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MODEL OF JUDICIAL MANAGEMENT OF EVIDENCE-TAKING PROCEEDINGS IN THE ITALIAN CIVIL TRIAL (CARTABIA REFORM)

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Abstract
The article presents a model of judicial management of the evidence-taking proceeding in the Italian civil procedure following the reform introduced by Law No. 206 of 26 November 2021, implemented, inter alia, on 28 February 2023 and 30 June 2023 by means of Legislative Decree No. 149 of 10 October 2022 (the reform was named *riforma Cartabia* after its author, former Minister of Justice, Marta Cartabia). Post-reform, the model has become significantly formalised and more detailed, limiting the judge's decision-making freedom in organising proceedings. From the perspective of the principle of procedural material concentration and judicial management of the evidence-taking proceeding, the preliminary stage is critical: from the plaintiff's summons of the defendant to court (*in ius vocatio*), which is essentially a lawsuit, to the hearing for the first appearance of the parties and case verification. At this stage, parties are required to present facts, legal elements of a claim, means of evidence, and all defence arguments in their pleadings within statutory deadlines. The subsequent stage of collecting procedural material important for the case resolution is a hearing scheduled for the first appearance of the parties and verification of the case (often termed 'a preliminary hearing'). Here, the judge freely questions the parties and, based on the presented facts, clarifies matters necessary to resolve the case. After questioning the parties, the court may decide to conduct a conciliation proceeding. If not, the judge rules on the parties' evidence-related motions and, considering the nature, urgency and complexity of the case, sets a timetable for subsequent hearings and specifies actions to be taken at each. A hearing intended for the taking of evidence

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must be scheduled within 90 days. The court may also rule on taking evidence *ex officio*. Then, according to the timetable developed, the judge takes evidence. The final stage of an ordinary proceeding occurs when the judge determines that the case is mature enough for resolution because it has been appropriately and definitively prepared, and the necessary evidence has been collected, or there is no need for further evidence collection. One tool for managing an evidence-taking proceeding may include the so-called abuse of procedural law. The Italian civil procedure does not explicitly regulate this issue. The concept of abuse of procedural law has been defined in case law and doctrine. However, procedural regulations mandate acting in court according to the principle of honesty and loyalty, with various sanctions stipulated for conduct that violates this rule, such as the obligation to pay compensation, reimburse trial costs, or imposition of a fine.

Keywords: Cartabia Reform, judicial management of a proceeding, evidence-taking proceeding, in ius vocatio, preliminary hearing, Italian civil procedure, principle of honesty and loyalty

The Italian legal system has undergone significant reform based on Law No. 206 of 26 November 2021, implemented on 28 February 2023 and 30 June 2023 by Legislative Decree No. 146 of 10 October 2022 (the reform was named after its author, former Minister of Justice Marta Cartabia – *riforma Cartabia*). These changes also encompassed the Code of Civil Procedure (*Codice di procedura civile*, hereinafter c.p.c.) and concerned, among other things, the management of civil proceedings to enhance their efficiency,[1] methods of alternative dispute resolution, enforcement of court judgements, arbitration, and digitalisation. The legislator's interference particularly affected the preliminary inquiry proceeding. It includes requirements for the content of summons, adjustment of the minimum time limits for defence counsel's procedural activities, and the defendant's appearance in court as well as the overall organisation of the initial stage of the ordinary inquiry proceeding.[2] The Italian model of presenting litigation documents and judicial management of the evidence-taking proceeding, particularly after the Cartabia Reform, is highly formalised and restricts judicial discretion significantly. The most important stage of the proceeding, from the perspective of trial material concentration and judicial management of the evidence-taking proceeding, is the preliminary phase: from the service of a summons (*in ius vocatio*), which effectively constitutes a lawsuit (Articles 163 and 163-bis c.p.c.), to the first hearing intended for the parties' appearance and case verification (Article 183 c.p.c.). This phase is formalised, setting strict deadlines for performing procedural and judicial activities related to

[1] Sudio Legale Jacobacci & Associati; jacobacci-law.com, post of 27 February 2023; https://www.jacobacci-law.com/news-and-publications/cartabia-reform-of-the-italian-civil-procedure-points-to-bear-in-mind-for-litigation-management-in-italy-28-february-2023 [accessed on 8 April 2024].

[2] Carratta, A., *Le riforme del processo civile D.Lgs. 10 ottobre 2022, n. 149, in attuazione della L. 26 novembre 2021, n. 206*, Torino, 2023, pp. 30–32; Donne, C.D., 'La fase introduttiva, prima udienza e provvedimenti del giudice istruttore (artt. 16, 163-bis, 164, 165, 166, 1+67, 168-bis, 171, 171-bis, 171-ter, 182, 183, 184, 185, 187 c.p.c.)', in: Tiscini, R. (ed.), *La riforma Cartabia del processo civile. Commento al d.lgs. 10 ottobre 2022, n. 149*, Pisa, 2023, p. 269 et seq.

the presentation of claims, allegations, and evidence as well as the gathering of litigation material by the parties and the court.

Formally, a trial begins with a summons to appear at the first court hearing called '*notificazione di citazione*'.[3] The delivery of this summons to the defendant results in the suspension of the dispute, in accordance with Article 39 par. 3 c.p.c. The plaintiff usually chooses the date of the court hearing. The dates of the first sittings (intended for the first appearance of the parties and case verification) are set at the beginning of each judicial year by the president of the court (Article 163 c.p.c.). A summons is in fact a lawsuit, but in order to continue the proceeding resulting from its submission, it is necessary to take further steps, which will be discussed later in this paper. Apart from indicating, inter alia, such formal elements as identification data of the parties and solicitors and the name of the court to which the lawsuit is filed, this pleading should also include:

1. A specification of the subject matter of the claim.
2. A clear and substantive presentation of facts and legal aspects that constitute grounds for the claim together with relevant conclusions that result from them.
3. A detailed indication of the means of proof the plaintiff intends to use, in particular documents presented as evidence.

These requirements were introduced as a result of the Cartabia Reform and correspond to the principle of clarity and conciseness laid down in Article 121 c.p.c., which stipulates that all procedural acts shall be drawn up in a clear and concise manner. This regulation is based on the parties' obligation to maintain honesty and integrity, as expressed in Article 88 c.p.c. It serves to fully exercise the right to defence, but a reasonable duration of the proceeding must also be ensured.[4] The requirements seek, on one hand, to facilitate the judge's comprehension of the pleadings submitted by the parties and, on the other hand, to enable the defendant to adopt a precise position on the factual circumstances raised by the plaintiff, thereby identifying all uncontested and indisputable facts. Pursuant to Article 115 c.p.c., unless otherwise stipulated by law, the judge must base their decisions on evidence presented by the parties or a prosecutor, and on facts that have not been expressly challenged by the opposing party. However, the judge may, without the need for evidence, base their decisions on commonly known facts consistent with common knowledge and experience.[5] Hence, the provision introduced in Article 163 c.p.c. aims to delineate the procedural material by obviating the need for evidence concerning undisputed

[3] Dalfino, D., 'Chapter VI. Characteristics of Procedure. Ordinary proceedings in first instance', in: De Cristofaro, M., Trocker, N. (eds), *Civil Justice in Italy*, Nagoya University Comparative Study of Civil Justice, Vol. 8, 2009, section 3.3.

