Civil and Commercial Mediation in Italy: Lights and Shadows

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ABSTRACT

This article provides with a panoramic view over civil and commercial mediation in Italy, especially after the 2010 legislative reform, and with a specific focus on the institution of compulsory mediation for specific matters. After having introduced some of the theoretical and practical reasons that led the action of the Italian legislator, this article deals with four problematic issues concerning the reform: the sensitization of legal professionals; the success rate of mediation; the economic and professional structure of mediation providers; and the exclusion of family and labour matters from the reform. Finally, the 2017 confirmation of the discipline will be discussed.

INTRODUCTION: THE ITALIAN MEDIATION REFORM

In the last seven years, Italy has been an experimental field for the use of mediation in civil and commercial disputes. The incentive for such process was the Legislative Decree n. 28/2010, which took effect in March 2011. The act envisioned four types of mediation: the voluntary; the judicial; the statutory clause; and the preventative and mandatory one. The first can be freely suggested and implemented by the parties at any moment of the dispute. The second refers to the situation where the judge, even during the appeal, suggests the parties to make an attempt of

out-of-court settlement, after having evaluated the matter of the debate and the willingness of the parties. The resolution of the dispute through mediation can also be founded on a statutory or contractual clause. Finally, and most importantly for what concerns the topic of this article, the Law asked for a compulsory attempt to mediate[1], as condition of legal action, in a number of matters, which is now estimated to represent around 8% of the civil and commercial courts' docket. The selected disputes ranged from banking and finance contracts to property rights, landlord/tenant disputes, condominium disputes, medical malpractice, insurance, division of goods, trusts and estates, loans, leasing of companies, and defamation (libel and slander). Initially, car accidents were included too. The legislative act, which was in part occasioned by the European Directive n. 2008/52/CE, was intended to set an experimental phase of six years after which the application of mandatory mediation and its effects would be tested and, possibly, confirmed. Last year, Legislative Decree n. 50/2017, later converted in Law n. 96/2017, stabilized the discipline of mediation by erasing its temporary and experimental nature.

As far as we know, this legal reform resulted in the largest mandatory mediation programme for civil cases in Europe – if not in the world. Although several jurisdictions nowadays feature mediation by judge order, or compel mediation in reason of the disputed matter, none of them envisions such an extended application of compulsory mediation. Studies testify that the number of yearly mediations in Italy, which has surpassed 200.000 cases, is about twenty times higher than those from other European countries, according to their available data[2]. The wide range of matters involved in compulsory mediation and the con-

1 On December 12th, 2012 the Italian Constitutional Court declared compulsory mediation unconstitutional due to a procedural fault. Under the input of the European Union, Legislative Decree 69/2013 reintroduced it starting from September 20th, 2013.

2 Main data about mediation in this article come from the Ministry of Justice DG STAT database, whose statistics about 2017 can be found at https://webstat.giustizia.it/Analisi%20e%20ricerche/Civil%20mediation%20in%20Italy%20-%20Year%202017%20(ENG).pdf (accessed July 13th, 2018). And from ISDACI database, whose 2017 Ninth Report over the diffusion of alternative justice in Italy can be found at http://www.isdaci.it/wp-content/uploads/2016/06/eBook_nono-rapporto_ISDACI.pdf (accessed July 13th, 2018).

siderable frame of time of its application provides us with a set of experiences and data that is solid enough to discuss the use and the application of such alternative procedure.

THEORETICAL AND PRACTICAL REASONS TO PROMOTE (AND COMPEL) MEDIATION

Before dealing with the most problematic aspects of the reform, we argue that analysing the substantial arguments and the more practical reasons for the promotion of mediation, and of compulsory mediation in specific fields, can help understanding the rationale of the legislative act.

