Scientific Research Publishing

Beijing Law Review, 2025, 16(1), 353-376
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

Mandatory Mediation, the Italian Experience, a Case Study—2025

Giovanni Matteucci

Independent Researcher, Grosseto, Italy
Email: giovannimatteucci@alice.it

How to cite this paper: Matteucci, G. (2025). Mandatory Mediation, the Italian Experience, a Case Study—2025. *Beijing Law Review*, 16, 353-376.
https://doi.org/10.4236/blr.2025.161017

Received: February 4, 2025
Accepted: March 16, 2025
Published: March 19, 2025

Abstract

Istat "*Over the course of their lives, almost* 6 *million people aged* 18 *and over have been involved in a case at civil judicial offices*: 13*% of men and* 11*% of women. These are mainly family cases, mainly for separations and divorces, and work cases.* 54*% of people aged* 18 *and over, who are a party to a civil case, or have been in the past, are very or fairly satisfied with the judicial system. Satisfaction prevails among women and people with lower educational qualifications. Only* 28*% of citizens involved in a civil case know the economic costs of the process at the time the case is initiated. Increases knowledge of extrajudicial dispute resolution tools and the use of them*". The relationship between Italians and civil justice has not always been one of the easiest. Mediation, at least formally, has always been rooted in the Italian legal system, except for the period 1922/1945. In 2010, compulsory civil mediation was introduced, i.e., a condition for civil proceeding. Disputes, criticism, bewilderment. However, although at a slow pace, it has grown and most recently the Legislative Decree no. 216 of 27.12.2024, called "Correttivo" came in force. It brings interesting changes to Legislative Decree 10.10.2022, no. 149 (Cartabia Reform), which made changes to one of the basic acts of the Italian legislation on mediation, Legislative Decree 28/2010. Only one concern: the likely *lawyerisation* of mediation. In the article, *Mandatory mediation, the Italian experience*, 2015, the last words were: "*Since* 2010 *Italy has become a very interesting laboratory to analyze the consequences of different types of ADRs. And I think we are just at the very beginning*". Ten years later, with an 18% increase of agreements and more attention to training, not yet sufficient, it should be repeated: "*We are just at the very beginning*!"

Keywords

ADR, Mediation, Mandatory Mediation, Cartabia Reform, Correttivo, Italy

1. Introduction

Italy is a country in Southern Europe, a peninsula in the middle of the Mediterranean Sea.

It has

- a surface area of 302,073 km^2
- 58,991,230 resident population (31.12.2023, ISTAT)[1]
- 2,255,000 billion USD GDP (2023, World bank)[2]
- 9,576 magistrates (2022, CSM Statistics)[3]
- 1,652 more magistrates would be necessary[4]
- 236,946 lawyers (2023, Legal Welfare Fund).[5]

Istat "*Over the course of their lives, almost* 6 *million people aged* 18 *and over have been involved in a case at civil judicial offices*: 13*% of men and* 11*% of women. These are mainly family cases, mainly for separations and divorces, and work cases.*

54*% of people aged* 18 *and over, who are a party to a civil case, or have been in the past, are very or fairly satisfied with the judicial system. Satisfaction prevails among women and people with lower educational qualifications.*

Only 28*% of citizens involved in a civil case know the economic costs of the process at the time the case is initiated.*

Increases knowledge of extrajudicial dispute resolution tools and the use of them"—Citizens and civil justice, 2023[6]

The relationship between Italians and civil justice has not always been one of the easiest. Mediation, at least formally, has always been rooted in the Italian legal system, except for the period 1922/1945.

In 2010, compulsory civil mediation was introduced, *i.e.* a condition for civil proceeding. Disputes, criticism, bewilderment. However, although at a slow pace, it has grown and most recently, in the Italian Official Gazette of 10.01.2025, Legislative Decree no. 216 of 27.12.2024, called "Correttivo", was published.[7] It brings

[1]https://www.istat.it/?s=Al+31.12.2023+la+popolazione+censuaria+è+pari+a+58.991.230+

[2]https://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2022%29/9cb1284e-5f95-f7b8-8ee1-07bef53d39e1#:~:text=partire%20dal%201993.-,Distribuzione%20per%20genere%20dei%20magistrati%20presenti%20in%20Italia,ordinari%20in%20Tirocinio%20(MOT)

[3]https://www.ilsole24ore.com/art/giustizia-mancano-1652-magistrati-ecco-dove-si-registrano-maggiori-carenze-AFzEMzS

[4]https://laprevidenzaforense.it/rubriche/previdenza/i-numeri-dell-avvocatura-al-2023/#/

[5]https://www.istat.it/comunicato-stampa/cittadini-e-giustizia-civile-anno-2023/

[6]https://www.istat.it/comunicato-stampa/cittadini-e-giustizia-civile-anno-2023/

[7]Decreto Legislativo (legislative decree) 27.12.2024, n. 216, Disposizioni integrative e correttive al decreto legislativo 10 ottobre 2022, n. 149, in materia di mediazione civile e commerciale e negoziazione assistita.
(25G00003) (GU Serie Generale n.7 del 10-01-2025)—notes: Entry in force of the regulation 25/01/2025
The text of the "Correttivo" can be found in
https://www.linkedin.com/pulse/mediazione-civile-e-commerciale-dlgs-27122024-n-216-matteucci-fxmkf/?trackingId=FDWamWLBQ7K73qrb-WKTtHg%3D%3D and
https://www.academia.edu/127068117/Mediazione_obbligatoria_in_Italia_D_Lgs_216_27_12_2024_Correttivo
The text of the D.Lgs. 28/2010, with the *amendments* by the "Correttivo", in
https://www.linkedin.com/pulse/decreto-legislativo-28-del-43-2010-con-le-modifiche-dal-matteucci-0mivf/?trackingId=KCB7coOBRz-GLO1DdwfP%2FyQ%3D%3D and
https://www.academia.edu/127067057/Mediazione_obbligatoria_in_Italia_D_Lgs_28_del_4_3_2010_CON_LE_MODIFICHE_APPORTATE_dal_D_Lgs_27_12_2024_n_216_Correttivo
The numbers, relating to articles of law and subparagraphs, on this article, refer to the articles not of the "Correttivo" but of Legislative Decree 28/2010, as amended by it.

interesting changes to Legislative Decree 10.10.2022, no. 149 (Cartabia Reform), which made changes to one of the basic acts of the Italian legislation on mediation, Legislative Decree 28/2010, already the subject of numerous interventions over the years (Matteucci, 2024a).

Only one concern: the likely *lawyerisation* of mediation.

In 2015 I wrote the article, *Mandatory mediation*, *the Italian experience*, 2015. The last words were: "*Since* 2010 *Italy has become a very interesting laboratory to analyze the consequences of different types of ADRs. And I think we are just at the very beginning*".

Ten years later, with an 18% increase of agreements and more attention to training, not yet sufficient, I can still repeat: "*We are just at the very beginning*!"

2. The Mediation in Italy from 1865 to 2020, a Synthesis

The Italian State was founded in 1861. The first Civil Procedure Code (c.p.c.) come into force in 1865 and in the first seven articles "Conciliation" was ruled.

Art. 7 "*Where the subject matter of the conciliation does not exceed the value of thirty lire*, *the minutes of the conciliation shall be enforceable against the parties intervening*, *for which purpose the conciliator may authorise the dispatch of the copy in the form prescribed for judgments.*"

And the reason for such importance given to the conciliation was explained by the Minister of Justice Vacca in his report presenting the code to the king: "*When it is necessary for the law to prevent citizens from taking law into their own hands*, *substituting private force for social justice*, *it is just as well that public reason should not intervene*, *except in aid of every voluntary means intended to prevent or stop disputes. Litigations. are in themselves the cause of dissensions*, *disturbances and grudges that are detrimental to social harmony*" (Scamuzzi, 1886). There was no lack of doubts and criticisms.

The efficiency of justice, at the end of the 19th, beginning of the 20th century, seems was not to be the maximum. According to Giovanni Giolitti, one of the most relevant politicians in that time, "*in Italy*, *... justice is slow*, *expensive and without sufficient guarantees*" (Giolitti, 1899).