[4] Reali, G., 'La cognizione in primo grado', in: Dalfino, D. (ed.), *La riforma del processo civile L.26 novembre 2021 N. 206, E D.LEC. 10 ottobre 2022 N. 149 E 151*, 2023, pp. 97–98; Panzarola, A., 'La visione utilitaristica del processo civile e le ragioni del garantismo', *Rivista trimestrale di diritto pubblico*, 2020, No. 1, p. 105, thus also Finocchiaro, G., 'Il principio di sinteticità nel processo civile', *Rivista trimestrale di diritto pubblico*, 2020, No. 1, p. 853.

[5] For more on the issue see Carratta, A., *Le riforme…*, op. cit., pp. 34–35; Mandrioli, C., Carrata, A., *Diritto processuale civile*, Torino, 2022, pp. 7–12; Reali, G., 'La cognizione…', op. cit., p. 99; Cass., ord. 27 gennaio 2022, n. 2402, ForoPlus; ord. 9 novembre 2022, n. 33026, Ibidem; ord. 26 novembre 2020, n. 26908, Poro it' Rep. 2021, voce Procedimento civile, n. 184; ord. 9 maggio 2018, n. 11032, ForoPlus; 22 settembre 2017, n, 22055, id. Rep., 2017, voce Prova civile in genere,

circumstances between the parties or those not directly contested. As posited in legal doctrine, the obligation to present facts and legal grounds for a claim (elements of law) clearly and concisely allows for the comprehensive examination of a request before the court and prevents the protraction of proceedings without distorting the adversarial system principle. The requirement of conciseness, in turn, acts as a filter of thoroughness, selecting only those elements of the factual and legal state necessary and sufficient to identify the grounds for the claim.[6]

The stipulation in Article 163 par. 3 and 4 c.p.c. (the specification of the request that is the subject of the summons, clear and specific presentation of facts and legal elements that constitute the grounds for the request, and relevant conclusions resulting from them) is of such significance that their absence or unclear specification results in the invalidity of the request (*citazione*). The plaintiff is then granted a deadline to supplement or rectify it (Article 164 c.p.c.). However, the violation of merely formal rules regarding editorial matters (e.g., verbosity, repetition of arguments) does not invalidate the summons. Invalidity arises when the breach of the obligation of clarity and precision transcends the purely formal aspect and affects the essence of the request, or when the summons is illegible or vague regarding essential elements.[7]

In the process of gathering evidence in an Italian civil trial, statutory deadlines for carrying out particular procedural activities, especially those for the exchange of procedural documents, which were extended as a result of the Cartabia Reform, play a significant role. They constrain the judge's discretion in making decisions regarding the management of the evidence-taking procedure. The deadlines for specific procedural activities of the parties are outlined as follows:

1. The time limit linking the moment the pendency of the dispute occurs by means of serving the summons (*citazione*) on the defendant with the date of the initial court session dedicated to the parties' appearance and verification of the case (preliminary hearing) is 120 days if the service of the summons occurs within Italy and 150 days if it happens abroad (Article 163 [1] par. 1 c.p.c.). Following the Cantabria Reform, this deadline cannot be shortened.[8] This limitation curtails the judge's discretion to manage the proceedings but gives the defendant a guarantee that they will be properly prepared for their defence.
2. The plaintiff should file their claim to the court within 10 days from the date of serving the summons on the defendant, which effectively occurs through various formalities. The specified request, along with the factual and legal grounds, is already expressed in the *atto di citazione*. These formalities encompass the submission of an application to enter the case in the court's register, along with the original *atto di citazione*, any power of attorney and other relevant documents, completion of a form containing essential case details (such as information on the parties and their legal representatives, the case subject matter, etc.), and

n. 30; 19 ottobre 2016, n. 21075, id' Rep., 2016, voce cit., n. 22; 15 ottobre 2014, n. 21847, id' Rep., 2014, voce cit., n. 33.

[6] Donne, C.D., 'La fase…', op. cit., p. 273 et seq.

[7] Reali, G., 'La cognizione…', op. cit., pp. 99–100.

[8] Carratta, A., *Le riforme…*, op. cit., pp. 34–35.

payment of the court fee (Article 165 c.p.c.).[9] Failure by the plaintiff to register the case does not impede its trial, provided the defendant enters into a dispute within 70 days before the initial session date (Article 307 in conjunction with Article 166 c.p.c. and Article 171 c.p.c.).[10]

3. *Citazione* should encompass, among other things, summoning the defendant to appear (to undertake defensive measures) within 70 days before the date of the first hearing and to present themselves before the judge conducting the proceedings (investigating/examining judge – *il giudice istruttore*) assigned to handle the case (Article 168 bis c.p.c.).[11] Within this period, the defendant is obligated to submit a defence response to the lawsuit, known as *comparsa di risposta*, in accordance with Article 167 c.p.c. In response to the lawsuit, the defendant should, among other things, present all defence arguments, clearly and specifically address the facts cited by the plaintiff on which the claim is based, list the evidence they intend to cite, present documents to be disclosed, and formulate defence conclusions. Legal doctrine indicates that the defendant has the following rights: (1) to refute the opposing party's statements and allegations; (2) to introduce additional facts; (3) to lodge a counterclaim; (4) to bring actions against third parties; (5) to adopt a passive stance.[12] Under the threat of forfeiture, the defendant should submit counterclaims and procedural and substantive allegations that cannot be discovered by the court *ex officio*. Since, according to Article 115 par. 1 c.p.c., the court's decisions may also be based on facts that have not been expressly challenged, the defendant should explicitly contest the circumstances quoted in the *citazione*. Simultaneously, this means that the facts not challenged by the defendant will not require proof in the same manner as the facts the defendant has expressly admitted.[13] If the defendant opts for a passive stance, fails to appear before the judge, and does not submit a defence response, and there are no formal obstacles, the proceedings will be conducted in the defendant's absence (*contumacia*). This does not determine the final outcome of the case, but the defendant will forfeit the right to bring allegations, cite facts, and present evidence unless the deadlines for submitting claims and evidence are reinstated after proving that their failure to appear and present a defence response was not their fault. However, in the defendant's absence, the

[9] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., section 5.

