

Kluwer Mediation Blog

Mandatory Mediation in Italy – Reloaded

Rafal Morek (DWF LLP) · Wednesday, October 9th, 2013

The “[Italian mediation explosion](#)” attracted a lot of attention from the international mediation community. The mediation explosion came to a sudden halt in December 2012, when the Italian Constitutional Court ruled that the provisions had been unconstitutional. Just recently, on September 20, 2013, a new regulation came into effect, again opting for mandatory mediation, but with several important modifications.



The history of this program dates back to 2009, when the Italian legislature implemented [Law No 69/2009](#). The Law delegated a mandate to the Government to introduce a regulation of civil and commercial mediation. The Government fulfilled it by [legislative decree 28/2010](#), which introduced mandatory pre-trial mediation of civil and commercial cases.

Before it came into effect (on March 21, 2011), Italy’s national lawyers union (*Organismo Unitario dell’Avvocatura*) called for a [national strike from March 16 to March 21, 2011](#). Lawyers across the country were asked to abstain from attending hearings in any civil, criminal, tax, or

administrative proceedings, and to send clients letters urging them to sign a letter protesting the new law.

In contrast, proponents of the new law argued that notorious delays in Italy's civil justice system cost Italy around 16 billion euro, and contributed to Italy's drop to 158th ranking in [the World Bank's Doing Business report](#). When implementing mandatory mediation in 2011, as noted by *Giuseppe De Palo*, the Italian Government hoped to shift over one million disputes out of the court system within five years.

Between March 2011 and October 2012, when mandatory mediation was in operation, according to [statistics of the Ministry of Justice](#), 215,689 mediations started, with an average success rate of 12% (but close to half of which settled when the defendant accepted to mediate).

On December 6, 2012, the program was frozen when the 15 judges of the Italian Constitutional Court ruled ([award no. 272/2012](#)) that the decree 28/2010 did not comply with the Constitution. The reason of the decision was not, as requested by lawyers associations, the breach of the citizen's right to defense (Article 24 of the Italian Constitution) but rather "over-delegation": the Government had not been expressly delegated by the Parliament to introduce the compulsory pre-trial mediation system.

Now the law has been rewritten, with significant modifications.

First, pre-trial mediation remains compulsory in a listed category of cases. This catalogue has been narrowed down compared to the previous version, to exempt e.g. car accident disputes.

Second, litigants are now allowed to withdraw from the mediation process at the initial stage if they deem settlement unlikely. This opt-out system provides an actual "mediation experience" to litigants. At the same time, however, the new law re-introduced a controversial mechanism to ensure that parties think twice before withdrawing from mediation. Upon a party's withdrawal, the mediator may propose a solution to the dispute. When it is rejected and the case goes to trial, the judge may shift onto the rejecting party all mediation and litigation costs, should the judgment be consistent with the proposal.

Third, the new law requires that parties be assisted by counsel in mediation. This amendment was vigorously advocated for by members of the Italian bar during the legislative process. The requirement to engage legal counsel in mediation, however, appears highly doubtful.

In addition, lawyers also enjoy preferential treatment as mediators. While it is necessary to attend a course and pass a professional examination to achieve an accredited mediator qualification, lawyers are mediators "by right" (but they will be required to receive training, and limit themselves to mediation of cases in which they have specific legal competence, in compliance with the provisions of Article 55 bis of the lawyers' code of ethics).

Protests against the new law have now vanished into thin air.

Despite these controversies, the Italian mediation model might now once again inspire a number of other countries unsatisfied with the slow development of mediation practice.


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