

The new Italian legislation in mediation: What particularities exist in the legal framework that a foreign lawyer should be aware of?

Grazia Torrente and Alessandra Vignone, founders of Torrente Vignone, an international law firm in Milan Italy. Distance Learning Course in International Commercial Arbitration, Class of 2007

The new Italian law on mediation, Legislative Decree Number 28, was enacted on 4 March 2010. Pursuant to the new law, all civil and commercial disputes, provided that they concern “disposable rights”, may be referred to in mediation proceedings, which may not last longer than four months. This period starts from the date on which the request for mediation was filed, or from the expiry of the date in the case where a judge has prescribed a certain time limit.

The main reason why the Italian legislature enacted this new law was to try and reduce the enormous number of currently pending civil cases in Italy, which totals some 5.4 million cases .

The law came into force after its publication (i.e. 20 March 2010), apart from the provision regarding the mandatory recourse to mediation, which will come into force twelve months later (i.e. 20 March 2011).

It is important to note that at the time of compiling this article discussions are taking place between the official body representing Italian lawyers and the Justice Minister, on the possibility of deferring until a later date the law regarding obligatory mediation coming into force, which is provisionally timetabled for the 20 March 2011.

The most significant new provision was the one regarding mandatory recourse to mediation in certain specific cases: joint ownership/condominiums; right of ownership and other rights in property (such as, for example, usufruct, use, habitation, land use, emphyteusis, equitable servitude); division of property; inheritance, family rights to estate, leasehold, commodate, business rental; claims related to vehicles or boats, claims regarding medical responsibility claims, claims of defamation through libel cases and insurance, banking and financial contracts.

The legislator followed certain criteria in selecting which areas of law obligatory mediation should apply to. For instance, cases which may take a long time to



Alessandra Vignone

process (such as those in which family issues are concerned) or where different rights to the same property are present (e.g. right of ownership and other rights to property), or matters which may be highly litigious, (e.g. small claims related to road accidents) alternatively, widely used contracts such as those used in insurance or banking were included.

The provision for the obligatory nature of the recourse to mediation in the areas mentioned above is one of the most relevant Italian particularity with respect to other European countries.

Some practitioners see this decision of the lawmakers as having the aim of expanding the scope of dispute resolution, and in this way testing out this procedure. Indeed the dominant culture in Italy seems to be one of ‘being accustomed’, and in some cases this can only be overturned where the change is reinforced by legislation from the authorities.

Another particularity of the Italian legislation is that, if requested by both parties, the mediator is bound to make a proposal. In the event the parties do not accept the proposal made, the law sets out certain legal consequences.



Grazia Torrente

Moreover, settlement agreements are enforceable after they have been declared to be enforceable under a separate process of homologation upon the request of the parties involved. The competent Court is located in the district Court in the area where the mediation centre is based. By doing so, the parties can enforce the obligations set out in the settlement agreement and could use it, for example, to apply for a mortgage based on a debtor’s assets.

Finally, from an analysis of the new law on mediation it is possible to identify three different types of tax relief related to this: (i) complete exemption from stamp tax for all of the acts of the proceedings; (ii) partial exemption from the act of registering the transcript of the conciliation process and (iii) the recognition of tax credit for the insurance costs paid to the conciliation centre.

The validity of the new law in mediation and how it will be applied will only be seen over the passage of time, once the process has been thoroughly tested after the conclusion of a large number of mediation proceedings.