[10] Carratta A., *Le riforme…*, op. cit., pp. 35–36.

[11] Civil cases in the Italian civil trial are usually conducted, managed and resolved by a single (monocratic) judge (*il giudice istruttore*), described as an examining judge, investigating judge or a judge conducting the proceeding. In some special situations stipulated by law and laid down in Article 50 bis c.p.c., a case is managed and resolved by a collective bench (*collegio*) or managed by an investigating judge and next resolved by a collective bench.

[12] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., para. 4; it is also pointed out that the defendant may present constitutive facts (constituting the source of law, which must be proved in order to make use of them), facts indicating that the law has been amended or expired, or that particular factual circumstances are ineffective – Ferrari, M., 'Comparsa di costituzione e riposta: la guida completa. I requisiti, le difese proponibili e le eccezioni sollevabili', *Altalex*, https://www.altalex.com/guide/Comparsa-di-costituzione-e-risposta, 29.06.2020 [accessed on 8 April 2024], para. 8.

[13] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., para. 4.

evidence-taking proceedings will be limited to confirming the facts justifying the plaintiff's claim and indicating certain rights they are entitled to.[14]

4. Within 15 days following the expiration of the deadline referred to in Article 166 c.p.c. (70 days after serving the *atto di citazione* on the defendant), the judge conducting the proceedings shall conduct a preliminary examination of the case, including verification of the following premises: the admissibility of the proceedings, the effectiveness of the commencement of the dispute, the necessary procedural participation in the case (Article 102 par. 2 c.p.c.), the correctness of the *citazione* (Article 164 par. 2, 3, 5, and 6 c.p.c.), the appearance of the defendant and the correctness of the defence response (Article 167 par. 2 and 3, Article 171 par. 3 c.p.c.), the correctness of the power of attorney (Article 182 c.p.c.), etc. Additionally, the judge may point out to the parties the issues that they consider important for resolving the case and necessary for clarification *ex officio*. This includes not only procedural issues but also substantive ones, such as the suspicion of abusive provisions in the contract. Raising such issues enables the parties to amend their claims and allegations and propose motions to conduct an evidence-taking proceeding.[15]
5. If, following the preliminary examination of the case, it becomes necessary for the court or the parties to issue orders or undertake additional actions, the judge conducting the proceedings may, if deemed necessary, postpone the date of the hearing scheduled for the initial appearance of the parties and the case consideration for a period not exceeding 45 days.
6. The subsequent stage of trial preparation involves the exchange of supplementary pleadings as per Article 171 ter c.p.c., within the specified deadlines laid down therein. In accordance with the provision, the parties, under the threat of forfeiture, may:
   (1) At least forty days before the hearing referred to in Article 183 c.p.c. (the hearing scheduled for the initial appearance and case verification), report claims and allegations resulting from the claim of the opposing party or allegations made by the defendant or third parties, and specify or change claims, allegations and conclusions reported previously. In the same pleading, the plaintiff may apply for permission to summon a third party to appear in court if such a need arises from the defence in the pleading submitted by the defendant.
   (2) At least twenty days before the trial, respond to new claims and allegations made by the opposing party, report allegations resulting from new claims reported in the pleading referred to in par. 1 as well as indicate means of evidence and submit documents.
   (3) At least ten days before the trial, respond to the new allegations and indicate opposing evidence.

[14] Ibidem.

[15] Luiso, F.P., *Il Nuovo Processo Civile. Commentario breve agli articoli riformati del codice di procedura civile*, 2023, pp. 69–71.

The above-mentioned provision entitles the parties to submit three pleadings, which the judge shall ensure. Failure to meet the deadlines laid down in Article 171 ter c.p.c. results in the 'lapse of time', and thus the parties are deprived of the right.[16]

This stage of the preparatory phase serves to definitively specify the factual and legal state that is to be subject to examination and adjudication, and to outline the evidence to be examined and assessed by the court (*thema decidendum et probandum*). This solution, introduced by the Cartabia Reform, aims to comprehensively prepare the case for adjudication in the trial and thus prevent the proceedings from prolonging.[17] The submission of supplementary pleadings does not require the judge's consent. Unlike before the Cartabia Reform, the right to submit them and deadlines for their submission are laid down in statute and are not subject to any modification by the judge. However, the parties may waive their right to submit preparatory pleadings by relinquishing their submission.[18] The first supplementary pleading enables the parties to cite new factual circumstances, but within the limits permissible through the proper use of the so-called *ius poenitendi*, i.e. specification of the existing statements, allegations and conclusions. The function of the second pleading is to fully define *thema decidendum*. It may include: a response to new or changed statements and allegations made by the opposing party, a presentation of new allegations resulting from the new statements, and allegations related to the use of *ius poenitendi* by the parties in the first pleading. It also clarifies *thema probandum* by giving parties the last opportunity to finally specify their evidence-related conclusions. The third pleading, in turn, results from the 'replicating power' in relation to the issues raised in the second pleading.[19] Doctrine points out that the above provisions only consider the opposing party's defence. They do not stipulate that the need to provide further evidence may result from new allegations properly formulated by the defendant in the second pleading, or even from allegations made therein for the first time. In such a case, the third pleading should serve to indicate evidence necessary to demonstrate the falsehood of facts that are grounds for allegations, and not only, as the provision stipulates, to report opposing evidence. For this reason, it is proposed that the right to admit such evidence be derived from the right to defence guaranteed in the Constitution or from the appropriate application of the instrument of the deadline restoration (Article 153 c.p.c.).[20]

The above-presented procedure may, of course, undergo certain deviations due to events beyond the control of the parties, such as the judge's illness and other unforeseen circumstances, counterclaims filed, intervention by a third party, or the need to rectify the *citazione* or *comparsa di risposta*. However, the model solutions for judicial management of evidence-taking proceedings in the preparatory phase of the

[16] Iannicelli, L., Angelone M., 'La fase introduttiva e di trattazione nella cognizione di rito ordinario in primo grado dinanzi al tribunale', in: Didone, A., De Santis, F. (eds), *Il Processo Civile Dopo La Riforma Cartabia*, Milano, 2023, pp. 157–158.

[17] Carratta A., *Le riforme…*, op. cit., pp. 34–35; Donne, C.D., 'La fase…', op. cit., p. 287 et seq.

[18] Reali, G., 'La cognizione…', op. cit., p. 115.

[19] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., pp. 158–160.

[20] Reali, G., 'La cognizione…', op. cit., pp. 115–116.

Italian civil trial are stipulated within statutory limits, which leave little discretion to the judge.

