Kluwer Arbitration Blog

Interim Measures in Italy-Seated Arbitrations: The Reform is Not a Time Machine

Gregorio Pettazzi, Valerio Letizia (Freshfields) · Tuesday, March 11th, 2025

For decades, Italy was one of the very few countries in the world that prohibited arbitrators from granting interim relief. The situation changed in 2022 with the so-called "Cartabia" Reform, named after Professor Marta Cartabia, Italy's Minister of Justice at the time and former president of the Constitutional Court (*see also* discussion here). Thanks to the reform, arbitrators in Italy-seated arbitrations now have the power to order interim measures, provided that the parties have conferred this power on them either in the arbitration agreement (or a separate written document) or by making reference to institutional arbitration rules that so provide. Under the reformed Article 818 of the Italian Code of Civil Procedure ("CCP"), once conferred by the parties, the arbitrators' power to order interim relief is granted on an exclusive basis from the acceptance of their appointment (for sole arbitrators) or the constitution of the arbitral tribunal.

The new regime applies to all proceedings initiated after 28 February 2023 (Article 35(1) of Legislative Decree 149/2022). Yet, the law does not clarify how the entry into force of the new rules interplays with the requirement that the parties agree to confer arbitrators the power to grant interim relief. This raised the question: Do arbitrators have jurisdiction to order interim relief in proceedings started after 28 February 2023 if the underlying arbitration agreement was concluded at the time when the ban on arbitral interim measures was still in place?

On 7 January 2025, in the first publicly known ruling addressing this question, the Court of Milan said no (*see* here). The court reasoned that before the Cartabia Reform parties could not possibly have intended to confer arbitrators a power they simply could not exercise. The new rules could not have any impact on the parties' intent.

To weigh the potential ramifications of the decision, below we examine the reasoning of the Milan Court and then evaluate the likelihood that Italy's higher courts will follow its approach.

1. **The Court of Milan's Decision to Deny the Arbitrators' Power to Grant Interim Relief**

Case Background

The case involved a distribution agreement entered into by X and Y on 20 September 2020, which granted X the exclusive right to distribute electric vehicles manufactured by Y in a designated area. The agreement was supplemented on 17 May 2022 to include, among other things, an arbitration

clause providing for Milan-seated arbitration under the Milan Chamber of Arbitration Rules ("CAM Rules").

After X commenced arbitration against Y for breach of the distribution agreement, on 26 September 2023 the parties entered into a settlement agreement, terminating the distribution agreement by mutual consent.

Y then sued X before the Court of Milan, seeking a declaration that X had breached the settlement agreement.

In response, X requested that the Court of Milan issue an injunction to prevent Y from distributing and marketing Y's electric vehicles in the area covered by the 2020 distribution agreement. X argued that the settlement agreement was null and void, and therefore the injunction was necessary to prevent further breaches of its exclusive right to distribute Y's electric vehicles in the relevant area.

Reasoning of the Milan Court

To rule on X's interim relief application, the Court first had to establish its jurisdiction in light of the arbitration clause of the distribution agreement. It concluded that the arbitration clause did not deprive it of the power to order interim measures. At the time the parties agreed to arbitrate (May 2022), the ban on arbitrators' interim measures was still in place. Thus, it had to be assumed that, regardless of the reference to the CAM Rules, the parties did not intend to—for they could not—grant arbitrators the power to order interim measures.

Having established its jurisdiction, the Court then went on to consider the application and ultimately rejected it on the merits.

2. Is the Milan Court's Approach Likely to Be Followed by Other Courts in Italy?

As in other civil law jurisdictions, there is no formal doctrine of binding precedent in Italy. Whether the Milan Court's approach will be adopted by other Italian courts will depend on its persuasiveness.

The Milan Court's approach focuses on the "intent" of the parties when signing the arbitration agreement. This intent is, in turn, informed by the legal framework existing at the time of the agreement. The "crucial point"—as the Milan Court put it—is that when the parties agreed to arbitrate (May 2022), they were precluded from granting arbitrators the power to order interim measures. The Cartabia Reform was in fact enacted only few months later (October 2022).

