

**C.E.D.R.**



**European Council for Agricultural Law  
Comité Européen de Droit Rural (C.E.D.R.)  
Europäisches Agrarrechtskomitee**

**XXIV. European Congress and Colloquium of Agricultural  
Law – Caserta (Naples) – 26-29 September 2007**

**XXIVe Congrès et Colloque Européens de Droit Rural –  
Caserta (Naples) – 26-29 septembre 2007**

**XXIV. Europäischer Agrarrechtskongress mit Kolloquium –  
Caserta (Neapel) – 26.-29. September 2007**

**Commission II**

**National Report – Rapport national – Landesbericht  
Italie**

**Marianna Giuffrida**

**Prof., Dipartimento di Diritto privato e teoria del diritto, Facoltà di  
Giurisprudenza, Università degli studi di Messina**

# XXIV European Congress and Colloquium of Agricultural Law Caserta (Naples) – 26-29 September 2007

Organized by the European Council for Agricultural Law in collaboration with the  
Facoltà di studi politici alta formazione europea e mediterranea Jean Monnet and  
the Associazione Italiana Cultori di Diritto Agrario (A.I.C.D.A.)

## Commission II

### Jurisdiction and Alternative Dispute Resolution in Agriculture

**National Reporter:** Prof. Marianna Giuffrida, Dipartimento di Diritto privato e teoria del diritto,  
Facoltà di Giurisprudenza, Università degli studi di Messina, Italia.

1. In these last years, the alternative dispute resolution is eminently increasing. In the Italian legal system, the arbitration is regulated by the main principle of the voluntary agreement, on the application of the artt. 24, 1° p. e 102, 1° p., Cost. Only the parties, by means of an agreement, can decide to use this instrument, whereas the law maker can only plan arbitration outlines. The Arbitration general rules are in the art. 806 and followings of the c.p.c., as modified by the art.20, legislative decree of February 2<sup>nd</sup>, 2006, n.40. As a general rule, the parties can devolve to arbitrators all their disputes, except those ones on unavailable rights, except legal explicit prescription (art.806 c.p.c.). In particular, the Italian law distinguishes between ritual and no ritual arbitration. The first has the same effectiveness of the civil procedure while the second combines the transaction features and the civil procedure ones, among which is the cross-examination principle. Therefore, in the last case, the arbitration decision has the effectiveness of an agreement, as well as established by the article 808 *ter* c.p.c.

The Italian law submits to the Agricultural Specialized Sections at the Tribunals and the Courts of Appeal the exclusive competence for the disputes on the agricultural contracts. Therefore it's doubt if it's possible to use the arbitration for this kind of disputes. However, the Italian law admits the agreements in waiver (that are special agreements stipulated by the parties with the assistance of their national unions representatives) to the binding regulations about agricultural contracts, among which there is the one on the Agricultural Specialized Sections competence. So that the scholars deem that an agreement in waiver could contain an arbitration provision. This solution is supported by the consideration that the ritual arbitration is possible also when the Italian law submits to the administrative jurisdiction the exclusive competence about some subjective rights. Moreover available rights are regulated by the binding rules and that supports the solution, even for the great arbitration relevance, especially after the arbitration reform.

Abolished the distinction between national and international arbitration, the new article 832 c.p.c. authorizes that the parties, in their arbitration agreement, could refer to a predetermined arbitration regulation, such as the UNCITRAL outline or the Arbitration National Chamber outline. Until now, the main trouble of the arbitration was the high cost. This trouble is corrected by means of arbitration chambers at public bodies.

Instead, the Agricultural Ministry decree law of December 20<sup>th</sup>, 2006 has recently created, at the same Ministry, the Arbitration National Chamber and the Mediation Front Office, preserving their autonomy. The Arbitration National Chamber and the Mediation Front Office competence is determined both for matter and value. In fact, they can resolve the disputes about the effectiveness, the interpretation, the execution and the resolution of the relationships concerning the agricultural activity in which AGEA (the Italian paying

organism for the implementation of the Common Agricultural Policy) is the only public party and credits and obligations available for the parties. The parties can use the arbitration before the Arbitration National Chamber for the disputes with a value superior to 20.000 Euro and they can use the Mediation Front Office for the disputes with a value till 20.000 Euro. But the legislative decree of March 29<sup>nd</sup> 2004, n. 99, article 7, establishes that the parties can use the arbitration before the Arbitration National Chamber also for the disputes on the value of the “compendio unico”, that is the productive land minimum extension, or on its community and national aids.

