

Mediation and judiciary in Italy 2019 **

Abstract - According to the European Parliament (12.9.2017) “*Italy uses mediation at a rate six times higher than the rest of Europe*”.

Mandatory mediation was ruled in 2010 in Italy and came in force in 2011. Furious opposition by lawyers, benign neglect by judges. In 2013 the “Opt-Out” model was introduced. Results :

year 2011 - 60,810 mediation proceedings, 9,912 agreements, 16% success rate.

year 2018 - 151,923 mediation proceedings, 20,965 agreements, 14% success rate.

20,965 is the highest number of agreements through mediation ever reached in Italy. If all parties were present and they decided to go beyond the first meeting, the success rate in 2018 was 45%. Nevertheless, mediation is growing well below its potential: 3.220,928 new proceedings were filed in courts in 2018.

The Italian judges can order the litigants to undergo a mediation (delegated mediation) (ex art. 5, c.2, D.Lgs. 28/2010) or / and make a solution proposal based on equity (ex art. 185-bis civil procedure code), which the parties are free to accept or refuse (not binding arbitration), in all subjects related to alienable civil rights. When compulsory mediation was ruled they looked at mediation with a “benign neglect”, but since 2015 it is thanks to the judiciary that the use of mediation has been increasing in Italy: mediation proceedings delegated by judges were 2% (of all incoming mediation procedures) in 2011, 10% in 2015, 11% in 2016, 13% in 2017, 15% in 2018.

Index – 1 Introduction ; 2 A bit of history ; 3 Innovations by the judges, 3i Court of Rome, Alternative Sentence Resolutions, 3ii Court of Bari, integrated conciliation, 3iii University and Court of Florence, effective mediation, 3iv The guided mediation, 3v Case management tool of the process; 4 Conclusions.

I - Introduction

“*If the man does not reach the edge of the precipice, his wings will not grow on his back*” ¹ .

In 2009 in Italy there were:

- a tremendous number of pending civil litigation cases in the overall judicial system, 5,700,105, the maximum number ever reached ² ;
- a huge number of new filed civil proceedings, 5,012,000 (new filed civil proceeding in first instance Court 2,779,000);
- duration of a civil trial, 1,066 days.

In 2010 the Legislative Decree 28/2010 ruled mandatory mediation in many civil matters ³ , the 8% of all the commercial and civil disputes filed in the Italian courts (facing a furious opposition by lawyers and a benign neglect by judges), and it came into force in 2011. Agreements were (and still are) enforceable. From 2011 to 2018, a total of 130.438 agreements were reached in

* JD, B&ED, Diploma in Economics, IAPMMHJMC, professional mediator and trainer in mediation; advisor in small/medium firm financial crisis prevention; giovannimatteucci@alice.it .

** Article published in Asia Pacific Mediation Journal, 2019 / 2, page 62 <http://mediate.or.kr/base/data/APMJ.php> .

¹ Nikos Kazantzakis 1863 - 1957

² Ministero della Giustizia, Monitoraggio della giustizia civile, anni 2003 / 1° trim.2019 (12.7.2019)
https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1287132&previousPage=mg_2_9_13

³ Legislative Decree no. 28/2010 and Ministerial Decree no. 180/2010 ruled mandatory mediation in the following civil matters: property (*diritti reali*), lease (*locazione*), insurance contracts (*contratti assicurativi*), partition (*divisione*), wills and inheritance (*successioni ereditarie*), medical malpractice damages (*risarcimento danni da responsabilità medica*), financial contracts (*contratti finanziari*), loans (*comodato*), business rents (*affitto di azienda*), libel (*risarcimento da diffamazione a mezzo stampa*), family covenants and agreements (*patti di famiglia*). Interim and preventive procedures (injunction proceedings, notice to quit, possessory proceedings, civil action inside the criminal proceedings, etc.) were exempted from the mandatory attempt at mediation. Judges can order to undergo a mediation proceeding in every civil matter.

mediation proceedings. In 2018 the number of newly filed civil proceeding in first instance Courts lowered to 2,001,508 (also due to the financial crisis blown-up in 2008: lower incomes, less litigations), pending civil litigation cases lowered to 3.443.105 ⁴ .

On 12.12.2012, the Constitutional Court declared the unconstitutionality of compulsory mediation, due to over-delegation (the Government went beyond its powers in ruling the delegated legislation) and not because of the breach of a citizen's right to defense. Under the pressure of the European Union, mandatory mediation was reloaded at the end of 2013 ⁵ .

The filing of conflicts subjected to mandatory mediation had a 9% increase when mandatory mediation was revoked and a 15% decrease when mandatory mediation was back again ⁶ .

The Legislative Decree no. 69/2013 reintroduced the mediation as a mandatory first step before

⁴ Ministero della Giustizia, Monitoraggio della giustizia civile, anni 2003 / 1° trim.2019 (12.7.2019)
https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1287132&previousPage=mg_2_9_13

⁵ Giuseppe De Palo and Leonardo D'Urso, *Achieving a Balanced Relationship between Mediation and Judicial Proceedings*, in European Parliament, *The implementation of the mediation directive*, 29.11.2016, 2016
http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/571395/IPOL_IDA%282016%29571395_EN.pdf .

⁶ Italian Ministry of Justice, Statistics on mediation, 2015, page 3
[https://webstat.giustizia.it/Analisi%20e%20ricerche/Civil%20mediation%20in%20Italy%20-%20Year%202015%20\(ENG\).pdf](https://webstat.giustizia.it/Analisi%20e%20ricerche/Civil%20mediation%20in%20Italy%20-%20Year%202015%20(ENG).pdf)

As far as mediation is concerned, Italy has experienced five different time periods :

A) 1993 - 2003 :

- “pure” voluntary mediation;
- not enforceable;
- no links with the judicial proceeding;
- no compulsory assistance by a lawyer to the parties;
- fees to be paid at the beginning of the proceeding;

B) 2003 – March 2011

- voluntary mediation;
- enforceable;
- no links with the judicial proceeding;
- no compulsory assistance by a lawyer to the parties;
- fees to be paid at the beginning of the proceeding;

C) March 2011 – October 2012

- mandatory mediation;
- enforceable;
- links with the judicial proceeding;
- no compulsory assistance by a lawyer to the parties;
- fees to be paid at the beginning of the proceeding;

D) October 2012 – September 2013

- voluntary mediation;
- enforceable;
- links with the judicial proceeding;
- no compulsory assistance by a lawyer to the parties;
- fees to be paid at the beginning of the proceeding;

E) from September 2013

- mandatory mediation;
- enforceable;
- links with the judicial proceeding;
- compulsory assistance by a lawyer to the parties;
- pre-mediation first meeting, free of charge, with an “opt out” mechanism.

The conflicts subjected to mandatory mediation are only the 8% of all the conflicts filed in Italian courts; their filing had a 9% increase in period **D** (voluntary mediation) and a 15% decrease in period **E** (mandatory mediation).

going to court. But the heavy pressure exerted by lawyers on the members of Parliament led to significant changes from the previous regulation. Among others :

- lawyers are mediators “*ope legis – per se*” (and for almost two years they were asked to attend only a 15 hours basic training !);
- the compulsory assistance (presence) of lawyers for each party;
- the first “informative” is meeting free of charge ⁷ ; the invited party, according to lawyers’ misinterpretation, can abstain from the proceeding by not attending the mediation meeting (with the plaintiff and the mediator), otherwise he can be present at the first informative meeting, can “OPT-OUT ” from the process at a later time ⁸ .

According to the previous Legislative Decree no. 28/2010 mediation could also start at the invitation by the judge (delegated mediation). Moreover, Legislative Decree no. 69/2013 established the possibility for judges:

- to ORDER THE LITIGANTS TO UNDERGO A MEDIATION in all subjects (not only matters subject to compulsory mediation) related to alienable civil rights (delegated mediation) (ex art. 5, c.2, D.Lgs. 28/2010)
- to OFFER A SOLUTION PROPOSAL BASED ON EQUITY (ex art. 185-*bis* civil procedure code) in all subjects (not only matters subject to compulsory mediation) related to alienable civil rights, which the parties are free to accept or refuse (not binding arbitration).

In some cases, the judges blend these two options: they offer a solution proposal and, if the proposal is rejected, they order mandatory mediation (arbitration – then – mediation).