A problem we will find over the decades, as well as other issues:

- lack of training for people in charge of handling conciliations and the unwillingness of praetors (magistrates) to resort to judicial conciliation; and a hope for a reduction in civil litigation through resort to conciliation and arbitration;[8]
- Italians are not too fond of novelty: 'Everything must change, so that nothing changes', is a statement in a famous book, and film, called 'The Leopard" (Tomasi di Lampedusa 1958);
- in Italy there were (and still are) too many lawyers (Calamandrei, 1921);
- Italians many times prefer to find the solutions not by formal methods (Prezzolini,

[8]Regno d'Italia Ministero di Agricoltura, Industria e Commercio. Direzione generale della statistica, "Annali di Statistica" (Kingdom of Italy, Ministry of Agricolture, Industry and Commerce, Yearbooks of Statistics), *Atti della commissione per la statistica giudiziaria civile e penale*, *giugno* 1896, page XVI.

1921).[9]

Anyway, after WWII the IIWW, traditional social groups have lost their relevance and relations among individuals have become more complex, so that the attempt to resolve disputes increasingly goes through the courts, bringing about an ever-increasing backlog in civil courts (Battista, 2019).[10]

A century later, therefore, many constant figures appear in the situation of justice and out-of-court dispute resolution in Italy, although many efforts to improve them have been made and are bearing results.[11]

3. Compulsory Civil Mediation Implemented in 2010

The backlog in the Italian civil courts has been a problem for a long time: 4,861,515 cases pending in 2005, 5,395,102 in 2010, 5,826,440 on 31.12.209, the highest value ever recorded, despite the fact that in previous years innovations have been introduced in the judicial system.

In 2010, Italy, probably the first country in the contemporary Western area, introduced mandatory civil mediation, a condition of admissibility, in matters (De Palo, 2014; Bruni, 2019)[12] whose disputes amounted to approximately 8.5% of cases in civil courts. The judge could, and can, order the use of mediation in disputes relating to ALL available rights. The mediation agreement, approved by the president of the court, was enforceable.

The weak point of all these innovations was training.

The regulatory innovation was substantial: a condition of admissibility had been introduced, without which no court action could be brought. It was therefore necessary to provide knowledge of the institute, and its operation, in a hurry throughout the all country. An institute whose essential techniques are based on communication. Techniques that are not taught in university law classrooms; moreover many professionals would not have been able to devote too much time to attending 100/200 hour courses. Therefore, 50-hour courses

[9]Prezzolini Giuseppe, "*It is not true...that there is no justice in Italy. Instead, it is true that one should not ask the judge for justice, but rather the influential deputy, minister, journalist, lawyer, etc. You can find it: the address is wrong*" Codice della Vita Italiana, Ed. La Voce, §18, 1921—Translation is mine
http://tuttosbagliatotuttodarifare.blogspot.it/2011/10/codice-della-vita-italiana-giuseppe.html

[10]Battista Pier Luigi, "*The country, where everything ends in court*".—"*From neighbour disputes to civil rights and schools. Controversies, sluggish politicians, quibbles. Why we delegate our daily lives to judges, while we continually contest that jus- tice does not work. ... Barking dogs, hanging laundry, snacks, school failures. Inefficacies, however, that draw a picture in which, having disappeared the organs of 'mediation', the parties, associations, trade unions, committees, cultural centers, leave the individual citizen with the only 'mediation' called upon to decide today: justice*", in "*Il Paese dove tutto finisce in tribunale*", in Il Corriere della Sera, 29.03.2017. Traslation is mine.
https://www.corriere.it/cronache/17_marzo_29/paese-dove-tutto-finisce-tribunale-935c7212-14c5-11e7-a7c3-077037ca4143.shtml

[11]Matteucci (2010) Giovanni, *Mediation belongs to the Italian legal tradition*, to be published soon.

[12]Disputes related to: condominiums, rights in rem, division, hereditary succession, family pacts, leases, comodato, business leases, compensation for damages from medical and healthcare liability, compensation for damages from defamation in the press or other advertising media, insurance, banking and financial contracts.

(including communication techniques) were prescribed, mostly managed by lawyers, who focused on the structure of the procedure and its relationship to the trial.[13]

Furthermore, there was an expectation of 200,000 mediation procedures in just five years, so many professionals, mainly lawyers, hastily attended training courses, generally run by lawyers and, therefore, focused more on procedural techniques than on mediation. The quality suffered and so did the results of the mediations, especially the number of agreements (Matteucci, 2012). Furthermore, there was, and still is, a lack of curricular university courses on ADR.

Three regulatory acts were approved: L. 69/2009, 18.06.2009[14] and Legislative Decree 28/2010, 04.03.2010,[15] which also regulated the mediation delegated by the magistrate. After a few months the Ministerial Decree 180/2010, 18.10.2010.[16]

The opposition from the lawyers was vehement, arguing first of all that "Mediation is not part of the Italian legal culture"; history says the opposite (Matteucci, 2015; Matteucci 2024a; Swanson, 2016). But the problem was cultural (legal training, at the university and professional, based exclusively on adversarial techniques) as well as economic (ADR understood not as *Alternative Dispute Resolutions*, but as *Alarming Drops in Revenues*) (Godin, 2011).[17]

On the part of of the judiciary, there was a formal benign neglect, as mediation was considered a "child of a lesser God"; a cultural, educational problem (Matteucci, 2014).

The main concerns on the part of the magistrates were:

– a metamorphosis of the system, with disputes initially managed with psychology-based techniques, outside of constitutional guarantees;

[13]Before 2010, there had been some courses dedicated to mediation and arbitration, high professional level, of about 200 hours, with a focus on communication techniques. But they had been attended by only a few hundred amateurs.

[14]Legge delega 18.06.2009, n. 69, *Disposizioni per lo sviluppo economico, la semplificazione, la competitività nonché in materia di processo civile.* (09G0069) (GU n. 140 del 19-06-2009 - Suppl. Ordinario n. 95)
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2009-06-19&atto.codiceRedazionale=009G0069&elenco30giorni=false

[15]Decreto Legislativo 04.032010, n. 28, *Attuazione dell'articolo* 60 *della legge giugno* 2009, *n.* 69, *in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali.* (10G0050) (GU n. 53 del 05-03-2010)
https://www.gazzettaufficiale.it/eli/id/2010/03/05/010G0050/sg

[16]Decreto Ministeriale 18.10.2010, n. 180, *Regolamento recante la determinazione dei criteri e delle modalità di iscrizione e tenuta del registro degli organismi di mediazione e dell'elenco dei formatori per la mediazione, nonché l'approvazione delle indennità spettanti agli organismi, ai sensi dell'articolo* 16 *del decreto legislativo* 4 *marzo* 2010, *n.* 28. (10G0203) (GU Serie Generale n. 258 del 04-11-2010) (10G0203) (G.U. Serie Generale n. 258 del 04.11.2010).
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2010-11-04&atto.codiceRedazionale=010G0203&elenco30giorni=false#:~:text=Il%20decreto%20stabilisce%20i%20criteri,livelli%20di%20formazione%20dei%20mediatori

[17]Paul Godin—"*Italian Lawyers Strike Because of Mandatory Mediation—Believe it or not, the Italian Bar Association is calling on its members to strike in opposition to a mandatory mediation law. According to the website for the Organismo Unitario dell'Avvocatura Italiana (the Italian bar association—*http://www.oua.it/*), lawyers are being asked to participate in a strike from March* 16-22, *and a public protest demonstration on March* 16*th. The strike is aimed at a new law commencing March* 21*st, requiring mandatory mediation in certain cases. Lawyers are being asked to attend the protest and to cease work on all cases during that period.*
Interestingly, the timing of the strike blankets a national holiday (March 17-18*) and a week- end (March* 19-20*), effectively extending what is already a four-day weekend.*
Now that mediation is an accepted part of the civil litigation process, we forget that in other parts of the world, lawyers are still fighting against measures that may settle cases and reduce legal fees. Even though there is a significant backlog of cases in Italy, lawyers are obviously not taking this new law lying down.
That said, it is interesting that the Government passed the law notwithstanding such strong opposition from the Bar"—in ADRChambers (Canada), 19.04.2011 (De Tilla, 2012).

- fear of non-lawyer mediators;
- interference between mediation and jurisdiction;
- the resolution of cases without issuing a sentence contrary to the criteria of career progression of judges, based above all on the number of sentences issued.

