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Italy: Litigation Dispute Resolution Comparative Guide

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1 Legal framework

1.1 What system of jurisprudence applies in your jurisdiction? What implications does this have for litigation?

The legal system used in Italy is the civil law system. It is based on written law and recognises the decisive role of the law from a legislative-parliamentary viewpoint, and also in terms of the judicial function.

The founding principles of this system are laid down in codes.

This model of law is general and abstract. The laws do not analyse concrete facts, but rather govern general scenarios from which individual cases must be extrapolated by way of interpretation.

1.2 What rules govern litigation in your jurisdiction?

In the Italian legal system, litigation is governed by the procedural codes.

Ordinary civil proceedings are commenced with the issue of a writ of summons. It is not obligatory to include the evidence to be presented in the writ of summons; this can be provided later, when the court sets the date for the parties to file their pleadings. In the pleadings, which should be filed at the time the proceedings commence, it is possible to respond to the other party and to ask the court for evidence.

With regard to the Code of Criminal Procedure, the procedural system in Italy is a mixed system, which tends to be adversarial. The investigation stage of the proceedings mainly involves questioning, as it takes place in private and is conducted by a judge. The trial is mainly adversarial, as it is based on debate between the parties.

1.3 Do any special regimes apply to specific claims?

Under civil law, there are various types of special proceedings, such as:

- summary proceedings;
- precautionary and possession proceedings;
- proceedings in court chambers;
- employment proceedings;
- corporate proceedings; and
- divorce proceedings.

In criminal law, proceedings are sometimes treated as special, as one or more procedural phases are omitted – either the preliminary hearing, the trial or both. These types of proceedings are:

- the accelerated procedure (no hearing);
- imposition of punishment at the request of the parties, known as 'plea bargaining' (no hearing);
- immediate trial (no preliminary hearing);
- summary judgment (no preliminary hearing); and
- proceedings by decree (no preliminary hearing or main hearing).

1.4 Which bilateral and multilateral instruments have relevance to litigation in your jurisdiction?

In civil law, Law 18 of 31 May 1995 is very important, as it sets out the provisions that govern international private law. Article 1 of this law:

- determines the scope of the Italian jurisdiction;
- sets out the criteria for identifying the applicable law; and
- governs the efficacy of foreign court rulings and documents.

Other important regulations include:

- the Brussels Ia Regulation (1215/2012) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- the Brussels IIa Regulation (2201/2003) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;
- the Rome I Regulation (593/2008) on the law applicable to contractual obligations;
- the Rome II Regulation (864/2007) on the law applicable to non-contractual obligations;
- Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;
- the Rome III Regulation (1259/2010) on the law applicable to divorce and separation;
- Regulation 650/2012 on jurisdiction, the applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession;
- Regulation 2016/1103 on jurisdiction, the applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; and
- Regulation 2016/1104 on jurisdiction, the applicable law, recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

2 Judicial structure

2.1 What courts exist in your jurisdiction and how are they structured?

The civil judicial system is structured as follows.

Courts of first instance and courts of appeal: The lower courts (magistrates) are presided over by lay judges with competence to hear pre-determined minor cases. The court sits as a single judge for less complex cases and as a bench for more serious cases.

The courts of appeal review the decisions of the courts of first instance.

The courts of first instance and of appeal are divided into districts and have jurisdiction over disputes in accordance with the relevant provisions of law.

Supreme Court of Cassation and Constitutional Court: The Court of Cassation mainly reviews the rulings of the courts of appeal. It reviews only the correct application of the law and not the facts of the case. The Constitutional Court rules on matters relating to the constitutional cohesion of laws. The Court of Cassation and the Constitutional Court are based in Rome.

Criminal law: In criminal law, the structure is similar. The difference is the Court of Assizes, which deals with more serious cases (eg, murder and terrorism) and is presided over by professional judges at the first level.

The courts of appeal reviews decisions of the courts of first instance.

The Assizes Court of Appeal reviews decisions of the Court of Assizes.

2.2 What specialist courts or tribunals exist in your jurisdiction?

The Italian Constitution prohibits the establishment of new extraordinary or special courts. However, there are specialised divisions for specific matters, which may be established within the ordinary judicial bodies. For example, the company courts have jurisdiction over commercial matters and disputes involving IP rights. Another specialised court is the High Court of Public Waters, which has jurisdiction over disputes pertaining to matters of public water.