And, over the time, the “Alternative Sentences Resolutions”, the “integrated conciliation”, the “effective mediation” and the “guided mediation” have also been launched ⁹ . And the combined use of solution proposal and delegated mediation can also be used as an efficient case management tool of the judicial proceeding.

II - A bit of history

The Italian State was founded in 1861. In the first Civil Procedure Code (1865), the heading of the seven introductory articles was “Conciliation”. According to the Law 20 March 1865, police officers must first of all reconcile conflicts among private citizens and according to Lorenzo Scamuzzi, in 1880, the Justices of Peace (*Giudici di Pace*) issued the 70% of all sentences delivered in Italy ¹⁰ . Law no. 261/1892 provided that the judge “*in order to reach a conciliation, could call for the single party in a private hearing*” (an ante litteram caucus).

⁷ Only a 48.80 euro fee, 97.60 if mediation value is higher than 250,000 euro – the mediator works for free, the lawyer hired by the party is paid.

⁸ Leonardo D’Urso and Romina Canessa, *The Italian Mediation Law on Civil and Commercial Disputes*, a description of the mediation procedure under the Legislative Decree 28/2010 and the Ministerial Decree 180/ 2010, along with the translation of the laws in English, in MondoADR March 2017 www.mondoadr.it/wp-content/uploads/The-Italian-Mediation-Law.pdf

⁹ For an analysis of the mediation experience in Italy, Giovanni Matteucci, *Civil mediation, how to kick-start it; the Italian experience. Statistics 2011 / 2016*, Revista da Emerj – Escola da magistratura do Estado do Rio de Janeiro, Vol. 19, n.4, 2017 http://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista19_n4/revista19_n4_78.pdf

¹⁰ Lorenzo Scamuzzi, *Conciliatore – Conciliazione giudiziaria*, in Digesto Italiano, 1886.

Marcello Marinari: “*In Italy, at the end of nineteenth century, almost 70-75% of disputes (on a total amount of approximately 2 million cases) reached judicial settlement before the Judge-Conciliator (Giudice Conciliatore), the lowest first tier Court. There is no doubt that the monetary value of those cases was extremely low, due to the poverty of Italian people, in a society which was deeply different from the present one, but where there was, as now, a widespread claim culture, as those figures effectively show.*”

Therefore conciliation / mediation belong to the Italian juridical and judicial culture.

But the totalitarian regime carried out during the Fascist period (1922 – 1943) disliked conflict resolutions reached by private citizens; they must be settled by judges, through sentences. The Civil Procedure Code of 1941, art. 183, provided the possibility of conciliation managed by the judge in a pre-trial hearing; nevertheless it was always a pure formality.

Since the 1930s, in Italy, mediation gradually lost its importance and it was no longer taught in universities for over seventy years; it was (and still is) part of the Italian legal tradition, but it was forgotten.

In 1993, Law no. 580 ruled: each Italian Chamber of Commerce had to set up a conciliation (and arbitration) chamber; the interest-based approach and the Harvard mediation proceeding were the references. At a very slow pace ADRs started their way in contemporary Italy ¹¹ .

The Legislative Decree no. 5/2003 (in force since 2005) ruled voluntary mediation in corporate, financial and banking controversies. Nobody (rectius, no lawyer) used it, and when I asked why, lawyers replied: “*Because it was not compulsory*”.

In 2010 the Legislative Decree 28/2010 ruled mandatory mediation in many civil matters. Furious opposition by lawyers, very strong perplexity from the judges. But from 2015 onwards, it is thanks to the judiciary that the use of mediation has increased in Italy.

III – Innovations by the judges.

Italian judges at the beginning looked at mediation with a "benign neglect", because they considered it as the "Child of a Lesser God" ¹² . The main concerns on the part of the judiciary were likely to be the following:

- introduction into Italian law, whose roots date back to Roman law, of a procedure typical of other legal cultures (*a concern based on false assumptions*);

Yet, that kind of Judicial settlement (conciliazione), was extremely different, and it still is, from the modern concept of mediation, even though it may be included in the case management mechanisms.

First of all the judge-conciliator (in fact a kind of oxymoron, by a modern point of view) combined the power to settle the case with the power to decide on the merits of it, in case of failure of the settlement attempt.

As a consequence, no confidentiality could, and still can, be granted to the parties. Secondly, judicial settlement mainly focuses on the legal grounds of the case, and generally tends to be seen by the lawyers as an agreement implying a mutual and partial waiving by both parties to the remedy that is sought by the claimant as well as a waive to the defence by the defendant.

“Plus, before the Giudice Conciliatore, the Court frequently used to be excessively authoritarian and patronizing, more than authoritative, with the aim of reaching an agreement”;

in *Mediation and case management*, in GEMME, The Annual Conference 2013, pages 233-246 Bucharest, 5.10.2013 in <https://ecjleadingcases.files.wordpress.com/2013/11/draft-paper.pdf>

¹¹ Nicola Giudice: “Chambers of commerce has pioneered in Italy the field of business mediation thanks to Law n. 580/1993 which lays down an obligation for Chambers to offer mediation services to the business community. The first *Sportello di conciliazione*’ (conciliation desk) designed to assist in resolving business-to-consumers disputes was established in Milan in 1996 and could therefore witness, and actually promoted, the unfold of mediation in the country so far. Before then mediation was timidly employed in family disputes (namely divorce) then in social and juvenile criminal environments”. In GEMME, European Conference 5/6.6.2014, pages 250-256 <https://mediacionesjusticia.files.wordpress.com/2015/07/mediation-road-of-peace-for-justice-in-europe.pdf>

¹² Giovanni Matteucci, *Conciliazione endoprocessuale e mediazione delegata: per la magistratura italiana ‘figlie di un Dio minore*’ in MondoADR 8.12.2014 <https://www.mondoadr.it/articoli/conciliazione-endoprocessuale-mediazione-delegata-la-magistratura-italiana-figlie-di-dio-minore.html>

- metamorphosis of the system, whereby disputes are initially managed by psychology-based techniques and not on the basis of constitutional guarantees; preference for a lawyer as mediator (*concerns which show a very modest knowledge of mediation*);
- interference between mediation and jurisdiction (*a reasonable concern*);
- career advancement within the judiciary is largely based on the number of judgments delivered by each judge; if the criteria for career advancement were to include the number of disputes resolved through mediation (which is a shorter proceeding), judges may neglect their judicial function (*a questionable, unreasonable concern*).

Nevertheless, a small portion of the Italian judiciary began to look carefully at mediation and its possible use. I mainly refer to:

- “Progetto Conciliamo”, started in 2005 at the Court of Milan ¹³ ;
- “Progetto Nausicaa”, started in 2009 at the Court and University of Florence;

both projects focused on the analysis of mediation and aimed at improving the knowledge of mediation among legal professionals ;

- the experience of the Court of Modugno, a separate division of the Court of Bari, started in 2011, whose leader, Judge Mirella Delia, launched the “integrated conciliation”;
- the experience of the Court of Ostia, a separate division of the Court of Rome, whose leader, Judge Massimo Moriconi, thanks to an extensive use of invitation to mediation in the 2012 – 2013 period, achieved a reduction of at least 10% of the disputes entrusted to him ¹⁴ .

i - Court of Rome, Alternative Sentence Resolutions - Which method did Judge Moriconi use? The magistrate analyzed all incoming cases and, whenever he believed that the parties could reach a settlement, he invited them and their lawyers to undergo a mediation proceeding. The indicated success factors were:

“A. high quality standards of the mediation providers in all their components (appropriate logistical structure ... , adequate technical and legal support to the mediators, high competence and professionalism of the latter, awareness that a large number of mediation agreements will testify the real ability of the structure and the refusal of an empty bureaucratic formalism);

“B. loyal collaboration of lawyers with the mediation provider, the mediator, the counterparts and the judge;

“C. full understanding of the potentialities of the institute of mediation and strong impulse to mediation by the judge;

“D. priority to the delegated mediation with respect to compulsory mediation;

“E. periodic meetings among mediation bodies, lawyers organizations and judiciary for the refinement of the mediation tools and the elaboration of operational protocols of the mediation proceeding” ¹⁵ .

Moral suasion was effective .