However, a small number of judges immediately realized the potential of mediation:

- "Conciliamo Project", started in 2005 at the Court of Milan, Judge Marcello Marinari (Buffone, 2014);
- "Nausicaa Project", started in 2009 at the University and Court of Florence, Prof. Paola Lucarelli and Judge Luciana Breggia (Breggia, 2015);
- "Integrated Conciliation", started in 2011 at the Court of Bari, Medugno branch, Judge Mirella Delia (Delia, 2012);
- Court of Rome, Ostia branch, where Judge Massimo Moriconi, thanks to an intensive use of invitation to mediation, in 2012 achieved a decrease of at least 10% in the cases present in his role (Moriconi, 2011).

These first initiatives began to be known by various magistrates and over the years they produced interesting results (Biolchini, 2013; Matteucci, 2019; Matteucci, 2024d).

Another important element, for the initial spreading of mediation knowledge in Italy, was the CIM—Italian Mediation Competition in Milan, a competition between university students, who negotiate in front of a professional mediator. Initiative promoted and managed by Dr. Nicola Giudice of the Chamber of Commerce, organized for the first time in 2013, repeated every year, and also proposed again in other cities, with enthusiastic participation from young people from many universities in Italy. After that, not few university professors, on their own initiative, organized courses on ADR, which have always seen consistent participation from students. However, the Ministry has failed to establish curricular courses on ADR in all universities.

As already mentioned, when mandatory civil mediation was implemented in Italy, in 2020, there was a strong reaction by lawyers.

It is interesting to note that a few years earlier corporate conciliation had come into force. Legislative Decree No. 5 of 17.1.2003 ("Reform of company law"), with Articles 38, 39 and 40, had introduced the VOLUNTARY administered mediation in the corporate, banking, credit and financial fields. It was possible for the parties to ask the mediator for a proposed agreement and, for the latter, to be submitted for homologation by the president of the court and become enforceable. The legislation came into force in 2005.

On that occasion, the Italian legislator also made a fundamental choice: the outsourcing of mediation management to public and private bodies, set up according to criteria dictated by the Ministry of Justice and controlled by the latter.

The reference sectors (corporate, banking, credit and financial) of the legislation were broad and the potential conflicts several, the use of the procedure was

VOLUNTARY and it was possible to obtain enforceability of the agreement. Despite this, the use of the tool was close to zero.

When I asked some lawyers why, the response was: "**It was not mandatory !!!**"

Therefore the introduction of compulsory law was the last, only means to bring lawyers and the judiciary to use the procedure.

But appeals to the Constitutional Court against the law began to pour in:

1 Justice of the Peace of Parma with order of August 1, 2011;

2 Regional Administrative Court for Lazio with order of April 12, 2011;

3 Justice of the Peace of Catanzaro with order of September 1, 2011;

4 Justice of the Peace of Catanzaro with order of November 3, 2011;

5 Justice of the Peace of Recco with order of December 5, 2011;

6 Justice of the Peace of Salerno with order of November 19, 2011;

7 Court of Turin with order of January 24, 2012;

8 Court of Genoa with order of 18 November 2011.

And the Constitutional Court, in its judgment no. 272 of October 24/December 6, 2012, declared unconstitutional part of legislative decree 28/2010 for (be careful) excess of delegated power with respect to law no. 69/2009, not for hindering access to justice, guaranteed by Article 24 of the Constitution.[18] There remained voluntary mediation, which grew, and mediation ordered by judges. Appeals in courts increased, in matters where compulsory mediation had been abolished. Therefore, it had been useful.

The backlog of trials in civil courts was still very high, so in 2013 the government with a political decision reintroduced the compulsory mediation, whose numbers, according to statistics from the Ministry of Justice, began to rise: Law Decree 69/2013, known as "Del Fare",[19] with innovations of no small relevance.

To overcome the hostility of the lawyers, compulsory legal assistance to the parties was introduced (in practice useless, because in the vast majority of proceedings the parties were already previously accompanied by the lawyer of their choice) and lawyers became mediators *ope legis*, with a required 15-hour training (if 50 hours had proved inadequate, let alone 15!) (Matteucci, 2013).

As far as the procedure was concerned, an initial information meeting was introduced, which was compulsory and free of charge (except for e.40 out-of-pocket expenses). At the end of the initial information meeting the parties, advised by their lawyers, could decide whether to START the procedure, which was then voluntary, or to abandon it. Procedure called **OPT-OUT**. The agreement, signed by the parties and the lawyers, immediately enforceable (De Palo, 2020; D'Urso &

[18]https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=272

[19]Decreto Legge 21.06.2013, n. 69, Disposizioni urgenti per il rilancio dell'economia. (13G00116), note: Entrata in vigore del provvedimento: 22/6/2013. (GU Serie Generale n. 144 del 21-06-2013 - SuppL. Ordinario n. 50) (Giudice, 2013)
https://www.gazzettaufficiale.it/eli/id/2013/06/21/13G00116/sg
L. 9 agosto 2013, n. 98, Conversione in legge, con modificazioni, del decreto-legge 21 giugno 2013, n. 69, recante disposizioni urgenti per il rilancio dell'economia. (13G00140) note: Entrata in vigore del provvedimento: 21/08/2013. (GU Serie Generale n. 194 del 20-08-2013 - Suppl. Ordinario n. 63)
https://www.gazzettaufficiale.it/eli/id/2013/08/20/13G00140/sg

Canessa, 2017).

A further innovation was the introduction of the art. 185-bis of the Civil Procedure Code, according to which the magistrates could (and can) make a conciliatory proposal; if not accepted, they can send the parties to mediation (arb-than-med). In this way the traditional decision-making power of the judge was highlighted, expanding its perimeter. The magistrates, albeit slowly, began to use the tool at their disposal, placing the lawyers faced with the choice of whether to comply in a more or less adequate manner with the judge's order.

With the Ministerial Decree 07.03.2016, the Alpa commission was established at the Ministry of Justice, for the development of hypotheses of organic regulation and reform of *de-jurisdictionalization* tools, with particular regard to mediation, assisted negotiation and arbitration (Matteucci, 2017).[20] On 18.01.2017 the final report was delivered, which remained closed in a drawer ("*The Ministry did not respond*"!), the contents of which, however, will be almost entirely taken up by the Cartabia Reform, 2022/2023.

One of the main handicaps of mediation was the limited presence of the parties at the meetings, who were represented by their own lawyers, thus greatly weakening the effectiveness of the procedure. From a formal point of view, another handicap was the content of the power of attorney and who should have certified the authenticity of the signature.

The problem was brought to the attention of the Court of Cassation, which with sentence no. 8473 of 2019, after an elegant summary of the relevant legislation, at the focal point of the question, it sentenced: "*... the need for personal appearance does not mean that it is a non-delegable activity. In the absence of an express provision to this effect, and not having the nature of a strictly personal act, it must be considered that it is an activity that can be delegated to others. …. It is neither foreseen nor excluded that the delegation may be given to one's lawyer.... And the power to substitute someone else for himself for participation in the mediation can be granted with a substantial special power of attorney.*"

"*It follows that, although the party can be replaced by the defender in participating in the mediation process, as this is not desired, but is not excluded by law either, he cannot confer this power with the power of attorney conferred on the defender and authenticated by him, although he/she can confer on him with it all*

[20]Matteucci, G.—"*A world of experience has opened up that, although described also for statistical purposes by the bodies involved in arbitration and mediation culture ..., had not until now been perceived in all its breadth and complexity*" (page16). Given the high professionalism of the commission members, one could have said: better late than never!"

Of particular interest is the hearing of the Directorate General for Civil Justice: "*In* 2016 *there were* 1,050 *registered organisms; between* 2014 *and* 2016 *a quarter of the bodies were cancelled. ... the number of cancelled bodies was almost seven times higher than the number of newly registered bodies. ... the inspections carried out—amounting to* 125*—led to the cancellation or suspension of almost half of the mediation bodies*"; *in other words, the* "*hangover*" *of the* 2010 / 2011 *period has left a bitter taste in the mouths of many.*

Commissione Alpa e mediazione: "*festina lente*" *o* "*adelante con juicio*"*?* Blogmediazione07.02.2017 https://blogmediazione.com/2017/02/07/commissione-alpa-e-mediazione-festina-lente-o-adelante-con-juicio/

the widest procedural power in the procedure".

The perplexities and disorientation were considerable (Lucarelli, 2019; Marinaro, 2019), also because the Court of Appeal, which had previously intervened, had expressed its opinion by means of a substantial notarial power of attorney.