The institution of a regulated arbitration, like that established by the Agricultural Ministry Decree law, is an important innovation in a sector, as agricultural one, in the past devolved upon ordinary jurisdiction. Once more, in fact, this instrument aims to prevent the long times of the Italian administration of justice which are an obstacle for a fast report to the EC. The Agricultural Ministry decree law, in fact, provides for 180 days at most from the arbitrators' settlement to the arbitration award. This term can be extended for other 180 days at most when it's necessary to acquire evidences and not exhibited documents.

The Agricultural Ministry Decree law provides both a Board of Arbitrators of three members, with one as President, and a single arbitrator if the parties set so. An arbitrators' list and a Presidents' list are kept by the Arbitration National Chamber. Lawyers and professors with a specific competence in community, administrative and civil law, administrative and accounting judges with an high qualification and state lawyers, managers of the Agricultural Ministry for ten years at least and graduated in law can be registered in the Arbitrators' and Presidents' lists. The single arbitrator is chosen by the Arbitration National Chamber, throughout draw, among the arbitrators registered in the Presidents' list, if the parties don't agree. In the case of a Board of arbitrators the private party freely can choose its own arbitrator while AGEA, the public party, must choose its own one among those ones registered in the arbitrators' list of the Arbitration National Chamber. The President is chosen in agreement by the other arbitrators and by the Arbitration National Chamber, throughout draw, among the arbitrators registered in the Presidents' list, if they disagree. The arbitrator must accept the appointment in writing and he mustn't accept the appointment if he has professional, business, consanguinity or affinity relationships with one of the parties or with a lawyer of the parties. The Agricultural Ministry decree law establishes a behaviour code for the arbitrators to secure their independence, neutrality, seriousness, dispassion and correctness, before during and after the procedure. If the arbitrator omits or retards his own carrying out, after ten days from the injunction, he is declared decayed by the Arbitration National Chamber.

The arbitrator is responsible for the harms caused to the parties in the following cases: if he has omitted or retarded his own carrying out with his own intent or with serious guilt; if he hasn't pronounced the award in the established terms; if he has behaved with his own intent or with serious guilt. In the case of the intent, the reparation is commensurated to the harm, in the other cases it can't pass the treble of the due bill.

The Arbitration National Chamber deals with the establishment of the Boards of arbitrators. The Secretary has an important role in the relationship between the Arbitration National Chamber and the Boards of arbitrators, considered the number of the potential disputes. Instead the Arbitration National Chamber is the subject that administers the procedure, without involvement in the single arbitration, with the exception of the expressly established cases and that ensures the uniformity and the coherence of the decision by means of the capillary information activity which it itself carries out toward the Boards of arbitrators, sharing the common rules and the already pronounced decisions.

The Board of Arbitrators sets, with a writ, the further terms for the exhibition of the subsequent potential acts and documents, other than the replications; the transmission modalities of the acts during the arbitration procedure; the allocation modalities of the bills

between the President and the Arbitrators; the potential arbitration suspension. The Board of Arbitrators sets the discussion date, too and it can dedicate one or more meetings to the preliminary investigation and it can pronounce the writs and fulfil the preliminary investigation acts, until the discussion. No meeting can be set in August and from 20<sup>th</sup> to 31<sup>st</sup> of December. In these periods the terms for the arbitration award pronouncement are suspended.

All the evidences established by the Italian legal system are admitted. The Board of Arbitrators can also enquire to the public administration about its own acts and documents to be acquired to the arbitration procedure. The Board of arbitrators is like the ordinary judges thanks to this rule.

To avoid the trouble of the high cost of the arbitration procedure, the Decree law establishes that the party that introduces the request must deposit a budget equal to 3% of the dispute value if it's lower than € 500.000,00 and for the surplus equal to 15 for two thousand. The lack of the deposit precludes the arbitration.

In contrast with the arbitration general rules, which allow the according to equity arbitration award, the decree provides only the according to law arbitration award.

In whichever moment before the end of the discussion, the Board of Arbitrators can do a mediation attempt and, if it is successful, it writes the minutes that the parties sign and the Board of Arbitrators orders them enforceable.