Other special courts provided for by the Constitution include:

- the State Court of Auditors;
- military tribunals;
- administrative courts of first instance; and
- the administrative court of appeal, which is the Council of State.

3 Pre-litigation

3.1 What formalities apply before litigation can be commenced in your jurisdiction?

Mediation is obligatory in certain cases under Article 5, paragraph 1 a of Legislative Decree 28/2010. These involve disputes relating to matters such as:

- condominiums;
- inheritance;

- family agreements;
- tenancies;
- child custody;
- business leases; and
- medical negligence.

In such cases, a request for mediation is a prerequisite for the commencement of proceedings.

An invitation to attend assisted negotiation must precede the application to court in cases involving:

- an action for compensation for damages caused by boating or ship accidents, regardless of value – in this case the invitation to negotiate replaces the invitation to mediate; or
- a claim for payment (on any grounds) of a cash sum of up to €50,000 – in this case the invitation to negotiate is obligatory only if the dispute does not involve any of the matters for which mediation is obligatory.

3.2 Do any pre-action protocols or similar rules apply prior to the commencement of litigation? What are the consequences of non-compliance?

Pre-action conduct and protocols such as those found in English-speaking countries do not apply in Italy.

However, certain practices must be followed that relate more than anything else to fairness. For example, in civil law, before going to court to claim a sum of cash, the performance of a contract or another type of performance, a letter will usually be sent by a lawyer formally requesting payment or performance within 15 days. If this period elapses to no avail, the matter will be referred to the competent courts. This is similar to a letter of complaint; but in Italy, as this is an extra-judicial act, it is not a prerequisite for the proceedings. However, the court may take it into account later in the proceedings – for example, when assessing the procedural conduct of the parties in the payment of legal costs.

3.3 What other factors should a party consider before commencing litigation in your jurisdiction?

Litigation in Italy can last for a long time, with all the costs that this entails. Therefore, procedures such as mediation and negotiation have been introduced, in order to encourage people to use alternatives to court proceedings.

4 Commencing litigation

4.1 What rules on limitations periods apply in your jurisdiction?

Under Italian law, there are two separate concepts relating to limitation periods:

- Forfeiture is the means by which the legal system extinguishes the rights of the rights holder if it does not exercise them within the term prescribed by law (Articles 2934 *et seq* of the Civil Code); and
- Time barring is the loss of the possibility to exercise a right due to failure to exercise it within a mandatory period (Article 2964 of the Civil Code).

These concepts are very similar in practical terms, but not on a legal level. Time barring is determined only by the law, while forfeiture may also be the result of an agreement between two parties. Typical examples include:

- the period within which defective consumer goods must be disputed (two months after discovery, for forfeiture); and
- the period within which that right may be exercised, perhaps by bringing legal proceedings (two years after purchase, for time-barring).

Neither time-barring nor forfeiture can be determined by the court. This means that the expiry of the limitation period must be actively disputed (either in person or through a lawyer) without expecting the court to acknowledge the fact. Time-barring and forfeiture are factors to be considered immediately, either when the party intends to exercise a right or when performance is required (eg, fines, bills). In this context, it should be remembered that payment precludes the possibility of objecting to the limitation period.

4.2 What rules on jurisdiction and how this is determined apply in your jurisdiction?

Civil jurisdiction is determined according to the relevant criteria, value and territory, based on the state of affairs at the time the claim is made.

If a party wishes to resolve a dispute in court, in order to protect its rights, it must identify the court with competence to hear the case. In this regard, the legal system sets out the criteria that determine the competence of a civil court: the object, the value of the dispute and the territory.

In this sense, competence is part of jurisdiction, as it identifies the degree of competence exercised by the various ordinary courts under Article 1 of the Code of Civil Procedure.

Civil jurisdiction and competence are both determined with reference to the current law and the state of affairs at the time the claim is made (Article 5 of the Code of Civil Procedure).

In criminal law, territorial competence is determined based on the place at which the crime was committed. If the crime resulted in the death of one or more people, the court with competence is that of the place at which the act or omission occurred. In the case of an ongoing crime, the court of the place at which the crime was committed has competence. In the case of an attempted crime, the court of the place at which the last action aimed at committing the crime took place has competence.

