

CIVIL JUSTICE REFORM

1. Background: objectives and timetable of the reform

Following the green light from the Senate, on 25 November 2021 the Chamber of Deputies definitely approved the bill entitled "*Delegation to the Government for increasing the efficiency of civil trials, reviewing alternative dispute resolution mechanisms and taking urgent measures for rationalising the procedures regarding rights of individuals and families as well as enforcement procedures*" (the "**Delegation Law**")¹.

The reform of civil justice, aimed at reducing the duration of trials by at least 40%, is one of the objectives agreed with the European Union in order to access the resources of the National Recovery and Resilience Plan ("**NRRP**").

The Delegation Law has a twofold objective: on the one hand (the most relevant), it effectively empowers the Italian Government to implement the reform of civil justice; on the other hand, it directly amends certain provisions of law.

With regard to the timing, the Delegation Law sets a term of one year from its entry into force for the Government to adopt one or more implementation legislative decrees for the reform of civil justice, in line with the objectives of simplifying, speeding up and rationalising the trial. On the other hand, the direct amendments to the current legislation shall apply to proceedings commenced as from the 180^o day after the law comes into force.

The most significant amendments regarding first instance proceedings and review proceedings, as well as the other measures provided for by the Delegation Law are analysed below².

2. First instance proceedings

Important guidelines and criteria are laid down for the reform of the trial of first instance.

In this regard, the Delegation Law provides, first of all, a clear restyling of the rules governing proceedings before the Court in monocratic composition (single Judge), with the aim of ensuring concentration and reasonable duration of the trial.

2.1 Amendment of the content requirements of the plaintiff's writ of summons and the defendant's statement of defence and improving efficiency in the phases prior to the first hearing

In order to define the framework of the respective claims and the evidentiary requests, it is provided that:

- in the writ of summons the plaintiff must clearly and specifically set out the facts on which he/she relies and the legal basis of his/her claim and indicate the evidentiary requests and the documents to be filed;

¹ The Delegation Law, although approved in the same version as the text voted on by the Senate, has not yet been officially published.

² We will examine the amendments regarding arbitration, mediation and assisted negotiation in a following Newsletter.

- the defendant must present all of his/her defences in the statement of defence and specifically reject the arguments set out by the plaintiff, as well as indicate his/her evidentiary requests and the documents to be filed;
- in a brief prior to the first hearing, the plaintiff shall: **(a)** file, under penalty of forfeiture, counter-claims and objections subsequent to the defendant's statement of defence; **(b)** submit the request to summon a third party, if necessary; **(c)** clarify and amend his/her arguments as appropriate; as well as, **(d)** again under penalty of forfeiture, require new evidence and file new documents;
- in turn, in a subsequent brief before the first hearing, the defendant may amend his/her arguments and, under penalty of forfeiture, submit new evidence and file new documents;
- within a further period prior to the first hearing, the parties may reply to the claims and objections set forth in the previous briefs and present evidentiary requests in response to those presented by the counterparties.

2.2 Importance of the first hearing

In the first hearing the parties must appear in person in order to try to settle the dispute. Failing amicable composition, the Judge will take a decision on the evidence. The following hearing for the evidence gathering must be held within 90 days.

2.3 Amendments concerning the decision-making phase

The Delegation Law provides specific time frames in order to reduce the duration of the proceedings. In particular, in the event that the proceedings are not carried out pursuant to Article 281-sexies of the Italian Code of Civil Procedure, the Judge sets the final hearing and provides:

- a mandatory time-limit of no more than 60 days prior to that final hearing for the parties to define their final requests;
- a mandatory time-limit of no more than 30 and 15 days prior to that final hearing for the filing of closing statements and briefs of reply, respectively, unless expressly waived by the parties.

2.4 Possibility for the Judge to offer a settlement proposal

Until the case is finally held over for decision, the Judge can try and offer a settlement framework to the parties.

2.5 New simplified trial procedure ("*procedimento semplificato di cognizione*")

It covers all disputes in which the facts are non-contentious, the gathering evidence phase is based solely on documents or, in any case, can be promptly completed, or are not complex.

2.6 Interim decisions

In disputes falling within the jurisdiction of the Court of first instance on disposable rights, the Judge may **pronounce interim orders on the claim**, when those or the defendant's objections appear to be evidently well-grounded³.

³ In particular, it is specified that:

(i) the interim relief order is provisionally enforceable;

2.7 Relationships between the single Judge and three-judges panel

A new discipline of the relationships between the single Judge and three-judges panel is established.

In addition, the Delegation Law provides for (i) the reduction of the cases in which a three-judges panel has jurisdiction, (ii) the redetermination of the jurisdiction of the Justice of Peace, as well as (iii) the assimilation of these procedures to the proceedings before the Court in monocratic composition.

Simplified or fast-track trial procedures are provided for recognition or enforcement of foreign judgments in civil and commercial matters or insolvency (EU Regulation no. 2012/1215 and EU Regulation no. 2015/848).

3. Review proceedings

The Delegation Law also intervenes on second and third instance proceedings.

