliation in collective disputes involving several provinces (art. 12D of Act 628/1961; Ministerial Decree

[66] Mario Grandi (2003), Labor conciliation, mediation and arbitration in Italy, in Fernando Valdés Dal-Ré, *Labor Conciliation, mediation and arbitration in European Countries*, Subdirección General de Publicaciones, Madrid, pp.251-27

687/1966); and iii) Provincial Labor authorities, with powers of conciliation in province-level collective disputes (art.12.2d, Act 628/1961; Ministerial Decree 687/1966). The law (art.49 of Legislative Decree 165/2001) provides the procedure of "true interpretation" of collective agreements in the public sector. The process involves "renegotiation" of the disputed clause by the parties to the collective agreement and the parties to the conciliation procedures can be public[67]. Local and central public authorities such as mayors, government delegates, regional government heads, central government ministers may intervene in dealing with collective labor disputes through administrative action or compulsory conciliation attempt prior to exercise of striking rights in essential public services with the roles of conciliators even when It is not contemplated in law, on the request of the parties or on the initiative of the authorities themselves. These interventions aim to protect public or collective interests at the local and national levels.

Collective dispute conciliation procedures are essentially voluntary and optional except the cases of strikes in essential public services. The practice of conciliation procedures is always associated with the duty to "keep peace". This duty, however, is bilateral: employer associations and employers need to abstain from unilateral measures while trade unions commit not to use direct action. If no agreement is reached after a dispute settlement process the parties are again free to act as the "peace" obligation is temporary and binding only during the process. If It is a collective dispute about enforcement of the contract and failed to reach an agreement, It can be transposed to a plurality of individual disputes to bring to the labor courts. In such case, conciliation attempt must be done before the court procedures as regulated in the Article 410 of the Civil Procedure Code or in the Legislative Decree 165/2001.

2.2.2.4. Procedures for strikes in essential public services

In Italian law, striking rights is recognized by the Constitution (Article 40) and it is vested in all workers. However, striking rights is not recognized for military

[67] Mario Grandi (2003), Labor conciliation, mediation and arbitration in Italy, in Fernando Valdés Dal-Ré, *Labor Conciliation, mediation and arbitration in European Countries*, Subdirección General de Publicaciones, Madrid, pp.251-27

personnel, the State police and staff working at nuclear power plants in order to protect national safety, physical welfare and people's property. The extent to which the right to strike is limited in the public service industries has been traditionally unclear, since there have been no regulations defining the area of these industries, types of services that must be maintained in case of strikes or lock-outs and how these needs should be met (existing regulations, e.g. for hospital personnel are vague and insufficient). There is also no general legislation about the restrictions on exercise of striking rights. It may be governed by a convention, under the trade-union codes of self-regulation or under the rules established in collective agreements. Article 40 of the Constitution is the basic constitutional provision in the field of collective labor relations, which represents a fundamental innovation with respect to the classical principles of formal equality and democracy, since it recognizes the right of the workers to promote their own interests. This right is one of the instruments given to employees '*to remove the obstacles which hinder their effective equality and their full participation in the economic social and political life of the country*'[68]. The article works also as a restriction on the employers' anti-strike action, which was clearly recognized by the articles 15 and 28 of the Act 300/1970. The recognition of the right to strike has limited the employers' freedom of action, for example, the employer cannot substitute other workers recruited from outside to take the place of the strikers.

As common practice, the forms of strike action in essential services are subject to be controlled by the relevant unions. In fact, the confederation charters traditionally prescribed that strikes in essential public services must be decided after consultation with the horizontal organs of the organization (Article 42 of the CISL charter) or must be authorized by the latter (Article 14 of the CGIL charter)[69]. The problems arising from these forms of struggle are often handled through informal bargaining between employers and trade unions, especially those regarding the activities and the minimum technical services to remain functioning. Those

[68] T. Treu, *Part II. Collective Labor Relations* (2016), p. 239, in Roger Blanpain (Volume Editor), Frank Hendrickx (Volume Editor), Roger Blanpain (General Editor), Frank Hendrickx (General Editor), Italy, IEL Labor Law (Kluwer Law International BV, The Netherlands)

[69] T. Treu, *Part II. Collective Labor Relations* (2016), p. 157–254, in Roger Blanpain (Volume Editor), Frank Hendrickx (Volume Editor), Roger Blanpain (General Editor), Frank Hendrickx (General Editor), Italy, IEL Labor Law (Kluwer Law International BV, The Netherlands);

traditional attempts to solve problems have proved less satisfactory, which were particularly inadequate in controlling strikes in public services that were organized by independent unions to reduce consumer inconvenience and danger. The traditional attempts used the codes of self-regulation adopted in the 1970s by CGIL, CISL, UIL, which required following conditions in exercising the right to strike: i) Relevant trade union proclaim the strike, definition of modalities and notify the horizontal organizations; ii) Vertical unions and horizontal organizations representing workers at various territorial levels discuss the strike plans; and iii) If the horizontal organizations have divergent opinions on the opportunity to strike, the vertical union is required to re-examine its decision, yet still remains free to proceed. Following those directives, the vertical trade union must develop more precise rules on the matter, particularly those relating the forewarning to consumers, minimum services to remain functioning, and the gradual implementation of strike decisions. This initiative of the major unions has been only partially effective because the self-regulation rules do not apply to non-union workers and autonomous unions. For this reason, the law has intervened to improve the effectiveness of these codes with the Act 146 approved after a long debate by Parliament on 14 June 1990. Ten years later, Act 83/2000 was passed aiming at redressing some weaknesses of the previous law, as indicated from the practical implementation. The amendments are mainly directed to enhancing the powers of the expert commission in charge of monitoring and enforcing the law. In addition, the main regulations have been made clearly applicable not only to the strike action of workers, but also to the abstention from work of independent workers, professional employees or even small entrepreneurs when they provide essential services.

The Act 146/1990 sets some basic rules. First, it defines the essential services to which the procedure applies. The list consists of sectors ranging from energy production and distribution to transport, health services, schools, television, judicial system, banks and telecommunications. It is an open-ended list because the procedure is stipulated as applying to all activities which are functional to fulfill the fundamental personal interests and rights of citizens as recognized by the

Constitution including right to life, to liberty, to health and safety, to freedom of movement, to social assistance and security, to education and freedom of speech. In addition, the Act establishes the general principle stating that the exercise of the right to strike in those services must be in balance with the exercise of the personal rights indicated by the Act. Finally, the Act imposes a general duty on the unions to give ten days advance notice of their intent to strike, and a corresponding obligation on employers to inform the consumers about the timing and modalities of the tentative strike action. The Act also regulates that minimum levels of service provision should be laid down by collective agreements. However, the enforceability of such agreements is subject to the approval of a special guarantor committee. Later, the Act 83/2000 has regulated that such agreements must allow for "cooling-off" and disagreement settlement procedures before a strike is called. To comply with the Act 146/1990, national sectorial agreements have set general rules on the issues stipulated by the Act and at the same time, settled other questions concerning overall relations between the parties. Decentralized agreements, both at the local and enterprise levels, have proven to be more important than expected as a means of adapting and specifying the general rules set at the sectorial level. These agreements have been particularly important in municipal and local services. For example, in urban and suburban transport, the national agreement establishes the principle that in cases of strike, the service must be fully guaranteed for six hours a day at the rush hours especially for students and workers. The local agreements specify the distribution of the six hours according to local traffic - usually three in the early morning and three in the afternoon. They also set out the numbers of employees needed to guarantee the service, the ways of selecting personnel to avoid barring strike action to the same people and the way to inform the consumers