4.3 Are class actions permitted in your jurisdiction?

Following reforms introduced in 2019, since October 2020 the class action has been governed not by the Consumer Code as previously, but rather by the Code of Civil Procedure, to which Title VIII-*bis* of Book IV on class actions was introduced. The reforms have strengthened the instrument of class action. In particular, its scope of application has been extended, both subjectively and objectively – in other words, in terms of both the people who can avail of a class action and the legal situations that can be brought to court.

It is now possible to launch a class action in order to protect subjective situations that arise as a result of harmful behaviours to verify liability and obtain a conviction for compensation for damages and restitution.

The class action is launched against the perpetrators – which may be companies or the managers of public services or public utilities – for actions and behaviours adopted in the exercise of their activities. The provisions on actions against the public authorities and public agencies are not affected.

4.4 What are the formal requirements for commencing litigation?

The first formal requirement to commence legal proceedings is to have the right to take legal action. Procedural standing is the procedural equivalent of the capacity to act at a substantive level. It encompasses the capacity:

- to validly exercise a subjective position which is defined by law for the parties to legal proceedings; and
- capacity to validly carry out the procedural acts that the law requires of the parties (eg, responding to formal questions and signing procedural documents).

Usually, for natural persons, this right is acquired at the legal age of consent.

Another important formal requirement is that the party taking action must know that it bears the burden of proof. Distribution of the burden of proof is the basic rule for identifying the party that must prove the facts of the case, in order to allow the court to take a decision and issue a ruling accordingly. As a general rule, anyone that attempts to enforce a right in legal proceedings must prove the facts on which the proceedings are based. This means, for example, that when a plaintiff claims in court that the defendant is in breach of contract, the plaintiff must prove the existence of the contract in order to obtain full performance or termination of the contract.

4.5 What are the procedural and substantive requirements for commencing litigation?

One of the most important procedural requirements in the service of legal process is the writ of summons.

This is an act of procedural law whereby the plaintiff files the document that starts the proceedings. It is served in writing and has the dual function of:

- summonsing the party on which it is served to court; and
- formally asking the court to protect a certain subjective legal situation.

It applies in almost all legal systems in the world.

In the Italian system, the writ of summons, as provided for and governed by Article 163 of the Code of Civil Procedure, is the document that normally initiates civil proceedings. The writ of summons must be drafted in Italian. Unless the party is authorised to self-represent, the writ of summons must be deposited in writing and signed by a lawyer who is qualified to defend the party before the court in question. The service of a writ of summons usually has a dual effect, because it is addressed to two different parties: the defendant and the court. It is brought to the knowledge of the defendant following service by a court bailiff. It is brought to the knowledge of the court with the notice of listing of the case and when the party bundles are deposited at the court registry. The depositing of the party bundles at the court registry is a specific procedural activity known as ‘filing an appearance'.

4.6 Are interim remedies available in your jurisdiction? If so, how are they obtained?

In the Italian system, an interim order is a provisional remedy. An interim order is an order made by the court, which imposes a measure that in some way anticipates the final decision or prevents the final decision from being useless when made. In essence, an interim order is applied.

An interim order is an order through which the court, having assessed the circumstances, imposes the most appropriate measure. An interim order is an actual decision taken by the civil, criminal or administrative court on the basis of the information available to it, and may be upheld or completely disavowed by the final decision.

Regardless of the type of procedure in which the application is made, an interim order requires the fulfilment various conditions, which are normally indicated by two Latin phrases:

- *fumus boni iuris* (grounds for establishing a *prima facie* case); and
- *periculum in mora* (danger in delay).

4.7 Under what circumstances must security for costs be provided?

The Italian legal system provides for the 'single fee' (*contributo unificato*), rather than security for costs. This is a sum, predetermined by law based on the value of the dispute, which the plaintiff must pay in order to list the case at court. The single fee is a tax which has replaced the revenue stamp on legal documents, the registration tax, court registry fees and bailiffs' service fees.

5 Disclosure

5.1 What rules apply to disclosure in your jurisdiction? Do any exceptions apply to certain types of documents?

There is no concept of disclosure in Italy and thus the parties have no prior obligation to produce documents or evidence on request.