But the notarial power of attorney is not necessary, unless the transaction, which is the subject of any agreement in mediation and subsequent to it, requires the intervention of a public official. In fact, any agreement reached in mediation is a contract, so if a person delegates another person to represent him for the stipulation of a contract, "*the power of attorney has no effect if it is not conferred in the forms prescribed for the contract that the representative must conclude*" (art. 1392 c. c.). Furthermore, art. 1350 c. c. provides that "*contracts which transfer ownership of real estate must be made by public deed or authenticated private agreement, under penalty of nullity*" or which have real estate rights as their object.

Since 2019, therefore, the most debated topic among Italian mediation practitioners has not been how to improve the effectiveness of the procedure, but rather "the power of attorney" of the party, who does not appear, to his lawyer. More precisely: "*Attorney yes, attorney no, attorney how, attorney perhaps*" (Matteucci, 2024a).

The quantitative results were lower than expected, knowledge of the institute was not widespread, lack of training at university level and the quality of the offer was not always adequate.

From a statistical point of view, in the period 2011/2022 the following were recorded:

- reduction (−5% per year) in procedures activated in civil courts, due to the economic crisis and the Covid pandemic;
- a strong increase (+14% per year) in civil and commercial mediation procedures;
- a strong increase (+12% per year) in agreements reached in mediation.

And, according to the European Union, in 2016 Italy used mediation at a rate six times higher than the rest of Europe.[21]

But in 2022:

- the success rate (agreements/mediations activated) was 15%;
- the ratio agreements/new judicial procedures 0.9%.

Too little. It should be remembered, however, that the matters subject to mandatory mediation in the 2011/2022 period amounted to only 8.5% of the disputes subject to civil proceedings.

Furthermore, in mediation procedures where all parties had introduced themselves and agreed to go beyond the first meeting, the success rate was 47% (Matteucci, 2024a; D'Urso, Gavrila, & Schonewille, 2020; Cominelli & Jacqmin, 2020).[22]

[21]EU Parliament, Resolution P8_TA (2017)032, *Implementation of the Mediation Directive*, 12.9.2017 (2018/C 337/01) A
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0321&rid=4

4. Cartabia Reform—2021/2023

The Draghi government remained in office from 13.02.2021 until 22.10.2022. A jurist of considerable competence, Prof. Marta Cartabia, was appointed Minister of Justice, who radically addressed the reform of the civil process and ADR.

On March 12, 2021, the Luiso Commission was appointed. Final report ("*the process will be civil*") filed on 23.04.2021 (Matteucci, 2021). Immediately afterwards, the Cartabia Reform of the Civil Process and ADRs (civil, criminal and family mediation, assisted negotiation and arbitration) started and was completed between 2022 and 2023, with the following rules

- Law 26.11.2021, no. 206 (delegation),[23]
- Legislative Decree 10.10.2022, No. 149 (implementation),[24]
- Ministerial Decree 09.06.2023 (restorative justice),[25]
- Ministerial Decree 01.08.2023 (23A04556) (legal aid),[26]
- Ministerial Decree 01.08.2023 (23A04557) (tax incentives),[27]
- Ministerial Decree 04.10.2023, n.150—Regulation of the register of mediation bodies and training bodies, compensation due to bodies, national and cross-border dispute ADR bodies and Consumer Code. Abolition of Ministerial Decree 180/2020.[28]
- Ministerial Decree 07.10.2023, 151 (regulation of the Family Mediator).[29]

With regard to mediation, the main innovations were:

A—increase in the number of matters subject to compulsory mediation,[30]

[22]For the overall statistical data, Matteucci, G., cit. note 8, pages 223/232. 47% is a good result, when compared with the results, times and costs of the civil trial. Due to the fact that, unlike the trial, mediation is agile, inexpensive and does not require large, costly and personnel-intensive structures.

[23]Legge 26.11.2021, n. 206 (delega)—Delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata.—G.U. 09.12.2021, n.292
https://www.gazzettaufficiale.it/showNewsDetail?id=4329&backTo=archivio&anno=2021&provenienza=archivio

[24]Decreto legislativo 10.10.2022, n. 149—Attuazione della legge 26 novembre 2021, n. 206, recante delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata. (22G00158)
Entrata in vigore del provvedimento: 18/10/2022—G.U. 17.10.2022, n. 243, S.O. n.38
https://www.gazzettaufficiale.it/eli/id/2022/10/17/22G00158/sg

[25]D.M. 9 giugno 2023—giustizia riparativa.
Istituzione presso il Ministero della giustizia dell'elenco dei mediatori esperti in giustizia riparativa. Disciplina dei requisiti per l'iscrizione e la cancellazione dall'elenco, del contributo per l'iscrizione allo stesso, delle cause di incompatibilità, dell'attribuzione della qualificazione di formatore, delle modalità di revisione e vigilanza sull'elenco, ed infine della data a decorrere dalla quale la partecipazione all'attività di formazione costituisce requisito obbligatorio per l'esercizio dell'attività (23A03848)—G.U. 15.07.2023, S.G. n. 155.
https://www.gazzettaufficiale.it/eli/id/2023/07/05/23A03848/sg

[26]D.M. 01.08.2023 (23A04556)—Gratuito patrocinio

[27]D.M. 01.08.2023 (23A04557)—Incentivi fiscali
Incentivi fiscali nella forma del credito di imposta nei procedimenti di mediazione civile e commerciale e negoziazione assistita. (23A04557)—(GU Serie Generale n.183 del 07-08-2023)
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-07&atto.codiceRedazionale=23A04557&elenco30giorni=false

B—increased effectiveness of the procedure, through negative procedural consequences and tax incentives,

C—increased commissions to be paid to mediation bodies,

D—greater involvement of the judiciary,

E—involvement of the public administration,

F—higher quality requirements for mediation bodies, mediators and trainers, sanctions,

G—regulation of the use of technical advisers in mediation,

H—telematic mediation,

I—opposition to an injunction,

L—increase in training duration (from 50 to 80 hours),

M—increase in tax incentives.

In my opinion, the most important innovations are those labeled B, D and L (Matteucci, 2024a). There is still a lack of curricular university courses on ADR.

Tax incentives (some automatic, some on demand) may also make a not insignificant contribution to the development of mediation, as long as the procedures to obtain them are simple and well known. And online seminars focusing only on these procedures are already beginning to be provided.

On 06.30.2023 the overall Cartabia Reform on mediation definitively came into force. From 11.15.2023 the new allowances due to mediation bodies and mediators have been applied.

The Cartabia Reform has affected not only mediation but also, and above all, the process. In 2023, there was a lot of bewilderment on the part of lawyers about the new rules for activating trials, and, in the uncertainty, they resorted a little more to mediation, the structure of which had not changed much. It is difficult to predict how much all these changes will interact with each other and within how long. Two interesting novelties: young lawyers are increasingly acquainting themselves with mediation, and magistrates are also increasingly taking an in-depth look at the subject (Matteucci, 2024c).

Therefore, as regards compulsory civil mediation, in Italy, the following phases can be distinguished:

A) March 2011 - October 2012

[28]D.M.04.10.2023, n.150, *Regolamento_registro organismi mediazione ed enti formazione, indennità spettanti agli organismi, organismi ADR controversie nazionali e transfrontaliere e Codice consumo* **Entrata in vigore del provvedimento: 15/11/2023—(GU Serie Generale n.255 del 31-10-2023)** https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-10-31&atto.codiceRedazionale=23G00163&elenco30giorni=true

[29]D.M. 07.10.2023,151—Disciplina del Mediatore familiare-Gazzetta Ufficiale, 31.10.2023, n. 255 https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-10-31&atto.codiceRedazionale=23G00162&elenco30giorni=false

[30]The following matters were already compulsory: condominium, rights in rem, division, hereditary succession, family pacts, leases, comodato, business leases, compensation for damages arising from medical and healthcare liability and defamation by the press or other means of advertising, insurance, banking and financial contracts (8.5% of disputes subject to civil judgments).
The following were added: partnership contracts, consortia, franchising, work contracts, network contracts, supply contracts, partnerships, subcontracting (with the Cartabia Reform the overall percentage rose to 20/25%).

- mandatory civil mediation
- no compulsory legal assistance
- executive agreement subject to approval by the magistrate
- *jussu juducis* mediation
- fees to be paid at the beginning of the procedure.

B) October 212 - September 2013

- no mandatory but voluntary civil mediation
- no compulsory legal assistance
- executive agreement subject to approval by the magistrate
- *jussu juducis* mediation
- fees to be paid at the beginning of the procedure.