The Act.83/2000 also states that exercise of striking rights in essential public services can only take place if there has been a prior attempt at conciliation, which must be performed in accordance with the procedures set forth by collective agreements and contracts regarding the minimum essential services to be assured in cases of strike. However, though the law requires attempts of conciliation to avoid

the strike, there is no official figure of conciliator with professional competence acting in the processes of mediation. In most of the cases, the conciliation is conducted by the prefect or a prefecture's associate as a representative of the government whose work is basically carried out by their own judgments or by the determination of public authorities but not by an institutional provision for the conciliation procedures. If the mediation process fails, the prefect can apply the order to enforce a particular "address" requested for the specific strike dynamic such as summonsing disputing parties at the prefecture for a new effort of conciliation, postponing strike, reducing its duration, or adopting minimum levels of essential service assured to be delivered.

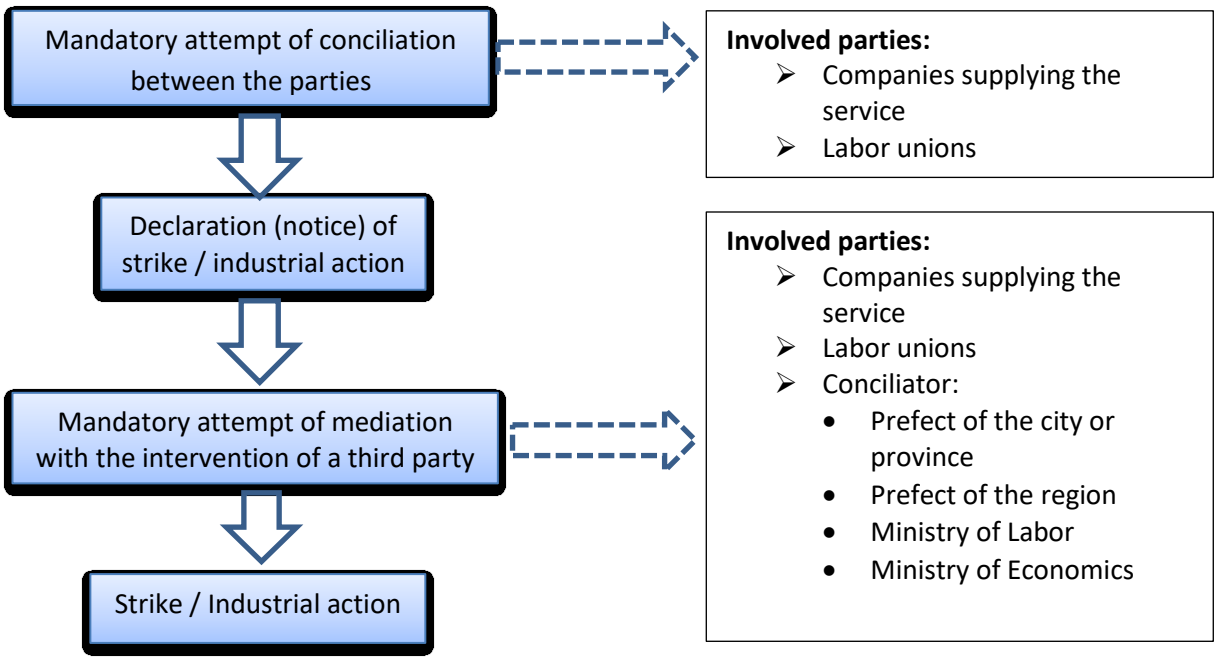
Procedures for strike/industrial actions

The procedures for the strike in essential public services start with a notification of strike by the trade unions that are required to inform the employers about workers' intent of striking before running it. At this period, disputing parties are impelled to reach conciliation with the aim at "cooling off" the conflict and avoid the strike. Nevertheless, at this point, it is not required to invite a conciliator but the trade unions will play the mediation role when the parties meet for conciliation attempt. It should be noted that, as stated by Italian law, registered conciliators cannot work on labor conflicts. If the conciliation process between the parties fails, the strike will be called. After the declaration, disputing parties are summonsed by a third party acting as a conciliator with the purpose of reaching a mutual agreement that leads to the end of strike. It depends on geographical location where the disputes arise, the ombudsman can either be a prefect or a ministry. For example, if the conflict is at the levels of company, organization, locality or province, the ombudsman is typically the prefect of respective province; if it is at regional level, there will be the engagement of the regional capital's prefect and if the dispute pertains to the national level, either "Ministry of Economic Development and Industrial Activity" or "Ministry of Labor" will be engaged as the ombudsman. In these cases, the conciliator can act to have the strike withdrawn or to reach a solution with the trade unions concerning an adequate level of essential public service provision during the strike.

As it can be seen, this conciliation process is compulsory nevertheless, the disputing parties can not choose the conciliator. The prefect usually performs the conciliation process alone or with the assistance of his/her associates who are presumed with certain roles in conciliation. Under the procedural aspect, no protocols or legislation have been established so far and consequently, conciliation procedures generally depend on praxis that may vary case by case. Naturally, the conciliation process occurs informally and the prefect's duty is to assure a mutual agreement to be reached by both disputing parties to avoid strikes. By the end of the process, there doesn't exist an official accord between the parties as the conciliation result, instead, the agreement is endorsed by the union, for example, a proclamation on the strike cancellation coming after the concessions or commitments. If no agreement is reached, the union will then move on the strike. However, the prefect can impose the strike with a set of directives by an ordinance, such as time of the strike, number of workers to perform the essential services, etc. The striking employees and unions that do not comply with the order issued by the prefect will get an administrative fine for each day of strike. In addition, they may also be sanctioned by the employers with suspension of their functions.

Following figure illustrates the procedures of strike/industrial action in essential public services:

Figure 4. Conciliation in the strike in essential public services



Source: Andrea Caputo and Giuseppe Valenza (2019), *Mediation and Conciliation in Collective Labor Conflicts in Italy*, in M. Euwema et al. (eds.), Mediation in Collective Labor Conflicts, Industrial Relations & Conflict Management, Springer Nature Switzerland AG, pp. 123;

Andrea Caputo and Giusppe Valenza (2019), in one of their surveys indicated some limitations of Italian conciliation system, which include: i)The non-existence of a procedural framework for conciliation; ii) Low perception and knowledge of conciliation among the user groups; iii) The unavailability of a professional training scheme on conciliation, which tends to be developed by individual skills and experience of those engaging in the process; iv) The sparse influence of the conciliation on the parties' future relationship, especially, the reached agreements seem to be very breakable, holding up until the next dispute to come; v) The inadequate interest of relevant parties in the success of the conciliation because such process is requested by law, not by the parties themselves; and vi) The insufficient resources to productively assist the system.

