Which country's court is responsible?

Italija

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

As a general rule, in the Italian legal system, jurisdiction lies with the ordinary courts, since these courts have specific jurisdiction over disputes relating to personal rights and entitlements. The Justice of the Peace (*Giudice di Pace*), the General Court (*Tribunale*) and the Court of Appeal (*Corte di Appello*) are all ordinary judicial bodies. The court of last instance is the Supreme Court of Cassation (*Suprema Corte di Cassazione*), while the constitutional court is the Constitutional Court (*Corte Costituzionale*). Besides the ordinary court system, provision is also made for an administrative court system. Administrative courts have jurisdiction to hear disputes concerning issues of legitimate interests and, in the specific areas laid down by law, disputes involving individual rights, relating to the exercise of or failure to exercise administrative powers in relation to measures, acts, agreements or conduct involving the exercise of those powers, on the part of public authorities. Acts or measures adopted by the Government in the exercise of political power may not be challenged before the courts. Administrative jurisdiction is exercised by the Regional Administrative Courts (*Tribunali Amministrativi Regionali* – TAR) and by the Council of State (*Consiglio di Stato*), according to the provisions set out in the Code of Administrative Procedure. The court of last instance is the Supreme Court of Cassation, but only on jurisdictional grounds. There is also another special court – the tax court (*tributario*). Fiscal jurisdiction is exercised by the Provincial Tax Courts (*Commissioni Tributarie Provinciali* – CTP) and by the Regional Tax Courts (*Commissioni Tributarie Regionali* – CTR). The tax courts have jurisdiction to hear all disputes relating to taxes of every description and going by any name, including regional, provincial and municipal taxes and contributions paid to the Italian National Health Service, surtaxes and additional taxes, the associated sanctions, and interest fees and any other ancillary fees. In the Italian legal system, there are a number of 'specialised' chambers within the ordinary court system. Some of the most important specialised chambers include: a) the chambers specialising in matters concerning immigration, international protection and the free movement of EU citizens; b) the chambers specialising in corporate matters; c) the chambers specialising in agricultural matters. There are also specialised courts such as the Juvenile Court (*Tribunale per i Minorenni*) or the *Tribunale di Sorveglianza* (Court supervising the enforcement of sentences). Employment-related disputes are referred to the ordinary courts, some of which comprise specific chambers (employment chambers). However, technically speaking, these are not specialised chambers but rather organisational models within the courts.

As a general rule, the General Court has jurisdiction over all cases that do not fall under the jurisdiction of other courts. The General Court also has sole jurisdiction over all cases concerning taxes and duties (that have not been referred to the tax courts), all cases relating to the status and capacity of persons and to honorary rights, actions citing fraud, enforcements and, in general, any case having an indeterminable value.

The Justice of the Peace has jurisdiction over cases relating to movable assets worth up to EUR 50 000, when the law has not placed them under the jurisdiction of another court. From 31 October 2021, this figure will stand at EUR 30 000. The Justice of the Peace also has jurisdiction over all matters relating to the disputes indicated in Section 7 of the Code of Civil Procedure.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

The criterion for identifying the court to refer the dispute to is 'jurisdiction'. In the Italian legal system, jurisdiction generally indicates the set of powers and functions that a legal body may exercise. There are different types of jurisdiction: - by subject matter; - by territory; - by instance; - by value. With respect to civil procedure, jurisdiction indicates the level of authority allocated to each judicial body and, therefore, the scope within which the decision-making powers of that body are justified. The jurisdiction in question is defined from a 'technical perspective', and its legal arrangements are set out in Sections 7 *et seq.* of the Code of Civil Procedure. On the basis of the rules in question, the procedural nature of jurisdiction constitutes a preliminary matter and may therefore form the subject of a decision within the framework of the dispute. If any of the rules governing jurisdiction are breached, the review body may, in particular, justifiably pass a ruling on a lack of jurisdiction (see Section 38 of the Code of Civil Procedure). Jurisdiction in the technical sense differs from so-called 'internal' jurisdiction, i.e. the distribution of matters within the framework of the competent judicial entity. This latter form of jurisdiction, which is also referred to as 'tabular', is dependent on the way in which the General Court is structured: for instance, through the provision of internal chambers (civil chamber No 1) or the setting-up of entities focusing on specific subjects (employment chamber) or else through the establishment of separate entities. Failure to comply with the provisions governing the allocation of matters does not give rise to a procedural issue concerning jurisdiction, but rather simply to an organisational problem as regards the distribution of the case within the judicial body.