One of the arguments for implementing mediation has to do with pacification purposes. Disputes in many of the mentioned matters under compulsory mediation (for example, landlord/tenant disputes, condominium disputes, and division of goods) tend to arise among family members, neighbours, or people who are particularly close to each other for affective, geografical, or commercial reasons. In these cases, the issue of maintaining, or not worsening, the relationship between the parties cannot be ignored. The theory of Donald Black explains that "the relationship between law and relational distance is curvilinear"[3]. With the expression "relational distance", he refers to the intensity of the bond between two individuals: at the extremes, we find, on the one side, close relatives, while, on the other, complete strangers. According to Black, the closer is the relationship between the parties, the less likely they are to find the solution of their dispute through the law and the judicial system; rather, they look for a more friendly and private settlement. This theory can be applied also to lawyers: the more intimate is their relationship, the more they will look for an out-of-court solution between their clients. On the contrary, strangers are more eager to use legal tools to solve disputes. Consequently, clashes between close relationships find fertile ground in the extra-legal field. This consideration can be applied also to family and labour relationships, which, however, find no obligation of mediation in the Italian

3 Black, D. (1976). Morphology. In *The Behavior of Law* (pp. 37–62). New York and London: Academic Press, p. 41.

legal system: below, we will expand on the reasons for such a defferential choice.

Alternative Dispute Resolution procedures create a friendly and non-judging environment within which parties play a stronger role than that they are allowed to perform within trials. Mediation fosters empowerment and encourages practical and original solutions, which take into account not only the specific issue of the dispute but also further matters that, instead, cannot be submitted before a court. In this regard, the expression "all issues mediation"[4] identifies the capacity of this procedure to adopt a holistic and inclusive approach towards all aspects of the conflict.

Looking for original solutions means solving a dispute not only in strictly economic terms, as it is likely to be the case for judicial civil resolutions, but also through other kinds of obligations. The mediator does not focus only on mere legal aspects, but he can take into consideration psychological and relational issues. In other terms, mediation offers an access to justice that goes beyond the interpretation of justice as application of legal norms. Such an understanding includes the promotion of principles of what is known as "procedural justice", which, rather than being granted by the outcome, can be satisfied by the perception that the resolution process has been fair. According to scientific literature[5], in most of the cases, the outcome of a procedure is less important than the procedure itself: as long as the decision process is perceived as unbiased, the parties are more willing to feel the result as just, and, therefore, to adapt their behaviour to its provision.

There are elements that considerably influence the perception of the fairness of the procedure. Among them, there is the feeling that the parties are treated with neutrality and dignity: this mechanism implies that the dispute is dealt with care and com-

4 Cominelli, L. (2008). "Mediazione familiare: nuove professioni e il dibattito sulle alternative al giudizio". *Sociologia Del Diritto*, *XXXV*(3), p. 198.

5 Vidmar, N. (1997). "Procedural Justice and Alternative Dispute Resolution". In K. F. Röhl & S. Machura (Eds.), *Procedural Justice*. Dartmouth: The Oñati International Institute for the Sociology of Law, Ashgate, 121-136.

petence. Another essential element of fairness is the opportunity to tell one's own personal story and sorrow: this step, which covers only a residual part within trial, is considered necessary in the path toward healing and reconciliation, since it grants the possibility to be listened, understood, and pitied. Furthermore, the chance to talk ensures the parties an active role in managing the conflict and their personal situation. Finally, control over the process is another relevant feature that enhances the level of satisfaction over the result of the dispute. According to comparative studies over traditional and alternative ways of dispute resolution, non-binding procedures, such as mediation, are the best tools to provide the parties with control over the process and the solution, the chance to talk freely and to participate, and with the likelihood of maintaining or improving a relationship with the adversary party.

Beyond facilitating the communication between the parties, and thus their relationship, mediation reduces the barriers to justice in more practical terms: this argument constituted a further reason for the introduction of compulsory mediation. With regard to costs, procedural acts are free from any stamp duty, and the total amount of expenses tend to be lower than that for judicial costs; as in trial, in Italy the procedure is free for those who benefit from free legal aid (annual income should be lower than 11.493,82 €).

With relation to time management, instead, the maximum period to settle out-of-court was established at three months maximum, after which the trial could either be completely closed or continue if no settlement had been achieved. Studies proved that the effective duration of mediation ended to be a bit longer than expected (in 2017 the average lenght of mediation with a happy ending was of 129 days). However, expectations over time reduction proved to be true: the average time for mediation has resulted to be about one eighth of the average time for civil proceedings. Certainly, time compression has had a consistent impact on the courts workload. In fact, mediation is assumed to be among the reasons why judicial statistics enjoyed a slight im-

provement in recent years in Italy: pending cases decreased from approximately 6 million in 2009 to 4.5 million in 2016, while the average length of proceedings slightly reduced as well. Although in recent years, the economic crisis and the rise of court fees make it impossible to establish whether litigation has decreased thanks to the sole improvement of mediation, we can find a clear signal of such process in the significant decrease (-16%) of new cases in those disputes that are subject to compulsory attempt of mediation. The improvement of judicial statistics has allowed Italy to regain eleven positions in the international rankings for business friendliness[6].

