

Veröffentlichungen

Report on the Law Decree No. 132 of September 12, 2014

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1. Possibility for the parties to file a joint application to institute an arbitration in case of disputes pending both in first degree (Tribunal) and in second degree (Court of Appeal).

The arbitrators are appointed by the Parties or by the Chairman of the Bar Association among lawyers registered with the Bar Association.

The maximum term for the arbitration proceedings is 120 days.

The arbitration award has the same effect of the Court decision.

2. Conciliation (ADR) with the assistance of lawyers.

The lawyers are obliged to inform clients about the possibility to settle the dispute by conciliation (ADR) instead of instituting Court proceedings, provided that the dispute does not concern the so called "diritti indisponibili" (i.e. rights which cannot be disposed by the will of the parties, like disputes relating to the family status, the acknowledgment of a child, etc.)

If a friendly settlement is reached, it is immediately enforceable like a Court decision.

3. Compulsory conciliation (ADR) for credits not exceeding

Euro 50.000,00 and for claims originating from car or boat accident.

The Plaintiff, before instituting the action before the Court, must invite the Defendant make an attempt to settle the dispute by Conciliation (ADR).

The Plaintiff is, therefore, allowed to institute a legal action before the Court only after promoting the Conciliation (ADR).

There are few exceptions to the above procedural rule.

The Defendant has 30 (thirty) days to reply to the Plaintiff's invitation for the participation to the Conciliation (ADR) and, in case of failure to answer or refusal of the Conciliation (ADR), said behavior may be evaluated by the Judge in assessing the legal expenses by the losing party at the end of the Court proceedings.

4. Agreement with assistance of lawyers for cases concerning personal separation of the spouses, divorce and modifications of the conditions applicable to separation and divorce.

The Parties do not need to apply for a Court decision, but may reach a settlement with the assistance of lawyers, provided that the spouses have no child of minority age or child of majority age with serious handicap or who are either legal incompetent or are not economically independent. The agreement has the same effect of a Court decision and the lawyers have to file the settlement with the Registrar of the Municipality (Ufficiale dello Stato civile) where the marriage was registered.

It should be noted that the settlement, however, cannot provide transfer of properties.

5. Conciliation (ADR) concerning rights of employees.

So far all settlements containing waivers by employees to be valid and enforceable had to be finalized by special procedures, like Court settlement or settlement with the assistance of Trade Unions or conciliation procedure before Labor Commissions, while this new Decree recognizes validity also to the settlement reached with the assistance of a lawyer.

6. Assessment of legal expenses.

The new rule provides that the Judge must condemn the losing party to pay the legal expenses to the winning party except in case the dispute was on a new matter not previously decided by the Court or in case of partial loss of both parties with respect to their claims or defenses.

In the past, the Judge had complete discretion of powers in assessing legal expenses due by the losing party, while the new rule is intended to charge the expenses to the losing party to discourage litigation or instrumental opposition.

7. Possibility for the Judge to apply the summary procedure in cases which do not require a complex evidence phase.

In 2009 was introduced a simplified procedure to be chosen by the Plaintiff for cases which do not need a complex collection of evidence because the claim is grounded on written evidence already available.

The new Decree allows the Judge (independently from the choice of the Plaintiff) to apply this simplified procedure in cases which do not need complex collection of evidence.

8. Witnesses' declaration taken by lawyers.

In the past, the declaration of witnesses had to be taken exclusively before the Court with the presence of the witnesses, of the Judge and of the opposite party.

This procedure caused frequently long-delay because of the absence of the witnesses or their inability to attend a specific hearing.

The new Decree for the first time in the Italian legal system admits written statements of witnesses taken unilaterally by the lawyer, saving the possibility of the Judge to call the witness before the Court to hear him personally.

The lawyer must of course warn the witness about the risk to release false statements.

9. Interest due for delayed payments.

At present the legal rate of interest applicable in case of delayed payments (assuming moratorium interest was not agreed between the parties) is 1% per year.

It follows that the defendant had the interest to delay the procedure so taking benefit of a financing at 1% per year!

The new rule establishes that the rate of interest must be that of commercial transactions, which at present is 8,15% per year (instead of 1% per year).

10. Enforcement proceedings.

Enforcement proceedings are those to be instituted when the losing party does not comply with the Court decision.

So far, the enforcement proceedings took long time and the creditor had, inter alia, the difficult burden to find the properties of the debtor to be attached.

Since the matter is very technical we do not enter into details of the new rules, but we wish only to mention that the creditor may now make telematics researches about the properties of the debtor getting information from public files, including Anagrafe Tributaria (Tax Office Data Bank).

Moreover, when the creditor has to attach assets of the debtor in the hands of a third party for credits connected to labour or family matters, the third party was required to participate at a hearing to confirm the amount due by him to the debtor.

Now there is no need of this formality and the declaration of the third party can be made in written form without any other formality.

11. Reduction of the Court Holidays.

So far, Italian Judges were entitled to holidays from August 1 to September 15 of every year; now the holidays have been reduced to 30 days (this rule has been strongly objected by Judges). Moreover, the Court offices were in the past closed for holidays from August 1 to September 15 (except for urgent cases), while the new Decree reduced the closing of the offices from August 6 to August 31 of every year.

12. Other provisions.

The new Decree is rather long (23 articles), but we limited our report to the most important issues.

Rome, September 16, 2014

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