An Overview of the Italian Judicial System

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In General About Italian Judicial System and the Italian Civil Law

The Law on Civil Procedure has been in force in Italy since 1942. This law was amended in the following years. Italy is a representative of the Italian-Canonical model (Basset, 1978). of civil trial which model has been applied in many countries in Continental Europe and which countries were under the influence of this system in the first 70 years of the 20th century and for which system will be discussed in the following sections of this paper. The Italian civil trial in terms of type is divided into three stages.

In general the first stage is called the "initial stage" (introdutative stage) at which stage it is determined in which court the trial will take place.[1]. In the second phase which is called the "preparatory phase" (fase di trattazione od istruttoria) the preparation of the process takes place which will be the basis for the development of the court procedure and the passing of the judgment. At this stage, the disputed issues are determined, the lawsuit and the defense are cited and evidence is presented and then accepted by the court.[2] In the final phase, called the "decision-making phase" (fase decisoria), the lawsuit and the defense are reviewed and a decision is made[3].

In some processes, the line between the second and third stages is definitive. All this because if the process is conducted by a single judge, the decision is taken by a commission composed of three judges. However, in a large number of court proceedings both the preparatory phase and the placement phase are conducted and led by a single judge(Cappelletti, 2013). As is the case in most systems of Continental European countries, the hierarchy of courts in Italy is divided into three stages.

Against the decisions of the courts of first instance (Tribunals), appeals are filed in the court of second instance (Corte di Appello), while against the judgments of the courts of second instance the procedural parties address their civil case to the Supreme Court (Corte di Cassazione) [4]. However there are some features that distinguish Italian civil trial from civil trial in Continental Europe and the Anglo-American legal system. The following differences will be examined below:

[1] For more see the : Regolamento Recante la Determinazione dei parametri per la liquidazione dei compensi per la professione forense, Al Sensi Dell'articolo 12, Comma 6, della Legge 31 Dicembre 2012, N.247; b) per fase introduttiva del giudizio (pg.441); (G.U. Serie Generale n. 77 del 2 aprile 2014); - Il Ministro della Giustizia; - [Regulation Establishing the parameters for the payment of fees for the legal profession, In accordance with Article 12, Paragraph 6, of Law No. 247 of 31 December 2012] - b) for the introductory phase of the trial (pg. 441); (Official Gazette General Series n.77 of 2 April 2014); - The Minister of Justice.
[2] Ibid, 442.
[3] See: Code of Civil Procedure of Italy, article 189 & 275.
4 Mauro Cappelletti I Joseph M. Perillo - Civil Procedure in Italy (a book); Chapter 3 - Judicial Organization, I. The courts - page 69-73/65.

Some Qualities of Judgment

Development of the Process by the Procedural Parties

Each stage of the trial depends on the initiative of the procedural parties. The procedural parties file a request (lawsuit) and also go to court for their deadlines and extension. The court can not assess these claims, it is authorized only on this basis and also court decisions are limited to claims (lawsuits) and defenses filed by procedural parties. In addition the decision, as a rule, can be based only on the evidence presented by the procedural parties. The process is a long process in Italy and consists of a number of preliminary sessions. Lawyers generally attend hearings where only relevant verbal evidence is submitted and hearings where the latest verbal evidence is presented, while other less experienced professional colleagues attend other hearings[5].

More Preliminary Hearings and Written Evidence

In Italy it is necessary to hold several preliminary sessions at certain intervals, where preparations for the trial will be made, where evidence will be submitted and discussed. Prior to each preliminary hearing, the parties shall submit their requests in writing and respond to the requests of the opposing party. Therefore, the process can take a long time. In the Italian civil judicial system, written evidence and experts are of paramount importance. In most special legal proceedings it is decided without taking witness statements[6].

Therefore, only when written evidence can not be obtained or can not have access to them, then only verbal evidence is obtained. From this point of view the initial stage consists of requests and other documents of the procedural parties, while the verbal part of the trial is presented only as a pure formality.[7].