Enforcement of the legislation governing the strikes in essential public services

The Act 146/1990 and Act 83/2000 combine the force of law with respect for the principle of self-regulation. The Acts put a general duty of advance notice of 10 days for each strike in essential services and entrust collective bargaining with the task of establishing the minimum services to be delivered in cases of strike with the

aim at balancing the exercise of the right to strike with fundamental rights of citizens. The proportion of minimum services varies according to sectors and types of services and the agreements acquired must be implemented by all interested employers. The Parliament designates a special commission of 9 experts, which has power to evaluate the adequacy of these minimum services and send a proposal to the parties if there is a disagreement. Such proposal will be binding until the parties reach an agreement in line with the Act 83/2000 and in fact, it has proved to be quite influential. However, the concept of essential services seems to be very difficult to evaluate. In several cases, such conception is attached to the time dimension. The legal provision is implemented by ruling out strikes at certain times of the year (e.g. during holiday seasons for transportation industries such as railways and airlines, during examination periods for schools) or at certain times of the day (e.g. urban transportation at rush hours); by regulating minimum intervals between two strikes; by banning the co-occurrence of more than one strike within the same industry or in correlated areas such as airlines and railways; by enforcing maximum duration for a strike or, inversely, a minimum frequency at which services must be provided (garbage removal); and by excluding or limiting short strikes (e.g. in the schools they are permitted only at the beginning or at the end of daily teaching sessions). In other cases, the minimum levels of service are secured under a quantitative proportion. The Act 83/2000 states that the percentage of service to be guaranteed may not on average exceed 50 per cent of the usual and may not involve more than 30 per cent of the employees normally used[70]. But this indication is hardly to be taken literally. The most common form is to fix a percentage of the service (e.g. the number of flights or of trains to be guaranteed). However, the percentage of service is often directly related to the number of employees needed for work during the strike. The percentage of minimum level of services varies according to sector, ranging from a very high percentage in urban transport to a very low one in telecommunications and radio TV,... Collective parties are required to consider and include these contents into specific agreements.

[70] T. Treu, *Part II. Collective Labor Relations* (2016), in Roger Blanpain (Volume Editor), Frank Hendrickx (Volume Editor), Roger Blanpain (General Editor), Frank Hendrickx (General Editor), Italy, IEL Labor Law (Kluwer Law International BV, The Netherlands), pp. 244.

The activities of the Commission designated by the Parliament mentioned above mainly focus on promoting agreement among the parties. To realize the tasks, it may investigate the case, hear the parties and provide them with opinions and guidelines. Some guidelines of the Commission are practically binding and influential such as the indications on the timing and duration of the strike or measures to reduce damages to the users of essential services. In such a case that the disagreement between parties or different groups of employees is serious, the Commission may organize a referendum among the interested employees and once agreement reached, the employer must be responsible for applying the collective rules on minimum services to secure the protection of the users and the enterprises must inform the users about the coming strike and its modalities at least five days in advance. The sanctions applied for the employers, strikers and unions follow the directives of the Commission. The violations by the unions of their obligations are sanctioned with the suspension of their rights (time-off work, leaves for union representatives), and possibly with exclusion from the bargaining table. If the unions are not benefiting from those rights they will be sanctioned by an administrative fine based on their legal representatives. The managers in charge of enterprises providing essential services who do not fulfill their obligations concerning information, adoption of measures necessary to protect consumers' rights are also sanctioned with administrative fines depending on the seriousness of the violation. The sanctions on both the unions and the managers are decided directly by the Commission.

Characteristics of strikes in Italy

According to the 2016 annual report of the Commissione Garanzia Sciopero, labor union conflicts in Italy mainly happened in the essential public services areas where the strike occurrence was at a high rate regardless types of ownership (*see the Appendix 4 - Collective industrial actions in Italy by geographical relevance 2004–2016).*

Strike in essential public services is the typical types of industrial actions, which widely happens in Italy and often appears more intense in the developed areas of

the country than in the depressed ones. Workers' participation in the strikes, particularly the contractual variety, is usually high even by non-union members following a well-established tradition and goal of Italian unionism. This high rate of participation is favored by the decentralized net of 'delegates' representing all workers and often by a systematic use of picketing. The average duration of strikes is traditionally short, however, their impact has been sometimes serious due to the forms of action adopted, which tend to result in loss of production with minimum loss of wages. The common types of industrial actions which have caused the most serious consequences are sit-downs, occupations, work-ins, blockades of goods entering or leaving the firm, etc. As a reaction to such industrial actions, employers have sometimes resorted to partial lock-outs, or to nonpayment of wages during the intervals between intermittent strikes or to workers made idle by others' strikes. In the last decades these forms have been reduced to a minimum. Wild-cat strikes are rare in Italy, cases of spontaneous action are normally promptly controlled by the unions and their delegates or endorsed and guided by them. Several wild-cat strikes have occurred in public sector, sometimes endorsed or guided by independent unions but not the main confederations.

Table 2: Strike trends in Italy
(including disputes not concerning to employment relations)

Year	Number of strikes	Number of workers participating (000)	Hours lost (000)	Average hours lost per striker
1960	2,471	2,338	46,289	19.80
1970	4,162	3,722	146,212	39.28
1980	2,238	13,825	115,200	8.33
1990	1,094	1,634	36,269	22.20
1995	545	445	6,365	14.30
2000	966	687	6,189	9.01
2001	746	1,125	7,182	6.38
2002	616	5,442	34,027	6.25

2003	710	2,561	13,732	5.36
2004	745	709	4,890	6.89
2005	654	961	6,348	6.61
2006	587	467	3,883	8.32
2007	667	906	6,508	7.18
2008	621	669	5,059	7.56
2009	889	267	2,601	9.76

Source: Istituto Nazionale di Statistica [71].

2.3. Key findings and discussion

2.3.1. Of the eight ILO fundamental conventions, Italy has ratified all including the Convention No. 98 on the Right to Organize and Collective Bargaining and the Convention No. 97 on Association Freedom and Protection of the right to organize. Through the study of Italy's collective labor dispute resolution system, it can be seen that Italy has well complied with the requirements of the ILO conventions concerning the right to collective bargaining and association freedom of workers. Meanwhile, only five out of the eight ILO fundamental conventions have been ratified and in force in Vietnam. The Convention No.98 on the Right to Organize and Collective Bargaining has newly been ratified and just come into effect in July 2020 while the Convention No.87 on Association of Freedom and Protection of the Right to organize has not been ratified. Vietnamese legislation on the settlement of collective labor disputes has so far appeared some points incompatible with the ILO's conventions, especially in the area of collective bargaining and association freedom. As analyzed in section 2.1.3.1, the Vietnam Labor Code 2012 and its guiding documents have shown nonconformities with the ILO Convention No. 98 concerning the issue of collective bargaining. As a result, after this Convention was ratified by the Government, a series of amendments have been made related to the

[71] T. Treu, *Part II. Collective Labor Relations* (2016), pp. 236-237, in Roger Blanpain (Volume Editor), Frank Hendrickx (Volume Editor), Roger Blanpain (General Editor), Frank Hendrickx (General Editor), Italy, IEL Labor Law (Kluwer Law International BV, The Netherlands);

principles of voluntary collective bargaining, the automatic right to represent the labor collective of the upper-level union in the enterprises without grassroots union and regular collective bargaining.