When the exchange of pleadings concludes, in line with Article 171 ter c.p.c., in the Italian civil proceeding, the parties' ability to submit further statements and evidence generally ceases. They should be submitted before the case examination enters the decision-making phase. In the Italian system, there is no provision for further submission of statements and evidence, comparable to Polish Article 205 [12] par. 1 CCP (and similar). Nonetheless, it is possible to reinstate the deadline for carrying out a procedural activity, including submitting statements and evidence, in accordance with Article 153 c.p.c. To meet the requirement for deadline reinstatement, the party must demonstrate that they failed to meet the activity deadline through no fault of their own, owing to unforeseen circumstances or force majeure, indicating an inability to avoid missing the deadline despite diligent behaviour.[21]

The next stage of collecting procedural material relevant to resolving the case is the hearing scheduled for the first appearance of the parties and verification of the case in accordance with Article 183 c.p.c. (referred to as a preliminary hearing). As per this provision, the parties are obligated to attend the initial hearing intended for the first appearance and case verification. During this hearing, the judge freely interrogates the parties and, based on the reported facts, elucidates the issues necessary for resolving the case. The unjustified absence of the parties is evaluated according to Article 116 par. 2 c.p.c., within the principle of free assessment of evidence. The duty of the parties to appear in person may be fulfilled by their representatives (Article 185 c.p.c.). Conducting a hearing of the parties in writing is also permissible (Article 127 ter c.p.c.).[22]

Following the parties' statements, the court may opt to initiate conciliation proceedings. If such a decision is not made, the judge decides on the parties' claims based on evidence and, considering the nature, urgency, and complexity of the case, issues a decision on the timetable of subsequent hearings and specifies the actions to be taken at each. A hearing concerning admitted evidence should be scheduled within 90 days.[23] The court may also decide to take evidence *ex officio*. In such instances, each party may, within the deadline set by the court in the same evidence-related decision, present evidence they deem necessary in connection with the evidence ruled *ex officio* as well as submit a response within the subsequent deadline set by the court. Next, the court decides on any evidence-related requests submitted in response to the admission of evidence by the court *ex officio*. Furthermore, even at a later stage of the proceeding, the court may indicate the issues crucial for case resolution, which will be considered *ex officio*. However, in accordance with Article 101 par. 2 c.p.c., the court is obliged, under penalty of nullity, to set a period of not less than twenty days and not more than forty days from the date of the service of the order for submitting pleadings concerning the issue. This provision ensures the implementation of the principle of procedural fairness and equal rights of the parties.

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[21] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., par. 8.

[22] Luiso, F.P., *Il Nuovo Processo*…, op. cit., pp. 79–83.

[23] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., p. 165.

Thus, the preliminary hearing is not limited solely to examining the effectiveness of court proceeding initiation; it can and should include the examination of contentious issues and, in any case, the specification of facts contested by the parties as well as the clarification of evidence-related theses and the definition of the limits of the evidence-taking proceeding.[24] It constitutes, as described in legal doctrine, a 'completed interrogation' because the parties can no longer change their claims and, as a rule, any statements and evidence become subject to a statute of repose. For these reasons, the obligation to interrogate the parties seems unnecessary in cases where there is no need for additional explanations after the submission of pleadings pursuant to Article 171-ter c.p.c., e.g., when the dispute concerns only the law.[25] Moreover, such a strict definition of the rules of the preliminary hearing is questioned in legal doctrine due to the fact that many variables may thwart its course and make it necessary to postpone the hearing.[26] This hearing, however, is a key moment in the examination of the case in the sense that, at this hearing, the judge decides on the regime under which the case will be handled.[27] Thus, the judge may refer the case to conciliation. Furthermore, in accordance with Article 183 – quater c.p.c., the claim may be rejected (the so-called interim order rejecting the claim) if it is manifestly unfounded or if the lawsuit does not clearly indicate the claim, or the facts that are the subject of the claim are not indicated. In the event of a successful appeal against the order, the proceeding continues before a judge other than the one who issued it. This solution is criticised in the literature due to the expressly wide scope of the judge's discretion to assess the existence of the premise of obvious groundlessness of a lawsuit, which is not based on objective criteria.[28] Subsequently, having assessed the complexity of the dispute and having heard the parties, the judge may rule to continue the proceeding in a simplified mode if the facts are not contested or if the claim is based on evidence resulting from documents or is easy to adjudicate or requires uncomplicated investigation (Article 183 – bis c.p.c.).[29] The judge may also, in accordance with Article 183 – ter c.p.c., issue a decision to accept the claim if the actual circumstances justifying the claim have been proven and the opposing party's allegations seem obviously unfounded (it is the so-called provisionally enforceable payment order). In the event of a successful appeal, the proceeding continues before a judge other than the one who issued the order. It is indicated in the doctrine that premises for issuing an interim payment order (particularly those relating to the allegations of the defence) are abstract, undefined, and not based on objective criteria, and the judge's discretion to assess those premises is excessive.[30] Further decisions

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[24] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., par. 4.

[25] Reali, G., 'La cognizione…', op. cit., pp. 117–118.

[26] Ibidem, pp. 122–123.

[27] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., pp. 162–165; Reali, G., 'La cognizione…', op. cit., pp. 117–118.

[28] Liuzzi, G.T., 'Le nuove ordinanze definitorie (artt. 183-ter e 183-quater c.p.c.)', in: Dalfino, D. (ed.), *La riforma del processo civile*, Gli Speciali del Foro Italiano, 2023, pp. 128–129 and 135.

[29] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., pp. 165–170; Luiso, F.P., *Il Nuovo Processo…*, op. cit., pp. 82–84.

[30] Liuzzi, G.T., 'Le nuove…', op. cit., pp. 128–129 and 131; Scarselli, G., 'I punti salienti dell'attuazione della riforma del processo civile di cui al decreto legislativo 10 ottobre 2022,

on the choice of an appropriate path for examining the case include the initiation of the issuance of a prejudicial ruling by a collective bench (Article 187 c.p.c.) and continuation of the proceeding in an ordinary mode by preparing a trial timetable and setting a hearing for the purpose of an evidence-taking proceeding within 90 days (Article 183 c.p.c.).[31] However, it is an instructional deadline.[32] Development of a trial timetable referred to in Article 183 c.p.c. is obligatory to continue the proceeding. Admitting evidence, the judge is also obliged to make a forecast regarding the research needs and the time necessary to examine the case.[33] This activity of the judge constitutes, as it were, a culminating moment in judicial management in general, and in the management of the evidence-taking proceeding in particular. The assessment of the level of the case complexity as well as the anticipation of the proceeding duration require a preliminary substantive assessment of claims, statements and allegations. The further course of the proceeding, the number and scope of undertaken procedural activities and evidence-taking depend on the results of this preliminary assessment of statements and evidence by the investigating judge.

