



Italian Supreme Court no. 20104 of 24 September 2020

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According to the First Division of the Italian Supreme Court, the issue concerning the beginning of the “long time-limit” for challenging arbitration awards is open interpretation and represents an issue of particular significance worthy of submission to the Joint Division of the Italian Supreme Court, pursuant to Article 374, paragraph 2, of the Italian Code of Civil Procedure. This was stated in the order of the Supreme Court no. 20104 of 24 September 2020.

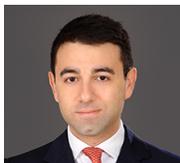
The case concerned an arbitral award challenged before the Court of Appeal of Bologna, which declared *ex officio* the challenge proceedings inadmissible on the grounds that it was not taken within the statutory period set by the law, having been notified later than the annual deadline from the subscription of the award by the arbitrators, pursuant to Article 828, paragraph 2, of the Italian Code of Civil Procedure.

The claimant’s recourse before the Supreme Court was filed on the grounds that the Court of Appeal justified its decision focusing on the date of subscription of the award by the arbitrators, regardless of the date of its communication to the parties which, in that case, was almost three weeks after. And – as explained by the same claimant – such interpretation should be considered in contrast with the constitutional principle of due process, as the parties to an arbitral proceedings do not have the possibility to periodically verify the filing of the final decision (which is possible before civil courts).

According to the Supreme Court, the issue is of particular significance regardless of the specific legislation applicable *ratione temporis* to the dispute (i.e. regarding both the previous text of the Article 342 of the Italian Code of Civil Procedure, as well as the one currently in force). Indeed, it should be deemed possible “to adopt a constitutionally oriented interpretation of the combined provisions of Articles 828, paragraph 2, and 825, paragraph 1, of the Italian Code of Civil Procedure, in the sense that the annual time-limit for challenging the arbitration award should start on the date of communication of the award by the arbitrators; or, subordinately, in case of considered conflict with the literal sense of law to such an interpretation, the proposed question of the constitutional legitimacy of the regulation previously reconstructed could be assessed as not manifestly unfounded.”

In light of the above, the First President of the Italian Supreme Court will now have to decide whether the matter is to be referred to the Joint Divisions of the Supreme Court.

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