2.3.2. Vietnam Labor Code 2012 and its guiding documents detail the order, procedures and forms for resolving CLDs, which are applied for all types of enterprises based in Vietnam. Whereas, in Italy, the Labor Law does not provide these regulations, there is no formal and unified system for CLD resolution applicable to all businesses. Instead, when a dispute arises, there may be a variety of measures taken, methods and procedures for resolving labor disputes are all specified in the collective agreement of each industry or each enterprise. There may be “cooling procedures”, but the resolution arrangements are on a voluntary basis.

2.3.3. Before Vietnam ratified the ILO Convention No.98 and amended the Labor Code in 2019, there was only one trade union organization in Vietnam, no real freedom of association and workers’ representative organizations did not demonstrate their expected role of protecting the interests of workers through collective bargaining. Collective bargaining did not exist in a true sense, union activities were also dominated by employers, trade union officials worked concurrently and were usually the ones who held managerial positions in the enterprises. Thus, CAs are essentially not the result of voluntary negotiations and agreements, not derived from the needs and desires of employees but on the administrative paper only. Whereas in Italy, there exist 3 major unions (CGIL, CISL, UIL) and a number of other non-trade union organizations, which are formally based on the freedom of association and freedom of representative under the spirit of the ILO Convention No.87 that has not been ratified by Vietnam. This brings more choices for employees to choose their representative organizations, and as it is a voluntary choice, workers have confidence in their representative organizations that in turn, can promotes their role in protecting the rights of workers. This results in the enhancement of the real, effective collective bargaining and actual validation of CAs in Italy.

2.3.4. Conciliation is a mandatory procedure in CLD resolution system of Vietnam while it is completely voluntary in such system of Italy where disputing parties can choose to self-mediate or involve the third party. Regulations concerning conciliation, subjects and competent agents of conciliation in Italy are very diverse, flexible, informal and do not follow a uniform procedure as in Vietnam. The tasks and involvement of prefect or minster in conciliation are to avoid a strike or reach an agreement on an adequate level of essential services during the strike. At the end of the conciliation procedures, no written agreement between disputing parties (a conciliation minute) is produced, instead, the accord is endorsed by the union (for instance, by declaring the cancellation of the strike), following the concessions or promises of concessions. Whereas, in Vietnam, although the law requires disputing parties to go through mandatory conciliation and arbitration procedures before a strike, in practice, strikes often take place before the conciliation by the multi-sector Task Force, which seems to handle with post-strike issues but not to avoid a strike as It does in Italy.

2.3.5. Labor arbitration is not allowed in the settlement of interest labor disputes and is not encouraged for application in right dispute resolution in Italy. Mandatory arbitration is not allowed in any case. Meanwhile, the currently validated Labor Code 2012 of Vietnam prescribes mandatory arbitration procedures before disputing parties can go on striking in the process of the interest CLD resolution. This provision is inconsistent with the ILO's principle of CLD resolution mentioned in section 1.2.2, in which, mandatory arbitration is only allowed if it is on the request of both disputing parties, or the strike is of the types restricted or banned. The revised Labor Code 2019 has made some changes, whereby, mandatory arbitration is no longer applied in the resolution of CLDs either in right or interest aspects but the procedures are voluntary for disputing parties. Accordingly, there will be similar points in the application of labor arbitration in collective labor dispute resolution in the two countries.

2.3.6. In Italy, collective agreement can "*regulate all aspects of the employer-employee relationship, except those that are regulated by law"*[72] and it is under the regulations of Civil Code concerning the contract in general. Those regulations furnish the legal basis for CAs. As Italy does not stipulate the procedures for CLD resolution in its legislation, when a dispute occurs, CAs become the main source for the dispute settlement. CAs have binding effect on the responsibility to enforce the commitments signed by the two parties, which is ensured by Civil Code. Meanwhile, in Vietnam, the contents of CAs are mainly copied from the general legal documents, which are not resulted from real negotiation and agreement between two parties. CAs also do not specify methods or regulations of dispute resolution but refer it to the implementation of general regulations in the Labor Code. Therefore, CAs do not seem to have binding and legal reference values in the process of resolving labor disputes in practice.

2.3.7. While in Vietnam, strike was the first and main solution chosen by workers to settle a collective dispute when it occurs, in Italy, collective bargaining was seen as the fundamental instrument to resolve collective conflicts and govern industrial relations, which is very the spirit of the ILO Convention No.98 and recommended by ILO for application with the aim at harmonizing the industrial relations and maintaining the stable business of enterprises.

2.3.8. In Vietnam, strike procedures are commonly regulated for all types of enterprises except those where strikes are prohibited; mandatory mediation and arbitration are required before going on a strike. Meanwhile, in Italy, there are not formal regulations on strike procedures in private sector and other types of businesses but in essential service area. For the enterprises working in essential service area, if the compulsory mediation by prefect is not successful, labor collective may go on strikes without having to take arbitration procedures as in Vietnam, but they must ensure the minimum service provision and number of employees working during the strike as stipulated by the Act.146 and the Act.83 to mitigate the negative impact of strikes on social life and security. This regulation

[72] http://www.ilo.org/ifpdial/information-resources/national-labor-law-profiles/WCMS_158903/lang--en/index.htm

doesn’t exist in the Vietnamese system because most of the enterprises working in essential service area belong to the list of strike unallowable businesses.

2.3.9. In Vietnam, strike occurs in all types of businesses but mostly in FDI enterprises, then private sector and the least in state-owned enterprises. Whereas, striking in public essential service area is quite popular in Italy. Therefore, the requirements for strike procedures of the two countries are also different: for example, in Italy, the enterprises that go on strike must ensure minimum service provision and number of workers remaining at work during the strike time so as to mitigate negative impacts on the daily life of the community. Such requirements do not exist in Vietnam.

2.3.10. In Vietnam, the inter-sectorial Task Force intervenes to resolve the wildcat strikes when they already occurred in almost cases and it took the roles of disputing parties during the settlement process. Under the intervention and coordination of the Task Force in the mediation process, final results usually rest on the acceptance of employers to fully or partly meet the workers' claims. Whereas, in Italy, there is a Special Commission appointed by the National Assembly to involve in strike procedures in public essential services area. However, its engagement is taken before the strikes occur aiming at evaluating the adequacy of the minimum services to be provided by the enterprise that is about to go on strike, and sends them a proposal for adjustment if it is not reasonable. This proposal is binding until the parties reach agreement in compliance with the Act 83/2000. If it is violated by employers, workers or trade unions, penalties will be imposed under the directives given by the Commission. Accordingly, this Commission does not do the duties of disputing parties, but only checks and points out unreasonable issues to the parties as well as requires them to comply with legal regulations on minimum services provision during the strike. Therefore, even when the strikes take place in case the mediation between the two parties is failed, they are still under control and comply with the requirements of law. However, this Committee’s intervention only limits to the strikes in public essential services but does not work in other businesses.