Besides saving relationships (might they be affective or commercial) between the parties, money, and time, the Italian legislator, while working on the reform, wanted to ensure that the settlement agreement reached in mediation was directly enforceable, tantamount to an arbitration award, and that the parties who refused to participate in the preliminary meeting without an acceptable reason might be sanctioned by the judge of the trial with damages or a doubled court fee. These goals asked not only for the promotion of mediation in general terms, but for a deeper and stronger reform of the use of mediation, which ended in making it compulsory in specific matters.

THE SENSITIZATION OF LEGAL PROFESSIONALS: AN AMBIVALENT PROCESS

The advocates of compulsory mediation are ready to admit that compelling mediation on a massive scale was a less than optimal solution, but in the short-to-medium term it was the only option to jumpstart mediation in the Italian legal system. Indeed, the number of voluntary mediations increased massively too, and they now represent around 10% of the mediation procedures. What is particularly interesting, is that mediation conducted by judge's order, which during the first year was at 1.7% of the

6 World bank Group (2016). *Doing Business 2016. Measuring Regulatory Quality and Efficiency*. Washington: The World Bank, available at http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB16-Full-Report.pdf (accessed July 13th, 2018).

total, has also increased remarkably and now has even surpassed voluntary mediations, reaching 13,4% on the total of mediation of 2017, *i.e.* dealing with 20.835 cases.

The Court of Milan (ord. 27/4/16) has recently issued a decision which interprets Article 5, second paragraph of the Legislative Decree 28/2010 on civil and commercial mediation with a substantialist approach. This latter provision refers to mediations conducted by order of the judge of the trial. The judge can compel the parties, after a *prima facie* evaluation of the case, to go to a mediator. If the parties do not obey, the judge will bar any subsequent phase of the proceedings. With this decision, the Court adheres to the principle that the condition of admissibility cannot be satisfied with a simple preliminary mediation meeting between the attorneys. The Court of Milan expressly states that the parties must personally attend the meeting, unless they have a legitimate impediment. The decision confirms the importance of participation of the parties to mediation and the centrality of reaching an agreement that comes the closest to the economic and non-economic interests of the contenders. The Court concurs with what has been decided by other Courts (including in Florence, Rome, and Palermo) when the judges, after evaluating the conduct of the parties, the state of the trial, and the nature of proceedings, had requested to attempt a mediation. This provision testifies a growing awareness that meeting in front of the mediator cannot be a mere formality, but a process necessarily founded on the negotiation of the substantive interests of the parties. Italian judges might have finally become aware of the mediation rationale, while the quality and the number of mediation projects they were involved to[7], proved an effective sensitization about conciliatory measures.

However, one should take into account that within the number of mediations by court's order, which proves an increased awareness of the procedure among the judges, only a small portion concerns non-mandatory matters. In other terms, only a little percentage of this kind of mediation results from a truly proacti-

7 Matteucci, G. (2017). "Civil Mediation, How to Kick-Start It; The Italian Experience. Training, Compulsory, Tax Relieves, Control". *Revista da EMERJ*, 19(4), 78-100.

ve role of the judge. The data shows that, while mandatory (and effective) mediation is more and more successful, the other kind is not as much widespread. The dissemination of the culture of "real" mediation will require a long time and an intense educational path.

Furthermore, the diffusion of mediation among judges comes to terms with an opposite circumstance. The evaluation system for their job, which enables promotions, the chance to do extra-judicial appointments, etcetera, still relies on the number of judgements issued along the year, as it is the only available data to evaluators. This circumstance is likely to dissuade judges from recurring to mediation and ADR in general, since, eventually, those who mostly used these instruments found no career advantage from its use, rather the contrary[8].

As far as lawyers are concerned, they were quite reluctant to the introduction of compulsory mediation. Previous to the reform, and long after, the debate on this measure was fierce, and the Italian Bar Association was particularly enraged. However, time and experience over mediation seems to have had a positive impact on their approach toward its use. Certainly, the 2013 introduction of the obligation for the parties who undertake compulsory mediation to be assisted by a lawyer[9], has furtherly softened their aversion toward mediation as alternative instrument to the trial. Their presence has also increased during non-compulsory mediation: in 2017, 77% of the claimants and 85% of the defendants recurred to the help of a legal professional.

