

NATIONAL REPORT

- ITALY -



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GENERAL OVERVIEW

National Legal system

The Italian Code of Civil Procedure was enacted in 1940 and entered into force in 1942, at which time it replaced the Code of Civil Procedure of 1865, the first procedural code of the unified Kingdom of Italy. The advent of the Republican Constitution (enacted in 1947 and in force since 1 January 1948) had remarkable side-effects on the rules governing the administration of justice at large. Among the 'rights and duties of citizens', the Constitution lists the right of access to justice as a fundamental right. The Constitutional Court has repealed several articles of the Code, since they were deemed to be at odds with constitutional provisions and, in particular, with the right of access to justice in its value as a 'dynamic prong' of the equality principle enshrined in Article 3 of the Constitution. Other procedural rules were not repealed, but the Constitutional Court made it clear that they had to be given a 'constitutionally oriented' interpretation when applied by the courts. Since the 1950s, the Code has undergone an endless series of reforms in order to address the problem of the excessive length of proceedings. Since no reform has proven to be effective, as is clearly demonstrated by the fact that at the end of June 2011 the average length of adjudication was estimated at seven years and three months, it is reasonable to expect a new wave of reforms in the near future. Not only is the Code not what it was when it went into force, but also, due to the reforms mentioned above, it has become just one of the many legal sources of the rules governing civil and commercial litigation. The second half of the twentieth century witnessed a constant increase in a disparate variety of 'special proceedings' provided for by individual statutes that, typically, enlarged the catalogue of substantive rights recognized by the legal system and created new procedures for the judicial enforcement of such rights.

Court jurisdiction and different types of litigation for debt collection	<p>Ordinary courts (civil and criminal) have general jurisdiction. The jurisdiction of civil courts is determined according to the amount in controversy, unless a rule on subject matter jurisdiction is applicable. In civil matters (including debt collection), courts of first instance are the justices of the peace and the Tribunali; the former are lay judges, while the latter are professional judges. Venue (which in Italy is known as ‘territorial competence’) is governed by specific rules, as exceptions to the general principle according to which the competent forum is the place in which the defendant has his domicile or residence, or – should they be unknown – his place of abode. From a hierarchical point of view, above the courts of first instance seat the Courts of appeals and, at the apex of the judicial pyramid, a Supreme Court, called Corte di cassazione.</p>
National summary procedures for recovery of money claims	<p>Within an ordinary proceeding, the parties are allowed to apply for various kinds of ‘anticipatory rulings’ for the recovery of money claims or the delivery of specific goods, if certain requirements are met, for instance if the amount of money owed by the defendant to the plaintiff is not disputed, or if the court is satisfied that the claim is well-founded in light of the evidence offered by the party who is praying for relief. Strictly speaking, these ‘anticipatory rulings’ cannot be qualified as summary procedures, even though they serve the same purpose, that is the swift satisfaction of creditors. The Code then provides for a special summary <i>ex parte</i> procedure (<i>procedimento di ingiunzione</i>) for the recovery of money claims or the delivery of a specific amount of fungible goods or a specified chattel, provided that the claim is supported by documentary evidence or at least by certain types of documents that would not be admissible as written evidence in an ordinary proceeding.</p>
State of IT operational options in judicial procedures for recovery of money claims	<p>Applications for orders for payment can be lodged electronically. Most courts have official web sites, on which one can find the specific regulations governing the lodging via Internet of different kinds of motions, applications and petitions. It is common to find also forms in PDF format.</p>

SCOPE OF THE PROCEDURE

Eligible claims	The summary <i>ex parte</i> procedure is available for the recovery of money claims or the delivery of a specific amount of fungible goods or a specified chattel.
Limit regarding value of claim	No limits as regards the monetary value of the claim are provided for.
Rules on using the procedure	The procedure is optional, but the advantage of the summary procedure as opposed to resorting to an ordinary proceeding is clear: the debtor is notified only after the order for payment has been issued and, if he does not lodge a statement of opposition to the order within 40 days, the order becomes final and enforceable.
Possibility of using national procedure in cross border cases	It has been possible since 2002, when a statutory instrument (d. legisl. no. 231 of 2002) modified article 641 of the Code. The new text of this Article provides that if the defendant resides in another Member State, the time assigned for either complying with the order or lodging an opposition is 50 days.
Rules on representation by a lawyer	Parties must be represented by lawyers: the only exception concerns cases falling within the jurisdiction of the justice of the peace, provided that the amount in controversy is less than € 1, 100.