Equality of Procedural Parties and Independence of Judges

In the Italian trial system, as is the case with other judicial systems, during the trial the parties have the same rights, opportunities and conditions. Regardless of whether a decision that will be brought in court will be final or temporary, that decision cannot be made without hearing the procedural parties. Even ordinances and temporary detentions are not brought without hearing the procedural parties (Giorgiantonio, 2009).

Court costs in Italy compared to other countries, are lower. In order for the trial to be conducted fairly and conscientiously, it is extremely important that the court be impartial. Therefore, judges in Italy are neither elected nor appointed. To become a judge you must pass a state exam. In addition, it is preferable to regulate the division of proceedings that

[5] Ibid, page 54-67/65.
[6] Elisabetta Silvestri - Evidence in civil law, Department of Law, University of Pavia; page 10 & 11, 2014.
[7] Ibid, page 11.

are rigorous, in the courts of first instance. This rule is made to prevent the parties from choosing a court where a decision can be made in their favor[8].

Judicial Organization

The judicial hierarchy in Italy is divided into three stages. Courts of first instance include the so-called tribunals and the courts of peace (Giudici di Pace) which administer simple court proceedings. The courts of second instance are the courts of appeal (Corti d'Appello). The court of third instance is the Supreme Court (Corti di Cassazione). The so-called tribunals act as courts of first instance in almost all trials, with the exception of trials left to peace courts. In addition, they are also responsible for some tax-related cases and cases regarding the conditions of individuals. [9].

A special feature is that the decisions of the courts of peace are considered as decisions of the courts of second instance [10] . Also, peace courts conduct litigation related to movable property whose value of disputes does not exceed the value of 2,600 euros, then litigation where the subject of dispute are traffic accidents where the value of causing damage does not exceed the amount of 16,000 euros and these courts also conduct court proceedings related to disputes where immovable property is presented as a case.[11].

Courts of second instance review decisions of tribunals that appear as courts of first instance [12].

Whereas the Supreme Court reviews the decisions of the courts of second instance from a legal point of view. In Italy there are also specialized courts such as tax courts (tax courts). Proceedings in these courts are led by expert judges (professionals in the above field). While, in terms of special processes (such as bankruptcy proceedings, legal matters in the field of company law, will enforcement, divorce and other topics of family law) in the courts of first instance for leadership a commission consisting of 3 judges is engaged in these processes. In such processes the experiences of well-known experts in many fields are used. The courts of appeal consist of three members from that area, while the Supreme Court consists of 5 members from that area (Grossi , 2010).

Maın Phases of the Trial

Obligations to be Fulfilled Before the Beginning (Initiation) of the Civil Judicial Procedure

Prior to the initiation of civil court proceedings, there is no obligation to notify the opposing procedural party. However, if no deadline is specified for the fulfillment of

[8] Ibid, page 9, 10, 13, 19 & 20.
[9] Civil Code of Italy, article 9.
[10] Italian Civil Procedure Code, article 341.
[11] Ibid, article 7.
[12] Ibid, article 30.

an obligation by the other (opposing) party and if the other party has not fulfilled this obligation before initiating a court proceeding, it is required that the other procedural party be notified. After a warning if the other party does not declare within 15 days, in this case the possibility of starting (opening - initiation) of the procedure is immediately opened[13].

As a rule, there is an obligation to represent the party by the representative by proxy [14]. But, in certain situations where the value of disagreement in the procedure and disputes in the business field is not more than 500 euros, there is a possibility for the procedural parties to initiate and conduct their own procedure.[15]. Requests to initiate proceedings and other written statements must be signed by attorneys. Therefore, lawyers must be present in court together with their powers. Lawyers with at least 10 years of work experience are authorized to attend second instance courts[16].

Physical nd legal persons can initiate court-civil proceedings without fulfilling preconditions. However, in such situations when we are dealing with legal persons who are minors who do not possess the ability to act and also when disputes arise where the parties are firms, then the above-mentioned persons must be represented by their legal representatives. It is important to mention that the initiation of the procedure depends on the legal interest (benefit)[17].