SUMMARIZATION OF CHAPTER 2

1. Out of the eight fundamental ILO conventions, Italy has ratified all, which are currently in force and guaranteed the compliance. Meanwhile, Vietnam has just ratified and implemented five of them, The Convention No. 87 on association freedom, and Convention No. 98 (newly ratified and came into effect on July 2020) has not been implemented in Vietnam. This affects the establishment and operation of workers' representative organizations as well as real collective bargaining;

2. There is a significant difference between the collective labor dispute resolution systems of Vietnam and Italy in terms of regulations, procedures, competent agents and enforcement;

3. In Vietnam, CLD resolution system is officially and systematically regulated in the Labor Code and its guiding documents. In particular, procedures for interest CLD settlement includes: Collective bargaining, Mediation, Arbitration and Strike procedures while for the right CLDs, procedures include: Collective bargaining; Mediation, Arbitration (as in revised Labor Code 2019)/or administrative decision of the chairman of the DPC (in Labor Code 2012) and recourse to the Court;

4. In Italy, formal system of collective labor dispute settlement does not exist but procedures and contents related to CLDs are included in CAs that are legally determined in accordance with the Civil Code and complemented with the union codes of self-regulations which are given a transitory legal effect under the Act 146/1990 until the minimum services are settled by CAs. Italian law only regulates strike procedures in public essential service areas; Compulsory arbitration and mediation do not address matters regarding workplace conflict and there is no official figure for mediation in labor disputes. Disputing parties can involve these figures but absolutely on a voluntary basis, conciliators can be different people in each case, which can be social partners or institutions such as ministries, prefectures. There is only one case where mandatory mediation is applied before the parties can go on striking, which is in public essential services. In this case, mediation procedures are conducted under the order of the prefect;

5. Vietnam's legal provisions related to CLD resolution and strike procedures have not effectively worked in practice. The current labor dispute resolution process includes mandatory steps in strict order that does not allow to skip one to take the next. It can be considered as a unique, long and complicated path that has not been chosen by the labor relations parties over the past 20 years. Instead, they went on "spontaneous strikes" as their own way to solve the disputes;

6. Traditional attempts to control and limit strikes in Italy used the codes of self-regulation adopted by CGIL, CISL and UIL, which do not apply to non-union workers and autonomous unions. The Act 146 and the Act 83 have made amendments in which, individuals, professional employees and small businesses working in public essential services are also subjects to the Act implementation concerning the strike procedures. Most strikes are controlled and implemented in accordance with the law, wildcat strikes rarely occur and are quickly controlled by trade unions.

Chapter 3: RECOMMENDATIONS FOR THE IMPROVEMENT OF VIETNAMESE LEGISLATION ON COLLECTIVE LABOR DISPUTE RESOLUTION

Through analyzing the legislation and procedures for CLDs of Vietnam and Italy in Chapter 2, it can be seen that, besides the achieved results, there are still shortcomings and limitations, especially in the resolution system and legal enforcement of Vietnam. This may be caused by the inappropriate regulations and/or ineffective enforcement mechanism. Therefore, Chapter 3 will provide some recommendations to improve the legal procedures for collective labor dispute resolution of Vietnam based on the general principles, requirements of the ILO Conventions and the model of CLD resolution of Italy with the aim at building a harmonious, stable and progressive labor relations system and promoting the interests of all parties for a stable economic development.

3.1. Necessity of the improvement of legislation on collective labor dispute resolution of Vietnam

Under the international integration context, Vietnam has joined various new-generation free trade agreements with other countries and international organizations. These agreements do not set aside specific labor standards, but reaffirm the ones stated in the ILO Declaration 1998 on the fundamental principles and rights concerning working, employment and labor relations that must be respected and implemented by all member countries of the agreements. Therefore, it is a fundamental requirement for Vietnam to amend its law and legal documents towards the compliance with the ILO's standards concerning labor relations in general and CLD resolution in particular. Through studying the CLD resolution system of Vietnam, it can be seen that, there are still many provisions of the existing Labor Code and its guiding documents inconsistent with international labor standards. For example, the documents recording conciliation results of a CLD dispute resolution by a labor conciliator are not considered equivalent to other agreements reached in the usual way as ILO's requirement; voluntary mediation and arbitration have not been prescribed in the currently validated law. Whereas, Italian legal regulations concerning labor relations including collective bargaining, right to strike, voluntary conciliation an arbitration, etc. have been fully compliance with the ILO's conventions and the CLD resolution procedures have been flexibly applied. For instance, the recognition of labor dispute settlement mechanism agreed by the parties in the CAs, the insurance of workers' association freedom and voluntary collective bargaining. Differences in Vietnamese legislation on CLD resolution from that of other countries' and international standards may reduce the attractiveness of Vietnam's labor market to foreign investors. Thus, overcoming the current inadequacies of respective laws and legal documents will not only increases the effectiveness of actual CLD resolution but also ensures the compliance of Vietnamese law with international labor standards and match with other country partners', which would promote the development of national economy.

3.2. Recommendations for the improvement of legislation on collective labor dispute of Vietnam

3.2.1. Apply flexible procedures for collective labor dispute resolution

Unlike Vietnam, where the legislation including the Labor Code and its guiding documents are formally and fully issued for resolving CLDs, Italy does not have formal regulations on CLD resolution. Instead, when a CLD arises, different solutions can be applied to reach the results, which are basically identified in the CAs of enterprises/industry. However, in practice, although the law is fully provided, spontaneous strikes occur quite often in Vietnam and have not been settled in the order prescribed by law. This implicates the regulations do not work in practice but on paper only. Thus, the thesis recommends Vietnam to review and learn the Italian model, not to stipulate the uniform procedures for resolving CLDs in law but leave them flexibly discussed and agreed by the labor relation's parties as one of the contents in their CAs. Procedures may vary according to types of business and enterprises which will work better in the labor dispute resolution of each enterprise and industry.

