



Italians move to reform law

27 March 2017

Global Arbitration Review

As the IBA Arbitration Day and GAR Awards in Milan loom this week, details have emerged of a draft revised arbitration law for Italy that aims to speed up proceedings and allow arbitrators to grant interim measures, among other changes



The draft was produced by a Commission for the Reform of Arbitration chaired by **Guido Alpa**, professor of civil law at Sapienza University in Rome and former president of the Italian Bar Council. It is the first attempt to reform the law in 11 years, following previous reforms in 1983, 1994 and 2006 (in each case, after a similar length gap).

Italy's arbitration law, governing both domestic and international cases, is to be found in articles 806 to 840 of the Italian Civil Code of Procedure and is based on the UNCITRAL Model Law, with some departures. **Stefano Azzali** and **Lucio Pinto** – secretary general and case manager of the Milan Chamber of Arbitration, respectively – tell GAR that the 2006 reform represented “a significant step forward” for arbitration in Italy. However, further reform was “very much needed” bearing in mind the increased size of the arbitration caseload, changes in related laws and regulatory gaps that have emerged in practice. These could not be “ignored anymore,” Azzali says.

The reform aims to speed up arbitration proceedings and the process of recourse to the courts, he says. The 2006 law limited the scope to appeal violations of law in relation to the merits of the case to when the parties have agreed to it or it is compelled by law. Appeal of decisions regarded as contrary to public policy was always admitted.

Alpa's commission goes further in proposing that parties should be able to skip lower courts and challenge awards directly before Italy's Court of Cassation within 60 days of receipt ("recourse per saltum"). Parties can agree to this before or after the award is handed down.

At a time when the average duration of Italian Court of Appeal proceedings is rising, this will "ensure a remarkable compression of the overall duration of recourse to the courts," Azzali comments.

It will also help strengthen the stability of the award to have challenges decided by the highest level court at the outset.

Interim measures

Another change of note is that the draft revised law extends the power to grant interim measures to arbitral tribunals in administered arbitrations.

Up to now, Azzali says, Italian law has restricted arbitrators' power to grant such measures – the only ones that tribunals can currently grant regard the suspension of the decisions of deliberative assemblies in corporate matters.

The reform aims to bring Italian arbitration law in line with international best practice and thus facilitate international transactions and attract foreign investment, he says. The power to grant interim measures will be limited to tribunals acting in administered arbitrations and overseen by the institutions.

The biggest advantage of the reform is that foreign parties will have the opportunity to seek interim measures before "a body perceived as neutral" rather than before the courts, which may not always be perceived as so, he explains.

Other changes

Other reforms proposed by Alpa included broadening and clarifying the arbitrability of employment disputes and making the regulation of such proceedings more similar to commercial arbitration; and introducing arbitration in disputes relating to public administrative bodies.

An important and potentially high impact proposal is to enable arbitration of disputes involving consumers. Until now, Azzali says, the Italian civil code has prevented parties from choosing to arbitrate such disputes and arbitration clauses in consumer contracts have been seen as vexatious, along with any other clause waiving the consumer's right to access to the courts.

Recently, though, Azzali says there are clear signs that the suspicion of consumer arbitration and fear that the proceedings may be to the weak party's detriment are decreasing. "We are entering an era of opportunity and trust and Professor Alpa's committee is riding the wind of change by proposing express modification of the Consumer Code to permit the choice of arbitration, along with a set of measures to protect the weaker party".

These measures include making administered rather than ad hoc arbitration mandatory, meaning there is always an institution involved to help guarantee the independence, impartiality and high quality of the arbitrators and predictability of time and costs and to supervise the proceedings up to the final award. The

revised law also makes it mandatory that the seat of arbitration is the place where the consumer resides or is domiciled.

In the context of consumer arbitration, it will be possible for parties to challenge the award for violation of the law relating to the merits even without party agreement or express permission in the law.

In respect of the proposed changes to consumer arbitration and interim measures, Azzali notes the recognition of the important role played by arbitral institutions in providing a fair proceeding.

Grounds of challenge remain the same

One change that is not made, however, is a reduction in the number of grounds for challenging arbitral awards which remain at 12, double the number in the UNCITRAL Model Law (albeit one article in the Model Law is separated into two in the Italian version).

For Azzali, this is not as concerning as it sounds as recent research conducted by the Bocconi School of Law in Milan show that judges tend to uphold arbitral awards regardless. Of 99 decisions on challenges of arbitral awards issued by the Courts of Appeal of Brescia, Genoa, Turin and Milan – the four courts most involved with arbitration matters – from 1 January 2007 to 30 June 2014, only four were upheld.

"The number of grounds of challenge is less important than the reaction of the courts considering them," he says. "The recent data clearly showed that judges adopt a deferential approach to awards and the risk of them being set aside is low, especially if they arise from arbitrations administered by an institution, as the Bocconi study confirms."

The draft revised law comes as Italy sees increased international arbitration activity. Recent statistics of the Milan Arbitration Chamber show that in 2015, 23% of the chamber's cases involved a non-Italian party with parties from the European Union featuring in 9% of cases and parties from outside the EU in 6%.

Already this year, Milan has played host to the Euro-Mediterranean Arbitration Conference held by the OECD and UNCITRAL in January. This week, the city will also host the GAR Awards on Wednesday evening and the IBA Arbitration Day on 31 March.

Information about the GAR Awards is available here – a few tickets are still available. The event will be held in the Palazzo Parigi Hotel and will raise money for the Swawou School, which provides free primary school education for girls in Kenema, Sierra Leone.

The law reform commission

- **Guido Alpa** (President) professor of private law, Università di Roma "La Sapienza"
- **Franco Amadeo**, public notary
- **Giovanni Amoroso**, president of section of Court of Cassation
- **Ferruccio Auletta**, professor of civil procedural law, Università di Napoli "Federico II"
- **Antonio Briguglio**, professor of civil procedure law Università di Roma Tor Vergata
- **Luciana Breggia**, president of the second section of Florence Tribunal
- **Alessandro Cardosi**, lawyer
- **Fabio Cintioli**, professor of administrative law, Unniversità studi internazionali di Roma UNINT

- **Antonella Ciriello**, judge of labour tribunal in Naples
- **Giovanni Giangreco Marotta**, lawyer
- **Alberto Giusti**, judge of the Court of Cassation
- **Michele Marchesiello**, judge and former president of the Tribunal of Genoa
- **Giuseppina Raguso**, public notary
- **Chiara Tenella Sillani**, professor of private law at Università di Milano

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