C) September 2013 - 30 June 2023

- mandatory civil mediation
- compulsory legal assistance
- first information meeting without fees, OPT-OUT procedure (abolished in 2022)
- *jussu judicis* mediation and arb-than-med proceeding
- fees to be paid after the first information meeting, at the beginning of the proceedure
- agreement, signed by the parties and lawyers, immediately enforceable.

D) 06.30.2023 the overall Cartabia Reform on mediation came into force:

- mandatory civil mediation
- mandatory legal assistance
- the mediation begins immediately, when the procedure starts
- *jussu judicis* mediation and arb-than-med proceeding
- fees to be paid the beginning of the procedure (higher amount from 11.15.2023)
- agreement, signed by the parties and lawyers, immediately enforceable.

From 2011 to 2023, disputes subject to voluntary mediation amounted to 8.5% of judgments in civil courts. These judgments increased by 9% during period B (voluntary mediation), decreased by 15% during period C (mandatory mediation).

5. Artificial Intelligence Applied to *jussu judicis* Mediation—2014

As already mentioned, in 2010/2011 the judiciary accepted with benign neglect the introduction of civil mediation as a mandatory condition of admissibility in the Italian legal system. Some, very few, judges, however, realized the potential of the institute from the beginning and this awareness was then extended to many other magistrates. One detail has distinguished the Italian judiciary's attention to mediation: the predictability of the latter. That is, identifying the type of disputes that could most likely be treated and resolved in mediation.

In two different Italian courts, methods have been developed to predict the outcome of a dispute, so that it is possible to understand in advance which cases,

already started, can be resolved through an invitation/injunction from the judge to the parties to go to mediation and then return to court (and then apply these techniques also to out-of-court disputes) (Matteucci, 2024b):

- the Court of Modugno, a separate section of the Court of Bari, in 2011 Judge Mirella Delia started the "**integrated conciliation**" project. Box-cases have been developed to help predict possible solutions, times and probable risks of decisions. In other words, the predictability of a conciliatory solution in that conflict. The database grew considerably and was shared by other courts and universities and the project was included among the "Best Practices", number 2526, chosen by the Superior Council of the Judiciary;
- the Court of Florence (Judge Luciana Breggia) and the University (Prof. Paola Lucarelli) worked on "**simple justice**", giving birth in 2009, together with the Observatory on Civil Justice (an association made up of magistrates, lawyers and chancellors), to the Order of lawyers and the Chamber of Commerce, the Nausicaa Project. The Dpt of Engineering was then involved to implement a predictive algorithm of the "mediability" of a judicial proceeding and its probability of outcome. On 11.03.2024 the document *Explainable Artificial Intelligence for Agile Mediation Propensity Assessment* was published, artificial intelligence applied to *jussu judicis* mediation.

"*Italian Justice has recently added mechanisms to exploit mediation process. One of the most critical aspects is a reliable identification of litigations which can be successfully mediated outside court procedures. The decision is under responsibility of a judge/court who has to read hundreds of pages and several documents, to be able to take a decision on the basis of few statements. This paper describes both an artificial intelligence solution and a tool to provide a decision support system which could process documents and be capable to: (i) produce reliable suggestions, (ii) produce circumstantiated motivations, thus highlighting statements which could support identified suggestion focusing the work of any judge/court on actual statements and documents with relevant facts, and (iii) provide a web based tool producing suggestions and motivations on demand at service of the involved court and judges, compliant with privacy and security, as to data. To this end, AI and eXplainable AI technologies have been used and a solution has been obtained which meets the above-mentioned objectives and many other detailed requirements. Such a solution has been developed in the context of the research project 'Giustizia Agile', funded by the Italian National PON Governance and Institutional Capacity, and validated against real cases. The solution has exploited the Snap4City framework for data and AI/XAI management.*" (Collini, Nesi, Raffaelli, & Scandiffio, 2024)

This tool not only facilitates the evaluation of mediation projects with 97% accuracy at the sentence level, but, more significantly, through the use of XAI, it clarifies specific clauses and paragraphs within the documents, which could affect the mediation.

The use of AI will reduce the process duration. But not immediately. It is such

a strong organisational, managerial and, above all, psychological "leap", that it will take time to become acquainted and appreciated. It will also depend on the evolution of the technique, which is absolutely boyante.

And the social and economic consequences of the implementation of the "simple justice" project were also quantified:

A—Social impact of the project, measured by the growing trust of citizens, businesses and professionals adherence of the parties to the order for referral to mediation ordered by the judge: ratio between the number of mediations actually carried out by the parties and the total number of referral orders by the judges

Year 2015: 56%.

Year 2019: 73%.

Increase in effective mediations: +30%

B—economic impact: efficiency of the judicial system, average duration of trials

Year 2017: average duration 480 days.

Year 2019: average duration 297 days.

Reduction in the average duration of processes: −38%.

C—Deflation of the judicial load, relationship between orders for referral to mediation and closed trials.

Year 2015: 27%.

Year 2019: 42%.

Increased process extinction: +55%

D—Cultural impact, development of a culture of conflict mediation and new knowledge on the part of judges, citizens and litigants.

a—development of the culture of judicial conciliation.

Year 2017: 525 referral orders received by the most representative body.

Year 2019: 1,126 referral orders received by the most representative body.

Increase in referral orders for mediation: +114%.

b—voluntary choice of mediation by citizens, businesses and lawyers which requires competence and knowledge of the tool.

Year 2015: 231 voluntary mediations

Year 2019: 505 voluntary mediations

Increase in voluntary mediations: +118%.

6. The "Correttivo"—25.10.2025

In the Official Gazette of 10.01.2025, Legislative Decree No 216 of 27.12.2024, (long awaited and) called the "Correttivo", was published.[31] In fact, it introduces amendments to Legislative Decree 10.10.2022, no. 149 (Cartabia Reform), which made changes to one of the basic acts of the Italian legislation on mediation, Legislative Decree 28/2010, already the subject of numerous interventions over the years (Matteucci, 2024a).

The numbers, relating to articles of law and subparagraphs, shown in this article

[31]Decreto legislative 27 dicembre 2024, n. 216, Disposizioni integrative e correttive al decreto legislativo 10 ottobre 2022, n. 149, in materia di mediazione civile e commerciale e negoziazione assistita.

refer to the articles not of the "Correttivo" but of Legislative Decree 28/2010 as amended by the "Correttivo".[32]

In the "Correttivo" there are innovations of no small importance. Only one perplexity.

One innovation, which might seem lexical, but which instead affects the substance of the procedure and some important consequences, is the specification: "*The minutes, to which the mediation agreement is attached*".

Article 5-ter of Legislative Decree 28 2020 (with all its amendments over the years) used to read: "*The report containing the conciliation agreement*" (and, on this detail, the original Decree 28/2010 already made a substantial pot-pourri). This aside has been replaced by "The minutes to which the conciliation agreement is annexed". This respects the essence of the mediation procedure: the agreement belongs to the parties, and the relevant document is signed only by them and by the lawyers, if any, who assist them; the minute, recording the outcome of the procedure (agreement/no agreement) is signed by the parties, the lawyers and the mediator, who is not responsible for the content of the agreement (Matteucci, 2024a).[33]

And it's not just theory. Legislative Decree 28/2010, article 17, paragraph 2 stated "*The report containing the conciliation agreement is exempt from registration tax within the value limit of one hundred thousand euros, otherwise the tax is due for the part excess*". Several times the Revenue Agency, in the presence of agreements in mediation, especially those concerning adverse possession, without the minutes, had contested the application of the tax relief (Battista & Matteucci, 2024).

The "Correctivo" also made the following change "*The minutes and the conciliation agreement are exempt" from registration tax up to the value of €*100,000.00. So, not theory, but matter. And it is hoped that there will no longer be any interpretative problems in this regard.

Another change of not only formal, but substantial, importance is art.8, c. 4-bis, relating to the delegation for participation in the meeting.