This applies both in civil proceedings and (all the more so) in criminal proceedings. In both cases there are specific periods within which the parties can decide whether to file a certain document, under penalty of not being able to use it subsequently if they fail to do so.

However, not all documents can be used as evidence in the proceedings. For example, Article 191 of the Code of Criminal Procedure stipulates that documents obtained in breach of prohibitions imposed by law cannot be used as evidence.

Although there is no specific provision to this effect in the Civil Code, case law has established that evidence that has been fraudulently removed from the adverse party which was in possession of that evidence cannot be used in any case.

5.2 What rules on third-party disclosure apply in your jurisdiction?

Not applicable, as this concept does not exist in the Italian legal system.

5.3 What rules on privilege apply in your jurisdiction? Does attorney-client privilege extend to in-house counsel?

In Italian law, professional secrecy is governed by Article 200 of the Code of Criminal Procedure, which states that the following persons:

> *may not be obligated to make a statement on what they have known by virtue of their ministry, office or profession except in cases where they are obligated to report to the court:*
>
> 1. *ministers of religious orders whose statutes do not conflict with Italian law;*
> 2. *lawyers, licensed private investigators, technical experts and notaries public;*
> 3. *doctors, surgeons, pharmacists, midwives and any other person exercising a public health profession;*
> 4. *persons exercising other offices or professions who have the legal right to refrain from making a statement, determined by professional secrecy.*

This provision is also referred to verbatim in the Civil Code, by Article 249 of the Code of Civil Procedure.

5.4 How have technological advances affected the disclosure process in your jurisdiction?

Not applicable, as this concept does not exist in the Italian legal system.

5.5 What specific considerations should be borne in mind during the disclosure process, for both plaintiff and defendant?

Not applicable, as this concept does not exist in the Italian legal system.

6 Evidence

6.1 What types of evidence are permissible in your jurisdiction?

In criminal proceedings, a distinction is drawn between:

- typical evidence – that is, evidence which is expressly laid down in the law and which includes "witness testimony, examination of the parties, discussions, acts of recognition, reconstructions of events, technical experts' reports and documents"; and
- atypical evidence, which is not governed by the law.

In accordance with Article 189 of the Code of Civil Procedure, the court may accept atypical evidence if it can be used to ascertain the facts and does not prejudice the moral freedom of the individual, in accordance with the prohibition laid down in Article 188 of the Code of Criminal Procedure.

However, in civil proceedings, only typical evidence is expressly laid down in law.

There are two categories of typical evidence:

- oral evidence, which includes confessions, formal interrogatories, oaths and witness testimonies; and
- documentary evidence, which includes digital documents, private deeds, certified private deeds and public deeds.

With reference to atypical evidence, there is no general provision such as that in Article 189 of the Code of Criminal Procedure, which expressly authorises admissibility. However, it has been held in case law that the list of evidence indicated in the code is not mandatory. This means that atypical evidence can also be admitted in civil proceedings through debate between the parties, using the instrument of disclosure of documents, and in accordance with the pre-trial evidence measures.

The evidentiary effect of such evidence is that of mere presumption, as governed by Article 2729 of the Civil Code, or evidentiary argument.

6.2 What rules apply to expert evidence in your jurisdiction? What specific considerations should be borne in mind when preparing and presenting expert evidence?

Here again, criminal and civil proceedings have their own peculiarities.

Criminal proceedings: In criminal proceedings, the judge may order an expert report if this is necessary to carry out investigations or to obtain information or assessments that require specific technical, scientific or artistic expertise. However, in discovery proceedings, expert psychological or criminological evidence is not admitted.

The expert will be selected from a list of court-registered experts or will be a person with particular expertise in the specific subject area. The performance of the expert's instructions is governed by Articles 220 and following of the Code of Criminal Procedure. The expert must carry out these instructions unless one of the reasons for abstention exists, as provided for in Article 36 of the Code of Criminal Procedure (Article 221, paragraph 3 of the Code of Criminal Procedure).

The expert must attend the court hearing to confirm the instructions and agree to respect the truth in fulfilling his or her mandate (Article 226, paragraph 1 of the Code of Criminal Procedure). Giving false expert evidence is a crime that is punishable by imprisonment for between two and six years).