Lawyers are finally conceding that compulsory mediation is a "lesser evil", while the 2016 National Forum of the Italian Bar Association approved the use of mediation and encouraged its improvement by expanding *compulsory mediation* to new categories of disputes, as well as it acknowledged the *importance of training* for mediators and lawyers, and of the *party's personal presence.*

8 Moriconi, M. (2018). "Mediazione civile e commerciale. Un bilancio a otto anni dall'entrata in vigore del decr. legs. 28/2010". *INMEDIAR, Istituto Nazionale per la Mediazione e l'Arbitrato.* Available at http://www.inmediar.it/un-bilancio-a-otto-anni-dallentrata-in-vigore-del-decr-lgs-28-2010/ (accessed July 13th, 2018).

9 Legislative Decree n. 69/2013 converted by Law **n. 98/2013.**

THE "UNSATISFACTORY" SUCCESS RATE

There are still some criticisms about the way the reform has been implemented, especially with regard to the aims pursued by the Italian Legislator.

First, one should consider that, over the total number of requests to mediate, the counterparty has agreed to show up before the mediator and to go beyond the first preliminary meeting in less than half of the cases. Since statistics on the achievement of the final agreement show similar rates, we can estimate that only one in five cases finds resolution in mediation[10]. Despite the increasing levels of confidence, and the slight improvement of the settlement rates in the last years, this is a sub-optimal result, in comparison to the resolution rates that the literature on the subject testifies abroad: statistics from the U.S., for example, report that settlement rate is approximately 80%[11].. So, the issue revolves around whether the burdens imposed on such a significant number of the disputants, in terms of time and costs, justify a result that is modest after all, and if these "unsatisfying" rates are not due to the structure and the implementation of the reform. In fact, in many situations, disputes that are in mediation, no matter what the parties or the mediator do, are not necessarily the most suitable to be mediated: think of a large part of banking and finance standard contracts, which in fact have among the lowest rates of success in mediation. In 2017, only 6% of the mediations concerning bank contracts, and 10% of those about finance contracts, ended with an agreement, while the success rate achieved was 46% when mediation concerned family covenants and agreements.

With regard to the professionals involved in the mediation process, the attitude or other aspects of the judges, the mediators, and the lawyers can influence the settlement. In particular, many judges often order the parties to go to mediation in a bureaucratic and impersonal way, without motivating their request. This

10 In 2017, the success rate of mediation was 43% over the total number of mediations where the parties went beyond the first information meeting.

11 Wall, J. A., and Dunne, T. C. (2012). "Mediation Research: A Current Review". *Negotiation Journal*, 28(2), 217-244.

is not an incentive for parties to engage in good faith to achieve a solution. That is probably one of the reasons why mediation by order of the court is the least likely conciliatory procedure to lead to an agreement: the settlement rate (14% for mandatory matters and 22% for non-mandatory matters) is even lower than in mandatory mediations (24%). As for mediators, studies[12] have proved that there is no correlation between the style of mediation and the rate of achieved agreements, while, on the contrary, education in business and economics seems to positively affect the success rate. Finally, with regard to lawyers, the lack of education in ADR and of confidence in these procedures have a negative impact over the result of mediation.

SAVING MONEY, LOOSING PROFESSIONAL MOTIVATION

What was peculiar in this reform was that no public funds were destined to the promotion of mediation: the bill relied on the spontaneous creation of a mixed private-public market for the provision of mediation services. Public entities (such as the local Bar Association, professional associations or, more notably, the Chambers of Commerce) were automatically considered worthy of establishing a mediation provider, while private commercial entities had to go through an accreditation process. The prices for the mediation services had to be approved by the Ministry of Justice, and they tended to be in a rather low range, in order to promote mediation and to attract 'customers'. After all, a reasonable price, along with a reasonable time, seemed to be the conditions to allow compulsory mediation, and to consider it compatible with rule-of-law constitutional guarantees, and, most of all, with the right to a day in court[13]. The legal reform, with the noticeable intention to promote the mediation, has compressed its fees. However, by not committing the financial resources to subsidise the service, it is derailing the market for ADR services.