From 23.9.2013 to 10.10.2014, in the Court of Rome, the Judge Moriconi presided over about 700 cases; according to him, ADR methods could be used in almost 200 cases of them; in 121

¹³ Giuseppe Buffone, *La mediazione demandata o disposta dal giudice come sistema omeostatico del processo civile: il progetto dell'Osservatorio sulla Giustizia Civile di Milano*, 2014 <http://www.ilcaso.it/articoli/404.pdf>

¹⁴ Maria Cristina Biolchini, *Resoconto del convegno: Il ruolo del giudice nella mediazione*, in MondoADR 17.6.2013 <http://www.mondoadr.it/cms/articoli/resoconto-del-convegno-il-ruolo-del-giudice-nella-mediazione.html>

¹⁵ Massimo Moriconi, *La mediazione, profili operativi e problematiche operative*, 25.11.2011 <http://www.adrmaremma.it/moriconi01.pdf> the translation in English is mine.

cases he turned to 40 non-binding arbitrations, 35 delegated mediations and 46 non-binding arbitrations and delegated mediations (arb-then-med); in 58% of the cases the parties reached an agreement. 8% reduction of the disputes entrusted to him.

Given the continued use of these instruments, Judge Moriconi named his provisions ASR, *Alternative Sentence Resolutions* ¹⁶ ; in 2017 they were 110, 57 of which were agreements, 48%.

ii - **Court of Bari, Integrated Conciliation** - Another important experience was brought forward in the South of Italy, in the Court of Modugno, a separate division of the Court of Bari. In 2011 Judge Mirella Delia conceived the “integrated conciliation” ¹⁷ , thanks to the following provision

Civil Court of Bari

The Judge

- *carried out in the adversarial proceeding a brief discussion on the main points of the dispute;*
- *considered, with the agreement of the parties, the advisability of starting a process of conciliation between / among them;*
- *read Article 185, paragraph 1 of the Italian Code of Civil Procedure;*
- *recalled the new legal reforms on conciliation and mediation*

ASKS

the parties to file and exchange by fax, by, proposals and/or tenders for the amicable settlement of the dispute and by to file and exchange by fax any counter-proposal, assigning a further term until to hold a meeting, with the assistance of the lawyers (and possibly at a mediation provider) aimed at examining the transactional hypotheses, taking care to draft a written document to be deposited up to ten days before the adjournment hearing and which may be taken into account, as to substance, when the costs of the proceedings are being regulated;

ADJOURNS

the proceedings to the hearing of, hours, arranging for that date the appearance of the parties before him in order to be able to carry out, in accordance with the cited Article 185 c.p.c and where still possible, the judicial attempt at conciliation.

The initiative was based on the Italian constitutional principle of the “due process”, the art. 5 of the EU Directive 2008/52/EC and the artt. 185 and 185-bis of the Italian civil procedural code ¹⁸ and it was achieved with the involvement of local lawyers and graduates, who were carrying out a period of internship at the Court.

Later on the experience was continued at the Court of Bari, with the involvement of other judges, who have issued the following *Integrated Conciliation Resolutions* :

- 15 in 2015;

¹⁶ Massimo Moriconi , *Decalogo ASR: conoscibilità, predibilità e predittività della giurisdizione*, MondoAdr 1.6.2018 <https://www.mondoadr.it/articoli/decalogo-asr-conoscibilita-prevedibilita-e-predittivita-della-giurisdizione.html>

¹⁷ The idea of the “integrated conciliation” was born from the analysis of the similar French project, carried out by Simone Gaboriau, as president of the Court of Limoges, which operated in a socio-economic context similar to that of Modugno.

¹⁸ Mirella Delia, *Proposte programmatiche sulla conciliazione del Tribunale di Bari – sezione distaccata di Modugno*, Foro Italiano 2/2012, Monografie e varietà, page 59.

Mirella Delia, *Il giudice e le nuove combinazioni endoprocessuali nei moduli della mediazione; gli artt. 185 e 185 bis c.p.c.*, in *La Nuova Procedura Civile*, 6.2.2015
https://www.lanuovaproceduracivile.com/wp-content/uploads/2015/02/delia_mediazione.pdf

- 914 in the period from 1.1.2016 / 30.06.2018; 414 of which were defined, 332 (80%) without further intervention of the judge (agreement or waiver of the dispute) and only 82 (20%) with a formal judgment. ¹⁹ .

Moreover, a free-on-line data bank (*BDDC Banca Dati Digitale Conciliativa*) was set up, where a selection of the agreement records and the delegated mediation ordinance are reported ²⁰ ; a data bank already shared by other courts and universities ²¹ .

The Project is included among the “Best Practices”, number 2526, chosen by the Superior Judiciary Council (*Consiglio Superiore della Magistratura*).

iii - **University and Court of Florence, Effective Mediation** - In 2009 the University (Prof.a Paola Lucarelli) and the Court (Judge Luciana Breggia) of Florence, together with the Observatory on Civil Justice (an association composed of judges, lawyers and clerks), the Bar association and the Chamber of commerce, launched the Nausicaa Project, related to the delegated mediation, with three targets: to offer information about mediation through a dedicated office, located in the court; to provide judges with young research assistants to identify disputes that could be submitted to mediation; and to monitor ‘court-mandated’ mediation ²² . In 2012, the first results of the experiment: if all parties were present in the mediation proceedings, agreements were reached in 46% of cases; agreements outside the mediation framework were realized in an other 27% of cases ²³ .

As said before, in 2013 the first “informative” meeting, free of charge, was introduced with the chance, for the parties, to opt-out from the proceeding (the actual mediation, totally voluntary,

¹⁹ Mirella Delia, *La conciliazione fra organizzazione, formazione e tecnologia*, in “*Quaderni di conciliazione*” a cura di Carlo Pilia, Edizioni AV, n.10, pages 35-82, Cagliari 2019

<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

In the same publication:

Laura Fazio, *L'efficacia della conciliazione endoprocessuale: l'esperienza del distretto della Corte d'Appello di Bari*, pages 83 – 103,

Valeria Spagnoletti, *La rilevazione statistica della conciliazione endoprocessuale: l'esperienza del monitoraggio informatico presso il Distretto di Corte d'Appello di Bari*, pages 105 – 126

Pasquale Maurelli, *Il ruolo del CTU negli istituti di giustizia partecipata e ausilio della BDDC*, pages 127- 138

Rosita Stella Brienza, Davide Sportelli and Francesca Romana De Tullio, *La comunicazione a servizio della banca dati digitale conciliativa*, pages 139 – 134.

²⁰ http://www.giustizia.bari.it/buone_prassi_menu.aspx

Corte di Cassazione, *Le buone pratiche in materia di mediazione extra ed endoprocessuale*, 6.6.2018

http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/SLIDES_SSM_6.6.2018_LE_BUONE_PRATICHE_IN_MATERIA_DI_MEDIAZIONE_ENDOPROCESSUALE_def.pdf

²¹ Mirella Delia, *L'Ufficio del processo e la BDDC*, pages 401-423- in “*Il processo telematico*” AA.VV. Key Editore, May 2019. <https://www.keyeditore.it/libri/il-processo-telematico/>

²² Natasha Mellersh, *Ask An Expert: Luciana Breggia*, Imimmediation 23.6.2017,

<https://www.imimmediation.org/2017/06/23/ask-an-expert-luciana-breggia/>

Natasha Mellers, *The ingenious judge – A children's book*, Imimmediation 30.7.2017

<https://www.imimmediation.org/2017/05/30/ingenious-judge-childrens-book/>

²³ Chiara Giovannucci Orlandi, *The Florence Experience: A Culture Of Mediation*, Imimmediation 20.5.2017

<https://www.imimmediation.org/2017/05/20/the-florence-experience-the-culture-of-mediation/>

Università di Firenze, *I numeri della mediazione su invito / ordine del giudice a Firenze*, Diritto24 Il sole24Ore

28.11.2014 http://www.diritto24.ilsole24ore.com/Allegati/Free/Monit_Marinaro.pdf

Paola Lucarelli, *Mediazione su ordine del giudice a Firenze*, Wolters Kluwer, 2015

Paola Lucarelli e Annalisa Tonarelli, *Giustizia Semplice, report di monitoraggio parziale, febbraio/ dicembre 2018*, Università degli Studi di Firenze 1.2.2019

<http://met.cittametropolitana.fi.it/public/misc/20190401132704088.pdf>

starts after the first informative meeting). The invited party, according to the lawyers' misinterpretation, could abstain from the process by not attending the first meeting (with the plaintiff and the mediator) or attended it (also not in person but represented by the lawyers) only to declare that they are not interested in proceeding with the mediation. The Court of Florence, then followed by many other courts, are condemning this behavior, remarking that lawyers are mediators 'ope legis', therefore 'ope legis' they must know mediation, the necessity of the parties' presence and of the real interaction among them. In other words, judges strongly underline that mediation must be "effective".

