



This project
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Mediation meets judges – FINAL fact sheet – WS2

The Court annexed mediation pilot scheme fact sheet aims to provide information about the experiences of mediation projects in Courts that have been developed during the project.

Description

- Who is involved:
 - Which court (or judge/clerk)? Number of judges? (*initials will do in case privacy issues are raised*)
Monza and Milano courts
 - Name and contact person in the Court/Tribunal.
Monza: Leopoldo Litta Modignani (President 1st civil section)
Milano: Elena Riva Crugnola (President Enterprise Section B)
They were both nominated by the Presidents of their respective courts to deal with MMJ project.
 - Number of mediators involved in the or on call: 9
 - Name and contact details of concerned MmJ partner/Chamber
Milan Chamber of Arbitration, Monza Chamber of Commerce
 - Other (bar association, lawyer, mediation centres, mediators...).
Bar Association Monza and Milano, Mediation centre of Milan Bar Association
- When did it start? Both operational starting from March 2015
Is there a date foreseen for review/evaluation? No
Judges in both cases decided not to formalize the collaboration and the activity with CAM (see further)
- What is the process?
CAM started two different pilots:
Milan: judges and mediators periodically meet and review the cases as to verify if mediation is suitable for the specific case.
Monza: judges and mediators periodically meet and review the cases as to verify if mediation is suitable for the specific case + judges were invited to call a mediator to their hearings as to cooperate on the diagnose of the case.
 - Where/when is info about mediation communicated: by the judges orally during the hearings and in written in the court orders to mediate. Once the party submit a case (referred by the judge) CAM mediation service send a letter to all the parties informing about the purpose and working principles of mediation.
 - Who receives the info (lawyers, parties): In the majority of cases the lawyers receives the information. It must be noticed although that the Italian law put an obligation on the lawyer that must inform the client about the possibility to use mediation, in particular for those classes of disputes where a first meeting with a mediator is a pre- condition before filing a legal action in front of the court. Another important point is that most cases fall in the “mandatory” mediation classes of disputes and that legal assistance is therefore mandatory as well.
 - How is the communication made in written – court orders draft in the pilot are very complete and complex – if compared to the previous ones – and point out that the parties should



participate in person. However the CAM mediation service provides detailed information in writing and by phone.

- Is it an invitation or an order by the judge? (discretionary)

Order by the judge

- Is there a feedback given to the judge?

In the mediation meetings which were part of the pilot the mediator insisted in suggesting the parties to give a feedback to the judge. However if this has happened or not we are not able to say.

Are there statistics collected and how? (discretionary)

In Italy the judge can order the parties to go through mediation but he/she cannot decide where (choice of the mediation provider) or who (choice of the mediator). This decision is entirely on the parties within a territorial competence criterion. Therefore, CAM made statistics on the mediation cases generically referred to mediation by the courts of Milan and Monza.

The mediation service handled 144 cases referred by the courts of Milan from 2014 and 2016 (in the same period, 2 years earlier the cases were 91); and 93 cases referred by Monza court (in the same period 2 years earlier were 5)

- Where there any prerequisite? (such as trainings for the judges) No
- Others

Evaluation of the scheme

- What works well/what is positive?

Positive outcomes of the project are:

- a first opening of the judiciary towards a collaboration with accredited and experienced mediation centres on mediation.
- Some of the judges had a “live” experience of mediation and this helped to make them understand the specific features of the tool and in what mediation consists of.
- Judges are now considering to include mediation in their training programmes.
- the quality of the court orders improved very much due to the fact that now the judge knows mediation more and better.
- The increase of court referred mediation is also a good sign.

- What are the difficulties

It is objectively difficult to formalise/institutionalise the experience and the activities of the project. We imagine this is due to the concern about independency. It must be noticed that in Italy are now operating 700 mediation centres and it is probably perceived as inappropriate to have a sort of a privileged partner. In our view, for the goal of a project to be reached, the judiciary should openly support mediation.

A great number of judges perceive an evaluation of the case with the perspective to suggest the best tool to resolve the problem as something out of their role.

We also notice it is very difficult to introduce the “diagnoses” of the case in a structured manner in the court.



- How many cases were referred to mediation?
As noted above, we can just report the cases that were submitted to our mediation centre by the parties (the judges cannot order a specific centre or mediator) – Over 1 year of pilot were handled 144 cases referred from Milan and 93 from Monza.
- How many mediation were positively concluded (even partially)
Milan: 11,3 % (20 cases still ongoing)
Monza 8% (6 cases still ongoing)
- Number of cases that were concluded through negotiation (other than mediation) with or without lawyers' assistance
We have no data
- Number of summons before the court (to mediate)
the online tool provided to the courts remained unused
- Average number of parties
116 for Milan 112 for Monza
- Number of informative sessions organized by the mediation service
Not applicable

Conclusion

- What is the future of this pilot scheme like?
It is difficult to answer since no official commitment has been signed by the mediation centre and the courts.
- Suggestion for improvement?
 - Collection of data by the courts
 - An institutionalised and structured approach to court referral by the judiciary
 - Training programmes should include mediation training (both theoretical and practical)
 - Set up of cooperation networks between courts and mediation centres
- What are you planning/able/ready to do to improve the service?
CAM has given full availability for training or informative sessions to judges