12 Cominelli, L., C. Lucchiari (2017). "Italian Mediators in Action: The Impact of Style and Attitude". *Conflict Resolution Quarterly*, 35(2), 223-242.

13 Judgment of the European Court of Justice (Fourth Chamber) of 18 March 2010. Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08).

It fostered a considerable workload, even though at controlled prices, and without costs for public finances. The result is that today's civil and commercial mediators are working virtually pro bono. Accredited providers for which mediators work, have a cost structure to be covered, while profits have to be split. Furthermore, no fee is payed to the mediation provider if one or both parties decide to opt out at the first mediation meeting. All this results in a very low income for mediators.

'Solo mediators' are not allowed to operate within this specific legislative framework, which is controlled by accredited entities. Certainly, non-accredited mediators (for example, foreign mediators) can mediate cases in Italy, but this will not satisfy the condition of legal action in compulsory mediation matters, and any agreement will not be enforceable, nor it will take advantage from tax benefits that legislation grants. This arrangement is creating, and will create in the future, some troubles for the mediator profession. With regard to the mediator's training, a college degree is required, and candidates must successfully pass a course of fifty hours in order to become civil and commercial mediators and to perform mediations in the framework of Legislative Decree no. 28/2010, while it is always legal to mediate even outside of this context. At this point, it is still not possible to perform mediations independently, because, as pointed out, only accredited institution that offer minimum capital and organisational guarantees can manage the procedure. So, accredited providers can select their mediators and confer them mediation tasks. Given the fact the controls on compliance have been occasional, especially in the early days, it was not uncommon to hear stories of 'ghost' mediation providers, who just operated a mailbox and whose sole purpose was to gather mediation requests they knew were already doomed to fail, but that needed (for a small fee) the procedural certification in order to go to court.

Moreover, one should consider that in the first years after the reform, a very large number of mediators has been trained and accredited. Therefore, mediators, even the most prominent ones, mediate only a handful of cases per year. Most of them are lawyers

or accountants who, perhaps more as a hobby, or for the excitement to take on a new professional challenge, take some days off from their ordinary job to solve the cases the institutions assign them. Considering that in Italy the median value of the disputes in mediation is 17,000 € and that the fee (to be shared normally with the mediation provider) is always proportional to the value of the dispute, mediators who can live only on the income produced by their profession can today be counted on the fingers of one hand.

The issue of the incentives to mediators is among the dysfunctional aspects of the reform. A provision that is apparently in favour of the disputant is not in the interest of the resolution in the long term, in that it devalues the mediator's work. Without good training and effective job gratifications for mediators, it is unlikely that mediation will come of age.

THE EXCLUSION OF FAMILY AND LABOUR MATTERS: A REASONABLE CHOICE

The reform did not envisage the extension of compulsory mediation to family and labour matters, thus leaving the conciliative resolution to the effective will of the parties.

A strong core of family mediators has been operating in Italy since the Eighties. The world of family mediation functions very differently from that of civil and commercial mediation. Although some judges, in the more complicated cases of familial conflict, advised the parties to go to mediation even in the past, it was only in 2006, with the introduction of art. 155.6 of the Civil Code, that judges have been explicitly authorised to facilitate the use of mediation by postponing the issuing of judicial decisions on divorce, in particular when the moral and the material interests of the children are at stake. In these occasions, resorting to mediation helps the interests of minors, while it facilitates open-ended solutions and multifaceted dialogue.

Nevertheless, a problematic aspect in recurring to mediation in family matters (and also labour matters) should be taken into account, namely the dimension of power within the parties

relationship. In such occurrences, trial might offer a better guarantee to compete on equal footing. The very young story of family mediation, and the issue of unbalanced power among the parties are among the elements that made it unsuitable to envision it as compulsory measure.

Thanks to the fact that family mediation has remained outside the European Directive of 2008, no specific constraints were established for mediation providers and no lists or registers were created for mediators, unlike what happened with civil and commercial mediation. However, the training and formation of family mediators is extremely selective: family mediators usually approach this profession in a more mature phase, often because the preferential requirements consist of psycho-social and legal training. Women represent the vast majority of family mediators[14], and the most common educational background is that of a social worker or psychologist. However, here too, there are no full-time mediators, as professionals tend to keep their original job, and to exercise family mediation only as a complement to their primary career. Moreover, as in other sectors, the demand for mediation services is low in comparison to the offer.

