An Important Milestone in the Evolution of Italian Legislation

Introduction

As the average length of trials has often been perceived as a hurdle for Italy, not only in providing an efficient service for citizens, but also in attracting foreign investments, an improvement of the judicial system has been pursued continuously for several decades and has finally been included in the framework of the recovery and resilience plan (PNRR) as a key target for collecting the funds allocated to Italy.

Indeed, a large-scale reform was expected and it has been completed in a relatively short timeframe.

Thus, the long march towards the goal of speeding up the time to justice has reached an important milestone with the introduction of d.lgs. n.149/2022 (the "Reform").

Despite some criticism, often related to the haste imposed by the time limits provided for in the PNRR, the Reform appears to be promising in many aspects and, although its effectiveness will have to be assessed over the years, its debut in the current year 2023 will be crucial in order to verify how the judicial system (judges, lawyers and operational offices) will react to this novelty.

While a detailed analysis is beyond the scope of this overview, it is possible to briefly highlight some of the most important aspects of the Reform.

Ordinary trial and simplified trial

The twofold procedural system, already present in Italian legislation, has been significantly modified by the Reform.

Regarding ordinary trials, the main updates concerning the fact that the parties shall appear before the judge only after the filing of complete defences (a writ of summons, statement of appearance, and three briefs for each party), resulting in the judgement's timeframe being slightly shortened. As a result, at the first hearing the judge should be in possession of all the information in order to make an effective attempt to settle the case – and to this purpose the appearance of the parties in person is now mandatory – or to set up a discovery phase, if this is deemed opportune, or to enter the adjudication phase. On the basis of the current status of the proceedings, and so skipping a discovery phase and the adjudication phase, the judge has the power, upon request of one of the parties, to issue an ordonnance rejecting the relief sought or awarding it, authorising enforcement action. Conversely, simplified trial has replaced the pre-existing "summary trial", in respect of which the scope has been significantly expanded.

Pursuant to the Reform, the plaintiff ought to resort to the simplified trial when:

• the dispute is based on facts that are not controversial;

• the case is based on documentary evidence;

• the case is one of ready solution; or

• a complex discovery phase is not required.

The procedure provides that each party files only one statement of defence before appearing at a hearing fixed by the judge. At the hearing, if the judge is of the opinion that the case does not meet the requirements of the simplified trial, they may order the change of the procedure from simplified to ordinary. If the case falls within the scope of the simplified trial, the judge may order the filing of additional briefs (no more than two), order a limited phase of discovery, if required by one or all the parties, or withhold the case for decision at the end of the oral discussion of the case.

It is worth mentioning that the Reform spirit, corroborated by specific provisions, is imbued with the idea that the judge should make every reasonable effort to induce the parties to come to an agreement before a judgement is rendered. With the enhancement of alternative dispute resolution (ADR), see below, this should lead to a major deflation of litigation and a consequent reduction in trial time.

Enforcement

Another point of weakness in the Italian procedural system has always been the difficulty of obtaining a concrete result pursuant the enforcement of a courts' decisions.

In this respect, the Reform has provided for effective tools to remedy this weakness such as the elimination of certain formalities (ie, the so called "executive formula"), the facilitation of the telematics search of the debtor's assets and, most importantly, optimising the sale of foreclosed properties through the possibility of selling them to interested parties presented by the debtor.

Preliminary referral to the Supreme Court

Another provision of the utmost importance is the possibility given by the Reform to the courts of first and second instance to refer from the outset of the trial directly to the Supreme Court a complex question of law that may affect a large number of disputes. This provision is aimed at discouraging the proliferation of lawsuits of identical or similar nature and the possibility that different decisions are rendered in identical or similar cases (ie, "serial litigation"). An example of possible application of the rule in comment in the current year 2023, and in the years to come, is the litigation stemming from the CJEU decision, known as "Lexitor", which is bound to have a strong impact on the banks and on the financial market.

ADR and Arbitration

The introduction of compulsory ADR proceedings as a condition to starting a litigation proceeding in court has significantly boosted this institute in recent years. This experience, which provided for the avoidance of a large number of in-court disputes, the legislator enhanced ADR broadening its scope of application and required the plaintiff to prove in the writ of summons to have (unsuccessfully) attempted mediation. Moreover, the parties may agree upon the possibility to produce expert reports filed in the frame of the ADR, provided that the ADR fails, thus easing and accelerating the gathering of evidences in ordinary or simplified trials.

Finally, the Reform enabled arbitrators for the issuance of urgency measures, previously reserved to ordinary judges. The latter maintain their control in case of appeal against the decisions rendered by the arbitrators and it is worth noting that before the acceptance of the appointment by the sole arbitrator or of all the members of the panel, the jurisdiction in comment rests with the ordinary judge.

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