The parties may in any case appoint their own technical experts.

Civil proceedings: In civil proceedings, the expert is more correctly referred to as the ‘court-appointed expert'. As established in Article 61 of the Code of Civil Procedure, the court may be assisted by one or more experts with particular technical competence, as necessary for individual acts or even for the whole of the proceedings. Court-appointed experts are usually selected from a list of court-registered experts. This list is drawn up in accordance with the provisions of the enacting terms of the procedural code. The parties can then appoint their own party experts, whose role is to oversee the work of the court-appointed expert and to assist him or her by presenting different points of view on the technical issues under discussion. The court-appointed expert must ensure the effective participation of the parties during the expert procedure. As in criminal proceedings, he or she must follow the principle of truth in preparing the report.

6.3 What other factors should be borne in mind when preparing and presenting evidence in your jurisdiction?

There are many aspects to be considered when deciding whether to produce evidence.

For example, among the many factors to consider, Article 188 of the Code of Criminal Procedure provides that, even with the consent of the interested party, it is not possible to use any method or technique that could influence freedom of self-determination or the capacity to remember and evaluate the facts.

In addition, the evidence must not be prohibited by law; nor may it be manifestly superfluous or irrelevant.

However, in civil proceedings, although civil law generally leaves a broad margin of discretion to the court, there are a number of limitations on the acceptance of witness evidence, as established in Articles 2721 and following of the code.

The first type of limit on the admissibility of evidence is value, as laid down in Article 271, paragraph 1 of the Civil Code, which excludes the evidence if the value of the object of the contract is more than €2.58. However, this provision is mitigated by Article 271, paragraph 2, which allows the court to admit evidence above that limit "taking into account the quality of the parties, the nature of the contract and any other circumstances".

Furthermore, witness evidence is not permitted "if it relates to additional clauses or clauses that conflict with the contents of a document shown to be stipulated earlier or simultaneously" (see Article 2722 of the Civil Code). Once again, in this case the rule is not absolute, but provides for exceptions.

7 Court proceedings

7.1 What case management powers do the courts have in your jurisdiction?

In criminal and civil proceedings, the court has full powers of case management – for example, with regard to matters such as:

- whether to admit evidence;
- the dates of adjournment; and
- the admission of certain parties to the proceedings.

The limits of this discretion are always laid down by law.

7.2 Are court proceedings in your jurisdiction public or private? If the former, are any options available to the parties to keep the proceedings or related information confidential?

Articles 471 and following of the Code of Criminal Procedure and Article 127 of the Code of Civil Procedure provide that anyone can attend criminal and civil hearings, which are public under penalty of invalidity, except where the court orders a hearing behind closed doors or in cases that are conducted as court-chamber proceedings (ie, only in the presence of the parties to the case).

In certain cases, there are exceptions that guarantee the confidentiality of certain documents or information.

In practice, however, civil hearings are conducted in the sole presence of the parties to the case.

7.3 How is the applicable law determined? What happens in the event of a conflict of laws?

In criminal proceedings, a person is governed by Italian law for all crimes committed on Italian soil. In some specific cases, an Italian national or foreign national who has committed a series of crimes abroad may also be prosecuted. The principle of *tempus commissi delicti* (the time when the offence was committed) also applies, whereby a person will be answerable for crimes existing at the time when a certain action was taken, unless that action has subsequently been decriminalised.

In civil proceedings, under Article 5 of the Code of Civil Procedure, jurisdiction and competence are determined on the basis of the law in force and the state of affairs at the time the claim was made. Subsequent changes in the law or in that state of affairs are not relevant in this respect. If the parties disagree about the law to be applied, the court has competence to make this decision.

7.4 What rules apply to the joinder of third parties?

Civil proceedings are not necessarily conducted between the original parties (ie, the plaintiff and defendant) only; it is always possible for a third party to join the proceedings, either on its own initiative or because it is summonsed at the request of a party or on the orders of the court. The voluntary intervention of a third party is governed by Articles 105 and 267 of the Code of Civil Procedure. On the basis of those provisions, anyone can join proceedings which are pending between other parties if it wishes to enforce against one or more persons a right that pertains to or depends on the rights being claimed in the case. The third party may join the proceedings at the request of a party under Article 106 of the Code of Civil Procedure. The parties may summons a third party which they consider to be involved in the case or by which they expect to be guaranteed.