[32]The text of Legislative Decree 28/2010, with the corrections made by the "Corrective", is reported in https://www.linkedin.com/pulse/decreto-legislativo-28-del-43-2010-con-le-modifiche-dal-matteucci-0mivf/?trackingId=KCB7coOBRzGLO1DdwfP%2FyQ%3D%3D and https://www.academia.edu/127067057/Mediazione_obbligatoria_in_Italia_D_Lgs_28_del_4_3_2010_CON_LE_MODIFICHE_APPORTATE_dal_D_Lgs_27_12_2024_n_216_Correttivo_

[33]Matteucci, G.—"The 'vulgate' has always underlined that, since the agreement is between the parties, the mediator has no responsibility for its content. A recent ruling seems to undermine this certainty a little, as it underlined that the mediator carries out the functions of a public official:
"Court of Forlì, sentence no. 619 of 09.25.2023—Est. Honorary Judge Dr. Maria De Ruggiero: *The report provides full proof up to the point of being accused of forgery and the mediator assumes the role of public official taking the minutes for the facts that occurred before him and the verification of the documentation to his actions.*"
https://www.mondoadr.it/wp-content/uploads/Trib-Forli-619-2023.pdf
In the same vein, Court of Cosenza, sentence. n. 109/2024.—Matteucci, G., cit. note 8, pages 54 and 194.

As already analyzed in §2, the most debated topic among Italian mediation practitioners since 2019 was not how to improve the effectiveness of the procedure in general, but rather the power of attorney granted by the party, who does not appear, to his lawyer, attending the meetings ("*Power of attorney yes*, *power of attorney no*, *power of attorney how*, *power of attorney maybe*").

Many times the lawyers showed up at the mediation meetings, alone, showing a power of attorney for the disputes. To the objection that the validity of that document, in accordance with the civil procedure code, was limited to the trial, there was, to say the least, a look of incredulity, if not pity. Then we started to see anonymous powers of attorney, with the signature always "authenticated" by the lawyer; several times, at least, with an attached copy of the identification document of the party, who had signed the power of attorney.

The problem was brought to the attention of the Court of Cassation, which expressed itself with sentence 8473 of 2019 relating to the necessary presence, or otherwise, of the parties in mediation. As pointed out in §2 3, when the party "*chooses to be replaced by the defender*".

The dismay was notable, also because the Court of Appeal, which had previously intervened, had expressed its opinion by substantive notarial power of attorney. And the prevailing discourse relating to the mediation procedure, for years, has been "*Power of attorney yes*, *power of attorney no*, *power of attorney how*, *power of attorney perhaps*", completely obscuring the analysis of the essence of the procedure and its several uses (Matteucci, 2024a).

The "Correttivo" intervenes on the topic, specifying:

Art.8,c. "4-bis. *The delegation for participation in the meeting pursuant to paragraph* 4 *is conferred with a document signed with a non-authenticated signature and contains the details of the delegating person's identity document. In the cases referred to in Article* 11, *paragraph* 7, *the delegating party may grant the delegation with a signature authenticated by a public official authorized to do so. The person delegated to participate in the mediation meeting takes care of the presentation and delivery of the delegation conferred in accordance with this paragraph, together with an unauthenticated copy of his/her identity document, for their acquisition in the procedural documents.*"

Therefore, a substantial special power of attorney is sufficient with the details of the delegating party's identity document indicated (and, I would add, a copy of this document attached). The copy of the delegate's identity document was already acquired as a matter of practice.

Bearing in mind that Legislative Decree 149 of 2022 (Cartabia Reform), in art. 8, c.4 (not subject to changes) prescribes "*The parties participate personally in the mediation procedure. In the presence of justified reasons, they can delegate a representative who is aware of the facts and has the necessary powers to resolve the dispute*" (Matteucci, 2024a).

Clarification also in relation to the duration of the procedure, initially six months (extendable), then three (extendable), now six again, extendable for

periods each time not exceeding three months. With a detail: "*The extension pursuant to paragraphs* 1 *and* 2 *results from a written agreement of the parties attached to the mediation report or resulting from it*". After the Cartabia Reform came into force, even authoritative experts pointed out that from now on there would only be two minutes, the one at the beginning of the procedure and the one at the end. For any intermediate meetings, concluded with a postponement agreement, it could be made up with emails (preferably certified emails) between the mediator and the lawyers present in the mediation. Personally, given that unforeseen events are not uncommon, I suggested drawing up minutes at the end of each meeting. Today the legislation prescribes it, with the extension of the postponement attached to it.

If delegated by the judge, mediation lasts six months, which can be extended by a further three months only once.

The duration of the proceedings is not subject to holiday leave.

As regards the mediations delegated by the judge, which have taken on ever greater importance and effectiveness, the legislation in force specified: Art. 5-quater, c 1. "*The judge*, *even during the appeal proceedings*, *until the moment of clarification of the conclusions having evaluated the nature of the case*, *the state of the investigation*, *the behavior of the parties and any other circumstances*, *may order*, *with a reasoned order*, *the experiment of a mediation procedure*".

A particularly appropriate clarification is in art.11, paragraph 4bis, the latter newly minted: 4bis. "*When the mediation ends without conciliation*, *the judicial request must be submitted within the same deadline referred to in Article* 8, *paragraph* 2, *starting from the filing of the final report of the mediation at the secretariat of the body*."[34] Attention must be paid to those court appeals to be made within very tight deadlines, e.g. 30 days.

An opening of no small importance lies in the art. 12, paragraph 1-bis - 1-bis. "*When the parties participating in the mediation are not all assisted by lawyers*, *the agreement attached to the minutes is approved*, *upon request of a party*, *by decree of the president of the court of the place where the mediation body before which the agreement is based is located. been achieved*, *subject to verification of formal regularity and compliance with mandatory rules and public order*."[35]

With the further addition of c.1-ter "*In cross-border disputes referred to in Article* 2 *of Directive* 2008/52/*EC of the European Parliament and of the Council of* 21 *May* 2008, *the agreement attached to the minutes is approved*, *upon request by*

[34]For the convenience of the reader, Art.8, c.2 (remained unchanged): 2. *From the moment in which the communication referred to in paragraph* 1 *comes to the attention of the parties*, *the request for mediation produces the effects of the judicial request on the statute of limitations and prevents forfeiture only once. To this end, the party may communicate to the other party the request for mediation already submitted to the mediation body*, *without prejudice to the body's obligation to proceed pursuant to paragraph* 1.

[35]Compared to the summer of 2013 (Decreto del Fare - Decree of Doing), when the legal profession "asked!" and obtained the compulsory presence of lawyers in all mediation procedures, a mandatory condition of admissibility, a long way has been made towards the acceptance of mediation!

a party, in accordance with paragraph 1*-bis*".[36]

In the "Correttivo" there are further details to the already specific legislation on legal aid and to the never-ending rules on mediation bodies and training bodies.

The "Correttivo" clarifies the difference between agreement and minute, resulting in fewer disputes in the application of the doubled automatic tax relief; fewer problems in the issuance of the power of attorney from the party to the lawyer; strong reminder of the presence of the parties in mediation, with a strong increase in the probability of agreement; more time for the judge to invite the parties to mediation; possibility of be presence in mediation even without the assistance of a lawyer.

Innovations adequate and useful. Consistent doubts, however, regarding a rule relating to ODR.

Online mediation was already foreseen by Legislative Decree 28/2010, it had developed greatly during the period of the Covid pandemic and had grown subsequently. Legislative Decree 149/2022 (Cartabia Reform), art. 8bis, had regulated it adequately (Stoppa, 2022; Stoppa, 2023).

The problem lay in the availability of the digital signature by all the subjects participating in the mediation, especially the parties (despite the fact that from some years more than 50% of the Italian population has had it). If the parties do not have one, the possibility was highlighted of making an OTP (one-time password) signature available by the body, upon reimbursement of a low cost. Not a welcome solution at all.

During the period of the Covid pandemic, once the procedure was completed, upon signing the report, the (provisional!) solution, provided for by the legislation used by many lawyers and accepted by many mediation bodies, was to have their client's handwritten signature and declare it digitally autographed by the lawyer himself.

There was a very strong demand that this "mixed" (handwritten and digital) signature solution should become stable. And the "Correttivo" ruled as follows.

Art. 8-bis (*Telematic mediation*).

1*. When the mediation, with the consent of the parties, is conducted by telematic means, the procedural documents shall be formed by the mediator and signed in accordance with this decree in compliance with the provisions of the Digital Administration Code, pursuant to Legislative Decree No.* 82 *of* 7 *March* 2005*.*

2*. At the conclusion of the proceedings, the mediator shall form a computerised document containing the minutes and any agreement to sign them. The document shall be signed immediately and returned to the mediator.*

3*. Upon receipt of the document referred to in paragraph* 2*, the mediator, after verifying the affixing, validity and integrity of the signatures, shall append his or her signature and file it with the secretariat of the entity, which shall send it to the parties and their lawyers, if appointed.*

[36]Who knows when the EU will sign the Singapore Convention on Mediation (2019)!