Initiating the Procedure and Giving Answer to that Initiation

The litigation starts from the moment when the respondent (convenuto) will be notified about the request for initiating the procedure (atto di citazione). Contrary to the legal systems of other countries, in Italy, before the initiation of civil proceedings before a certain court, since the request for initiation of the procedure is addressed to the relevant court, the respondent is notified. However, there are some special cases and ways in which this rule does not apply. The request for initiating the civil-judicial procedure must contain all the points mentioned by the Law on Civil Procedure.[18]. According to this, the request for initiating the procedure must contain the result (merit) of the dispute (petitum), while the response to the request for initiating the civil-court procedure must come from the respondent within 20 days before the date of the hearing and the obligation for the respondent to be present in person at the hearing.

The date of the first hearing is chosen by the plaintiff from the possible dates for the court hearings submitted by the court at the beginning of each specific year which relates

13 Italian Civil Procedure Code, article 1453.
14 Ibid, article 82.
15 Ibid, article 82 (1) .
16 Ibid, article 82 (3) .
17 Ibid, article 105.
18 Ibid, article 163.

to the new proceedings that will be instituted.

According to Article 137 of the Civil Law Procedure [19], if the residential address of the defendant is within the court area, then the official person gives the summons to appear in court (court summons) in hand, while if his residence is outside the area of the court, the court summons is sent by mail in the form of a letter of recommendation. 10 days after the submission of the notification for the request with which the procedure is initiated, the plaintiff submits the request for initiating the procedure in the court and thus the court procedure starts. Two days after the submission of the request for initiating the procedure the request is certified in court. Immediately after that the president of the court is ordered to appoint a judge who will lead the court proceedings. The president of the court appoints a judge who will lead the initial stage of the proceedings. In a large number of proceedings, a judge who is engaged to lead the initial stage of the proceedings is committed to continuing the proceedings to the end. The respondent, in turn, is responsible for responding to the proceedings. Otherwise, the court proceedings will take place in the absence of that procedural party.

The response regarding the procedure must be given at least twenty days before the first hearing [20]. The answer can be given even after the deadline, even on the day of the first hearing.

However, in this situation, it is presumed that the defendant waives the right to file a counterclaim. In its response, the opposing party presents its objections and its defense and in particular responds to the plaintiff's allegations highlighted in the request for initiation of proceedings. In response to the request for initiation of the procedure, the documents supporting the defense of the defendant should be included. The respondent must also report any other evidence which he has requested to be collected. In response to the request for initiation of court proceedings, the respondent party may accept the proceedings or file a counterclaim. [21].

Preparatory Phase and Preliminary Sessions

The date of the first hearing is determined by the plaintiff and the court and the defendant are informed about this. The judge in the first hearing checks whether the procedure has been initiated in accordance with the rules and whether both parties are ready for the procedure. If neither party has attended the first hearing, the judge sets a new date for a new hearing. If the parties do not participate in the second hearing either, in that case the procedure is withdrawn. If only the respondent does not appear at the hearing in that case the procedure will be conducted in his absence. If the defendant neither appears at the hearing nor gives an answer regarding the request for initiation of the procedure, then a

[19] Italian Civil Procedure Code, article 137.
[20] Ibid, article 166.
[21] Ibid, article 167.

judgment is rendered in his absence.[22].

At the first hearing, the procedural parties mention their selected claims and the results of the claim and if necessary, amend them. The judge who is engaged to lead the procedure determines the dates of the preliminary hearings and the dates of their holding, then arranges the mutual submission of claims and also deals with the activity of gathering evidence. [23].

It is essential that the investigation phase be held for a long time before the hearing of the procedural parties and be composed of several preliminary hearings. At this stage, first of all, the evidence to be collected is determined and then in accordance with the procedure, the evidence is collected. Evidence in the Italian system includes: witness statements, statements of procedural parties, expert reports and oaths[24].