Moreover the University of Florence (Dpt. of Law and Dpt. of Engineering) and the Court of Florence, Commercial Section, have carried out a project on delegated mediation and the implementation of a predictive algorithm on the "mediability" of the judicial proceedings and the probability of the outcome. In one year, 1,160 cases were sent to mediation, parties agreed to start the proceeding in 70% of cases and agreement was reached in 55% of cases. The engineers are studying all the documents to realize the predictive algorithm ²⁴ .

iv - **The guided mediation** - Mediation is an informal and very flexible proceeding and it allows also the presence of a technical consultant, requested by all the parties and appointed by the mediation provider, quite often previously required by the judge in the delegated mediation. If the agreement is not reached, the conclusions by the technical consultant can be used in the subsequent judicial proceeding, saving time and money ²⁵ .

And there is another opportunity. The judge, inside the trial, can ask for the intervention of a technical consultant and, on the basis of his report, order the parties to undergo a delegated mediation, underlining the boundaries of the subject matter; he indicates these boundaries to the mediator, who also receives all the related documents. This type of proceeding is called *guided delegated mediation*.

According to some scholars this approach would go against the autonomy of the mediation and of the mediator. In my opinion, on the contrary, it is only the definition of the ZOPA (Zone of Possible Agreement), made by the judge and not by the parties, which simplifies the initial activity of the mediator. And there is nothing to keep other problems (the "interests" behind the positions), which may arise during the mediation, from being taken into account. And the agreement could also be reached beyond the original boundaries.

One of the first applications of such possibility is due to judge Laura Fazio in a lawsuit between bank and customer, related to the calculation of interest rates on a current account. The magistrate ordered a technical consultation but the report did not solve all the doubts and, therefore, it was not possible to reach a decision or to issue a non binding award (art. 185-bis c.p.c.). The judge listed the remaining controversial points and sent the parties to mediation. In the event of a

²⁴ University of Florence, *Gestione conflitti, progetto fiorentino premiato al Forum PA 2019*, <https://www.unifimagazine.it/gestione-conflitti-progetto-fiorentino-premiato-al-forum-pa-2019/>

Judge Marilena Rizzo, president of the Court of Florence, *Progetto Firenze*, Congress organized by MediaPro part. III Lecce, 7.6.2019 VIDEO <https://www.youtube.com/watch?v=0oDmB3EqyIU&list=PLvELWtNJaOIULjYxe-qihqLsWDXQrZGvL&index=3>

²⁵ According to the Italian law, the mediator, if parties do not reach an agreement, can make a proposal (which the parties are not obliged to share) if requested by all parties, by only one of them and also by his own initiative, even if (and this is an absurd) one party is absent. Some judges (not too many), in the delegated mediation, have ordered the mediator to issue a proposal, in the event of the failure to reach an agreement. But they have forgotten that mediation is (and must be) an independent proceeding from the trial and that the mediator is not an auxiliary of the judge. Giovanni Matteucci, *The civil mediator in Italy: an auxiliary of the judge ?!?!*, Academia.edu 3.7.2015 https://www.academia.edu/16656311/ADR_Matteucci_2015.07.03_The_civil_mediator_in_Italy_an_auxiliary_of_the_judge

failure to agree, she would have asked the technical consultant for a further report, with additional costs and lengthening of time to reach a solution ²⁶ .

An extensive use, and analysis, of the guided delegated mediation was made by the above mentioned judge Massimo Moriconi ²⁷ . In July 2019 he ordered a guided delegated mediation “with range”: he studied the dispute, analyzed the legal aspects, examined the content of a likely sentence; but the proceeding could last for years, cost a lot and could be appealed; therefore he realized parties could reach an agreement, ordered them to undergo a delegated mediation, underlining the possible range of the amount of compensation ²⁸ .

v - **Case management tool of the process** - Delegated mediation can also be used as a case management tool of the process. This possibility, still poorly studied in Italy, was underlined in 2013 by a former judge, Dr. Marcello Marinari: “ ... *unlike the way we usually think about relationships between mediation and case management, I am convinced ... that those relationships include not only the alternative to the adjudication of the case and to the judgment, but also the way the mediation attempt may affect disclosure and the choice by the parties of the most appropriate strategy, where they fail to reach an agreement*”. The power of the judge to settle the litigation, “*may be defined as a proper case management power ... that may be used directing both judicial settlement, performed by the Judge, and mediation, by referring the case either to a Court annexed mediator or to an out-of-court mediator or mediation provider. the use of mediation may affect the way Courts apply and interpretate the law, taking into consideration a broader quantity of factors, in comparison with the traditional syllogistic scheme, even without rejecting and replacing it*” ²⁹ .

And the two mediation tools, that Italian law grants to the judiciary (delegated mediation and a solution proposal based on equity, in all subjects related to alienable civil rights), combined together in an appropriate manner, may not be an alternative solution to dispute but rather an integrated solution to dispute.

²⁶ Judge Laura Fazio, Court of Bari, a separate division of the Court of Altamura, 26.2.2016

<http://www.ilcaso.it/giurisprudenza/archivio/14526.pdf>

See, also, Judge Paola Mariani, Court of Ascoli Piceno, 18.4.2017 <http://www.adrmaremma.it/news427.pdf>

²⁷ Arianna Orsola, *Giurisprudenza e consulenze tecniche in mediazione: intervista al dottor Massimo Moriconi*, in Blogmediazione 5.2.2016 <https://blogmediazione.com/2016/02/05/giurisprudenza-e-consulenze-tecniche-in-mediazione-intervista-al-dottor-massimo-moriconi/>

Moriconi Massimo, “*Le potenzialità della mediazione guidata*”, in SPFMediazione 18.4.2016 <https://www.spfmediazione.it/2016/04/18/le-potenzialita-della-mediazione-guidata-secondo-il-giudice-massimo-moriconi/>

²⁸ Massimo Moriconi, *Mediazione guidata con range, ordinanza 4.7.2019*, in Non solo sentenze 29.7.2019 <https://ne-np.facebook.com/nonsolosentenze/posts/2310917582481327>

Massimo Moriconi, *Mediazione demandata e proposta del giudice 185-bis c.p.c.*, Congress organized by MediaPro part. IV Lecce, 7.6.2019 VIDEO <https://www.youtube.com/watch?v=5LEe8BQimjg&list=PLvELWtNJaOIULjYxe-qihqLsWDXQrZGvL&index=4>

²⁹ Marcello Marinari, *Mediation and case management*, in GEMME, The Annual Conference 2013, Bucharest, 5.10.2013 <https://ecjleadingcases.files.wordpress.com/2013/11/draft-paper.pdf>

Marcello Marinari, *Giurisdizione e mediazione, dalla risoluzione alternativa alla risoluzione integrata delle controversie?*, in MondoADR 20.2.2014 <http://www.mondoadr.it/cms/articoli/giurisdizione-mediazione-dalla-risoluzione-alternativa-alla-risoluzione-integrata-delle-controversie.html>

Marcello Marinari, *Civil and commercial mediation in Italy, the implementation of the 2008/52/EU Directive*, GEMME, European Conference, 5/6.6.2014

<https://mediacionesjusticia.files.wordpress.com/2015/07/mediation-road-of-peace-for-justice-in-europe.pdf>

IV – Conclusions

In Italy, in 2010 the Legislative Decree 28/2010 ruled mandatory mediation in many civil matters, a total 8% of all the commercial and civil disputes filed in the Italian courts, and it came in force in 2011. The compulsory mediation was declared unconstitutional on 12.12.2012 and it was reloaded at the end of 2013.

Mediation proceeding were 60,810 in 2011, 196,247 in 2015, 151,923 in 2018. Agreements were 9,912 in 2011, 20,965 (the highest number ever reached) in 2018 (see Appendix, table 1).