If in general we have a positive opinion on such regulated arbitration, however we criticize some rules of the regulation. In particular, the one according to which is possible to enclose to the application for the single payment scheme an irrevocable declaration of resorting to arbitration, inducing AGEA to put the arbitration provision in the application forms. This rule endangers the main principle of the voluntary arbitration, considered the predominant AGEA position in comparison to the simple farmers who can feel obliged to sign in fear of not having the community aid. The doubt is strengthened by the equivocal norm (art.17, 2° p, of the Agricultural Ministry Decree law) according to which wouldn't be necessary signing specifically the arbitration provision inserted in an act one-sidedness made by the proposer.

2. In relation to Statutory Tribunals, the Italian law submits to the Agricultural Specialized Sections at the Tribunals and the Courts of Appeal the exclusive competence for the disputes on the agricultural contracts. These judges aren't special ones but specialized ones. There aren't any particular problems for the implementation of these rules, even because after Nineties these disputes are decreased, when Italian law abolished a lot of agricultural contracts with the exception of the lands rented contract and the "soccida" contract (a kind of breeding contract). The procedure before these judges is very fast because it isn't the ordinary procedure but it's the one for the work disputes.
3. In the Italian law there isn't a figure comparable to the Independent Assessor who uses his expertise to decide the answer, determining the issue on his finding evidence for himself. In Italy there aren't any problems in practice with the lack of rules because the alternative dispute resolution, such as the mediation, and the arbitration are good alternatives to the ordinary jurisdiction.

4-4.3 The Italian law has been providing for a compulsory and out of civil procedure mediation attempt for the disputes on the agricultural contracts, since 1982. The compulsory mediation attempt realizes, in fact, a perfect interaction between the civil procedure and the mediation itself, as now the draft directive COM (2004) 718 wishes. If the mediation is successful, the minutes are written and the parties must fulfil them; if the mediation fails the minutes are written too and the parties are free of turning to ordinary jurisdiction to present the same claim presented in the mediation. The parties can't present new claims on the agricultural contracts without the mediation attempt. The fact of being obligatory of the attempt isn't in contrast with the Italian Constitutional principle, art.24, 1° c., according to which, everyone can arraign to defend its own rights and legitimate interests. It attends

like useful filter to ordinary jurisdiction. The parties are obliged to make the attempt and not to come to an agreement. So that the mediation doesn't avoid the access to the ordinary jurisdiction but it makes it potential (according to Article 3, p. 2<sup>nd</sup>, draft directive COM (2004) 718). Moreover the mediation quality is guaranteed both by the agricultural union representatives' involvement and by the selected mediator that is an extremely skilled organ.

The Agricultural Ministry decree law has recently provided for an out of civil procedure and voluntary mediation for the disputes about the effectiveness, the interpretation, the execution and the resolution of the relationships concerning the agricultural activity in which AGEA (the Italian paying organism for the implementation of the Common Agricultural Policy) is the only public party and credits and obligations available for the parties. The mediator is the Mediation Committee constituted by an AGEA representative and a CAA (Centro Assistenza Agricola=Agricultural Assistance Center) overseer or by a representative of the producers' associations and their national unions if community law provides in exclusive for these assignments, or by the involved party and by the Arbitration National Chamber Director or by his delegate. The mediation is cost-free. If it is successful, the minutes are written and the parties must fulfil them; if the mediation fails the parties can use the arbitration. The whole mediation must be completed within sixty days since the claim exhibition. The Decree law also provides for procedure adaptation to allow the on line utilization. The on line procedure is still a draft from which we can infer a single mediator to whom the parties refer their version of the facts. He is able to suggest a dispute solution.