Then, in accordance with Article 188 c.p.c., in compliance with the trial timetable he has developed, the investigating judge takes evidence. In this phase, an important disciplinary measure for the parties is provided, the application of which, however, does not depend on the judge's discretion. According to Article 208 c.p.c., if the party at whose request the evidence-taking proceeding is to be conducted does not appear, the investigating judge declares that the party has lost the right to present the evidence unless the opposing party requests it. At the subsequent hearing, the concerned party may request that the judge revoke the ruling on the loss of the right to present evidence. The judge revokes his former ruling if he recognises that the failure to appear was due to a reason beyond the party's control. This is a rather rigorous measure, considering that the party has effectively submitted an evidence-related motion and the party's failure to appear, as a rule, does not prevent the taking of evidence.

The last phase of the ordinary proceeding occurs when the judge decides that the case is mature for resolution because it has been adequately and definitively prepared and the necessary evidence has been collected or there is no need to collect it (Articles 187 and 188 c.p.c.). Article 209 c.p.c. stipulates the formal closing of the evidence-taking proceeding when all admitted evidence is presented or when the party lost the right to present evidence pursuant to Article 208 c.p.c., and there are no other means of evidence to be taken, or when the judge decides that further taking of evidence is unnecessary due to the results already achieved.

As a rule, in the first instance ordinary proceeding, the decision on the case rests with the judge who conducted it and to whom the evidence was presented. Thus,

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n. 149', *Giustizia Insieme*, 15 novembre 2022, https://www.giustiziainsieme.it/en/news/74-main/136-riforma-cartabia-civile/2529-i-punti-salienti-dell-attuazione-della-riforma-del-processo-civile-di-cui-al-decreto-legislativo-10-ottobre-2022-n-149?hitcount=0 [accessed on 8 April 2024].

[31] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., pp. 165–170; Luiso, F.P., *Il Nuovo Processo…*, op. cit., pp. 82–84.

[32] Reali, G., 'La cognizione…', op. cit., p. 121.

[33] Iannicelli, L., Angelone, M., 'La fase introduttiva…', op. cit., pp. 165–170.

this judge performs different functions depending on the stage of the proceeding (an investigating judge – an adjudicating judge).[34] The primary task of the judge conducting the proceeding (a managing judge, *il giudice istruttore*) is to exercise all the powers necessary to carry out the proceeding as quickly and fairly as possible. This judge sets subsequent hearings and deadlines for the performance of procedural activities that the parties must meet (Article 175 c.p.c.). This judge directs and manages the proceeding; inter alia, selects evidence, decides on its admission and ensures its collection. However, the procedural decisions that the investigating judge takes are not binding on a single-member or a collective adjudicating bench. The investigating judge adjudicates on the case, except for the cases in which the regulations provide for the resolution by a collective bench. They are laid down in Article 50 bis c.p.c. In those cases, the investigating judge is appointed only to examine the case and prepare it for resolution, and the issuance of the decision is entrusted to a collective bench, which is composed of the chairperson, another judge and the same investigating judge, who presents the results of the former proceeding to the bench.[35]

Regardless of the proceeding organisation and the model of judicial management of the evidence-taking proceeding presented above, the Italian Code of Civil Procedure provides for a detailed solution aimed at implementing the principle of evidence concentration. It concerns Article 210 c.p.c. Its purpose is to make the parties present evidence. It stipulates that the judge conducting the proceeding may, at one party's request, order the other party or a third person to present to the court a document or another thing that he considers necessary to show at the hearing. If a party fails to comply with the order to produce evidence without justified reasons, the court orders the party to pay a fine ranging from EUR 500 to EUR 3,000 and, in addition, assesses such conduct on the principle of free evaluation of evidence (Article 116 par. 2 c.p.c.). The third person may be ordered to pay a fine ranging from EUR 250 to EUR 1,500. However, the sanction is not automatic because the court should assess the reasons behind the refusal to present evidence and may consider them justified.

One of the tools for managing the evidence-taking proceeding may consist of the abuse of procedural law. The Italian civil procedure does not explicitly regulate it. The concept of procedural law abuse has been defined in case law and doctrine and is derived from the principle of equity and good faith expressed in Article 1775 of the Italian Civil Code.[36] The rules can be applied in an abstract manner not

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[34] Dalfino, D., 'Chapter VI. Characteristics of Procedure…', op. cit., par. 9.

[35] Ibidem.

[36] For the issue of evolution of the concept of abuse of law see e.g.: Perlingieri, G., Di Nella, L., 'A proposito della traduzione italiana "De l'abus des droits" di Louis Josserand', in: Josserand, L., *L'abuso dei diritti* (1905), trad. it. di L. Tullio, Napoli, 2018, and references cited therein. In merito, cf.: Ranieri, F., 'Eccezione di dolo generale', *Digesto (discipline privatische) sez. civile*, Vol. VII, Torino, 1991, p. 311ff, and Dolmetta, A.A., 'Exceptio doli generalis', *Enciclopedia Giuridica Treccani*, Roma, 1997, p. 1ff; and earlier Bigiavi, W., 'L'*exceptio doli* nel diritto cambiario', *Il Foro Italiano*, 1938, Part IV, c. 203ff; on abuse as counterfunctional exercise of the right: Tullio, L., *Eccezione di abuso*, Napoli, 2005, pp. 121 and 153ff [after Perlingieri, P., Femia, P., *Nozioni introduttive e principi fondamentali del diritto civile*, Napoli, 2004, p. 143 and Irti, N., *Dal diritto civile al diritto agrario (Momenti di storia giuridica francese)*, Milano, 1962, p. 45ff, who considers anti-functional' the act of abuse (*ivi*, p. 47)]. Cf. also: Restivo, C., *Contributo ad una teoria dell'abuso del diritto*,

only to natural and legal rights but to every situation in which a specific entity is given certain tools, instruments, or powers to defend a specific interest deemed worthy of protection.[37] Those tools and powers can be implemented in the area of both substantive and procedural law. The limit of those powers is to direct them towards the implementation of a specific interest. Therefore, similarly to Polish law, the condition for assessing whether the abuse of law has occurred is to determine whether the party exercises their rights in compliance with the purpose for which they were granted. If the rights are exercised in a dysfunctional manner, the legal system prohibits their exercise at the level of substantive law and their enforcement at the level of procedural law.[38] An allegation of the abuse of law is an oppositional