4. *The storage and exhibition of documents of the mediation proceedings conducted by telematic means shall be carried out by the mediation body in accordance with Article* 43 *of Legislative Decree No.* 82 *of* 2005.

And so far "*nulla quaestio*".

Perplexities, and not insignificant ones, in the subsequent Art. 8-ter. Especially in relation to c.4.

Article 8-ter (*Remote audiovisual mediation meetings*).[37]

1. *Each party may always request the head of the mediation body to participate in meetings by remote audiovisual connection.*

2. *The audiovisual connection systems used for the meetings referred to in paragraph* 1 *shall ensure the simultaneous, effective and reciprocal audibility and visibility of the persons connected.*

3. *Except for the cases regulated by Article* 8*-bis, when the mediator is required to obtain the signatures of the participants for the documents formed during a meeting in which one or more parties participate in the manner envisaged by this Article, with the consent of all the parties, the signatures shall be affixed in compliance with the provisions of the digital administration code, referred to in Legislative Decree No.* 82 *of* 7 *March* 2005,[38] *and in accordance with Article* 8*-bis, paragraphs* 2 *and* 3, *except as provided for in paragraph* 4.

4. *If there is no consent as provided for in paragraph* 3, *the signatures of all participants are affixed in handwritten mode before the mediator.*

5. *The parties shall cooperate in good faith and in good faith to ensure that documents formed during a meeting in which one or more parties are based on the modalities set forth in this Article are signed without delay.*

Paragraph 4, then, expressly provides for the possibility of affixing the signature in handwritten mode ("mixed" signature), adding "*before the mediator*", a detail that, in my opinion, contradicts with everything established earlier. If the party, and the lawyer assisting him, are connected with the mediator online (one presumes, therefore, at a distance), how can they sign "*before the mediator*"? And if the mediator, via computer connection, can "see" the party at the moment he or she signs the minutes, does this comply with the law? And what could be the subsequent objections from the other party, should the enforceability of the minutes be used?

One might suggest: artificial intelligence will solve everything! A joke? Not much.

The Hong Kong-based *eBram* Centre (Electronic Business Related Arbitration and Mediation) has already planned to develop a platform in 2019, which will also provide special artificial intelligence functions to facilitate business negotiations and dispute resolution with text translation, real-time translation of chat-style phrases, transcription of online hearing recordings, and user authentication for secure access (such as facial recognition, silhouette tracking and radio frequency

[37]No telematic.

[38]https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07;82

identification).

The entry into force of the Cartabia Reform, both for mediation and civil proceedings, has also led to a reshaping of the relationships between them (Matteucci, 2024c).

7. Conclusion

Compulsory civil mediation, introduced in 2010 into the Italian legal system, is beginning to be known and applied.

Dr. Maria Cassano, first president of the Court of Cassation, stated on 25.01.2024 "*With specific reference to mediation, the interesting results inferable from ministerial data are worth mentioning. ... especially in cases concerning succession, hereditary division, real rights, condominium, insurance, non-contractual liability. As observed by the doctrine, the value of mediation lies not only in its deflective capacity, but rather in its ability to achieve social cohesion, to put the person at the centre, even before the 'party', to give individuals the opportunity to understand the reasons for the conflict and to acquire awareness of it, to promote empathic listening to the other, to manage effective relationships through confrontation*"[39]

The Legislative Decree 2014/216, named "Correttivo", has made useful innovations, with a return to the past (pre-2013), that make the procedure smoother. But perplexities remain with regard to the regulations on remote, non-telematic mediation.

Moreover, in 2012 the average duration of procedures, with agreement reached, was 65 days, in 2022 it was 186. A procedure that should be lean and fast is taking longer and longer. Because the disputes analysed are increasingly complex or because of a progressive "*lawyerization*" of mediation? This trend has already been in place in the USA for some time (Nolan-Haley, 2010; Weiler, 2018; Rajkowski, 2020; Salisbury, 2020; Tvaronaviciene, Korsakoviene, & Radanova, 2023).[40]

The lawyerizaton of mediation will not be perceived by the general public but

[39]Cassano, M., 25.01.2024—Transaltion is mine.
https://www.cortedicassazione.it/resources/cms/documents/Relazione_Cassazione_2024.pdf

[40]Nolan-Haley, J.M, *Mediation*: *The* "*New Arbitration*", Harvard Negotiation Law Review, Forthcoming, Fordham Law Legal Studies Research Paper No. 1713928, 2010. Available at SSRN
https://ssrn.com/abstract=1713928

Weiler R., Whiter (Wither) *Mediation*, Kluwermediationblog 06.04.2018 (Ontario)
http://mediationblog.kluwerarbitration.com/2018/04/06/whither-wither-mediation/

Rajkowski P. (2020) The Death of Traditional Mediation—An Obituary, Mediate.com
https://mediate.com/the-death-of-traditional-mediation-an-obituary/

Salisbury M. (2020) The Lawyerization of the Mediation Process, in Mediate.com
https://www.mediate.com/the-lawyerization-of-the-mediation-process/

Tvaronaviciene A., Korsakoviene I., Radanova J. (2023) If Mediation Is Still a Paradox, Should We Bother Solving It? Mediate.com
https://mediate.com/if-mediation-is-still-a-paradox-should-we-bother-solving-it/

Monteleone, G. (2023) La mediazione obbligatoria: conciliazione o giurisdizione surrogata? Brevi riflessioni critiche, Judicium
https://www.judicium.it/la-mediazione-obbligatoria-conciliazione-o-giurisdizione-surrogata-brevi-riflessioni-critiche/

will be implemented step by step by lawyers and will reduce the efficiency and flexibility of the procedure. Much will depend on the conditions of the litigation "market", also in relation to the rapidly evolving economic situation, even international.

The Cartabia reform has expanded the use of compulsory civil mediation, has increased its possibility of effectiveness by introducing procedural and fiscal inventiveness, has introduced the conditions for greater involvement of magistrates and has increased training obligations (even if they are still not sufficient). The "Correttivo" has made the procedure a little simpler and more precise and has greatly reduced the uncertainty, a crucial problem, of the power of attorney from the party to the lawyer. Greater attention to the ODR.

Updated official statistics (2023/2024) will be needed to understand if all these innovations are effective.

In 2015 I wrote the article, *Mandatory mediation, the Italian experience*, 2015 (Matteucci, 2015),[41] The last words were: "*Since* 2010 *Italy has become a very interesting laboratory to analyze the consequences of different types of ADRs. And I think we are just at the very beginning*".

Ten years later, with an 18% increase of agreements and more attention to training, not yet sufficient, I can still repeat: "*We are just at the very beginning*!"

Acknowledgement

I would like to thank Dr. Monica Dall'Olio, lawyer Mario Antonio Stoppa and lawyer Giuseppe Ruotolo, mediators, for an exchange of ideas on the topics of this article. Insofar as it is superfluous, the responsibility for its content lies solely with the undersigned.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

Battista, M. T., & Matteucci, G. (2024). *Usucapione e mediazione, normativa e particolarità operative*. Vita Notarile. https://www.academia.edu/120186001/Usucapione_e_mediazione_normativa_e_particolarita_operative_15_02_2024

Battista, P. L. (2019). *Il Paese dove tutto finisce in Tribunale*. Corriere della Sera. https://www.corriere.it/cronache/17_marzo_29/paese-dove-tutto-finisce-tribunale-935c7212-14c5-11e7-a7c3-077037ca4143.shtml

Biolchini, M. C. (2013). *Resoconto del convegno: Il ruolo del giudice nella mediazione*. MondoADR. https://www.mondoadr.it/resoconto-del-convegno-il-ruolo-del-giudice-nella-mediazione/

Breggia, L. (2015). *Il Progetto Nausicaa del Tribunale di Firenze: Esperienza virtuosa di*

[41]Matteucci G., *Mandatory mediation, the Italian experience*, 2015, Revista Eletronica de Direito Processual 2015 https://www.e-publicacoes.uerj.br/redp/article/view/19964

invio in mediazione. Questione Giustiza. https://www.questionegiustizia.it/rivista/articolo/il-progetto-nausicaa-del-tribunale-di-firenze_esperienza-virtuosa-di-invio-in-mediazione_220

Bruni, A. (2019). *Mediation in Italy*. Concilia. https://concilia.it/wordpress/wp-content/uploads/2022/03/book_aia-1.pdf

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

Calamandrei, P. (1921). *Troppi Avvocati*. La Voce.