- 4.4. However, the minutes aren't deposited and they aren't declared enforceable. So there isn't coherence with the art. 5, p. 1, draft directive COM (2004) 718. The attempt request interrupts the limitation period that begins to pass over again.
- 4.5. In the Italian legal system it's possible to find in the legislative decree of January 17<sup>th</sup> 2003, n.5, for the mediation procedures on the corporation law, a rule (art.40), as the article 6 of the draft directive COM (2004) 718, which establishes that the mediation procedure regulations, deposited by the Mediation Bodies at the Ministry of Pardon and Justice, must establish the procedure confidentiality. Moreover it establishes that if the mediation attempt fails the parties declarations, made during the mediation procedure, can be used neither in the subsequent civil procedure nor in a witness deposition. So that the mediator can't testify in a subsequent civil procedure. Instead the Agricultural Ministry decree law establishes nothing regarding this matter. But if the Mediation Committee has been constituted by an AGEA representative or by the involved party it's possible to apply the general rule which establishes that the people who have an interest to take part in the civil procedure can't testify.
5. The Agricultural Ministry Decree law provides that the arbitration agreement is able to exclude the request of review. If such provision lacks, the arbitration ordinary rules will be applied. They establish three kinds of request of review: for nullity, for retraction, for a third person's opposition. The immediate request of review of the decision that partially decides the dispute is also admitted. In every case the request of review is presented before the Court of appeal in whose district is the arbitration site, that is the Court of Appeal of Rome. The terms to put forward the claim are: if there isn't the notification of the arbitration award, within a year from the date of the last arbitrators' signing; if there is the notification, the appeal for nullity within 90 days from the notification whereas the appeals for retraction and for a third person's opposition within 30 days. There have been some problems about the identification of the competent judge about the review since when the Italian law has allowed the arbitration on the disputes submitted to the exclusive competence of the administrative judges. In fact, it's said, in this case the competence about the request of review of the arbitration decision should be submitted to the supreme administrative judge, allowing, at least, the Court of appeal competence only about the nullification of the arbitration award and not also about the matter of the dispute. Both the requests of review for nullity and for retraction cannot be renounced. Therefore they can

be introduced even when the arbitration agreement establishes that the arbitration decision can't be submitted to a request of review. The request of review for nullity can be introduced only for some predetermined cases: if the arbitration agreement isn't valid; if the arbitrators are appointed without compliance to the rules; if the arbitration decision was pronounced by a person who couldn't be an arbitrator; if the arbitration decision pronounced about issues not included in the arbitration agreement; if in the arbitration decision there isn't the also sketchy reasons exposition, the decision dictation (in Italy the decision is divided into three parts: the first, in which the facts are explained, the second in which there are the reasons of the decision; the third in which there is the effective decision. In Italy this last one is called "dispositivo" that we have translated with "decision dictation"), the information of the decision site and the all arbitrators' signatures; if the arbitration decision has been pronounced after the term-time; if the procedural rules established by the parties on pain of nullity aren't be observed; if the arbitration decision contrasts with an other arbitration decision or with a judge's decision that can't be re-examined ever more and that have been produced in the arbitration procedure; if the cross-examination principle hasn't been observed; if the arbitration decision doesn't decide the dispute; if the arbitration decision contains contradictory statements; if the arbitration decision doesn't state about the claims and the exceptions submitted by the parties according to the arbitration agreement. The request of review for the legal rules violation is always allowed both in the work disputes and in the ones on agricultural contracts and if the legal rules violation is about the solution of an issue to be decided out of the procedure and that can't be an object of an arbitration agreement. The procedure for the review is divided into two parts. In the first, the Court of appeal examines the arbitration decision and, if there is an established nullity case, it avoids arbitration decision; in the second, it examines the matter of the dispute and decide about it with the exception of a different parties provision in the arbitration agreement or in a subsequent one. But, if one of the parties resided abroad when the arbitration agreement was signed, the Court of appeal decides only if the parties set so. If the Court of appeal doesn't decide the matter of the dispute, the arbitration agreement will be applied except if the arbitration decision was avoided for validity or effectiveness lack of the arbitration agreement. Besides, the Court of appeal, on the party request, if there are serious reasons, can suspend the arbitration decision effectiveness. There isn't the second part of procedure if the arbitration decision has been avoided both for lack of arbitrators' powers and because it decided about a dispute on the parties unavailable rights. In this last case, the Court of appeal must refer the dispute before the competent judge.

The request of review for retraction can be presented: if the arbitration award is dependent on a party intent to other one detriment, if the procedure is based on some false evidences, if some decisive documents are found after the arbitration award and the party couldn't produce them in the procedure for a case of force majeure or for opponent fault; if the arbitration award is dependent on an arbitrator intent determined with a judge's decision that can't be re-examined ever more.

Finally, a third person can present the request of review known as "a third person's opposition" if the arbitration award penalizes his own rights.

## BIBLIOGRAPHY:

CONSOLO, *Arbitrato e pubblica amministrazione*, Milano, 1999, p.151 ss.

CONSOLO, *La riforma della giustizia amministrativa. La giurisdizione del giudice amministrativo si giustappone a quella del giudice "ordinario" e ne imita il processo*, in *Giust.Civ.*, 2000, II, p.536.