3.2.2. Improve the enforceability of Collective Agreement

In the Obligatory Part of a CA under the Italian system, the obligations between the signing parties were traditionally classified with three types of obligations including the duty to implement the agreement, the duty to influence the members of the organization in applying its normative part and the peace obligation. Whereas, in the obligation part of the CA of a Vietnamese enterprise, parties are just generally required to implement all the contents of the agreement, meaning the duty to implement the agreement only, the other 2 duties of member influencing and peace keeping are not included. This may be the reason that the CA's member parties strictly abide by its contents in Italy. The second obligation of the collective agreement related to member influencing of the organization can be seen as an effective communication channel, raising employees' awareness of the contents and meaning of their CAs, whereby creating consensus in its compliance and implementation. In addition, the 3rd obligation of the CA is very a strike

preventative instrument because this obligation requires parties not to have industrial actions during the validation of the CA. In cases that strike occurs as an obligation violation, trade union is responsible for compensating all the damages caused by the strike to the employer. This makes the CA more effective, unions become more accountable for preventing and limiting industrial actions. In addition, in Italy, workers are free to choose their own representative organizations and these organizations also properly perform their roles of workers' representative in negotiating and reaching consensus on the contents of CAs based on the workers' will and desires. The enforceability of those CAs is guaranteed as such for an individual contract as stipulated in the Civil Code, to which, if there are any conflicts concerning the CA implementation, the parties can recourse to the court. However, CAs often prefer disputes to be settled out of court and since 1950, they have included no-strike clauses that do not allow trade unions to call a strike during the valid duration of an agreement. Commitments on the responsibilities and obligations of each party are also clearly indicated in the CAs, which enable them to be used as a main tool in resolving disputes without the need for a formal and specific legislation on collective labor dispute resolution as in Vietnam. Therefore, it is recommended that Vietnam should consider adding these two obligations to the CAs, strengthening its legality and mechanism to bind the parties to fulfill their commitments signed under their CAs so as to limit the situation of spontaneous strikes and overcome the ineffectiveness of the law enforcement on collective labor dispute resolution.

3.2.3. Apply voluntary mediation model and enhance the role of workers' representative organizations and trade unions in collective bargaining

In Italy, trade unions are very active in their role of workers' representative in collective bargaining and dispute resolution, they do not want the involvement of the third party as conciliators or arbitrators in the labor conflict resolution for the fear of losing their role. Trade unions act as the workers' representative to work with employer when a collective dispute concerning the enforcement of the CA arises. In addition, trade unions also perform the task of controlling and preventing spontaneous strikes. In CLD resolution, professional conciliator does not exist,

conciliation is informal, completely voluntary and not legally binding. In contrast, conciliation is mandatory in resolving CLD in Vietnam, the labor conciliator can be full-time or concurrently appointed by the Chairman of PPC with specific functions, duties and position allowance. However, in most of the cases, workers do not choose conciliation or collective bargaining but go on wildcat strikes as the first solution to the disputes. To which, it is necessary to reconsider the appropriateness, practice and effectiveness of Vietnam's mediation regulations as well as the representative role of trade unions and labor representative organizations in collective bargaining. In addition, through studying international labor legislation, it can be seen that the mandatory mediation and arbitration procedures regulated in Labor Code of Vietnam are contrary to the ILO' labor standards. According to the ILO, the resolution of labor disputes by means of conciliation and arbitration is common and particularly important because they can better ensures the will of disputing parties than a trial in the Court. Specifically, this issue was noted by the ILO in its Recommendation No.92 of 1951 on voluntary mediation and arbitration. Whereby, the ILO recommends that states establish voluntary mediation agencies in accordance with their own conditions, set up free and quick procedures for resolving disputes on the questions of either disputing parties or at a voluntary mediation agency as regulated[73]. Therefore, the thesis recommends that Vietnam learns the Italian model of voluntary mediation and continuous collective bargaining in CLD resolution. At the same time, it is necessary to improve the efficiency of trade unions' performance in the new situation, taking employees' satisfaction as a measure to evaluate their performance quality; Promote dialogues and collective bargaining activities at enterprises and industry levels to enhance the practical values and enforcement of the contents committed in CAs by member parties and maintain sound industrial relations.

3.2.4. Issue specific decrees and legal documents on strike control procedures

Strike is the final negative result of a CLD. Although Italy does not have a formal legal system for CLD resolution as Vietnam does, most strikes are controlled and

[73] International Labor Organization, *1951, Voluntary Conciliation and Arbitration Recommendation, No. 92, Para. 3*

occurred in accordance with the law, which have not much affected community's life and social order. Wildcat strikes rarely occur and are quickly controlled by trade unions. Whereas, in Vietnam, although the law details the procedures for resolving collective labor disputes, all occurred strikes were spontaneous and illegal. Therefore, Vietnam should review and consider the possibility of applying the Italian model of having specific Decree on strike control.

3.2.5. Supplement the principle of "ensuring the enforcement of mediation and arbitration results"

Concerning the mediation results, in Section 5, Part I, Recommendation No. 92, 1951 on voluntary mediation and arbitration, the ILO encourages countries to ensure that: "*All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner*"[74]. Thus, the record of successful mediation can be recognized as a written agreement between employees and employers, in other words, it has the same legal value as a CA. In Italy, the rules for handling the results of conciliation, orders of prefect or the special commission assigned by the parliament and for cases of violating strike procedures are clear and binding the parties by means of penalties, for example, If the mediation between disputing parties fails, the prefect may use the judgment to impose a particular "address" entailed for the specified strike dynamic, which may include: summonsing the parties at the prefecture for a new effort of conciliation, postponing strike, reducing its duration, or adopting minimum levels of essential service assured to be delivered, etc. The prefect's order must be complied by the unions and employees otherwise they will get an administrative fine for their striking time. With regard of the Commission's proposal/directive violation, the unions of their obligations will be sanctioned with the suspension of their rights (time-off work, leaves for union representatives). If employers fail to comply, they will be administratively sanctioned based on the seriousness of their violation. In Vietnam, there are no such sanctions for the realization of mediation results and

[74] International Labor Organization, 1951, *Voluntary Conciliation and Arbitration Recommendation,* No. 92, Part I;

arbitral awards. Based on the analysis of the legal regulations practice on CLD resolution of Vietnam in Chapter 2, it can be seen that the failures of applying legal institutions in resolving CLDs might have been caused by not only the inappropriateness of the procedures but also the low enforceability of mediation and arbitration results. Specifically, the minutes of mediation conducted by labor conciliator and LAC only record the successful or unsuccessful mediation results while the implementation of the agreements reached depends on the will of disputing parties. The record of successful mediation has no binding legal value on disputing parties. The law only generally stipulates that disputing parties must "*abide by the agreement reached, the arbitrator's judgment or decision*"[75]. Apart from this sentence, no sanctions shall be imposed when the obliged party fail to realize the minutes of successful mediation established by the conciliator or the arbitration council while the other party neither have rights to request the Court to recognize the mediation results[76] nor have it executed by the civilian enforcement team as stipulated in the Law on civil enforcement because this matter is not governed by such Law[77]. This is one of the reasons why disputing parties have not chosen the procedures regulated by law to settle their disputes so far. Therefore, the thesis proposes to supplement the principle of "*ensuring the enforcement of mediation and arbitration results"* in Vietnam's institutional system of CLD settlement. In particular, in case of successful conciliation where either of the parties does not implement the agreement reached, the other party should have the right to appeal the Court to recognize the record of successful conciliation in compliance with the Civil Procedure Code; for arbitration, disputing parties must comply with the arbitrator's awards. In cases where the obliged party neither implements nor requests to cancel the arbitrator's awards, the rest party should have the right to request the civil enforcement agencies to enforce the awards. Accordingly, in order to ensure the consistency of the legal system, it is necessary to amend the provisions of Vietnam revised Civil Enforcement Law 2014 towards supplementing the provisions on enforcement of labor arbitrator's awards to the Article 2 (in addition to those on commercial arbitrator's awards). Furthermore,

[75]Vietam Labor Code 2012, Point b, Clause 2, Article 196;
[76] Vietnam Civil Code 2015, Article 33
[77] Vietnam Civil enforcement Law 2008 (revised in 2014), Article 2

penalties applied under the Italian labor dispute resolution system can be considered for the application in similar cases in Vietnamese system to improve the enforceability and effectiveness of mediation and arbitration, which will promote confidence for disputing parties to choose these solutions instead of unlawful wildcat strikes. A part from that, it is also necessary to change the current mechanism of handling with unlawful spontaneous strikes by the inter-sectorial Task Force through its state administrative intervention, whereby, labor relation institutions should be more often used instead to harmonize the interests of parties, minimize the number of disputes and strikes.