COMPETENT COURTS

According to matter	The rules governing jurisdiction according to the amount in controversy apply. Justices of the peace have jurisdiction in cases whose value is up to € 5,000, if the dispute involves movable property; if the dispute involves claims for damages caused by the circulation of vehicles or boats, justices of the peace have jurisdiction in cases whose value is up to € 20,000. Above these thresholds, jurisdiction pertains to the Tribunale, where the summary procedure is handled and decided by a single judge. In case of claims seeking payment of fees and expenses incurred by lawyers, court clerks and other subjects who have rendered their services in connection with a legal proceeding, the summary procedure can be initiated also before the court that decided the case to which the credit claimed by the professional refers.
According to territory	Rules governing venue in ordinary proceedings apply (see above). Special rules are provided for in case the State or a public body are parties to a case. A peculiar rule concerns lawyers and notaries: they can bring the summary procedure against their clients to the court (justice of the peace or Tribunale, according to the amount in controversy) sitting in the place where the professional organizations to which they belong have their seats.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	No standardized forms are available.
Rules on representation by a lawyer	See above.
Description of the reasons for the claim	A detailed description of the reasons justifying the claim is not strictly necessary, since what counts is the supporting documentary evidence that must accompany the application for the order for payment (see below).
Need for written evidence and documents admissible as proof	The order for payment can be granted only if the claim is supported either by documentary evidence or at least by certain documents that, in ordinary proceedings, would not be admissible as evidence, such as writings by third persons, telegrams, insurance policies, commercial invoices, and reports from recorded financial transactions. If the claim concerns either the payment of fees and expenses incurred by lawyers, court clerks and other subjects who have rendered their services in connection with a legal proceeding, or the payment of the fees due to professionals whose services are remunerated according to legally approved tariffs, the claimant must prove his credit by submitting a detailed bill itemizing all the services rendered and the expenses sustained. The bill must be signed by the claimant, and carry the seal of approval granted by the professional association to which the claimant belongs.
Option of electronically filing the form	No.

ISSUE OF THE ORDER OF PAYMENT

<p>Specific rules for dealing with submitted apps for order of payment and court decision</p>	<p>The application is addressed to the court only and is served on the defendant after the court has issued its decision, since the summary proceeding takes place ex parte. The required documentary evidence (in the wide sense explained above) must be lodged together with the application. The court may invite the claimant to present supplementary evidence. Denial of the application does not prevent the claimant from initiating either a new summary proceeding or an ordinary one.</p>
<p>Decision of the court on the payment order</p>	<p>The order for payment, if granted, states that the payment (or the delivery of goods) is to be made within 40 days running from the service of the order. The order also contains the warning that, within the same time, the debtor can lodge an opposition to the order. If neither the payment is made, nor an opposition is lodged within 40 days, the order becomes immediately enforceable, and execution can be levied. If certain requirements are met, the court may authorize provisional execution; in particular, provisional execution must be granted if the claim is based on promissory notes, bills of exchange, checks, stock exchange certificates of liquidation, and notarial instruments.</p>
<p>Existence of guidelines for submitting application</p>	<p>None.</p>
<p>Defendant's service of the order of payment</p>	<p>The order for payment, together with the application upon which it has been granted, must be served on the defendant within 60 days running from the date of the order if service is supposed to take place in Italy, or 90 days if the defendant is located abroad. The order for payment expires if the claimant fails to perform service on the debtor within the deadlines set by the Code.</p>

REJECTION OF THE APPLICATION

Grounds for rejecting application	The court, when it deems that the evidence offered in support of the claim is insufficient, may request the claimant to produce further evidence. Failure to comply with such request implies denial of the order for payment; denial can also depend on other reasons, such as the lack of substantive and/or formal requirements set forth by the Code as regards the applicability of the summary proceedings or the contents of the application.
Existence of prima facie of claim	If the underlying obligation is subject to conditions, the order for payment can be granted only insofar as the creditor is able to make a prima facie showing that the conditions have been met.
Appeal availability (creditor)	No appeal can be brought against the order denying the application for an order of payment. As mentioned above, denial of the application does not prevent the claimant from initiating either a new summary proceeding or an ordinary one.

OPPOSITION BY THE DEFENDANT

Procedural rules	Within the time mentioned above (40 days), the debtor/defendant may lodge an opposition against the order for payment, summing the creditor/claimant before the court that issued the order itself.
Effects of notice of opposition	Once the opposition has been lodged by the debtor, the proceeding evolves as an ordinary adjudication, except that the time in which the parties must appear at the first hearing is reduced by half.
Nature of the structure of the procedure	Ordinary adjudication before a court of first instance.

EFFECTS OF ABSENSE OF TIMELY OPPOSITION

Consequences on not filing opposition	If an opposition is not lodged, the court, on motion of the creditor, makes the order for payment immediately enforceable. The same course of action is taken if the debtor, having lodged an opposition, fails to enter his appearance in the procedure.
How to obtain an enforcement judgement	See above.
Effects for the order of payment	Once made enforceable, the order of payment becomes final, even though it is still subject to some extraordinary attacks on judgments known as extraordinary revocation and revocatory third party opposition.

COURT FEES

Up to € 1,100 = € 18,50.

Up to € 5,200 = € 42,50.

Up to € 26,000 = € 103,00.

Up to 52,000 = € 225,00.

Up to 260,000 = € 330,00.

Up to € 520,000 = € 528,00.

Above € 520,000 = € 733,00.

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically	The enforcement of an order for payment takes place according to the general rules governing enforcement. Therefore, if the order for payment was granted for the recovery of a certain amount of money, the enforcement procedure will be the forced liquidation of the debtor's assets.
Abroad	The enforcement will take place in compliance with the rules laid down by international conventions and EU legislation.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

The European order for payment is a no-evidence procedure, while the Italian procedure, on the contrary, requires documentary evidence in support of the claim: this basic difference seems to overshadow possible similarities.