At the beginning the magistrates were highly doubtful, if not hostile, to the new legislation, with very few exceptions. Year after year, however, they began to use the new tools at first to reduce the backlog, then to provide a “justice service” more appropriate to the needs of society ³⁰ .

This is confirmed by the statistical data produced by the Italian Ministry of Justice. The percentage of the delegated mediations by judges, on the total number of the proceedings filed in the mediation providers, was 3% in 2011, 2% in 2013, 8% in 2014, 10% in 2015, 11% in 2016, 13% in 2017 and 15% in 2018 (see Appendix, table 5). But these figures underestimate the results reached by the judiciary, because they do not include mediations (and agreements) reached by the conflicting parties, after an invitation / order by the judge, outside a mediation provider.

Unfortunately, a uniform statistical collection for all courts does not exist and those judges, who have acted (and still act) as pioneers, have not agreed a method of reporting. I just recall the data mentioned in the previous paragraph:

- Court of Rome, *Alternative Sentence Resolutions* - in the 2012 – 2013 period Judge Moriconi achieved a reduction of at least 10% of the disputes entrusted to him ; from 23.9.2013 to 10.10.2014 he presided over about 700 cases; according to him, ADR methods could be used in almost 200 cases of them; in 121 cases he turned to 40 non-binding arbitrations, 35 delegated mediations and 46 non-binding arbitrations and delegated mediations (arb-then-med); in 58% of the cases the parties reached an agreement. 8% reduction of the disputes entrusted to him. In 2017 *Alternative Sentence Resolutions* have been 110, of which 57 agreements, equal to 48% ;
- Court of Bari, *Integrated Conciliation Resolutions* : 15 in 2015; 914 in the 1.1.2016 / 30.06.2018 period; 414 of which were defined, 332 (80%) without further intervention of the judge (agreement or waiver of the dispute) and only 82 (20%) with a formal judgment;
- Court, and University, of Florence – *Effective mediation* : in 2012, if all parties were present in the mediation proceedings, agreements were reached in 46% of cases; agreements outside the mediation framework were realized in another 27% of cases. In 2018, 1,160 cases were sent to mediation, parties agreed to start the proceeding in 70% of cases and agreement was reached in 55% of cases.

In Italy judges are at the forefront of the use of ADR. Some of them acted as pioneers and mapped out a route. Others are following them, but it will take time for the potential of the instrument to be fully exploited.

Giovanni Matteucci

³⁰ Giuseppe De Palo and Leonardo D’Urso, *Achieving a Balanced Relationship between Mediation and Judicial Proceedings*, in European Parliament, *The implementation of the mediation directive*, 29.11.2016 http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/571395/IPOL_IDA%282016%29571395_EN.pdf

Bibliography

Arianna Orsola, *Giurisprudenza e consulenze tecniche in mediazione: intervista al dottor Massimo Moriconi*, in Blogmediazione 5.2.2016

<https://blogmediazione.com/2016/02/05/giurisprudenza-e-consulenze-tecniche-in-mediazione-intervista-al-dottor-massimo-moriconi/>

Chiara Giovannucci Orlandi, *The Florence Experience: A Culture Of Mediation*, 20.5.2017

<https://www.imimmediation.org/2017/05/20/the-florence-experience-the-culture-of-mediation/>

Consiglio Superiore della Magistratura, Ufficio statistico, analisi e studi, “*Donne in magistratura*” 1.3.2019

<https://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2019%29/164355b0-4710-f3d8-cf63-9a0a54f1069f>

Council of Europe, European Commission for the Efficiency of Justice, Cepej studies n. 26, 9.2018 related to 48 countries, reference 2016

<https://www.coe.int/en/web/cepej/special-file-publication-2018-edition-of-the-cepej-report-european-judicial-systems-efficiency-and-quality-of-justice->

European Parliament, “*Implementation of the Mediation Directive - European Parliament resolution of 12 September 2017 on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the ‘Mediation Directive’)*” (2016/2066(INI)), P8_TA(2017)0321, point A

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0321+0+DOC+PDF+V0//EN>

Giovanni Matteucci, *Conciliazione endoprocessuale e mediazione delegata: per la magistratura italiana ‘figlie di un Dio minore’*, in MondoADR 8.12.2014

<https://www.mondoadr.it/articoli/conciliazione-endoprocessuale-mediazione-delegata-la-magistratura-italiana-figlie-di-dio-minore.html>

Giovanni Matteucci, *The civil mediator in Italy: an auxiliary of the judge* !?!, Academia.edu 3.7.2015

https://www.academia.edu/16656311/ADR_Matteucci_2015.07.03_The_civil_mediator_in_Italy_an_auxiliary_of_the_judge

Giovanni Matteucci, *Civil mediation, how to kick-start it; the Italian experience. Statistics 2011 / 2016*, Revista da Emerj – Escola da magistratura do Estado do Rio de Janeiro, Vol. 19, n.4, 2017

http://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista19_n4/revista19_n4_78.pdf

Giuseppe Buffone, *La mediazione demandata o disposta dal giudice come sistema omeostatico del processo civile: il progetto dell’Osservatorio sulla Giustizia Civile di Milano*, 2014

<http://www.ilcaso.it/articoli/404.pdf>

Giuseppe De Palo, *Mandatory mediation is back in Italy with new parliamentary rules*, in MondoADR 22.10.2013

<https://www.mondoadr.it/articoli/mandatory-mediation-italy-parliamentary-rules.html>

Giuseppe De Palo and Leonardo D’Urso, *Achieving a Balanced Relationship between Mediation and Judicial Proceedings*, in European Parliament, *The implementation of the mediation directive*, 29.11.2016

http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/571395/IPOL_IDA%282016%29571395_EN.pdf

Greg Bond, “*On the benefit of mediation training, and on getting things wrong. An interview with Ewa Chye*”, in KluwerMediationBlog 24.3.2019 –

<http://mediationblog.kluwerarbitration.com/2019/03/24/on-the-benefits-of-mediation-training-and-on-getting-things-wrong-an-interview-with-eva-chye/>

Laura Fazio, *L'efficacia della conciliazione endoprocessuale: l'esperienza del distretto della Corte d'Appello di Bari*, in "Quaderni di conciliazione" a cura di Carlo Pilia, Edizioni AV, n.10, pages 83-103, Cagliari 2019

<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

Leonardo D'Urso and Romina Canessa, *The Italian Mediation Law on Civil and Commercial Disputes*, a description of the mediation procedure under the Legislative Decree 28/2010 and the Ministerial Decree 180/ 2010, along with the translation of the laws in English, in MondoADR March 2017

www.mondoadr.it/wp-content/uploads/The-Italian-Mediation-Law.pdf

Lorenzo Scamuzzi, *Conciliatore – Conciliazione giudiziaria*, in Digesto Italiano, 1886

Marilena Rizzo, *Progetto Firenze*, Congress organized by MediaPro part. III Lecce, 7.6.2019 VIDEO

<https://www.youtube.com/watch?v=0oDmB3EqvIU&list=PLvELWtNJaOIULjYxe-qihqLsWDXQrZGvL&index=3>

Marcello Marinari: *Mediation and case management*, Contribution to the The Annual Conference 2013 of the Romanian Section of GEMME, pages 233-246 Bucharest, 5.10.2013 in

<https://ecjleadingcases.files.wordpress.com/2013/11/draft-paper.pdf>

Marcello Marinari, *Giurisdizione e mediazione, dalla risoluzione alternativa alla risoluzione integrata delle controversie?*, in MondoADR 20.2.2014

<http://www.mondoadr.it/cms/articoli/giurisdizione-mediazione-dalla-risoluzione-alternativa-alla-risoluzione-integrata-delle-controversie.html>

Marcello Marinari, *Civil and commercial mediation in Italy, the implementation of the 2008/52/EU Directive*, in Mediacion es Justicia – GEMME, European Conference, 5/6.6.2014

<https://mediacionesjusticia.files.wordpress.com/2015/07/mediation-road-of-peace-for-justice-in-europe.pdf>

Maria Cristina Biolchini, *Resoconto del convegno: Il ruolo del giudice nella mediazione*, in MondoADR 17.6.2013

<http://www.mondoadr.it/cms/articoli/resoconto-del-convegno-il-ruolo-del-giudice-nella-mediazione.html>

Massimo Moriconi, *La mediazione, profili operativi e problematiche operative*, 25.11.2011

<http://www.adrmaremma.it/moriconi01.pdf>

Massimo Moriconi , *Decalogo ASR: conoscibilità, predibilità e predittività della giurisdizione*, MondoAdr 1.6.2018

<https://www.mondoadr.it/articoli/decalogo-asr-conoscibilita-prevedibilita-e-predittivita-della-giurisdizione.html>

Massimo Moriconi, *Mediazione demandata e proposta del giudice 185-bis c.p.c.*, Congress organized by MediaPro part. IV Lecce, 7.6.2019 VIDEO

<https://www.youtube.com/watch?v=5LEe8BQimjg&list=PLvELWtNJaOIULjYxe-qihqLsWDXQrZGvL&index=4>

Massimo Moriconi, *Mediazione guidata con range, ordinanza 4.7.2019*, in Non solo sentenze

<https://ne-np.facebook.com/nonsolosentenze/posts/2310917582481327>

Mirella Delia, *Proposte programmatiche sulla conciliazione del Tribunale di Bari – sezione distaccata di Modugno*, Foro Italiano 2/2012, Monografie e varietà, page 59.