With respect to the place where the dispute must be based, except where the law stipulates otherwise, the competent court is that of the defendant's place of residence or domicile; if these are unknown, then it is that of the defendant's place of abode. If the defendant has no residence, domicile or place of abode in Italy, or if the abode is unknown, the competent court is that of the claimant's place of residence. The rules governing territorial jurisdiction are set out in Sections 18 *et seq.* of the Code of Civil Procedure.

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

The ordinary court system is split into two sectors: the criminal sector, which decides on whether or not criminal lawsuits put forward by the Public Prosecutor against a given individual or entity are well-founded; and the civil sector, which aims to legally protect the rights inherent to relationships between private individuals or between a private individual and a public authority, when the latter, in carrying out its duties, harms the personal rights and entitlements of other people. In the criminal sector, judicial personnel perform adjudicating and prosecuting duties, with the former involving the passing of judgments, and the latter involving the investigations being conducted (under the aegis of the Public Prosecutor's Office). Once those investigations have been concluded, the prosecution staff either initiate criminal proceedings or file for the case to be dismissed, support the accusation in court, and carry out prosecuting duties at subsequent instances. In accordance with the final paragraph of Section 107 of the Italian Constitution, criminal trials are brought by members of the Public Prosecutor's Office (even if they form a part of the ordinary courts). During the criminal trial, the injured party may initiate a civil action in order to receive compensation for the damages they sustained; they may also take action, separately, before the civil courts. Civil and criminal trials are governed by two separate sets of procedural rules: the Code of Civil Procedure and the Code of Criminal Procedure. Ordinary jurisdiction is administered by 'professional' judges and 'honorary' judges, both forming part of the judiciary.

At first instance, jurisdiction is exercised by the following bodies in both civil and criminal cases:

The Justice of the Peace – where an honorary judge presides alone
The Ordinary General Court (*Tribunale Ordinario*), which is made up of either a single judge or a panel of judges, depending on the nature of the dispute
The Juvenile Court, which is made up of a panel of judges assisted by experts
The *Tribunale di Sorveglianza*, which is made up of either a single judge or a panel of judges (assisted by experts).
At first instance, the prosecuting duties are carried out by:
The Public Prosecutor at the Ordinary General Court (including for offences falling under the jurisdiction of the Justice of the Peace)
The Public Prosecutor at the Juvenile Court
The Public Prosecutor at the Court of Appeal, for proceedings brought before the *Tribunale di Sorveglianza*.
At second instance, jurisdiction is exercised by the following bodies:
The Court of Appeal, for appeals lodged against judgments passed by the Ordinary General Court and the Juvenile Court;
The Ordinary General Court, for appeals lodged against judgments passed by the Justice of the Peace (and also for appeals lodged against orders relating to personal freedom);
The *Tribunale di Sorveglianza*, for appeals lodged against judgments passed by the Sentence Supervision Judge.
At second instance, the prosecuting duties are carried out by the Public Prosecutor at the Court of Appeal. Jurisdiction on the legitimacy of judgments is exercised by the Supreme Court of Cassation; in trials brought before the Court, the prosecuting duties are carried out by the Public Prosecutor at the Supreme Court of Cassation. Lastly, it should be pointed out that the prosecuting bodies in Italy also include the National Anti-Mafia and Anti-Terrorism Directorate (*Direzione Nazionale Antimafia e Antiterrorismo*), which carries out, as set out in Legislative Decree No 160/06, nationally coordinated prosecution duties.

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

Except where the law provides otherwise, the competent court is that of the defendant's place of residence or domicile; if these are unknown, then it is that of the defendant's place of abode. If the defendant has no residence, domicile or place of abode in Italy, or if the abode is unknown, the competent court is that of the claimant's place of residence. There are, however, special rules in place for determining the place where the dispute must be based: the general and special rules are given in Articles 18 *et seq.* of the Code of Civil Procedure. However, there are also different rules given in special laws governing, for example, matters concerning families or children, the enforcement of judgments, or consumers' rights.