CONSOLO, *L'oscillante ruolo dell'arbitrato al crescere della giurisdizione esclusiva e nelle controversie sulle opere pubbliche (fra semi-obbligatorietà ed esigenze di più salde garanzie)*, in *Arbitrato e pubblica amministrazione*, Giuffrè, Milano, 1999, p.151 ss.

GIUFFRIDA M., *I contratti agrari tra inderogabilità delle norme ed autonomia privata*, Giuffrè, Milano, 1996, p.78 ss.

LUISO, *Diritto processuale civile. I processi speciali*, Milano, 2000, p.308-309.

MANDRIOLI, *Diritto processuale civile. I procedimenti speciali di cognizione e i giudizi arbitrali*, III, Giappichelli, Torino, 2006, p.385.

MINISTERO DELLE POLITICHE AGRICOLE ALIMENTARI E FORESTALI DIPARTIMENTO DELLE POLITICHE DI SVILUPPO, *Vademecum per la Camera arbitrale e lo sportello di conciliazione in agricoltura*, in [www.politicheagricole.it](http://www.politicheagricole.it), ed.provv.

PUNZI, *Disegno sistematico dell'arbitrato*, Padova, 2000, p.250 ss.

ROMANO TASSONE, *Lodo arbitrale ex art.6, l. n.205 del 2000 e giudice dell'impugnazione*, in *Foro amm.*, 2003, p.2276.

VERDE, *L'arbitrato e la giurisdizione ordinaria*, in VERDE. (a cura di), *Diritto dell'arbitrato rituale*, Giappichelli, Torino, 2000, p.33.

## Summary

1. In the Italian legal system, the arbitration is regulated by the main principle of the voluntary agreement. As a general rule, the parties can devolve to arbitrators all their disputes, except those ones on unavailable rights, except legal explicit prescription. The Italian law distinguishes between ritual and no ritual arbitration for their different effectiveness. It gives to the Agricultural Specialized Sections at the Tribunals and the Courts of Appeal the exclusive competence for the disputes on the agricultural contracts. Therefore it's doubtful if it's possible to use the arbitration for this kind of disputes. Abolished the distinction between national and international arbitration, the new article 832 c.p.c. authorizes that the parties, in their arbitration agreement, could refer to a predetermined arbitration regulation. Until now, the main trouble of the arbitration was the high cost. This trouble is corrected by means of arbitration chambers at public bodies. Instead, the Agricultural Ministry decree law of December 20<sup>th</sup>, 2006 has recently created, at the same Ministry, the Arbitration National Chamber and the Mediation Front Office for the disputes in which AGEA (the Italian paying organism for the implementation of the Common Agricultural Policy) is the only public party. Their competence is determined both for matter and value. The institution of a regulated arbitration, like that established by the Agricultural Ministry Decree law, aims to prevent the long times of the Italian administration of justice. The decree provides only the according to law arbitration award in contrast with the arbitration general rules, which allow the according to equity arbitration award.
2. In relation to Statutory Tribunals, the Italian law submits to the Agricultural Specialized Sections at the Tribunals and the Courts of Appeal the exclusive competence for the disputes on the agricultural contracts. These judges aren't special ones but specialized ones. There aren't any particular problems for the implementation of these rules.
3. In the Italian law there isn't a figure comparable to the Independent Assessor who uses his expertise to decide the answer, determining the issue on his finding evidence for himself. In Italy there aren't any problems in practice with the lack of rules because the alternative dispute resolution, such as the mediation, and the arbitration are good alternatives to the ordinary jurisdiction.
4. The Italian law has been providing for a compulsory and out of procedure mediation attempt for the disputes on the agricultural contracts, since 1982. The compulsory mediation attempt realizes, in fact, a perfect interaction between the civil procedure and the mediation itself, as the draft directive COM (2004) 718 now wishes. The Agricultural Ministry decree law has recently provided for an out of procedure and voluntary mediation attempt for the disputes in which AGEA (the Italian paying organism for the implementation of the Common Agricultural Policy) is the only public party. In the Italian law there is a specific rule, as the article 6 of the draft directive COM (2004) 718, for the mediation procedures on the corporation law, while it lacks in the Agricultural Ministry Decree law.
5. The Agricultural Ministry Decree law provides that the arbitration agreement is able to exclude the request of review. If such provision lacks, the arbitration ordinary rules will be applied. They establish three kinds of request of review: for nullity, for retraction, for a third person's opposition.