When summonsing a third party, several procedural rules must be respected:

- A defendant that intends to summon a third party must state this in the acknowledgement of service and reply, under penalty of invalidity. At the same time, it must ask the investigating judge to change the date of the first hearing to allow the third-party notice to be served, in accordance with the terms of Article 163a of the Code of Civil Procedure.
- The plaintiff may also have an interest in summonsing a third party, in the wake of the defence arguments made by the defendant in its reply. In such case the plaintiff must, under penalty of forfeiture, ask the court at the first hearing for authorisation to serve the third-party notice.

Finally, the third party may join the proceedings if this is ordered by the court. This scenario, which is governed by Article 107 of the Code of Civil Procedure, essentially arises when the relationship with the third party interferes with the relationship that constitutes the subject of the proceedings. The peculiarity of this type of notice is that it is not made directly by the court; instead, the court orders one of the parties to serve it. If the ordered party does not do so, the court will order the case to be struck off the list pursuant to Article 270 of the Code of Civil Procedure.

7.5 How do the court proceedings unfold in your jurisdiction? What specific considerations should be borne in mind at each stage of the process, for both plaintiff and defendant?

In Italy, when we speak of 'plaintiff' and 'defendant', we are referring exclusively to civil proceedings.

Generally, the proceedings consist of three stages:

- the pre-hearing stage;
- the hearing; and
- the decision.

There are two opposing parties (plaintiff and defendant).

Except in those cases expressly provided for by law, the parties may not self-represent; they must instead engage the services of a lawyer through a formal letter of appointment.

Particular attention must be given to the terms of procedure established in law, as they are almost always mandatory – for example, in relation to:

- the filing of the parties' appearances;
- the admission of evidence; and
- the raising of objections.

The parties always have the option to appeal a ruling by a court of first instance. In specific cases, they can appeal to the Court of Cassation against rulings of the Court of Appeal. Two important things that the parties must bear in mind before taking action are the costs and the duration.

7.6 What is the typical timeframe for the court proceedings?

Looking at the last available data (from 2016), civil proceedings have an average duration of 18 months at first instance.

However, the proceedings may last more than eight years if the parties apply to all three levels of jurisdiction – the court of first instance, the Court of Appeal and the Court of Cassation.

In criminal proceedings, it takes on average almost one year for the first trial to be held. The proceedings take

approximately four years if the parties decide to apply not only to the Court of Appeal, but also to the Court of Cassation.

8 Judgment and remedies

8.1 What types of judgments, orders and other remedies are available in your jurisdiction?

Under Italian law, different types of orders can be made by a court. These orders have their source in:

- the Code of Civil Procedure – specifically in Articles 131 and following; and
- the Code of Criminal Procedure – specifically in Title II, Article 125, which is headed "Forms of order made by the judge".

These provisions make clear that in the Italian legal system, the court is not limited to making one type of order – the judgment – but rather has the power to decide on matters using other forms of order, such as a procedural order, an *ex parte* order or an order made without notice.

During the course of the proceedings, these three categories take on a different form, value and content. A judgment – which is the typical order made by the court – may take the form of an acquittal order, a conviction or a judgment on the merits or on procedure; and it is final.

On the contrary, a procedural order relates only to a procedural matter and does not close the proceedings, precisely because it is not definitive. This type of order is necessary to allow the judge to decide on a certain matter, such as the upholding of an interim measure; but it does not define the guilt or innocence of the accused party.

Finally, an order made without notice is quicker to obtain and is generally used to order the execution of a specific act or an action that affects the entire proceedings, such as an injunction order.

9 Appeals

9.1 On what grounds may a judgment be appealed in your jurisdiction?

An appeal can be filed for any reason and therefore the law does not indicate the errors in the judgment which may be appealed; this is why the appeal must have grounds. The statement of grounds must contain, under penalty of inadmissibility (as governed by Article 342 of the Code of Civil Procedure):

- details of the parties to the order which is being appealed;
- details of the requested amendments to the reconstruction of events made by the court of first instance; and
- an indication of the circumstances from which the violation of the law derived and their relevance for the purposes of the appealed decision.