2.2.1 The basic rule of territorial jurisdiction

For natural persons, except where the law provides otherwise, the competent court is that of the defendant's place of residence or domicile; if these are unknown, then it is that of the defendant's place of abode. If the defendant has no residence, domicile or place of abode in Italy, or if the abode is unknown, the competent court is that of the claimant's place of residence.
For legal persons, except where the law provides otherwise, if the defendant is a legal person, the competent court is that of its headquarters. If the legal person has other premises or a representative authorised to appear in court in relation to the application, the competent court is also that of the place where that representative or those premises is/are located. For jurisdiction-related purposes, companies without legal personality, unincorporated associations and committees have their headquarters at the place where they habitually carry out their activities.
In cases involving entitlements against specified persons (*diritti di obbligazione*), jurisdiction also lies with the court of the place where the obligation arose or has to be performed.

2.2.2 Exceptions to the basic rule

Court for child-related cases (Foro per le cause relative a bambini)
For intervening orders concerning parental responsibility, the habitual residence of the child at the time the application was submitted constitutes the key criterion. The habitual residence of the child must be identified on the basis of objective criteria; if the child is transferred, this shall not establish the jurisdiction of the court of their new residence if a minimum, non-appreciable period of time has elapsed, taking account of the child's age.
Court for marriage-related cases (Foro per le cause relative al matrimonio)
Separation. In cases of legal separation, the application is lodged with the court of the place where the couple last resided together or, if they never resided together, of the place of residence or domicile of the respondent spouse. If the respondent spouse resides abroad, or cannot be reached, the application is lodged with the court of the place of residence or domicile of the applicant; if that spouse also resides abroad, it may be lodged with any court in Italy.
Divorce. The competent court for hearing applications for the dissolution of a civil marriage or the termination of the civil effects of a concordat [Catholic rite] marriage is the court of the place of residence or domicile of the respondent spouse, notwithstanding the other criteria for determining jurisdiction provided as alternatives by the same legal provision. Joint applications, however, may be lodged with the court of the place of residence or domicile of either spouse.
Court for employment-related cases (Foro per le cause di lavoro)
At first instance, employment-related disputes fall under the jurisdiction of the General Court, acting as a labour court. Territorial jurisdiction lies with the court of the place where the working relationship began or where the company or a branch thereof to which the employee was assigned is located, or where the employee provided their services at the time the working relationship ended. This jurisdiction shall remain in place following the transfer of the company or the closure of the company or its branch, provided that the application is lodged within six months from such a transfer or closure. Territorial jurisdiction over disputes relating to working relationships at branches of public administrative bodies lies with the court of the place where the office to which the employee is assigned or was assigned at the moment the working relationship ended is located. In disputes where one of the parties is a State Administration, a court may not serve as a *foro erariale* (a court dealing with issues of public finance).
Court for cases relating to real property rights and evictions or repossessions (Foro per le cause relative a diritti reali e ad azioni possessorie)
For cases relating to real property rights on immovable property, cases concerning the leasing and gratuitous loans for use (commodate) of buildings and business leases, and also cases relating to the application of terms and compliance with the distances established by the law, by regulations or by customs concerning the planting of trees and hedges, jurisdiction lies with the court of the place where the building or business property is located. If the building is spread over more than one legal district, jurisdiction lies with the court of the district in which the party in question pays most tax to the State; if the party pays no tax, jurisdiction lies with any court for the district in which part of the building is located. For evictions or repossessions, and for reports of new works and potential damage, jurisdiction lies with the court of the place where the act under dispute took place.
Court for inheritance-related cases (Foro per le cause ereditarie)
Jurisdiction lies with the court of the place where the inheritance proceedings were initiated, in cases:
1) relating to the inheritance claims or the division of an estate, or in any other case between joint heirs aimed at dividing an estate;
2) relating to the annulment of the division of an estate and the safeguarding of shares, provided they are initiated within two years of the estate being divided;
3) relating to loans granted to the deceased or to bequests owed by the heir, provided they are initiated before the estate has been divided and in any case within two years from the inheritance proceedings being initiated;
4) against the executor of the estate, provided they are initiated within the time frames set out in the preceding point.

