

Publications

Another Italian reform - a new hope to unclog the Italian courts

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Author: Studio legale Scassellati-Sforzolini - Mazzi



The Italian government (still) hopes to prevent people from starting never-ending legal proceedings (in 2012, almost five million civil proceedings were still pending) and has enforced a new decree (DL n.132/2014 of 12th of September 2014), with the aim to increase alternative dispute resolution.

The decree introduces three novelties worthy of attention.

The arbitration

The decree provides a possibility for the parties to settle a controversy by arbitration, while the case is pending in front a first instance civil court or an appeal court.

Such option is entirely up to the parties, who shall agree to submit a joint request to the judge in charge of the case. If the case meets the requirements provided by the law (labor, welfare and family issues are excluded), the judge will transmit the request to the chairman of the Bar of the district of the court, who will select the arbitrators, among lawyers registered at the bar for (at least) five years.

The case will be handled by a sole arbitrator when the value of the case is not superior to € 100.000,00 and by an arbitral court if the value exceeds such amount.

The arbitration proceeding is subject to the ordinary rules of arbitration provided by the civil procedure code and must be concluded within 120 days, with a possibility of a 30 days extension. In lack of arbitral award within such term, the proceeding must be filed again by the competent court.

Lawyers have already expressed some skepticism about the actual benefits of such reform, with regard for instance to the fact that the request requires the agreement of both parties and to the lack of free choice of the arbitrators and of possibility to select technical experts.

The “assisted negotiation”

The decree provides some new matters subject to ADR, regarding (i) damages caused by circulation of motor-driven vehicles and boats, (ii) transportation and sub-transportation agreements and (iii) payment requests up to € 50.000,00.

The lawyer has the professional duty to inform its client of the obligation to try ADR before filing the case in court. If the other party accepts the proposal and an agreement is reached, it shall be deemed as a judicial sentence and shall be enforced as such. If not, the case will be filed in court.

Should the parties go to court without any ADR attempt, the case shall be barred to proceed by the judge. Should one of the parties refuses the attempt without a valid ground and loses the case, the judge will take such circumstance into consideration for the condemnation to the legal fees.

However, the exclusion of certain matters from the scope of the law (as labor and consumers/professionals cases, recovery debt enforcement proceedings, controversies worth less than € 1.100,00 and any matters for which the creditor is entitled to file for a payment injunction) has arisen some doubts about the real efficiency of such a reform.

Separations and divorces

Considered that Italian couples have to file in the first place a separation request and three years after, must file for divorce and that the whole proceeding often requires an excessive duration, two main changes have been introduced:

- the possibility to avoid to go in front of the court by signing an amicable agreement (through the “assisted negotiation”) which shall provide all the modalities of the separation or of the divorce. The parties must necessarily be assisted by lawyers who shall authenticate the signature of the agreement by their client. Such agreement shall be approved by the Public Prosecutor and then transmitted to the registrar within ten days from the signature, and shall be deemed enforceable as a judicial sentence. In case of opposition of the Public Prosecutor (with regard in particular to the provisions about children) the case shall be transmitted to the court;
- the possibility to sign a separation or divorce agreement or modify the provisions of a previous agreement in front of the sole registrar, without the assistance of a lawyer, but upon two conditions (which will rarely be met): if the couple does not have minor, handicapped or non self-sufficient adult children and if the agreement does not contain any financial provisions as alimony, use of the family home, property transfer etc.