Collini, E., Nesi, P., Raffaelli, C., & Scandiffio, F. (2024). Explainable Artificial Intelligence for Agile Mediation Propensity Assessment. *IEEE Access, 12,* 37782-37798. https://ieeexplore.ieee.org/document/10464317

Cominelli, L., & Jacqmin, A. (2020). Civil and Commercial Mediation in Italy: Lights and Shadows. *Revista da EMERJ, 22,* 11. https://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista_v22_n1/revista_v22_n1_11.pdf

D'Urso, G. C., & Schonewille, M. (2020). *6th Key-Government: Make Mediation a Prerequisite to Civil Litigation*. https://www.mediate.com/articles/gavrila-key6-civil.cfm

D'Urso, L., & Canessa, R. (2017). *The Italian Mediation Law on Civil and Commercial Disputes*. Mondoadr. https://mediatorsbeyondborders.org/wp-content/uploads/2017/09/The-Italian-Mediation-Law.pdf

De Palo, G. (2014). *Voluntary Mediation? Apparently, the False Prince Charming*. http://www.mediate.com/articles/PaloResponse.cfm

De Palo, G. (2020). *Mediating Mediation: the Easy Opt-Out Model*. Heinonline. https://heinonline.org/HOL/LandingPage?handle=hein.journals/heraldl2020&div=20&id=&page=

De Tilla, M. (2012). *OUA (Organismo Unitario dell'Avvocatura, di rappresentanza politica degli avvocati) president (2012) "L'obbligatorietà e i costi alti"*. Quotidiano Sanità. https://www.quotidianosanita.it/cronache/articolo.php?approfondimento_id=2797

Delia, M. (2012). La conciliazione: Proposte programmatiche dal Tribunale di Bari, Sezione distaccata di Modugno. *Foro Italiano, 15,* 60.

Giolitti, G. (1899). *Propaganda, giornale socialista, Napoli, 5.11.1899, discorso 29.10.1899 agli elettori di Busca.* https://www.mirkoriazzoli.it/discorso-di-dronero-di-giolitti/

Giudice, N. (2013). *Decreto fare e mediazione: qualche commento dopo la pubblicazione*. Blogmediazione. https://blogmediazione.com/2013/06/23/decreto-fare-e-mediazione-qualche-commento-dopo-la-pubblicazione/

Godin, P. (2011). *Italian Lawyers Strike Because of Mandatory Mediation.*

Lucarelli, P. (2019). *La sentenza della Corte di Cassazione 8473/2019: Un raro esempio di uroboro*. Judicium. https://www.judicium.it/la-sentenza-della-corte-cassazione-84732019-un-raro-esempio-urobo-ro/?fbclid=IwAR0a2BioN8TTfIqvULm-1nC3BrxZMkYU-khWpSsEJxx8vzFIx2plcqAYbg-8

Marinaro, M. (2019). *Mediazione: scontro sulla partecipazione personale delle parti*. https://ntplusdiritto.ilsole24ore.com/art/mediazione-scontro-partecipazione-personale-parti-ACQFbOV

Matteucci, G. (2010). *La mediaconciliazione: Una mimesi di legislazioni altrui o un recupero delle nostre tradizioni*? Temi Romana (quadrimestrale dell'Ordine degli avvocati di Roma).

Matteucci, G. (2012). *Mediazione avanti tutta, ma …la formazione*? Altalex. https://www.altalex.com/documents/news/2012/09/26/mediazione-avanti-tutta-ma-la-formazione

Matteucci, G. (2013). *Avvocati mediatori ope legis con il Decreto del Fare*. Altalex. https://www.altalex.com/documents/news/2013/07/04/avvocati-mediatori-ope-legis-con-il-decreto-del-fare

Matteucci, G. (2014). *Conciliazione endoprocessuale e mediazione delegata: Per la magistratura italiana "figlie di un Dio minore"*. MondoADR. https://www.mondoadr.it/conciliazione-endoprocessuale-mediazione-delegata-la-magistratura-italiana-figlie-di-dio-minore/

Matteucci, G. (2015). *Mandatory Mediation, the Italian Experience*. Revista Eletrônica de Direito Processual.

Matteucci, G. (2017). *Commissione Alpa e mediazione: "festina lente" o "adelante con juicio"*? BlogMediazione. https://blogmediazione.com/2017/02/07/commissione-alpa-e-mediazione-festina-lente-o-adelante-con-juicio/

Matteucci, G. (2019). Mediation and Judiciary in Italy 2019. *Asia Pacific Mediation Journal, 2,* 62. http://mediate.or.kr/base/data/APMJ.php https://www.academia.edu/40638556/Mediation_and_judiciary_in_Italy_2019

Matteucci, G. (2021). *Commissione Luiso: nuove prospettive per le ADR in Italia*? ADRItalia.

Matteucci, G. (2024a). *Mediazione civile e commerciale in Italia dopo la Riforma Cartabia. Da Zaleuco di Locri Epizefiri (VIII sec. A.C.) all'intelligenza artificiale*. Aracne Editrice. https://www.aracneeditrice.eu/it/pubblicazioni/mediazione-civile-e-commerciale-in-italia-dopo-la-riforma-cartabia-giovanni-matteucci-9791221814514.html https://www.aracneeditrice.eu/anteprime/9791221814514.pdf

Matteucci, G. (2024b). *Mediazione e intelligenza artificiale in Italia (2024)*. Altalex. https://www.altalex.com/documents/news/2024/09/18/mediazione-intelligenza-artificiale-italia-2024

Matteucci, G. (2024c). Civil Process and Mediation in Italy, 2024. Ius dicere et litem componere, Italiae usus. *Beijing Law Review, 15,* 1347-1366.

Matteucci, G. (2024d). *Mediazione e giudici in Italia*. Revista de Direito. https://portaltj.tjrj.jus.br/documents/d/portal-conhecimento/008-revistadireito2024-03-giovannimatteucci

Monteleone, G. (2023). *La mediazione obbligatoria: conciliazione o giurisdizione surrogata? Brevi riflessioni critiche: Ripristinando in ogni Comune dello Stato gli uffici di conciliazione da affidare a magistrati onorari*. Judicium. https://www.judicium.it/la-mediazione-obbligatoria-conciliazione-o-giurisdizione-surrogata-brevi-riflessioni-critiche/

Moriconi, M. (2011). *La mediazione, profili operativi e problematiche operative*. http://www.adrmaremma.it/moriconi01.pdf

Nolan-Haley, J. M. (2010). *Mediation: The "New Arbitration"*. Harvard Negotiation Law Review, Forthcoming, Fordham Law Legal Studies Research Paper No. 1713928. https://ssrn.com/abstract=1713928

Prezzolini, G. (1921). *Codice della Vita Italiana, §18*. http://tuttosbagliatotuttodarifare.blogspot.it/2011/10/codice-della-vita-italiana-

giuseppe.html

Rajkowski, P. (2020). *The Death of Traditional Mediation—An Obituary*. https://mediate.com/the-death-of-traditional-mediation-an-obituary/

Salisbury, M. (2020). *The Lawyerization of the Mediation Process*. https://www.mediate.com/the-lawyerization-of-the-mediation-process/

Scamuzzi, L. (1886). *Digesto Italiano, 1886* (p. 39). Voce Conciliatore.

Stoppa, M. A. (2022). *La rivoluzione della mediazione telematica in Italia*. Altalex. https://www.altalex.com/documents/news/2022/12/10/rivoluzione-mediazione-telematica-in-italia

Stoppa, M. A. (2023). *La nuova mediazione telematica: firma elettronica dei verbali e prospettive future con l'intervento del notaio*. Altalex. https://www.altalex.com/documents/news/2023/03/06/nuova-mediazione-telematica-firma-elettronica-verbali-intervento-notaio

Swanson, D. (2016). A History of Mediation in Italy: Both Ancient (Including Bankruptcy) and Recent. https://mediatbankry.com/2021/09/14/a-history-of-mediation-in-italy-both-ancient-including-bankruptcy-and-recent/

Tvaronaviciene, A., Korsakoviene, I., & Radanova, J. (2023). *If Mediation Is Still a Paradox, Should We Bother Solving It*? https://mediate.com/if-mediation-is-still-a-paradox-should-we-bother-solving-it/

Weiler, R. (2018). *Whiter (Wither) Mediation*? Kluwer Mediation Blog. http://mediationblog.kluwerarbitration.com/2018/04/06/whither-wither-mediation/