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Milano, 2007; Robles, M., 'Abuso del diritto e dinamiche sanzionatorie nella prospettiva costituzionale', *Rassegna di diritto civile*, 2009, Vol. XXIX, No. 3, p. 755ff; Vettori, G., 'L'abuso del diritto', *Obbligazioni e contratti*, 2010, No. 3, p. 168ff; Gentili, A., 'L'abuso del diritto come argomento', *Rivista di diritto civile*, 2012, No. 3., p. 297ff; in jurisprudence see: Pret. Parma, 30 March 1950, in *Foro civ.*, 1950, p. 336ff; Pret. Sondrio, 18 June 1988, in *Banca borsa tit. cred.*, 1989, II, p. 525ff; Trib. Milano, 2 March 1994, in *Giur. it.*, 1996, I, 2, c. 59ff; of particular interest is judgment in case of 18 September 2009, n. 20106, in *Rass. dir. civ.*, 2010, p. 577ff, who stated in a particular case an abuse of the right as a result of the exercise of the right of withdrawal ad nutuma, despite the fact that the parties stipulates such a possibility in the contract. In this regard, Giorgini, E., 'Recesso ad nutum secondo ragionevolezza', *Rassegna di diritto civile*, 2010, No. 2, p. 602, underlines the need to apply the principle of reasonableness when assessing whether there has been an abuse of the right by the person entitled to exercise it; See also Gentili, A., 'Abuso del diritto e uso dell'argomentazione', *Responsabilità civile e previdenza*, 2010, No. 2. p. 354ff; critically, Orlandi, M., 'Contro l'abuso del diritto (in margine a Cass., 18 settembre 2009, n. 20106)', *Rivista di diritto civile*, 2010, Vol. 56, No. 2, p. 147ff, who denies the possibility of constructing prohibition of abuse of rights as a general rule. For a detailed analysis on the abuse of right in Germany, see Di Nella, L., 'L'abuso delle situazioni giuridiche negli ordinamenti europeo italiano e tedesco: profili civilistici e tributari', in: del Prato E. (ed.), *Studi in onore di Antonino Cataudella*, Vol. I, Napoli, 2013, p. 695.

[37] Romano, S., 'Abuso del diritto', *Enciclopedia del diritto*, Annali, Vol. I, Milano, 1958, p. 166ff. e di Rescigno, P., 'L'abuso del diritto', *Rivista di diritto civile*, 1965, Vol. 1; Rescigno, P., *L'abuso del diritto*, Bologna, 1998, p. 11ff; in literature, see: Levi, G., *L'abuso del diritto*, Milano, 1993; Messinetti, D., 'Abuso del diritto', *Enciclopedia del diritto*, Annali, Vol. II, Milano, 1998, p. 1ff; Sacco, R., 'L'esercizio e l'abuso del diritto', in: Alpa, G., Graziadei, M., Guarneri, A., Mattei, U., Monateri, P.G., Sacco, R., *La parte generale del diritto civile. 2. Il diritto soggettivo*, Torino, 2001, p. 313ff; Messina, M., *L'abuso del diritto*, Napoli, 2004; Pellecchia, E., *Scelte contrattuali e informazioni personali*, Torino, 2005, p. 89ff; Tullio, L., *Eccezione…*, op. cit., p. 99ff; Perlingieri, G., *Profili civilistici dell'abuso tributario. L'inopponibilità delle condotte elusive*, Napoli, 2012, p. 10ff; Astone, A., *Il divieto di abuso del diritto. Diritto scritto e diritto vivente*, Milano, 2017, p. 3ff. Discretion can be understood as freedom regarding the choice of suitable means to achieve a benefit, not merely as 'freedom to choose the end to be achieved, given that the determination of the end is the prerogative of the legal system.' Thus Villella, A., *Per un diritto comune delle situazioni patrimoniali*, Napoli, 2000, p. 83, who refers on this point to Nuzzo, M., *Utilità sociale e autonomia privata*, (1975), reprint, Napoli, 2011, pp. 125, commentary 107, and 194, commentary 94.

[38] For comparison see: Perlingieri, P., *Profili del diritto civile*, Napoli, 1994, p. 109; Ferroni, L., 'Spunti per lo studio del divieto d'abuso delle situazioni soggettive patrimoniali', in: Perlingieri, P. (ed.), *Temi e problemi della civilistica contemporanea. Venticinque anni della "Rassegna di diritto civile"*, Napoli, p. 313. According to Messinetti, D., *Abuso…*, op. cit., p. 1 the technique of abuse constitutes a form of control implemented 'through a heteronomous evaluation of the ways in which the power is exercised.' More generally, see Zaccaria, G., 'L'abuso del diritto nella prospettiva della filosofia del diritto', *Rivista di diritto civile*, 2016, Vol. 62, No. 3, p. 744ff.

measure against a claim in the civil proceeding, which is used for dysfunctional purposes (*exceptio doli generalis*).[39]

As indicated above, the Italian Code of Civil Procedure does not contain a provision prohibiting the abuse of procedural rights by the parties, which would be the equivalent of Polish Article 4 [1] CCP. However, under Article 88 c.p.c., the parties and their lawyers are obliged to act in court in accordance with the principle of honesty and loyalty. The norm may be considered equivalent to the good manners clause in civil proceedings expressed in Article 3 CCP. Thus, the obligation to act loyally and honestly before the court has been viewed in Italian civil procedure from a positive perspective. The violation of this obligation may result in negative procedural consequences. The first of them is provided for in Article 88 c.p.c. The provision authorises the court to notify the authorities that exercise disciplinary powers over solicitors who violate the obligation laid down in Article 88 c.p.c. Further sanctions that may be imposed on the party violating the principles under Article 88 c.p.c. are laid down in Article 96 c.p.c.[40] Firstly, in accordance with the provision, if it turns out that the losing party acted or defended before the court in bad faith or with gross negligence, the court, at the request of the other party, shall order that party to pay compensation in addition to the trial costs (Article 96 par. 1 c.p.c.). Secondly, the court may order a plaintiff or a creditor to pay such damages if it recognises that there is no right (claim) in respect of which a protective measure has been taken or a lawsuit has been filed, a judicial mortgage has been registered or enforcement has been carried out, if the plaintiff or the creditor had acted without ordinary prudence (Article 96 par. 2 c.p.c.). Thirdly, ruling the reimbursement of trial costs, the court may order the losing party to pay an appropriate sum of money (Article 96 par. 3 c.p.c.). Fourthly, as an additional sanction in all three of the above cases, the court may impose on a party a fine of not less than EUR 500 and not more than EUR 5,000 (Article 96 par. 4 c.p.c.).[41]

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[39] Ranieri, F., *Eccezione…*, op. cit., p. 311ff, and Dolmetta, A.A., 'Exceptio…, op. cit., p. 1ff; and earlier Bigiavi, W., 'L'*exceptio doli…*', op. cit., c. 203ff.