3.2.6. Revise the Trade Union Law 2012 and ratify the ILO Conventions No.87 &105

To ensure the consistency and synchronization with the newly amended and supplemented provisions in the revised Labor Code 2019, Vietnam General Confederation of Labor is recommended to review and suggest the amendments and supplements for the Law on Trade Union 2012. In addition, to promote the compliance with the ILO's principles of sound labor relations, Vietnamese Government should develop the plan to soon ratify the rest two fundamental conventions of the ILO's, which are Convention No. 87 on "Freedom of Association and Protection of the Right to Organize" and Convention No. 105 on "Abolition of Forced Labor".

3.2.7. Modify the connotation of the collective bargaining concept

To ensure the voluntary collective bargaining, Vietnamese labor law needs to recognize that collective bargaining is a process with different activities but not just a meeting as current notion in the law and as common understanding. Such process may include one or more bargaining sessions as the model of continuous bargaining in Italy. During the process, each parties will have several rights and obligations regulated by legal act or institutions, which are not in nature the intervention in the parties' voluntary collective bargaining, but rather to ensure that the bargaining is done voluntarily and in good faith.

3.2.8. Enhance the role of tripartite mechanism and strengthen the State's proactive role in promoting voluntary collective bargaining

It is necessary to enhance the role of tripartite mechanism in resolving CLDs. According to the ILO, the tripartite mechanism is a cooperation and responsibility sharing mechanism existed between the State, employers and employees (through their representative organizations) to solve the problems concerning labor area for a prosperous economy and a fair society. There should be formal regulations on tripartite mechanism as a basic principle of labor legislation and specific provisions to further enhance the roles of workers' and employers representative organizations in CLD resolution process and at the same time, strengthen the State's proactive role in promoting voluntary collective bargaining as the spirit of the ILO's Convention No.98.

3.2.9. Review and amend regulations on the contents of collective bargaining

Continue to review and amend regulations concerning the contents of collective bargaining, ensure the correct interpretation of the regulations, of which, the collective bargaining contents given in the law provisions are suggestive and used for reference only, disputing parties can decide what contents to be bargained based on their needs as the spirit of the ILO's Convention No. 98. The revised Labor Code 2019 has provided more collective bargaining contents compared to those of the Labor Code 2012. However, such provisions still implicate that those are contents regulated for the collective bargaining of the parties, meaning compulsory rather than suggestive.

3.2.10. Develop an evaluation and measurement system of conciliation activities

There have not existed instruments so far that allow an evaluation of the conciliation system's efficiency. No guidance does exist either to measure the success rate of mediation or to evaluate the satisfaction of the service users. Thus, an effective assessment and measurement system of conciliation activities is recommended, which can provide detailed forms and indicators showing the quality, the satisfaction level of mediation results and the achievement rate of

conciliation agreements reached. In addition, as currently, the effectiveness of conciliation is mainly depended on the field experience and personal ability of the conciliators to communicate with disputing parties, It's necessary to provide them with professional training on mediation to build their capacity and improve the quality of mediation process.

CONCLUSION

With the purpose of making contributions to the improvement of legislation on collective labor dispute resolution of Vietnam, the thesis has systematically studied and clarified theoretical issues on collective labor disputes and legal regulations on collective labor dispute resolution; studied and analyzed the current situation of Vietnam's and Italy's legislation on CLD resolution and thereby provided a number of recommendations to amend and supplement the legal regulations on CLD resolution of Vietnam. Through studying the above issues, key conclusions have been drawn as followings:

1. CLD is an objective phenomenon existing in a market economy of a country. The purpose of national legal intervention in CLD resolution is not only to quickly resolve the dispute in peace but also to promote the development of collective bargaining, thereby to stabilize and harmonize the labor relations, contributing to development of socio-economy;

2. To improve the legislation on CLD resolution, Vietnam needs to address the irrational points and review the enforceability of such legislation. In addition, the improvement of the system also aims at building harmonious, stable and progressive labor relations under the market economy of Vietnam as well as ensuring the compliance of national legislation with international labor standards concerning labor relations in the context of international integration;

3. Despites certain differences between the legislation on CLD resolution of the two countries, in general, legislation on CLD resolution is made up of three groups of provisions including those on principles, methods and procedures of dispute settlement. In Vietnam, after the failure of the dispute settlement by mandatory

mediation, labor arbitration will be applied, then a strike (for interest CLDs), or DPC's resolution and Court procedures (for right CLDs). In Italy, CLDs are usually resolved through continuous collective bargaining regulated in CAs. The parties may choose mediation on a voluntary basis, which has been mentioned in their CAs. If a dispute derives from the implementation or extension of a CA, Self-regulation Code of trade union will be applied, which is valid until the new CA is established. For CLDs occurring in essential services area, mediation is compulsory before the labor collective can go on striking. In these cases, conciliators can be prefects or minister;

4. Through studying theoretical issues on the concepts, characteristics, categorization and settlement methods of CLDs in combination with the study of relevant regulations of the ILO, the thesis has deeply analyzed the existing legislation on CLD resolution of Vietnam and Italy under various aspects including the principles, competent subjects, procedures and situation of CLD regulation enforcement of the two countries. Based on such analysis, the thesis has identified the limitations and made some recommendations for the improvement of the legal regulations on CLD resolution of Vietnam, which include: (i) Learn/copy the Italian model that does not formally regulate and fix the procedures of CLD resolution in labor law but include these contents in sectorial and/or enterprise CAs so that flexible settlement methods can be applied depending on the characteristics of each industry and type of business, which results in better effectiveness; (ii) Consider to supplement the duty to influence members of the organization participating in the CA to apply its normative part and the peace obligation to CAs as Italy does and strengthen its enforceability as well as the mechanism to bind the parties in fulfilling their commitments in the signed CAs. This may help to limit spontaneous strikes as current situation and improve the effectiveness of law enforcement on CLD resolution; (iii) Apply the Italian model of voluntary mediation and continuous collective bargaining in CLD settlement and at the same time, improve the efficiency of trade unions' performance in their role of workers' representative; (iv) Consider the possibility of issuing separate Decrees and documents on strike control procedures as the Italian model; v) Supplement the

principle of "*ensuring the enforcement of conciliation and arbitration results*" to the CLD settlement system of Vietnam to make these methods more persuasive to disputing parties; vi) Amend and supplement adequate provisions to the Vietnam Trade Union Law 2012 to ensure the consistency and synchronization with the newly amended and supplemented provisions in the revised Labor Code 2019; Develop a plan to early join the two remaining ILO Conventions including Convention No.87 on “Freedom of Association and Protection of the Right to Organization" and Convention No.105 on “Abolition of Forced Labor”; vii); Modify the connotation of collective bargaining concept, define it as a process with different activities but not just a meeting as current notion in the law and as common understanding; viii) Enhance the role of tripartite mechanism and strengthen the State's proactive role in promoting voluntary collective bargaining as the spirit of the ILO Convention No.98; ix) Amend the regulations on the contents of collective bargaining to ensure the uniform interpretation that those contents are suggestive only not compulsory in practice; and x) Develop an evaluation and measurement system of mediation activities to improve the effectiveness of this method./.

