Second Study Commission
Civil Law and Procedure

66th Annual Meeting of the IAJ – Cape Town (South Africa)

ITALY
Questionnaire 2024
Written submissions – when do they turn from a help to a hindrance?

In Taipei, Taiwan, we decided that in 2024, our Second Study Commission will focus on how written submissions in civil litigations can turn from a help to a hindrance and whether there are limits on written submissions in our various jurisdictions. If so, what these limits include.

We have limited the questionnaire to six questions and expect to receive short but concise answers. The questions are as follows.

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Brief introduction

In the Italian civil process, procedural documents are in writing. It follows that the answers to the questionnaire will cover not only any authorised written pleadings that the parties may file in the course of the proceedings in accordance with the prescribed rules, but any judicial document relating to civil proceedings (e.g.: writs of summons and introductory acts, response briefs of the defendant, defence written submissions, counter-appeals and intervention, preliminary and closing written submissions).

Unlike procedural documents, which are written, hearings in the Italian civil process are oral. However, as of 2023, the possibility of replacing certain hearings (which would have been oral and in the presence of the parties) with the filing of written notes has been provided for by law. The purpose is to ensure a faster trial.

In this respect, the reference rule of the Code of Civil Procedure (Article 127 ter) provides, in brief, that:

- the hearing, even if it has been scheduled in advance, may be replaced by the submission of written notes containing only the claims and conclusions (as a general rule, the submission of documents attached to the written notes is not permitted), if it does not require the presence of persons other than the defence counsel, the parties, the public prosecutor and the judge's assistants;
- in the order replacing the hearing, the judge shall set a mandatory time limit of at least fifteen days for the filing of the notes and, if there are special reasons of urgency, which must be explained, the time limits may be shortened;
- the day of expiry of the time limit for filing the notes is considered to be the date of the hearing for all purposes and the time limit for filing the order of the Court starts to run from that moment;
- if none of the parties submits the notes within the time limit set, the judge shall set a new mandatory time limit for the submission of the written notes or shall schedule a hearing and, if none of the parties files the notes within the new time limit or appears at the hearing, the judge shall order the case to be removed from the register and declare the case dismissed.

1. Are there limits for written submissions in civil litigations in your jurisdiction in terms of the maximum length?

Article 121 of the Code of Civil Procedure states that:

- the acts of the trial, for which the law does not require specific forms, may be performed in the form most suitable for achieving their purpose;
- all procedural acts are drafted in a clear and concise manner.

In order to ensure the clarity and conciseness of the procedural documents, it is provided (Article 2 of Ministerial Decree No. 110 of 7 August 2023: for more details see below) that the introductory documents and defence submissions must be drafted, in particular, with:

1. header, containing an indication of the judicial office before which the application is made and the type of document
2. parties;
3. keywords (maximum twenty) identifying the subject matter of the action
4. in appeals, references to the contested measure with an indication of the judicial authority that issued it;
5. separate and specific statement (in separate parts of the procedural document) of the facts and legal grounds and, as regards appeals, identification of the contested parts of the decision and statement of grounds
6. in the factual part, precise reference to the documents produced, listed in numerical order and named in a manner corresponding to their content;
7. in relation to the grounds of law, a statement of any preliminary and preliminary questions and questions of substance, with an indication of the legal rules and case law precedents that are considered relevant
8. conclusions;
9. specific indication of the evidence and index of documents produced, with the same numbering and designation as in the body of the document
10. value of the dispute.

Article 46 of the implementing provisions of the Code of Civil Procedure provides that:

- minutes and other judicial documents must be written in a clear and easily legible character;
- judicial documents drawn up in the form of a computerised document shall comply with the regulations on the drafting, signing, transmission and receipt of digital documents;
- the Minister of Justice defines by decree the digital forms of judicial documents and establishes the limits of procedural documents, taking into account the type, value, complexity of the dispute, the number of parties and the nature of the interests involved. In determining the limits, the header and other formal indications of the document are not taken into account, among which a table of contents and a brief summary of the content of the document itself are included.

In this regard, the Minister of Justice adopted Decree No. 110 of 7 August 2023 containing a regulation defining the drafting criteria, limits and computerised schemes of court documents that applies to civil proceedings introduced as of 1 September 2023.

The size limits of procedural acts set by the 2023 decree refer only to cases with a value of less than € 500.000.

Article 6 of the ministerial decree establishes drafting techniques and in particular provides that acts are to be drafted using standard typefaces, preferably

a) using 12-point font size;
b) with line spacing of 1.5
c) with horizontal and vertical margins of 2.5 cm.

The rule also provides that footnotes are not permitted, except for the indication of case law precedents and doctrinal references.

Regarding the size limits of procedural documents, Article 3provides that the statement must be limited to a maximum of:

a) 80,000 characters, corresponding approximately to 40 pages (according to the format of Article 6), for introductory documents and in particular for: writ of summons and appeal, response and statement of defence third-party intervention and summons, conclusive acts, introductory act of the appeal proceedings;

b) 50,000 characters, corresponding to approximately 26 pages (according to the format referred to in Article 6 above), for replies and in general for the other written submissions;

c) 10,000 characters, corresponding to approximately 5 pages (in accordance with the format referred to in Article 6 above), for notes written in lieu of the hearing according to the Article 127ter of the Code of Civil Procedure (see brief introduction above), since as a rule no defensive activity (which remains possible only at the hearing) can be carried out with such notes.

