



By Avvocato Paolo Zagami

“Zagamilaw International Law Firm”

[www.zagamilaw.com](http://www.zagamilaw.com)

## Mediation and alternative dispute resolution

The need of this short legal notes arises from the fact that Italian Courts unfortunately are notorious for being very slow to judge and taking final decisions. To give you an idea and some unbelievable numbers regarding the average duration of civil judicial proceedings in Italy at first instance is 968 days and then at second instance is 1511 days. Therefore to get a decision by a Tribunal in Italy normally the private person who wishes the recognition of his rights has to pay a lot of legal expenses and has to be very patient awaiting usually for 2479 days which are around 6 years and an half. Also in a case filed in court the disputant will get by the judge or jury a resolution which probably will leave neither party to the dispute totally happy.

Thus the high cost and the long delays associated with the trial of civil matters often make litigation an impractical method of resolving disputes. Because the current legal environment discourages the early settlement of disputes, the Italian legal institutions tried to find alternative methods for helping people to settle legal problems before going to Court and a new approach for resolving disputes more efficiently. In this view has been recently issued the Decree law number 28/2010 which now carefully regulates the so called “Mediation”.

Basically the Mediation is an out court procedure to resolve conflict between the parties on civil matters where a third impartial and neutral mediator manages the interaction between them in order to help the parties in finding an agreement on the resolution of the issue. More exactly the Mediation is a settlement of a dispute or controversy by setting up an independent person between two contending parties in order to aid them in the settlement of their disagreement.

Some national Courts require some parties to resort to mediation before permitting the parties cases to be tried. Also in Italy from March 2011 the mediation procedure will become compulsory for several civil litigations areas and about it has to be noticed that the above mentioned Decree Law states the assistance of a professionally trained mediator who has to be registered at a special register kept by the Italian Government. On the other hand this method can already be used in Italy for the resolution of disputes in a short time compared to using the traditional judicial system of litigation.

For example if there is the need to solve a dispute between a builder/seller and a buyer on the restitution of a deposit paid for the purchase of a unit included in a building to be built due to the delay of the completion – or if the work has not started – is highly recommended to settle the controversy by the so called mediation according to the recent Decree Law number 28/2010. Mediation also has become very common in trying to resolve domestic relations disputes concerning especially divorce, child custody, contract and civil damage cases and disputants may use it also in another variety of disputes such as commercial, diplomatic, workplace and family matters.

In our opinion all lawyers, although the procedure is not still compulsory in Italy, should first suggest their clients to follow this procedure by their active participation as mediator who works to find points of agreement and make those in conflict agree on a fair result. Indeed Mediation gives many advantages, essentially we can summarize its benefits as follow:

- 1) It is fast. By mediation probably will be achieved a early settlement, this way it will be avoided the stressful length of the Italian civil proceeding as above mentioned. Indeed the mediation process generally takes much less time than moving a case through standard legal channels. In resolving disputes through mediation parties prevent the delay of a third party or judicially decided outcome and save an enormous amount of time and energy associated with protracted conflict and litigation.
  
- 2) It is cost-effective. There are professional mediators who perform some mediation for substantial fees but generally the financial cost is much less expensive than fighting the matter in Court. It means the entire mediation process is much cheaper than civil litigation as it imposes fewer costs than trial. From a cost/benefit analysis, alternative dispute resolutions methods can greatly reduce the cost of defending "standard" tort claims when used early in the litigation. That's also because the parties normally agree to split the mediation cost and so each side is responsible to pay 50% of mediator fees that have been approved by the Italian ministry of Justice and are calculated on the basis of the value of the claim.
  
- 3) It is confidential. While lawsuits are matters of public record, what transpires at a mediation can be kept confidential by agreement. The content of the mediation is private, known only to participants. No one except the parties to the dispute and the mediator know what has gone on in the mediation forum. Further the disputants can control the outcome and maintain relationships as the Mediation is not adversarial. They are active in the procedure and work directly with the mediator to find a solution that satisfies both their interests. Finally mediation satisfies the desire of some parties to have greater control over the selection of the individual who will decide their dispute.

For all the above mentioned reasons it has definitely to be recognized the great value of mediation as a tool for settling disputes out of Court according to the recent Italian decree law. The traditional litigation is a mistake that can be corrected by mediation because Italian judicial system is too

costly and too inefficient for resolving disputes. Given the benefits that it offers, it is highly desirable that demand for mediation will be growing.

Avvocato Paolo Zagami