[40] It should be pointed out that abuse of procedural law may concern all individual laws, rights and entitlements that the legal system grants the parties: Comoglio, L.P., 'Abuso del processo e garanzie costituzionali', *Rivista di diritto processuale*, 2008, Vol. 63(2), p. 328. On this subject see Lipari, N., 'L'abuso del diritto e la creatività della giurisprudenza', in: Lipari, N., *Il diritto civile tra legge e giudizio*, Milano, 2017, p. 33ff; with regard to the abuse of process, see numerous arguments in: Dondi, A., 'Abuso del processo (diritto processuale civile)', *Enciclopedia del diritto*, Annali Vol. III, Milano, 2010, p. 1ff; Montanari, M., 'Note minime in tema di abuso del processo', *Corriere giuridico*, 2011, No. 4, p. 556ff; Consolo, C., 'Note necessariamente divaganti quanto all'«abuso sanzionabile del processo» e all'«abuso del diritto come argomento»', *Rivista di diritto processuale*, 2012, No. 5, p. 1284ff; Scarselli, G., 'Sul c.d. abuso del processo', *Jucicium*, 2012, p. 1450ff; Ghirga, M.F., 'Recenti sviluppi giurisprudenziali e normativi in tema di abuso del processo', *Rivista di diritto processuale*, 2015, Vol. 70, No. 2, p. 445ff; Taruffo, M., 'Abuso del processo', *Contratto e impresa*, 2015, Vol. 31, No. 4–5, p. 832ff; Tropea, G., *L'abuso del processo amministrativo. Studio critico*, Napoli, 2015, p. 17ff; Verde, G., 'L'abuso del diritto e l'abuso del processo (dopo la lettura del recente libro di Tropea)', *Rivista di diritto processuale*, 2015, Vol. 70, No. 4–5, p. 1085ff; Fornaciari, M., 'Note critiche in tema di abuso del diritto e del processo', *Rivista trimestrale di diritto e procedura civile*, 2016, Vol. 70, No. 2, p. 593.

[41] Mastrogiovanni, G., in: Didone, A., De Santis, F. (eds), *Il Processo Civile Dopo La Riforma Cartabia*, Milano, 2023, pp. 199–200.

The above provision regulates the so-called aggravated (qualified) procedural liability for recklessness of the dispute, including cases of liability for damages for the parties' actions or procedural conduct and any harmful effects that may result from such actions for the opposing party.[42] Only a losing party can incur the liability provided for in Article 96 c.p.c. Contrary to the Polish procedure, the Italian c.p.c. regulation does not provide for targeted sanctions that may be applied regardless of the outcome of the trial (Article 226 [2] par. 2 CCP). The conditions for awarding compensation pursuant to Article 96 par. 1 c.p.c. include the exercise of the power contrary to the purpose for which it was granted (objective condition), and acting intentionally or with gross negligence (subjective condition). In the event of compensation based on Article 96 par. 2 c.p.c., it is sufficient to state that a party was even slightly negligent or that if they had acted with due diligence (ordinary caution), they would have known that they were not entitled to a specific substantive right or claim.[43] In both of the above cases (Article 96 par. 1 and 2 c.p.c.), compensation is awarded at the request of the aggrieved party, thus the burden of proof is on this party; it is the aggrieved who must prove that the opposing party acted unlawfully as well as that damage resulted from it and what its size was.[44] Under Article 96 par. 1 and 2 c.p.c., compensation should cover both material and non-material damage. Therefore, it should include redress.[45]

Unlike under the regulation laid down in Article 96 par. 1 and 2 c.p.c., pursuant to Article 96 par. 3 c.p.c., the court may *ex officio* order the party abusing procedural powers to pay an appropriate (fair) amount to the other party. The amount is awarded regardless of the winning party's claims and does not require that damage be proved. Therefore, it is a type of punitive damages paid to the other party but in the interest of the justice system and is left to the judge's discretion.[46] The provision

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[42] Parlato, I., 'Responsabilità aggravata', *AltalexPedia*; par. 2; Tribunale Massa, 16/11/2018, n. 804; Cass. Civ., 3 March 2010, n. 5069; Cass. Civ., 24 July 2007, n. 16308; Cass. Civ., 12 March 2002, n. 3573; Cass. Civ., 4 April 2001, n. 4947 (available at: https://www.altalex.com/documents/altalexpedia/2019/03/07/responsabilita-aggravata) [accessed on 8 March 2024].

[43] Parlato, I., 'Responsabilità…', op. cit., par. 2; Viterbo Court, 18 September 2018, n. 1273; Cass., 6 July 2003, n. 9060; Cass. Civ., 12 January 2010, n. 327; Cass. Civ., 8 September 2003, n. 13071; Cass. Civ., 21 July 2000, n. 9579; Cass. Civ., 29 September 2016, n. 19285; Cass. Civ., 19 April 2016, n. 7726; Cass. Civ., 22 February 2016, n. 3376; Cass. Civ., 30 October 2015, n. 22289; Cass. Civ., 11 February 2014, n. 3003 (available at: https://www.altalex.com/documents/altalexpedia/2019/03/07/responsabilita-aggravata) [accessed on 8 April 2024]; Cass. Civ., 9 November 2017, n. 26515; (available at: https://www.altalex.com/documents/news/2017/11/20/responsabilita-aggravata) [accessed on 8 April 2024].

[44] Parlato, I., 'Responsabilità…', op. cit.; par. 8; Trib. Rome, 10 July 2018, n. 14223; Trib. Rome, 2 October 2017, n. 18514; Cass. Civ., 6 November 2005, n. 21393; Cass. Civ., 19 July 2004, n. 13355; Cass. Civ., 15 April 2013 n. 9080; Cass. Civ., 8 June 2007, n. 13395; Cass. Civ., 15 February 2007, n. 3388; Cass. Civ., 12 December 2005, n. 27383; Cass. Civ., 9 September 2004, n. 18169 (available at: https://www.altalex.com/documents/altalexpedia/2019/03/07/responsabilita-aggravata) [accessed on 8 April 2024].

[45] Parlato, I., 'Responsabilità…'; par. 5, 6 and 7; Cass. Civ., 12 October 2011, n. 20995); Cass. Civ., 12 October 2011, n. 20995; Cass. Civ., 12 October 2011, n. 20995; (available at: https://www.altalex.com/documents/altalexpedia/2019/03/07/responsabilita-aggravata) [accessed on 8 April 2024].

[46] Cf. Zeno-Zencovich, V., 'Pena privata e punitive damages nei recenti orientamenti dottrinali americani', in: Busnelli, F.D., Scalfi, G. (eds), *Le pene private*, Milano, 1985, p. 375ff;

of Article 96 par. 3 c.p.c. has a nature of a sanction and is not just compensation; it is intended to prevent conduct that abuses procedural law, which is contrary to the principle of procedural loyalty.[47]

As a result of the Cartabia Reform, par. 4 has been added to Article 96 c.p.c., which strengthened sanctions imposed on the losing party who has abused their procedural rights. The regulation provides for an additional obligation to pay a fine ranging from EUR 500 to EUR 5,000 to the fine fund. The fine may be imposed on the party if one of the situations described in Article 96 par. 1–3 c.p.c. occurs and it constitutes a kind of compensation for the damage caused to the justice system in the form of unnecessary expenditure on conducting a court proceeding. This solution is intended to strengthen the guarantee of compliance with the principle of procedural loyalty, which is the basis of a fair trial.