Phase after the Main Review Session and Legal Ways for Appeals

In the Italian civil trial, the decisions of the courts of first instance are subject to review and review in the courts of second instance and the decisions of the courts of second instance are reviewed by the Supreme Court. In addition, appeals and objections may be lodged against decisions which are final through extraordinary legal channels. In the context of the recent reforms, the judgments of the courts of first and second instance without expecting their finality, have been brought into a situation where they can be executed. However, under certain conditions, enforcement (execution) can only be affected by the adoption of a particular decision [25]

Court Costs

In the judgment which has become final, the court costs are also decided. The costs include court costs and costs for the payment of proxy representatives (lawyers). Since the cost of court costs can vary in percentage with the change in the value of the dispute, depending on the type of litigation they can also be fixed. According to the Law on Civil Procedure, court costs and expenses for the payment of proxy representatives (lawyers) are attributed to the procedural party which will lose the dispute (civil court proceedings).[26].

Basic Problems of the Italian Judicial System

Regarding the articles of Italian Law and the application of the same articles in practice,

[22] Ibid, article 181, 182.
[23] Ibid, article 175.
[24] Paolo Biavati, 2008 - Oral and written evidence in italian civil procedure law - Location: Orality and writing in an efficient civil process : [Colloquium of the International Association of Procedural Law, 2008] / Federico Carpi (ed. Lit.), Manuel Ortells Ramos (ed. Lit.), Vol. 1, 2008, (Presentations generals and national reports = General reports and nationals reports), ISBN 978-84-370-7214-2, pp. 313-323, Valencia-2008.
[25] Italian Civil Procedure Code, article 337.
[26] Italian Civil Procedure Code, article 91.

there is a strict antagonism (contradiction). Article 24 of the Constitution of Italy[27], recognizes that every citizen (citizen of Italy) and every individual has the right of protection of their freedoms, rights and interests and also those citizens who can not pay court costs due to Weak economic opportunities are allowed by the same article to cover these costs through legal aid.

However, in reality it is about something completely different. In reality, when access to justice (distribution of justice) is complex, to overcome these complexities, it can be seen that the state can not take the necessary measures. In access to justice, lack of knowledge is a major obstacle. The lack of knowledge is said to stem from the fact that members of the legal profession strongly oppose, lobby strongly and share their professional knowledge with the public. Therefore, access to justice can only be achieved through lawyers. It is said that for people seeking justice from the Italian legal system, it is useless.

Fair trial has been replaced by some with some complicated and obscure celebrations that delay justice. Therefore, the procedural party that is guilty uses such cases and can hide himself after a procedure that lasts a long time. While, on the other hand, the procedural party which claims to be entitled to litigation, sees its only chance in the European Court of Human Rights (Viljanen, 2003 & Viljanen, 2008).

The main problem in the Italian legal system is the excessive delay in justice. This state of affairs, in the context of recent reforms, in the new Article 111 of the Constitution[28], brings the principle of "reasonable time for trial", which is considered a disaster, ie a state of chaos.

This situation, which has a long history, further aggravates the situation. Therefore as a fundamental problem in the Italian legal system is the excessive length of court proceedings that can not be tolerated. The procedural law of 1942, which made several attempts to resolve this issue, but with a strong reaction from the Comoros, was formed against the 1950 reform which left the efforts made in progress. Attempts made to change this situation, with the exception of one attempt, did not bear fruit.

Only the 1973 amendments to business law disputes (and subsequently to lease disputes) succeeded in reducing the length of the trial. Also, drafts related to procedural law have been prepared and discussed for years however, no general reform of the Italian legal system has been achieved (Biavati, 2010).

In the next ten years after 1950, Italian legal doctrine highlighted the lack of an Italian judicial system and proactive reforms were proposed. However, none of these objections yielded a result. Many of the Italian legal doctrines, with the exception of a few, failed

[27] Constitution of Italy, article 24.
[28] Constitution of Italy, article 111.

to understand the true causes of the crisis, so they are stuck in the mud of abstract and theoretical hearings. The political power did not try at all to solve such problems and never tried to argue with the Comoros organization and traditional opponents (Caponi, 2016).

