

First Italian Arbitration Day focuses on law reform

22 June 2022



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The first Italian Arbitration day brought together more than 200 professionals in Rome to discuss innovations that an upcoming reform of Italy's code of civil procedure will bring to Italian arbitration law in the coming months.

The event on 9 June was hosted by the Milan Chamber of Arbitration (CAM) and Italian Arbitration Association (AIA) and took place in the beautiful setting of the Palazzo Colonna, which is built over the ruins of a Roman temple dedicated to the Egyptian goddess of Serapis and is still home to Italian papal nobility.

Delegates came from as far afield as Brazil, China and the US to examine the main features of the Italian law reform from an international and comparative perspective.

Andrea Carlevaris, president of AIA, and **Stefano Azzali**, general director of CAM, opened the conference by communicating greetings and words of support from the Italian Minister of Justice, **Marta Cartabia**, who has driven the law reform.

The minister emphasised how arbitration can and must play a key role in the implementation of the Italian Recovery and Resilience Plan, which will see the investment of more than €200 billion from the European Union to help Italy emerge from the pandemic, and in helping restore foreign investors' confidence in the Italian justice system.

Azzali also shared data about the increasing use of arbitration to resolve disputes in Italy. In the past three years, requests for arbitration filed under the CAM rules have grown by 21%. In the first five months of 2022, they increased by 27% compared to the same period of last year.

Massimo Benedettelli, partner at ArbLit in Milan and the Italian member of the ICC Court, gave the keynote speech. Taking inspiration from the historical setting, he reflected on the roots of arbitration in Roman law, noting that the word *arbiter* (according to its roots: "one who rushes when called") featured in the Twelve Tables displayed in the forum, stating the rights and duties of Roman citizens that formed the foundation of the law. Arbitral justice was thus regulated in Rome as early as 451 BC.

The early regulation was inspired by basic principles which still stand, Benedettelli said. Arbitration is dispute settlement by adjudication, with arbitrators deriving their powers from the autonomous choices of parties but state law being key to the enforcement of arbitration agreements and awards.

Benedettelli also drew delegates' attention to the contribution that theories of Italian scholars such as **Pasquale Stanislao Mancini** (1817-1888) and **Santi Romano** (1875-1947) can have when handling the conflict-of-laws dimension of international arbitration so as to achieve the right balance between party autonomy and state sovereignty.

He concluded that we must look to legal tradition when responding to the challenges anti-globalist and populist movements pose to the legitimacy of international arbitration and avoid "false friends" in the form of over-simplifications of the theory and practice of arbitral justice.

The day continued with four panels, each focusing on the upcoming Italian reform from an international perspective.

The first, moderated by London-based arbitrator **Loretta Malintoppi** and featuring Swiss arbitrator **Pierre Tercier** and Georgetown University professor **Anne Marie Whitesell**, looked at arbitrators' duty of disclosure, with particular attention to the ongoing nature of the duty and best practice in this regard.

A comparison of the laws of different European countries reveals that Italy has aligned itself with international practice by introducing disclosure obligations as part of Minister Cartabia's justice reforms.

The second panel, moderated by **Paolo Marzolini** of Patochi & Marzolini in Geneva and featuring **Carole Malinvaud** of Gide Loyrette Nouel in Paris and **Sébastien Besson** of Lévy Kaufmann-Kohler in Geneva, looked at interim relief, with a focus on finding the right balance between tribunals and courts' powers, as well as on effective ways to enforce provisional measures.

Both Malinvaud and Besson pointed out that provisional measures extend to protecting the integrity of arbitral proceedings and Malinvaud noted the efforts of arbitrators to develop a uniform approach to the conditions for imposing them.

The Cartabia Reform will mark a big change by allowing arbitrators to issue interim measures if the parties so agree, they said.

Anna Joubin-Bret, secretary general of UNCITRAL also spoke in the first session, welcoming Italy's innovative reform of arbitration and suggesting that it will boost the country's reputation as a venue for international proceedings.

Bret went on to explain recent developments in the work of the UNCITRAL Arbitration Commission and Working Group II, which has led to the introduction of expedited arbitration rules among other reforms.

The third panel, moderated by **Luigi Fumagalli** of Milan State University and featuring two other professors, **George Bermann** of Columbia Law School and **Franco Ferrari** of New York University, looked at the law applicable to the merits of the dispute. The focus was on parties' and tribunals' powers to apply "rules of law" and how arbitrators should determine the law applicable to the merits in the absence of an agreement, a matter which the reform may leave unregulated.

The speakers argued that there need to be criteria to be followed by the arbitrators in this scenario. They drew a comparison with the rules of the Milan Chamber of Arbitration, which provide that, in the absence of a choice of law by the parties, arbitrators can select the legal regime they deem appropriate to the merits of the dispute.

The fourth and last panel, moderated by **Michelangelo Cicogna** of De Berti Jacchia Franchini Forlani in Milan and featuring Paris-based practitioners **Mélanie Van Leeuwen** of Derains & Gharavi and **Benjamin Siino** of GBS Disputes, discussed the enforcement of arbitral awards, with a focus on provisional enforceability and on the much-debated issue of recognition and enforcement of arbitral awards that have been set aside at the place of arbitration.

Van Leeuwen and Siino delved into the domestic law provisions of their countries of origin (the Netherlands and France, respectively), demonstrating how the procedure for recognising and enforcing awards can greatly vary from one jurisdiction to another, with consequences for the consistency and uniformity of arbitral rules.

Maria Beatrice Deli, secretary general of AIA, closed the event by underlining the exceptional dedication and vibrancy of the growing Italian international arbitration community.

The first Italian Arbitration Day was at the centre of a constellation of international arbitration events in Rome during the course of the week, which saw the participation of hundreds of professionals.

With next year's date already scheduled for 8 June 2023 in Milan, the Italian Arbitration Day looks set to become an important fixture in the arbitration calendar akin to Paris Arbitration Week and other seat-specific events.