Mirella Delia, *Il giudice e le nuove combinazioni endoprocessuali nei moduli della mediazione; gli artt. 185 e 185 bis c.p.c.*, in *La Nuova Procedura Civile*, 6.2.2015

https://www.lanuovaproceduracivile.com/wp-content/uploads/2015/02/delia_mediazione.pdf

Mirella Delia, *La conciliazione fra organizzazione, formazione e tecnologia*, in "Quaderni di conciliazione" a cura di Carlo Pilia, Edizioni AV, n.10, pages 35-82, Cagliari 2019

<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

Mirella Delia, *L'Ufficio del processo e la BDDC*, pages 401-423- in "Il processo telematico" AA.VV. Key Editore, May 2019. <https://www.keyeditore.it/libri/il-processo-telematico/>

Natasha Mellersh, *Ask An Expert: Luciana Breggia*, Imimmediation 23.6.2017
<https://www.imimmediation.org/2017/06/23/ask-an-expert-luciana-breggia/>

Natasha Mellers, *The ingenious judge – A children's book*, Imimmediation 30.7.2017
<https://www.imimmediation.org/2017/05/30/ingenious-judge-childrens-book/>

Paola Lucarelli, *Mediazione su ordine del giudice a Firenze*, Wolters Kluwer, 2015

Paola Lucarelli e Annalisa Tonarelli, *Giustizia Semplice, report di monitoraggio parziale, febbraio/dicembre 2018*, Università degli Studi di Firenze 1.2.2019
<http://met.cittametropolitana.fi.it/public/misc/20190401132704088.pdf>

Pasquale Maurelli, *Il ruolo del CTU negli istituti di giustizia partecipata e ausilio della BDDC*, in “Quaderni di conciliazione” a cura di Carlo Pilia, Edizioni AV, n.10, pages 127-138, Cagliari 2019
<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

Rosita Stella Brienza, Davide Sportelli and Francesca Romana De Tullio, *La comunicazione a servizio della banca dati digitale conciliativa*, in “Quaderni di conciliazione” a cura di Carlo Pilia, Edizioni AV, n.10, pages 139 -134, Cagliari 2019
<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

Università di Firenze, *I numeri della mediazione su invito / ordine del giudice a Firenze*, 28.11.2014
http://www.diritto24.ilsole24ore.com/ Allegati/Free/Monit_Marinaro.pdf

Università di Firenze, *Gestione conflitti, progetto fiorentino premiato al Forum PA 2019*,
<https://www.unifimagazine.it/gestione-conflitti-progetto-fiorentino-premiato-al-forum-pa-2019/>

Valeria Spagnoletti, *La rilevazione statistica della conciliazione endoprocessuale: l'esperienza del monitoraggio informatico presso il Distretto di Corte d'Appello di Bari*, in “Quaderni di conciliazione” a cura di Carlo Pilia, Edizioni AV, n.10, pages 105 – 126, Cagliari 2019
<https://www.lafeltrinelli.it/libri/quaderni-conciliazione-cdrom-vol-10/9788883741418>

Appendix

Italy is a country in Southern Europe; it covers an area of 300 thousands km², has an estimated population of 60 million people and a GDP 1,596,000 million euro (1,341,000 million USD) (26,600 euro / 22,350 USD per inhabitant).

In 2018, 3,220,298 new proceedings were filed in courts (4,475,059 in 2011) against 151,923 mediation proceedings (60,810 in 2011); 20,965 agreements were reached (9,912 in 2011). There are 9,401 judges ³¹ and 242,000 lawyers ³².

According to the European Parliament “*Italy uses mediation at a rate six times higher than the rest of Europe*” (12.9.2017) ³³ and the use of mediation in Italy is increasing ³⁴. Nevertheless, the knowledge of the institute is low and the basic training (50 hours) is not sufficient ³⁵.

The Italian judges can order the litigants to undergo a mediation (delegated mediation) (ex art. 5, c.2, D.Lgs. 28/2010) or / and make a solution proposal based on equity (ex art. 185-*bis* civil procedure code), which the parties are free to accept or refuse (not binding arbitration), in all subjects related to alienable civil rights. When compulsory mediation was ruled they looked at mediation with a “benign neglect”; later on they started using the new tools offered by the law and since 2015 mediation has developed by the intervention of judges: mediation proceedings delegated by judges were 2% (of all incoming mediation procedures) in 2011, 10% in 2015, 11% in 2016, 13% in 2017, 15% in 2018.

The websites have been accessed on 26.7.2019

³¹ Consiglio Superiore della Magistratura, Ufficio statistico, analisi e studi, “*Donne in magistratura*” 1.3.2019 <https://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2019%29/164355b0-4710-f3d8-cf63-9a0a54f1069f>

³² “*In Italia 242mila avvocati, giro d'affari medio 54mila euro*”, Il Sole 24 Ore, 16.5.2018 <http://www.ilsole24ore.com/art/norme-e-tributi/2018-05-16/in-italia-242-mila-avvocati-giro-d-affari-medio-54mila-euro--122546.shtml?uuid=AEyOSMpE>

Council of Europe, European Commission for the Efficiency of Justice, Cepej studies n. 26, 9.2018 related to 48 countries, reference 2016 (figures: x100,000 inhabitants):

professional judges - Italy	11,0 (average 22,0) table 3.6
public prosecutors - Italy	3,5 (average 11,7) table 3.24
lawyers - Italy	378,0 (average 162,0) table 3.52

<https://www.coe.int/en/web/cepej/special-file-publication-2018-edition-of-the-cepej-report-european-judicial-systems-efficiency-and-quality-of-justice->

³³ European Parliament, “*Implementation of the Mediation Directive - European Parliament resolution of 12 September 2017 on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the ‘Mediation Directive’)*” (2016/2066(INI)), P8_TA(2017)0321, point A <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0321+0+DOC+PDF+V0//EN>

³⁴ See table 1.

³⁵ Giovanni Matteucci, “*Civil mediation, how to kick-start it; the Italian experience – Training, compulsory, tax relieves, control*” Revista de Emerj, Escola da Magistratura do Estado do Rio de Janeiro, Vol. 19, n.4, 2017 http://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista19_n4/revista19_n4_78.pdf

Greg Bond : “... *I have always been sceptical about one-week forty-hour mediation courses leading to accreditation and people being able to say they are qualified mediators....*”, in “*On the benefit of mediation training, and on getting things wrong. An interview with Ewa Chye*”, in KluwerMediationBlog 24.3.2019 <http://mediationblog.kluwerarbitration.com/2019/03/24/on-the-benefits-of-mediation-training-and-on-getting-things-wrong-an-interview-with-eva-chye/>

Key Words – ADR, mediation, conciliation, agreement, mediation proceeding, mandatory mediation, opt-out, delegated mediation, mediator, court, civil trial, judicial proceeding, arbitration, judge, magistrate, lawyer, university, European Union.