The rule specifies that in counting the maximum number of characters spaces are not counted.

Articles 4 and 5 respectively provide for exclusions and derogations from the size limits laid down in Article 3 just examined.

In particular:

A) the size limits do not apply (Article 4):

- header, containing the indication of the judicial office before which the application is made and the type of document;
- indication of the parties;
- keywords (maximum twenty) identifying the subject matter of the case;
- in appeals, references to the contested measure with an indication of the court that issued it;
- conclusions;
- specific indication of the means of proof;
- value of the dispute;
- index and summary of the document;
- statutory warnings;
- service reports
- case-law references in the notes;
- date, place and signature of the parties and defence counsel;

B) the size limits may be derogated from and thus exceeded (Art. 5):

- if the litigation presents particularly complex issues, also by reason of the type, value, number of parties or nature of the interests involved: in this case the lawyer briefly states the reasons for exceeding the size limits and includes an index and a brief summary of the contents of the document
- where appropriate, in the event of the submission of a counterclaim, third-party summons, cross-examination, summons or cross-appeal.

2. Are there time limits for filing written submissions?

Time limits for the filing of written submissions are laid down by law or indicated by the court depending on the type of civil proceedings concerned and/or the stage of the proceedings at which it is located.

On the consequences of violating time limits, see answer to question 4 below.

3. Are there limits in terms of a maximum number of additional submissions in a case?

The number of party procedural documents is established by law depending on the type of civil proceedings concerned. As a rule, for each procedural phase (introductory, pre-trial, decisional) the parties are required to file a specific written document.

By way of example, the general scheme of the number of party documents for ordinary proceedings (first instance) is as follows:

- introductory documents;
- three supplementary submissions (which may, as a general rule, contain: new claims and exceptions based on the counterclaim or the exceptions raised by the defendant or the third party; clarification or amendment of the claims, exceptions and conclusions already raised; possible intervention of a third party by the plaintiff based on the defendant's defences; presentation of the preliminary investigations; possible evidence to the contrary and replies to any new exceptions);
- concluding submissions.

There are simplified rites or special rites for which there are fewer procedural steps laid down by law.

4. Are there rules, including penalties or cost implications, for breaches of these requirements?

Pursuant to the above-mentioned Article 46 of the implementing provisions of the Code of Civil Procedure, non-compliance with the technical specifications relating to the form and layout and the criteria and limits for the drafting of the document does not entail invalidity, but may be taken into account by the court for the purpose of deciding on the costs of the proceedings.

On the other hand, failure to comply with the time limits laid down by law for the submission of a procedural document will, as a rule, result in its inadmissibility: the court will not take it into account when deciding the case. In some cases, the filing of a procedural document by a party after the statutory time limits may result in preclusion, i.e., for example, the impossibility for the party to raise certain procedural, preliminary procedural or substantive objections and to formulate claims such as counterclaims.

5. Are these limits or requirements effective in terms of reducing the number and length of written submission and the time spent preparing for and determining a case?

As to the time limits for filing written documents and the number of written documents provided for in civil proceedings (see answers nos. 2 and 3 above), it can be assumed that they have no effect either on the length of the trial or on the time devoted to the preparation and settlement of a case.

Possibly, the provision that some oral hearings can be replaced by the filing of written notes (Art. 127 ter of the Code of Civil Procedure: see the brief introduction above) may facilitate the time taken to deal with the case.

As to the size limits of written documents in civil proceedings, as already specified these were introduced into Italian law only with Ministerial Decree No. 110 of 7 August 2023. This legislation also provided (art. 10) for the setting up of a permanent Observatory on the functionality of the drafting criteria and the size limits established for civil procedural documents in order to verify compliance with the principle of clarity and conciseness of procedural documents and to gather assessment elements for updating the reference legislation at least every two years.

The Observatory was formally established by Ministerial Decree of 29 March 2024 and at the moment no reports or data examinations are yet available.

It can generally be said that compliance with the drafting limits of written documents could facilitate the judge's study of the case, without, however, having an effect on the reduction of trial time.

6. What is the effect of written submissions on any hearing which subsequently takes place?

Italian civil proceedings are oral proceedings (except for the possibility of replacing some oral hearings with the filing of written notes): generally speaking, it can be said that during the hearings the contents of the written documents filed in preparation for the hearing are discussed and, in compliance with the adversarial principle, each party may reply to the contents of the written document filed by the other party.

7. Comments or suggestions as to what could otherwise prove to be effective

It can probably be assumed that reducing the number of procedural stages can contribute to reducing the duration of civil proceedings, provided that the adversarial principle is respected. In fact, in the Italian legal system there are certain types of civil proceedings (e.g. some special rites and the so-called “simplified cognizance rite” for cases that are easier to resolve, such as those for which there is no need to conduct investigations) for which the legislator has provided for fewer procedural stages, with the result that the case is generally decided in a shorter time than in the so-called “ordinary cognizance procedure”.