Court for cases between business partners and between apartment block residents (Foro per le cause tra soci e tra condomini)
For cases between business partners, jurisdiction lies with the court of the place where the company has its head office; for cases between apartment block residents, or between apartment block residents and the apartment block itself, jurisdiction lies with the court in the district in which the communal areas (or the majority of them) are located.
Forum for cases involving public administrative bodies (Foro della pubblica amministrazione)
For cases in which one of the parties is a State Administration, jurisdiction lies – in accordance with the special laws governing the representation and defence of the State in court and in the cases provided for therein – with the court of the place where the Attorney-General's Office (*Ufficio dell'Avvocatura dello Stato*) is located, within which district the court that would have jurisdiction according to ordinary rules is based. When the administrative body is the respondent, that district is determined with respect to the court of the place where the obligation arose or has to be performed, or where the movable or immovable asset forming the subject of the application is located.
Enforcement Court (Foro dell'Esecuzione Forzata)
For enforcement over movable or immovable assets, jurisdiction lies with the court of the place where those assets are present. For enforcement over motor vehicles and trailers, jurisdiction lies with the court of the place in which the debtor's residence, domicile, abode or headquarters is located. For enforcement over obligations to either carry out or not carry out a certain act, jurisdiction lies with the court of the place where the obligation must be fulfilled.
Consumer Court (Foro del Consumatore)
In cases involving a consumer, jurisdiction lies with the court of the place in which that consumer resides or is actually domiciled. The jurisdiction of this court is exclusive and mandatory, unless the parties have come together to negotiate the involvement of other courts. The procedural conduct of the consumer, which clearly comes after the initiation of the trial, cannot assume a value equivalent to negotiations and cannot justify derogation from the Consumer Court.

2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?
In some cases, a dispute may be lodged with several different courts, which are referred to as alternative courts. This scenario applies, in particular, to cases involving entitlements against specified persons: in this case, with respect to the court of the place where the respondent is domiciled, jurisdiction also lies with the court of the place where the obligation arose or has to be performed.

2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?
The court of the respondent's place of residence does not have jurisdiction in the event that Italian law provides for a different, exclusive court. In this respect, please refer to chapter 2.2.2 ('Exceptions to the basic rule').

2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?
Except where there is mandatory jurisdiction (that for which derogation by way of agreement is precluded), the parties may together agree on a different court (Section 20 of the Code of Civil Procedure).

3 Where specialised courts have jurisdiction how can I find out which one I have to address?
If a specialised court has jurisdiction, the competence criteria set out in the relevant special laws shall apply.
Administrative courts. Jurisdiction over disputes relating to measures, acts, agreements or the conduct of public administrative bodies always lies with the Regional Administrative Court in the territorial district in which those bodies have their headquarters. In any case, jurisdiction always lies with the Regional Administrative Court with respect to any disputes relating to measures, acts, agreements or the conduct of public administrative bodies the direct effects of which are limited to the territory of the region in which that Court is based. For disputes relating to civil servants, jurisdiction always lies with the court in the territorial district of which the place of employment is located. In other cases, jurisdiction always lies – with respect to State acts – with the Regional Administrative Court of Lazio (having its headquarters in Rome) and – with respect to the acts of supraregional public entities – with the Regional Administrative Court of the Region in which they have their headquarters.
Tax courts. The provincial tax courts have jurisdiction over all complaints lodged against tax authorities and tax collectors based in their district. If a complaint is lodged against any departments of the Revenue Office (*Agenzia delle Entrate*) having jurisdiction over all or part of Italy, jurisdiction lies with the provincial tax court in whose district the office tasked with the duties set out in the disputed report is based.

Related links
► *The Italian Constitution* (EN)
https://www.senato.it/sites/default/files/media-documents/COST_INGLESE.pdf
► *Italian Laws and Codes* (IT)
https://www.normattiva.it/?language=en
►Italian Code of Civil Procedure (IT)
http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-di-procedura-civile
►The Code of Administrative Trial (EN)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/mzk3/~edisp/nsiga_4276977.pdf
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► Tax Procedural Code (IT)
http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?id=%7bECD81E71-D37B-4722-AA36-116B5BCB2232%7d
► Ministry of Justice (IT)
https://www.giustizia.it/giustizia
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