Table 1

CIVIL AND COMMERCIAL MEDIATION IN ITALY

	Incoming mediation proceedings	The invited party was present	Agreement	Agreement	Agreement
				over all success rate	absolute values
			[1] C	[2] B x C = D	A x D = E
	A	B			
2011 °	60,810.	30.7%	53.2%	16.3%	9,912.
2012	154,879.	26.2%	41.4%	10.8%	15,647.
2013	41,604.	32.4%	42.4%	13.7%	5,700.
2014	179,587.	40.5%	24.2%	9.8%	17,599.
2015	196,247.	44.9%	22.6%	10.1%	19,821.
2016	183,977.	46.9%	23.7%	11.1%	20,421.
2017	166,989.	48.2%	25.4%	12.2%	20,373.
2018	151,923.	50.4%	27.3%	13.8%	20,965.

° 2/21 - 12/31/2011

[1] In 2011, 2012 and until 9/19/2013, a first information meeting was not required. On 9/20/2013 the "OPT-OUT" procedure entered into force, with the possibility for the present parties to decide whether or not to initiate the mediation proceeding. Data from 2014 show the success rate when all parties are present and decide to continue beyond the first meeting.

If all parties were present and they decided to go beyond the first meeting, the success rate in 2018 was 45%.

[2] Overall success rate, including mediations in which the invited party is not present and those in which parties do NOT go further the first information meeting

In the comparison between years, it has to be taken into account that :

- . from 10/24 . 12/13/2012 to 9/19/2013 the compulsory attempt at mediation was suspended
- . in 2012 there were approximately 45,000 mediations (an average of 11,165 per quarter) for damages from circulation of vehicles and boats; this subject matter it has been no longer mandatory since 9/20/2013.

Statistics based on data By Italian Ministry of Justice:

- . 2011 and 2012 years, columns A, B and C, source Ministry of Justice, 2012 issue, pages 3,6, and 7;
- . 2013, 2014, 2015 2016, 2017 and 2018 years, columns B and C, source Ministry of Justice, 2018 issue, page 6.

Civil mediation has been
compulsory since
voluntary since
compulsory since

September 20, 2013

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

	Proceedings filed in Ordinary Courts (with codes related to mediation)	Incoming mediation proceedings
2011	209,572	60,810.
2012	209,024	154,879 +155%
2013	228,871 +10%	41,604 - 73%
2014	195,273 - 15%	179,587 + 332%

	Proceeding filed in Ordinary Courts	Proceedings filed in Ordinary Courts (with codes related to mediation)	Incoming mediation proceedings
2011	2,701,949	209,572	60,810.
2012	2,671,232	209,024	154,879.
2013	2,533,476	228,871	41.604
2014	2,288,722	195,273	179,587
2015	2,060,765	191,721	196,247
2016	2,131,868	202,645	183,977
2017	2,039,201	201,055	166,989
2018	2,001,508	200,831	151,923

Table 3 Civil and commercial mediation in Italy

Lawyer's assistance in voluntary mediation

	Inviting party to mediation		Invited party present	
	legally assisted	NOT legally assisted	legally assisted	NOT legally assisted
	A	B	C	D
3/21/2011-12/31/2012 *	81%	19%	81%	19%
1/1-09/30/2013 *	72%	28%	65%	34%
year 2014	63%	37%	73%	27%
year 2015	52%	48%	83%	17%
year 2016	60%	40%	84%	16%
year 2017	77%	23%	85%	15%
year 2018	76%	24%	90%	10%

* Until 9/19/2013 the legal assistance in mediation was not compulsory.



Table 4 Civil and commercial mediation in Italy

Categories of mediation

(resolved cases)

	Mandatory by law [1]	Voluntary	Delegated by judge	Compulsory by contract / agreement
	A	B	C	D
03/21 -12/31/2011	78%	20%	2%	0,50%
2012	86%	11%	3%	0,03%
2013	55%	42%	2%	1,40%
2014	84%	10%	6%	0,60%
2015	82%	8%	10%	0,40%
2016	80%	9%	11%	0,50%
2017	76%	10%	13%	0,50%
2018	73%	11%	15%	0,60%

[1] Mandatory mediation with easy opt-out at the initial meeting since 09/20/2013.

Table 5 Civil and commercial mediation in Italy

Outcome by type of referral / proceeding			
	Settled proceedings (resolved cases)	Success rate when parties go further [2]	Success rate when parties do NOT go further [3]
	A	B	C
03/31/2011 - 12/31/2012			
Mandatory by law	81%	[1]	43%
Voluntary	16%	[1]	62%
Ordered by judge	3%	[1]	29%
2013			
Mandatory by law	56%	[1]	30%
Voluntary	42%	[1]	64%
Ordered by judge	2%	[1]	22%
2014			
Mandatory by law	80%	n.a.	45%
Voluntary	12%	n.a.	67%
Ordered by judge	8%	n.a.	33%
2015			
Mandatory by law	82%	43%	21%
Voluntary	8%	62%	41%
Ordered by judge	10%	31%	14%
2016			
Mandatory by law	80%	44%	23%
Voluntary	9%	61%	39%
Ordered by judge	11%	32%	15%
2017			
Mandatory by law	77%	44%	24%
Voluntary	10%	57%	36%
Ordered by judge	13%	n.a.	n.a.
<i>not compulsory matters</i>	12%	35%	22%
<i>unprocessable</i>	1%	31%	14%
2018			
Mandatory by law	74%	45%	26%
Voluntary	11%	63%	43%
Ordered by judge	15%	n.a.	n.a.
<i>not compulsory matters</i>	1%	38%	24%
<i>unprocessable</i>	14%	29%	14%

[1] In 2011, 2012 and untill 09/19/2011, the first information meeting was not requested

[2] Success rate when parties go further than the first information meeting.

[3] Success rate when parties do NOT go further the first information meeting.

Table 6.A Civil and commercial mediation in Italy

Mediation proceedings according to the type of mediation bodies

	Mediation bodies	Settled proceedings	Success rate when parties go further [2]	Success rate when parties do NOT go further [3]
	A	B	C	D
03/21/2011 - 12/31/2012				
Chambers of Commerce	87	31,480 16%	49% °	[1]
Private organizations	686	108,397 56%	46% °	[1]
Professionals not lawyers	80	1,094 0,6%	36% °	[1]
Bar associations	115	51,821 27%	34% °	[1]
	968	192,793 100%	44% °	[1]
2013				
Chambers of Commerce	87	3,902 16%	40% °	[1]
Private organizations	699	12,882 54%	49% °	[1]
Professionals not lawyers	85	336 1%	47% °	[1]
Bar associations	115	6,900 29%	30% °	[1]
	986	24,019 100%	42% °	[1]
2014				
Chambers of Commerce	87	18,185 12%	54%	23%
Private organizations	644	84,723 54%	51%	27%
Professionals not lawyers	92	1,198 1%	62%	38%
Bar associations	115	52,211 33%	38%	21%
	938	156,317 100%	47%	24%
2015				
Chambers of Commerce	88	20,361 11%	48%	22%
Private organizations	611	98,415 53%	47%	26%
Professional not lawyers	88	1,571 1%	47%	33%
Bar associations	107	65,398 33%	37%	19%
	894	185,745 100%	43%	23%
2016				
Chambers of Commerce	87	18,728 11%	47%	23%
Private organizations	516	90,270 52%	48%	27%
Professional not lawyers	70	1,489 1%	51%	35%
Bar associations	105	62,987 36%	37%	21%
	778	173,474 100%	44%	24%
2017				
Chambers of Commerce	84	16,175 10%	46%	24%
Private organizations	383	82.567 53%	48%	27%
Professionals not lawyers	47	1.424 1%	54%	34%
Bar associations	101	55.291 36%	36%	23%
	615	155.457 100%	43%	25%

Table 6.B Civil and commercial mediation in Italy

Mediation proceedings according to the type of mediation bodies

	Mediation bodies	Settled proceedings	Success rate when parties go further [2]	Success rate when parties do NOT go further [3]
	A	B	C	D
2018				
Chambers of Commerce	79	14,009 10%	47%	26%
Private organizations	375	76,029 53%	51%	30%
Professionals not lawyers	40	978 1%	60%	36%
Bar associations	103	53,918 37%	38%	24%
	597	144,934 100%	45%	27%

° Success rate (number of agreements / total defined proceedings) if the invited party is present.

[1] In 2011, 2012 and until 9/12/2013 the first information meeting was not requested.

[2] Success rates when parties go further the first information meeting.

[3] Success rate when parties do NOT go further the first information meeting.