This obligation must be balanced against the prohibition on making new claims. The appeal court must decide on the same matters that were raised at the first level and thus the following claims may not be made:

- new claims; and
- new pleas (not made *ex officio*).

Given that there is a prohibition on introducing new facts, on the other hand, it is possible to file claims relating to:

- interest that arose after the appealed judgment was issued;

- income that accrued after the appealed judgment was issued;
- ancillary costs that arose after the appealed judgment was issued;
- compensation for losses suffered after the appealed judgment was issued; and
- any pleas which are made *ex officio*.

9.2 What is the appeals process? Is the judgment stayed while the appeal is pending?

The appeal is a remedy which:

- is ordinary and can be made only against a judgment that has not become definitive;
- is on the merits, as it is aimed at reassessing the facts of the dispute and criticising points of law;
- can be made for any reason, as the accepted grounds are not specified by the legislature; and
- is partially devolved, as it gives the appeal court limited cognisance of the points and sections affected by the grounds.

This process is specifically governed by Title II of Book IX of the Code of Criminal Procedure, in Articles 593 to 605.

As the first-instance judgment is already enforceable, the mere lodging of an appeal does not suspend the efficacy of the first-instance judgment, which can thus be enforced provisionally. However, a judgment may be suspended by the appeal court at the request of the appellant, which must, for that purpose, make an express request in the writ of summons, failing which it will be invalid.

9.3 What specific considerations should be borne in mind during the appeals process, for both plaintiff and defendant?

In Judgment 699 of 18 January 2016, the Court of Cassation determined that the appellant always acts as plaintiff in the appeal proceedings. The appellant must:

- identify the court with competence for the second level of the proceedings;
- draft the notice of appeal in the same way as the writ of summons; and
- serve the appealed judgment.

It must file an appearance within 10 days of service of the writ of summons on the respondent. That party is also responsible for proving the foundation of the grounds of appeal. Consequently, the appellant is responsible for producing – or for reproducing in the appeal, if already produced at the first level – the documents on which its appeal is based.

Following the plaintiff's actions, the defendant will reply to the writ of summons served by the adverse party. The reply to the notice of appeal, which is known as the first statement of defence, must:

- contain all the defence arguments and a statement of position regarding the facts stated by the plaintiff in support of the claim; and
- indicate the evidence that the defendant intends to use and the documents to be produced.

The defendant must then formulate the requests to the court and the type of order sought, and propose any counterclaims as well as pleas on procedural matters and on the merits.

10 Enforcement

10.1 How are domestic judgments enforced in your jurisdiction?

Judgments issued at the end of the first level of the proceedings may take effect before they become final. Article 282 of the Code of Civil Procedure provides that first-instance judgments are provisionally enforceable on the parties. This means that the losing party is obliged to respect the order or conviction handed down by the court; if it fails to do so, it may face compulsory enforcement even if it decides to file an appeal and the case will continue to the next level. In material terms, enforcement does not take place automatically after publication of the judgment. The party that won the case must obtain a stamp from the registry at the court that issued the judgment, requesting an enforceable form of order. It is only when the enforceable version has been stamped that the judgment becomes enforceable.

10.2 How are foreign judgments enforced in your jurisdiction?

Under Article 64 of Law 218 of 31 May 1995 (reforms to the Italian system of international private law), foreign judgements made by an EU member state are recognised in Italy without the need for recourse to any proceedings where the following criteria are met:

- The court that made the order could have had knowledge of the case according to the principles on jurisdiction of Italian law;
- The introductory claim in the proceedings was made known to the defendant in accordance with the laws of the place where the proceedings were conducted and there was no breach of the essential rights of defence;
- The parties filed an appearance in the proceedings in accordance with the law of the place where the proceedings were conducted or their non-appearance was declared in accordance with the same law;
- The judgment was made final in accordance with the law of the place where it was made;
- The judgment does not conflict with another definitive order made by an Italian court;

- There are no proceedings pending before an Italian court in relation to the same matter between the same parties which started before the foreign proceedings; and
- The provisions of the judgment do not produce effects that conflict with public order.