In a legal framework where the arbitrators may grant interim relief only to the extent in which the parties empower them to do so, focusing on the parties' intent is reasonable.

However, in identifying the parties' intent, the Milan Court appears to have overlooked three important elements.

First, the CAM Rules envisaged arbitral interim measures long before the Cartabia Reform. Article 22(2) of the 2010 CAM Rules provided that: "The Arbitral Tribunal may issue all urgent and

provisional measures of protection, also of anticipatory nature, that are not barred by mandatory provisions applicable to the proceedings."

Due to the ban on arbitral interim measures—which constituted a mandatory rule—before the Cartabia Reform, arbitral interim measures in CAM arbitrations were, in practice, available only in foreign-seated proceedings. Yet, the language of the rule arguably implies that the parties did intend to confer on arbitrators the power to grant interim measures—at least to the extent permitted by the applicable mandatory norms.

This inference would be even stronger for the ICC Rules which, unlike the CAM Rules, include(d) an unqualified provision (Article 28(1)) in support of arbitral interim relief: "Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the arbitral tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate."

Yet the Milan Court's emphasis on the surrounding legal framework, rather than the language of the applicable arbitration rules, suggests that even such unqualified provision would not be sufficient. This appears to echo the approach of Italy's Supreme Court in other cases (no. 9284, 9285, and 9341 of 2016), but it is not necessarily convincing in this context. Taken to its extreme, the approach implies that even if the parties had expressly provided for arbitral interim measures in their arbitration clause, arbitrators would still lack interim relief powers if the clause predates the Cartabia Reform.

Second, the institutional rules applicable to the arbitration are those in force when the arbitration commences, not when the parties agreed to arbitrate.

This is provided by institutional rules (*e.g.*, Article 45(2) of the 2023 CAM Rules; Article 6(1) of the 2021 ICC Rules) but also by an express provision of Italian law (Article 832(3) CCP). It means that the parties' incorporation of institutional rules into their arbitration agreements is of a dynamic nature. The parties' choice of a given set of arbitration rules does carry with it their implicit agreement to any future development.

It could be argued that here it is not a question of amendments to the institutional rules; rather, what changed is the *lex arbitri*. Yet, the conclusion should not change. As a matter of Italian law, the parties' agreement should not be seen as static. If the content of the arbitration rules has evolved (whether because of a textual amendment or as a result of a change in the *lex arbitri*), the effect of Article 832 CCP should be to capture such evolution in the parties' agreement.

Third, under the new rules of the Cartabia Reform, the parties' selection of arbitration rules that provide for arbitral interim measures is sufficient to establish their intent to empower arbitrators. Courts are not required (nor permitted) to establish the parties' 'true' intent.

Accordingly, once the Court had established the applicability of the new regime, the only relevant question was whether the applicable arbitration rules chosen by the parties provided for arbitral interim relief.

The Cartabia Reform expressly defined its temporal scope: the new rules apply to all proceedings started after 28 February 2023. The Milan Court's approach effectively resulted in an implicit derogation from that express statutory provision.

Finally, there is a more fundamental aspect of the Cartabia Reform's new regime that the Milan

Court appears to have overlooked—namely, that the exclusive jurisdiction of arbitrators could only arise after the constitution of the tribunal. As no arbitration was pending at the time of the application, this would have provided the Milan Court with a much simpler (and more solid) basis for disposing of the issue and uphold its own jurisdiction on the application for provisional measures. The outcome was therefore correct, but perhaps not for the right reasons.

3. **Conclusion**

The key takeaway from the Milan Court's decision is that arbitral interim measures might not be available in proceedings concerning pre-Cartabia Reform arbitration clauses.

Although there are reasons to believe that other Italian courts will not follow the Milan Court's approach, parties who intend to grant arbitrators the power over interim relief should consider renegotiating their arbitration agreements or recording in a separate document their agreement to this effect.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.

This entry was posted on Tuesday, March 11th, 2025 at 8:41 am and is filed under Camera Arbitrale Milano, Interim measures, Italian law, Italy, Reform
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.