2

Table 7 **Civil and commercial mediation in Italy**

Values of mediation disputes (euro)		
	Average	Median
2012	n.a.	n.a.
2013	156,464.	10,412.
2014	110,556.	20,000.
2015	137,862.	19,929.
2016	139,544.	17,000.
2017	110,368.	17,000.
2018	130,000.	15,000.

Table 8 **Civil and commercial mediation in Italy**

Length of proceedings (days)		
	Civil Cases in Courts	Mediation proceedings (when agreement is reached)
2012	n.a.	65
2013	844	82
2014	984	83
2015	902	103
2016	882	115
2017	n.a.	129
2018	n.a.	142

Table 9

Civil and commercial mediation in Italy**Mediations by matter : A incoming; B agreement**

	2015	2015	2016	2016	2017	2017	2018	2018
	A	B	A	B	A	B	A	B
Non mandatory	11%	34%	12%	36%	14%	34%	16%	39%
Property	14%	36%	14%	36%	15%	38%	16%	41%
Bank contracts	23%	7%	20%	7%	18%	6%	15%	6%
Condominium	12%	25%	12%	26%	13%	27%	13%	26%
Lease	12%	28%	12%	29%	12%	30%	12%	30%
Insurance contracts	6%	14%	6%	15%	6%	14%	6%	14%
Partition	5%	28%	5%	29%	5%	31%	6%	33%
Wills and inheritance	4%	23%	4%	27%	5%	28%	5%	30%
Medical malpractice damages	7%	10%	7%	10%	5%	11%	4%	13%
Financial contracts	3%	12%	3%	8%	3%	10%	4%	12%
Loans	1%	31%	1%	32%	1%	33%	1%	34%
Business rents	1%	26%	1%	32%	1%	27%	1%	29%
Libel	1%	12%	1%	16%	1%	18%	1%	21%
Family covenants and agreements	0,10%	25%	1%	21%	0,10%	46%	0,10%	38%

Non mandatory=procedure non obbligatorie; Property=diritti reali; Bank contracts=contratti bancari
 Condominium=condominio; Lease=locazione; Insurance contracts=contratti assicurativi; Partition=
 divisione; Wills and inheritance=successioni ereditarie; Medical malpractice damages=risarcimento
 danni da responsabilità medica; Financial contracts=contratti finanziari; Loans=comodato; Business
 rents=affitto di azienda; Libel=risarcimento danni da diffamazione a mezzo stampa; Family
 covenants and agreements=patti di famiglia.

Table 10 Civil and commercial mediation in Italy

	Incoming mediation proceeding	The invited party was present	Agreement [1] C	Agreement overall success rate [2] B x C = D
A	B			
ITALY				
2011				
2 quarter	18,138.	26%	59%	15%
3 quarter	15,670.	30%	50%	15%
4 quarter	27,002.	36%	49%	17%
2 / 4 quarter	60,810.	31%	53%	16%
2012				
1 quarter	30,880.	35%	44%	15%
2 quarter	51,634.	26%	42%	11%
3 quarter	45,040.	21%	40%	8%
4 quarter	27,325.	21%	38%	8%
Year	154,879.	27%	41%	11%
2013	41,604.	32%	42%	14%
2014	179,587.	40%	24%	9%
2015	196,247.	45%	23%	10%
2016	183,977.	47%	24%	11%
2017	166,989.	48%	25%	12%
2018	151,923.	50%	27%	14%
"Milan Chamber of Arbitration - Mediation Service" (Milan Chamber of Commerce) *				
2014	959.	52%	27%	14%
2015	922.	54%	31%	17%
2016	780.	55%	38%	21%
2017	772.	56%	40%	22%
2018	850.	60%	35%	21%

[1] In 2011, 2012 and until 09/19/2013 the first information meeting was not required.

[1] In 2011, 2012 and until 09/19/2013 first information meeting was not required. On 09/20/2013 the "OPT-OUT" procedure entered into force, with the possibility for the present parties to decide whether or not to initiate the mediation proceeding. Data from 2014 shows the success rate when all parties are present and decide to continue beyond the first meeting.

If all parties were present and decided to go beyond the first meeting, the success rate in 2018 was 45% in Italy, in 2017 was 72% at the Milan Chamber of Commerce.

[2] Overall success rate, including mediations in which invited party is not present and those in which parties do NOT go further the first information meeting

Statistics based on data by Italian Ministry of Justice

https://webstat.giustizia.it/_layouts/15/start.aspx#/SitePages/Studi%20analisi%20e%20ricerche.aspx

* <https://www.camera-arbitrale.it/it/mediazione/statistiche-mediazione.php?id=405>

Giovanni Matteucci was born in Rome, Italy, in 1949. He graduated in Law and Economics & Commerce at "La Sapienza" University of Rome and earned a "Diploma in Economics" from the University of York (UK). He attended the postgraduate specialization courses in "Alternative Dispute Resolution techniques" and "Bankruptcy law" at the University of Siena.

He worked as a bank officer, specialized in assessing and managing risk, especially the uncertainly realized. He has been a civil mediator certified by the Ministry of Justice since 2006 and a trainer since 2011; he operates as a mediator at the Chamber of Commerce of Maremma and Tirreno, Conciliatore BancarioFinanziario, ADRCenter; he is an international accredited professional mediator at the Mainland - Hong Kong Joint Mediation Center. He specializes in the use of mediation to prevent conflict in the event of corporate financial crisis. He trained in Online Dispute Resolution with Virtualmediationlab-Hawaii.

Since 2014, he is a European funding consultant.

He has published, in English

papers

www.altalex.eu

Mediation and over-indebtedness in Italy, 10. 2012

www.altalex.com

Mediation will now have teeth; international commercial mediation enforceability; the Singapore Convention 2019, 5.2018

Maritime international commercial mediation clauses: mediation, arbitration, med-arb, arb-med, concurrent arbitration-mediation, arb-med-arb. Enforceability, from 2019: will it work ? , 11.2018

<http://e-archivo.uc3m.es/handle/10016/20429>

Italy Is Doing It – Should We Be? - Civil and Commercial Mediation in Italy “, in “Contemporary tendencies in mediation, pag. 205, Dykinson 2015, Universidad Carlos III de Madrid

www.redp.com.br

Mandatory mediation, the Italian experience (Vol. XVI 2015, pag. 189)

Revista Electronica de Direito Processual REDP; Periodico da Pós-Graduacao *Stricto Sensu* em Direito Processual da UERJ Universidade do Estado do Rio de Janeiro

www.insol-europe.org/publications/eurofenix-past-issues

Early disclosure of business crisis in Italy, Eurofenix Spring 2017 English (#67) / French page 28

‘Festina lente’ in NPL management in Italy, Eurofenix Autumn 2017 page 32

http://www.emerj.rj.gov.br/revistaemerj_online/edicoes/revista_v20_n2/versao_digital/73/

ADR in 24 Countries: Mediators and Ombudsmen

Revista da EMERJ Escola da Magistratura do Estado do Rio de Janeiro – V.20 – N.2 2018 page 73

<https://www.transnational-dispute-management.com/article.asp?key=2501>

Non-Performing Loans Prevention in Italy: Early Warning Indicator and Negotiation-Mediation in Bankruptcy, TDM Transnational Dispute Management 11.2017

<https://brill.com/view/book/edcoll/9789004373792/BP000028.xml>

“International commercial mediation, an opportunity for OBOR (One Belt One Road)” Brill publisher 9.2018

<https://independent.academia.edu/GMatteucci>

Mediation in Italy, July 2014; new rules being approved, 7.2014

ADR and the judiciary in Italy, 10.2014

The civil mediator in Italy : an auxiliary of the judge ?!?!, 7.2015

‘Italian mediation law is all right’ , the European Court of Justice said, 6.2017

Mediation with wolves, 7.2017

Civil mediation, how to kick-start it: the Italian experience. The relevance of training, 10.2017

videos

- “Mandatory mediation, the Italian experience” 2015

<http://blogconciliazione.com/2015/06/mandatory-mediation-the-italian-experience-video/>

- “International commercial mediation 2019 国际商事调解 2019

<https://www.youtube.com/watch?v=SwcQhsXUYqY>

Contacts

giovannimatteucci@alice.it and info@adrmaremma.it .

Skype ID

adrmaremma

Linkedin profile

<https://www.linkedin.com/in/giovanni-matteucci-58352226/>

Academia.edu

<https://independent.academia.edu/GMatteucci>

31.7.2019