3.1 Appeals

In particular, **with regard to appeal proceedings**, the delegation of powers to the Government provides on:

- **the possibility of a party (i) to get the suspension of the first instance judgement's enforceability** ("*inibitoria processuale*") when the appeal is evidently well-grounded, or, **alternatively**, when the enforcement of the first instance decision entails serious and irreparable harm, and **(ii) to submit the suspension request also during the appeal proceedings** on the basis of new elements that have occurred since the appeal was filed;
- **the amendment of the rules on the so-called appeal filter**, clarifying the possibility of declaring an appeal ungrounded when it does not have a reasonable chance of being upheld;
- **the importance of the Judge** in charge ("*Consigliere Istruttore*"), i.e. the Judge appointed to deal with the dispute before it is upheld for the decision by the three-judges panel;
- **the harmonisation of the rules on the decision-making phase in the first instance and the appeal phase**, in so far as they relate to defining the final requests of the parties and the exchange of their final briefs;
- **the reduction of the cases in which the Judge of appeal is required to refer the case back to the first instance Court**, limiting them to cases of violation of the right to be heard.

3.2 Supreme Court

With regard to the Supreme Court judgement, the Delegation Law provides, *inter alia*, for the elimination of the so-called filter section ("*sezione filtro*") and the introduction of an accelerated procedure for the definition of inadmissible, improper or evidently ungrounded claims. In particular, in the event of one of these circumstances, the Court is required to communicate it to the parties, giving them the possibility of opting for a request for a council chamber or for waiving the claim⁴.

(ii) both orders could be challenged;

(iii) if the appeal ("*reclamo*") is upheld, the proceedings continues before a different Judge.

⁴ Similarly with regard to the appeal proceedings, the reform provides that the appeal to the Supreme Court must contain a clear and synthetic exposition of the facts of the case and a clear and precise statement of the grounds of appeal.

In addition, the trial Judge is given the possibility to request a **preliminary referral to the Supreme Court**, but only on matters of pure interpretation of the law and of particular importance, which present serious issues and are likely to give rise to several disputes. The preliminary referral suspends the proceedings *a quo* and the Supreme Court states the legal principle which is binding in the proceedings *a quo*.

Lastly, a **new case of revocation** is introduced in the event that the content of a final judgment is subsequently declared by the European Court of Human Rights to be contrary, in whole or in part, to the European Convention for the Protection of Human Rights and Fundamental Freedoms or to one of its Protocols.

4. Other measures covered by the Delegation Law

The Delegation Law contains guidelines and criteria, *inter alia*, on the following:

- **amending the enforcement procedures** (e.g., elimination of the so-called "*formula esecutiva*" and "*spedizione in forma esecutiva*" in order to act *in executivis*; stay of the terms of effectiveness of the formal request for payment in the event the creditor proceeds to search electronically for the assets to be seized; interventions aimed at rationalising and accelerating the real estate enforcement proceedings; identification of criteria aimed at determining the amount and the term of duration of the *astreintes* pursuant to Article 614-bis of the Italian Code of Civil Procedure; possibility, under certain conditions, that the Enforcement Judge may also order such *astreintes*);
- **mandatory filing of deeds and documents in electronic form**, save in exceptional cases;
- **possibility of certain hearings to be conducted electronically**, or in any case by means of filing written briefs, in line with the emergency measures introduced to deal with the Covid-19 pandemic;
- amending the rules governing the Trial Office ("*Ufficio per il Processo*"), providing for it also to be established at the Supreme Court;
- encouraging the use of **electronic means to perform service of notices**;
- strengthening the duties of loyal cooperation of the parties and third parties, providing, in particular, that in the event of **aggravated liability** ("*responsabilità aggravata*"), the party may be ordered to pay a penalty to the Fine Fund (*Cassa delle ammende*), and that there may be procedural or economic consequences in the face of **unjustified refusal** to allow the inspection pursuant to Article 118 of the Italian Code of Civil Procedure, or failure to comply with the order to exhibit pursuant to Article 210 of the Italian Code of Civil Procedure;
- amending the rule on **lack of jurisdiction** ("*difetto di giurisdizione*"), allowing it to be detected *ex officio*, during the appeal, only in the face of a specific ground of appeal and excluding that in the appeal stage it can be raised by the plaintiff who commenced the proceedings in first instance;
- unifying the rules on appeals against dismissals of employees.

Finally, specific criteria and guidelines are dedicated to proceedings relating to the rights of individuals and families and to the establishment of the new court for individuals, minors and families.

5. Direct amendments to the current provisions

As mentioned, the Delegation Law introduces some changes to the current legislation that shall apply to proceedings commenced as from the 180° day after the law comes into force.

Some of these provisions are aimed at introducing urgent measures to streamline procedures in matters regarding individual and family rights, enforcement procedures and verification of citizenship status.

In particular, with regard to enforcement procedures, the Delegation Law intervenes on the competent court for the enforcement procedure of credits, when the debtor is a public administration⁵, and on the enforcement procedure over the debtor's credits or the debtor's goods in possession of a third person⁶.

⁵ It is provided that the court with jurisdiction is the Judge of the place where the office of the *Avvocatura di Stato* in whose district the creditor has his residence, domicile, abode or head office is located.

⁶ It is provided that the creditor, within the date of the first hearing indicated in garnishment act, is required to serve the debtor and the third-party with the notice that the enforcement proceedings has been registered.

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The Dispute Resolution Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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