

ITALIAN CIVIL PROCEEDINGS-A SUMMARY

In Italian legal system there is no local jurisdiction, the only existing jurisdiction being State jurisdiction, as provided by Italian constitution.

Italian civil justice system consists of three levels courts:

-first tier:

Small claim court (Giudice di pace), dealing with cases involving a maximum amount of 5.000,00 euros (and of 20.000,00 euros, only for motor accidents cases), and also dealing with a limited number of matters included in its exclusive jurisdiction.

Judges of Peace are selected by Consiglio Superiore della magistratura (High Judiciary Council) and appointed for a limited period of time (4 years, but they can be confirmed for a new term).

Superior Court (Tribunale), also dealing with appeals from Giudice di pace Court) after unification of Tribunale and Pretore Court, since June 1999.

-second tier:

Court of Appeals (Corte di Appello) dealing with both matters of fact and of law)

-third tier:

Supreme Court (Corte di Cassazione), dealing only with matters of law)

Appeal to the Corte di Cassazione may be brought on question of law from any of inferior courts, not necessarily as a second appeal.

Italian civil process is ruled by a code of civil procedure, come into force in 1942, deeply amended over the years.
Courts are not allowed to set up local rules.

a-Commencing of proceedings

In Italian civil procedure system there is no distinction between pretrial stage and trial, apart from a limited number of requirements in terms of mandatory pre-action settlement attempt, as a pre-requisite to filing a case.

There is no supervision about informal contacts and exchange of information between parties and lawyers, nor a discovery of all documents relevant to the case.

A Claim has to be issued by the Claimant (attore) and served on the defendant (convenuto) including a complete description of particulars of claim, both in terms of facts and of law, identifying the court and the day of first hearing.

Claimant may also produce documents supporting the claim, and must include in the claim the list of interrogatories and of witnesses the Plaintiff is going to ask to be heard in the trial.

After the defendant has been served, Claimant can file the case.

Defendant wishing to defend the Complaint must file a defense 20 clear days before the first hearing, including all substantial and procedural defenses.

Counterclaims must be entered within the same term.

Italian civil process is based on a non continuous trial, broken down into a number of hearings.

Italian civil trial is always a bench trial.

Preparatory stage

First stage includes one hearing before the judge:

In this hearing, or within an additional term starting from this hearing, parties must complete their pleadings, identifying the remedies sought.

In the same hearing, or after an additional time limit fixed by the Court for parties memoranda, judge decides about relevance and admissibility of testimonies, and other evidence, including exhibits. An additional time limit can be fixed by the judge.

Evidence taking phase

Additional documents may be required only by the judge.

Witnesses' depositions must be given before the judge, even though new legislation introduced the admissibility of written statements.

An expert opinion, supported by a written report, may be also ordered by the judge, even at his own motion.

The expert will be a Court expert, appointed by the Court itself, but the expert fees will be payed by the parties.

Parties may appoint their own experts.

Adjudication phase

Once evidence has been given, a final hearing is scheduled for both parties in order to formally confirm their pleadings.

Then a 60 days term is provided for written memoranda, and an additional 20 days term for replies.

When the 80 days terms is expired, it starts the 30 or 60 days term for written judgment by the single judge or by the three judges, when required, with the reasoning of the judgment, including both issues of facts and of law.

A shorter procedure governs application for interim injunctions and remedies, even *ex parte*.

Anyway *ex parte* injunction must be followed by a return hearing

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