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APPENDIX

APPENDIX I
NUMBER OF STRIKES BY YEAR IN VIETNAM
(From 1995 to 2018)

Year	Total	State-owned enterprises	Private enterprises	FDI enterprises
1995	60	11	21	28
1996	59	6	14	39
1997	59	10	14	35
1998	62	11	21	30
1999	67	4	21	42
2000	60	5	17	38
2001	60	9	26	25
2002	99	5	29	65
2003	142	3	35	104
2004	124	2	30	92
2005	147	3	39	105
2006	390	4	99	287
2007	544	2	111	431
2008	720	-	136	584
2009	218	-	60	158
2010	423	-	63	360
2011	885	3	206	676
2012	508		105	403
2013	355		113	242
2014	269		80	189
2015	245		66	179
2016	242		58	184
2017	167		34	133
2018	106		22	84
Total	**6.011**	**78**	**1.420**	**4.513**

Source: Vietnam Ministry of Labor Invalids and Social Affairs (2019), Report on strike situation

APPENDIX II
STRIKES BY TYPES OF ENTERPRISES IN VIETNAM
(Categorized by type of enterprises and countries from 2007 to 2018)

No.	Enterprise/Country	Number of strikes
I	**Stated-owned enterprises**	5
II	**Private enterprises**	1.054
III	**FDI**	3.623
	Of which:	
1	India	15
2	Britain	54
3	Austria	4
4	Arab Saudi	6
5	Belgium	13
6	Brunei	6
7	**Taiwan**	1.243
8	Denmark	6
9	Germany	21
10	**Korea**	1.287
11	**Hongkong**	119
12	Indonesia	2
13	Italy	4
14	Malaysia	65
15	Mauritius	6
16	U.S	59
17	Russia	5
18	Japan	310
19	Pakistan	3
20	Panama	4
21	France	51
22	Philippine	10
23	Samoa	8
24	Singapore	65
25	Srilanka	4
26	Thailand	20
27	Turkey	2
28	Swizerland	5
29	China	210
30	Australia	16
Total		**4.682**

Source: Vietnam Ministry of Labor Invalids and Social Affairs (2019), Report on strike situation

APPENDIX III
STRIKES BY INDUSTRIES IN VIETNAM
(Categorized by economic industries from 2007 to 2018)

No.	Industry	Number of strikes
1	Breeding	10
2	Food Processing	137
3	Weaving	129
4	Textile	1744
5	Leather, shoes	569
6	Wood processing	578
7	Paper	12
8	Printing	40
9	Chemistry	23
10	Plastic	176
11	Rubber	27
12	Pesticides	3
13	Paint, glue	14
14	Cosmetics	12
15	Candle	27
16	Yarns	14
17	Pharmacy	12
18	Packaging	75
19	Glasses	17
20	Brick	16
21	Ceramics	19
22	Cement	6
23	Concrete	6
24	Mechanical	**419**
25	Electronic	252
26	Electricity	47
27	Jewellery	18
28	Other services	6
29	Construction	29
30	Commerce	9
31	Carriage	20
32	Telecommunication	4
33	Safety Insurance	3
34	Other industries	209
	Total	**4.682**

Source: Vietnam Ministry of Labor Invalids and Social Affairs (2019), Report on strike situation

APPENDIX IV

COLLECTIVE INDUSTRIAL ACTIONS IN ITALY BY GEOGRAPHICAL RELEVANCE (2004 - 2016)

Relevance/year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Individual firm	339	415	432	431	553	841	793	1347	1328	1506	1171	1409	1343	11,908
Inter-regional	23	80	54			4	2	2	10	7	18	8	18	226
Local		302	330	572	161	425	328	257	276	206	206	182	131	3376
National	466	480	329	299	283	297	335	269	266	351	351	288	298	4212
Provincial							93	82	119	86	86	94	37	603
Regional	365	195	120	166	100	238	248	293	340	206	206	203	288	3032
Territorial	241	367	262	259	393	156	254	57	61	42	42	73	65	2261
Not identified	479	49	148	304	736	19	27	8	3	11	11	13	8	1814
Total	1913	1888	1675	2031	2226	1980	2080	2315	2403	2091	2091	2270	2188	27,432
Total Mediation intervention (conciliation attempt)	553	642	540	634	595	553	639	666	504	382	382	334	435	6844
% of mediation	29	34	32	31	27	28	31	29	21	18	18	15	20	25

Source: Andrea Caputo and Giuseppe Valenza (2019), *Mediation and Conciliation in Collective Labor Conflicts in Italy*, in M. Euwema et al. (eds.), Mediation in Collective Labor Conflicts, Industrial Relations & Conflict Management, Springer Nature Switzerland AG, pp. 114

APPENDIX V

TOP 10 SECTORS OF COLLECTIVE INDUSTRIAL ACTIONS IN ITALY (2004 – 2016)

Sector/Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total	%
Local public transport	325	317	270	343	412	372	333	496	357	394	328	378	339	4664	17
Waste management	126	141	139	147	181	161	270	359	355	503	312	408	321	3423	12
Air transport	224	353	258	243	326	211	241	124	161	166	181	153	206	2847	10
Public administration (Region and local)	72	93	89	165	152	145	163	204	188	162	162	202	166	1963	7
Rail transport	179	82	131	180	212	178	139	166	176	116	141	113	137	1950	7
Facility management	24	35	88	85	128	153	167	193	245	181	184	243	221	1947	7
Mail services	140	141	76	136	98	102	43	73	92	40	89	55	85	1170	4
Telecommunications	96	99	54	74	81	78	65	71	75	82	59	59	109	1002	4
National health services	56	33	67	107	79	43	91	62	68	87	63	64	108	928	3
Private health services	40	41	50	37	41	65	55	73	68	44	45	53	81	693	3

Source: Andrea Caputo and Giuseppe Valenza (2019), *Mediation and Conciliation in Collective Labor Conflicts in Italy*, in M. Euwema et al. (eds.), Mediation in Collective Labor Conflicts, Industrial Relations & Conflict Management, Springer Nature Switzerland AG, pp. 116;