Conclusion

Regarding the legal-judicial system in Italy, we see that; although there is a grounded division of judicial stages; which makes a litigation in civil courts less complicated, again in practice there are some problems that emerge. Although the Italian constitution gives all citizens of the state the right to the protection of their freedoms and interests; even the same constitution enables citizens who do not have the right economic conditions to be able to cover their court costs through legal aid, in fact in reality we have a completely different situation from that presented in the articles of the Italian constitution. In reality, in Italy when such cases occur; that is, when citizens can not cover court costs due to poor economic conditions, the state in most cases can not take the necessary measures.

Another problem for the Italian civil-judicial system is the excessive delay; that is, civil-court proceedings take a long time, which makes the legal system in Italy less efficient and productive. Although many efforts have been made to prevent and avoid this situation, we see that in practice this seems a bit impossible. Although there have been reform efforts in the Italian state, what in my opinion would bring these legal reforms to be made, but also to be implemented in practice; is understanding the real causes of the crisis; and because this is not being properly understood to bring about change in practice, the entire legal elite is stuck in the mess of abstract and theoretical sessions.

Therefore, I share the opinion that, in order to have a more efficient and qualitative civil judicial system, it is not enough to bring about reforms only in theoretical terms, but also to analyze that, if the reforms are achieved in theoretical terms, how the same will be implemented in practice. In order to achieve this in the Italian judicial-civil system, it is necessary to look at all the real problems that exist, such as: excessive length of civil proceedings, failure to enable citizens with difficult economic conditions to have legal assistance; and then think of a real solution to the same problems; which solutions will be accessible and feasible for the Italian state.

References

Bassett, W. W. (1978). Canon law and the common law. Hastings LJ, 29, 1383.

Biavati , P. (2008). *Oral and written evidence in İtalian civil procedure law - Location: Orality and writing in an efficient civil process :* [Colloquium of the International Association of Procedural Law, 2008] / Federico Carpi (ed. Lit.), Manuel Ortells

Ramos (ed. Lit.), Vol. 1, 2008, (Presentations generals and national reports = General reports and nationals reports), ISBN 978-84-370-7214-2, pp. 313-323, Valencia-2008.

Biavati, P. (2010). *Review to C. Consolo, Explanations of civil procedural law*. Third volume. The first instance trial and appeals, in Quarterly Review of Law and Civil Procedure. p. 1008-1011.

Constitution of Italy - articles: 24, 111.

Caponi, R. (2016). The performance of the Italian civil justice system: an empirical assessment - *The Italian Law Journal* (Vol. 02 – No. 01, page 16-31 - 2016).

Cappelletti, M. (2013). *Civil procedure in Italy*. Springer.

Giorgiantonio, C., (2007). *Civil procedure reforms in Italy: Concentration principle, adversarial system or case management?*. - Quaderni di Ricerca Giuridica (Legal Research Papers) ; Legal Services and Law Studies Department; number 66en pg.9.

Grossi, S. (2010). A comparative analysis between İtalian civil proceedings and American civil proceedings before federal courts - ind. *Int'l & Comp. L. Rev. Vol. 20*:2, - 4.4 Courts and decisions; pg.213 - 279, 2010.

Italian Civil Procedure Code - articles: 7, 9, 30, 82, 82 (1), 82 (3), 91, 105, 137.163. 166, 167, 175, 181, 182, 341.

Silvestri, E. (2014). *Evidence in civil law*. Department of Law, University of Pavia; page 10 & 11

Viljanen, J. (2003). *The European court of human rights as a developer of the general doctrines of human rights law. A study of the limitations clauses of the european convention on human rights*. Tampere University Press.

Viljanen, J. (2008). The role of the European court of human rights as a developer of international human rights law. *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol, (62)*, 249-265.

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