Despite this, the success rate is considerably higher. A recent study estimated that among the spouses sent to family mediation in Italy, around 80% actually started a mediation process, and, of these, nearly 95% attained good or excellent results, with the achievement of all or most of the objectives listed in the agreement under which the mediator has been hired. With the introduction of an 'assisted negotiation' procedure in 2014[15], borrowed from French legislation, lawyers have a further collaborative tool to resolve disputes by independently promoting mutual consent between the parties, especially those concerning family law. When a settlement is agreed upon, following the assisted negotiation procedure, it is no longer necessary to go to court in order to obtain a divorce. Finally, with

14 Studies from 2012 testify that more than 90% of the mediators in family disputes are women. Data can be found at http://www.associazionegea.it/la-diffusione-della-mediazione-familiare-in-italia-materiali-approfondimento/ (accessed July 13th, 2018).

15 Legislative Decree n. 132/2014 converted by Law **n. 162/2014.**

regard to 'collaborative' procedures, which in some cases may imply the intervention of a mediator, it is remarkable that in recent years the movement of collaborative lawyers has rooted and grown significantly in Italy as well.

A radically different outlook can be seen in labour mediation, too. For several years (from 1998 to 2010), a mandatory mediation referral was in force for all labour disputes. However, the system was completely ineffective. Conciliation commissions, bureaucratically complex to form and manage, were not even composed by real mediators, but by ministry officials and trade unionists. The time allotted to complete the mediation was insufficient, considering the backlog, and the parties thus proceeded to trial before they had even tried to mediate. The figures for the last year of compulsory conciliation operation, before it returned to be voluntary, shows that only 23% of referred disputes had been mediated in the private sector, while in the public sector the percentage had decreased to 18%. The practice resulted in going to mediation only in order to ratify a settlement that had already taken place between the parties.

In addition to these reasons that make labour matters unsuitable to compulsory mediation, Italian law is quite restrictive in relation to labour disputes: it obstructs facilitated negotiation by private neutrals of the worker's rights, both when those rights are not freely negotiable, and when they derive from mandatory provisions. In fact, today, no significant mediation activity can be reported in this field.

CONCLUSION: THE CONFIRMATION OF THE DISCIPLINE

The mediation scene in Italy is particularly lively and challenging these days. The trend of mediations, including both the number of procedures and that of reached agreements, is growing, albeit at different speeds depending on the specific matter and on the type of mediation used.

In January 2017, a ministerial committee (Commissione Alpa), which was in charge to evaluate the application and the

effects of Legislative Decree 28/2010, issued a proposal to apply minor changes to the existing legislation. First, the draft promoted the extension of mandatory mediation for six years more, thus recognising the value of this instrument. While the Commission suggested to exclude from mandatory mediation any commercial dispute under the jurisdiction of the Italian Companies Court whose value exceeds 250,000 euros, it suggested to include "duration" contracts in matters subject to compulsory mediation, and other relationships that require a quick and confidential resolution (professional and work contracts, tender, franchising, leasing, supply and administration contracts, unfair competition, transfer of shareholdings in partnerships). Indeed, even though it is preferable that the parties spontaneously resort to mediation, the obligation to attempt mediation has proved to have an impact over the sensitization of the parties and of the professionals about the use of alternative procedures and the conciliatory culture: the extension of mandatory mediation, or, at least, of the participation of the parties at the first meeting, would furtherly implement such trend, while it would have a deflative impact over the judiciary workload.

Moreover, the Commission suggested to include the obligation for the judge to motivate the order to mediate a dispute, and to eliminate the gratuity in the first mediation meeting. The proposal for revision did not receive much attention. Nevertheless, in April 2017, the Italian Government adopted a corrective action, Legislative Decree 50/2017, converted in Law 96/2017, that stabilized compulsory mediation in the legal system. In so doing, it abolished its transitory and experimental nature, and confirmed the value of the reform, to which we owe the fact that mediation has definitely entered the legal mainstream, and that judges and lawyers in particular have largely understood the benefits and the potential of the tool. Nevertheless, the renewal of the discipline should not hide the problems we identified with regard to the implementation of mediation. Efforts should be made to lessen the significant structural and organisational obstacles for mediation providers and mediators, which make me-

diation only a modestly effective tool for the citizen, while additional economic and professional incentives should be taken into consideration not to demotivate mediators, which would result in a lower quality of the service they provide. ❖