According to Article 65 of Law 218 of 31 May 1995: "Foreign rulings relating to individual capacity, the existence of family relations or rights of the individual also take effect in Italy when they are made by the authorities of the State whose law is referred to by the provisions of this law or produce effects in the legal system of that State, even if made by the authority of another State, provided that they do not conflict with public order and that essential rights of defence have been respected."

10.3 What specific considerations should be borne in mind during the enforcement process, for both plaintiff and defendant?

Although there are various iterations of the enforcement process, all of the various types of proceedings share some common characteristics. First, in the enforcement process, there is no investigation stage. In such proceedings there is also no adversarial discussion phase, and thus the debtor which is made subject to the enforcement is made party to the proceedings only if it files an objection. If this occurs, separate discovery proceedings will begin. Another specific feature of the enforcement process is that it is non-exclusive, in the sense that the same property can form the subject of various actions. In addition, both plaintiff and defendant must remember that all enforcement procedures require enforceable title. Finally, the following principles must be observed:

- the principle of the claim;
- the principle of will upon parties request; and
- the principle of availability.

11 Costs, fees and funding

11.1 What costs and fees are incurred when litigating in your jurisdiction?

The costs to be considered before commencing legal proceedings are the costs incurred in bringing the case to court. These will depend on the value of the case itself: the higher the value, the higher the fee payable to the court.

In addition to the procedural costs, it is necessary to consider the lawyers' fees or legal expenses; these must be proportionate to the nature and amount of services rendered. However, the winning party in civil proceedings may be reimbursed and paid by the losing party. Other costs to be considered include the costs of the technical experts and party experts, as well as the cost of documents, copies, travel and so on.

11.2 Are contingency fees and similar arrangements permitted in your jurisdiction?

Yes, contingency fees are permitted in Italy and have become common in recent years, in the form of written agreements that tie the lawyers' fee to the outcome of the case. In order to expand their client base, smaller law firms sometimes use this method, whereby the fee is paid only at the end of the case based on an estimate that the law firm gave to the client. According to the latest provisions from 2014, there are doubts about the legitimacy of this method where the amount is in proportion to the future compensation or value of the disputed asset.

11.3 Is third-party funding permitted in your jurisdiction?

This type of funding is not laid down the Italian Code of Civil Procedure. However, it can be said to be an atypical form of contract, according to Article 1322 of the Civil Code. In recent years, Italy has seen an increase in the number of investment funds involved in national and international arbitration proceedings, claims compensation, debt recovery proceedings and foreign enforcement of court judgments.

11.4 What other strategies should parties consider to mitigate the costs of litigation?

In general, legal costs may not be reduced or mitigated. For this reason, it is necessary to consider this carefully before starting proceedings, and if possible to avail of alternative methods such as an amicable agreement or mediation.

12 Trends and predictions

12.1 How would you describe the current litigation landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Compared to its counterparts in other EU countries, the Italian legal system is characterised by much longer timeframes for civil proceedings and by significant costs. In 2020, due to the COVID-19 emergency, new technologies such as videoconferencing began to be used for court hearings.

Over the next few years, the number of legal disputes in Italy will probably increase, involving matters arising from technological advances and the use of social media, as well as privacy and data protection. Every day, new cases of civil liability are arising in the field of information technology (eg, artificial intelligence, blockchain, Bitcoin) which are not yet fully regulated at a national level.

In terms of criminal law, 2019/2020 saw a particular focus on crimes against women and revenge porn, the outcome of which was the 'Code Red' reform.

13 Tips and traps

13.1 What would be your recommendations to parties facing litigation in your jurisdiction and what potential pitfalls would you highlight?

Before taking legal action in Italy, it is necessary to consider all potential risks and benefits of litigating. In addition to the costs, which will depend on the type of procedure and the fee set by the lawyer, another burden is the duration of the proceedings, which in Italy is very long: on average, it takes more than 2,600 days for a case to reach the third level of jurisdiction. In the context of civil justice, non-contentious first-instance proceedings (including injunctions, enforcement proceedings, insolvency, consensual separation and divorce proceedings) had an average duration of 231 days in 2018, while contentious appeal proceedings lasted 863 days.

Another important factor to consider is that the client must assist its legal team by providing as many documents in its possession as possible, so that the legal team has solid evidence on which to base the claim at court.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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