Another solution that gives the judge an instrument to counteract the lengthiness of a court proceeding and a tool to discourage parties from abusing their procedural rights is connected with the decision on the costs of the trial. In accordance with Article 92 c.p.c., deciding on the costs of the proceeding, the court may:

1. Disregard the costs incurred by the winning party, which it considers excessive or unnecessary.
2. Regardless of the outcome of the case, order one party to reimburse the other party for the costs incurred (even if they are not subject to reimbursement), which were caused because the party failed to fulfil the obligation laid down in Article 88 c.p.c. (breach of the duty of loyalty and honesty before the court).

The regulation under Article 92 par. 1 c.p.c. is similar to the solution adopted in the Polish civil procedure in Article 98 par. 1 CCP and Article 226 [2] par. 2 (3a) CCP, and detailed in the subsequent provisions. The solution has been formulated in a slightly different way, not from the negative side (by indicating what the court does not take into account), but from the positive side (what the court may take into account). Pursuant to Article 98 par. 1 CCP, the losing party is obliged to reimburse the opposing party, at his request, only for the costs necessary for the purposeful pursuit of rights and purposeful defence. However, in accordance with Article 226 [2] par. 2 (3a) CCP,

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Ponzanelli, G., 'I punitive damages, il caso Texaco e il diritto italiano', *Rivista di diritto civile*, 1987, Vol. II, p. 409ff; Quarta, F., *Risarcimento e sanzione nell'illecito civile*, Napoli, 2013, p. 8ff; Malomo, A., *Responsabilità civile e funzione punitiva*, Napoli, 2017, p. 7ff; Grondona, M., *La responsabilità civile tra libertà individuale e responsabilità sociale. Contributo al dibattito sui «risarcimenti punitivi»*, Napoli, 2017, p. 105ff; Lasso, A., *Riparazione e punizione nella responsabilità civile*, Napoli, 2018, p. 64ff; Cicero, C., 'Il perimetro dei "risarcimenti punitivi"', in: Cicero, C. (ed.), *I danni punitivi, Tavola rotonda – Cagliari 9 maggio 2018*, Napoli, 2019, p. 41ff. For a comparison with foreign experiences, see Benatti, F., 'Inadempimento del contratto e danni punitivi', *Rassegna di diritto civile*, 2013, Vol. 3, p. 846ff; Parlato, I., 'Responsabilità…'; par. 9; Trib. Rome, 28 September 2017; Cass. Civ., 8 February 2017, n. 3311; Cass. Civ., 19 April 2016, n. 7726; Cass. Civ., 8 February 2017, n. 3311; Cass. Civ., 19 April 2016, n. 7726; Cass. Civ., 11 February 2014, n. 3003 (available at: https://www.altalex.com/documents/altalexpedia/2019/03/07/responsabilita-aggravata) [accessed on 8 April 2024].

[47] Rinaldi, M., 'Lite temeraria: si alla sanzione pecuniaria per scoraggiare l'abuso del processo', *Tribunale Lamezia Terme, sez. civile*, 11 June 2012 (https://www.altalex.com/documents/news/2012/12/11/lite-temeraria-si-alla-sanzione-pecuniaria-per-scoraggiare-l-abuso-del-processo) [accessed on 8 April 2024].

in the event an abuse of procedural law by a party is recognised, the court may order the abusing party to cover the trial costs increased in proportion to the increase in the opposing party's workload necessary for conducting the case as a result of this abuse, but not more than twofold. The regulation under Article 92 par. 2 c.p.c. is similar to the solutions adopted in the Polish procedure in Article 226 [2] par. 2 (2) CCP and Article 103 par. 1 and par. 3 CCP. The provisions make it possible to impose on a party or an intervening party, regardless of the outcome of the case, an obligation to reimburse for the costs resulting from their negligent or obviously inappropriate conduct, and in the event of an abuse of procedural law, also an obligation to reimburse for the costs in a greater part than the outcome of the case would indicate and even reimbursement for all the costs. The sanctions are applied, inter alia, when a party has abused procedural rights, e.g., by submitting untruthful explanations, concealing evidence or delaying its presentation, or multiplying evidence that is irrelevant to the resolution of the case.

CONCLUSION

The Italian model of judicial management of evidence-taking proceedings differs significantly from the Polish one. In most areas, the Italian judge does not enjoy much discretion and decision-taking freedom in the field of collecting procedural material. Strict deadlines for the submission of pleadings and the moment after which further presentation of claims and evidence is not possible are laid down by statute. There are no special provisions in the Italian procedural law that would enable the parties to submit further statements and evidence, either, in the event the parties did not produce them through no fault of their own or when the need to provide them occurred after the deadline for submitting statements and claims. The parties can only use the general measure of restoring a deadline if they failed to meet one for a procedural step of submitting claims and evidence (e.g., filing a preparatory pleading).

The judge's managerial activities in the Italian civil procedure in the area of preliminary substantive examination of the case are strongly emphasised. At the preliminary hearing, the judge has the right to draw the parties' attention to certain matters that are important for the resolution of the case, which should be clarified, and to admit evidence *ex officio*. However, he is obliged to enable the parties in such a situation to take a stance on the issues raised by the judge and to lodge potential evidence related motions in connection with the evidence admitted *ex officio*. Having examined the case at the preliminary hearing, the investigating judge also takes a decision, inter alia, based on substantive considerations, whether the case will be heard in an ordinary or a simplified proceeding, whether it is justified to render an interim order to accept the claim or reject the request. The procedure is similar to the one functioning in the Polish CCP, i.e., a simplified procedure of dismissing an obviously unfounded claim (Article 191 [1] CCP). Another important feature that differentiates the Italian model from the Polish one is the more formalised course of the trial: the exchange of pleadings before set deadlines; a preliminary hearing

and a decision specifying the limits of the evidence-taking proceeding; a hearing devoted to the taking of evidence by the investigating judge; resolution of the case by the investigating judge or a collective bench. In the Polish model, the court or the presiding judge may take steps aimed at arousing the parties' initiative in explaining the circumstances relevant to the resolution of the case and modify the course of the proceeding in response to changes in the procedural situation and the parties' stance until the conclusion of the trial. The court or the presiding judge may, in particular, oblige the parties to submit preparatory pleadings, or admit evidence *ex officio* at any stage of the case, obviously within the limits of statutory requirements, which, however, grant the judge a fairly wide scope of discretionary powers. In this respect, the Polish model is more flexible while the Italian model encourages the parties to maintain procedural discipline.

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