Giustizia consensuale No 2/2021: Abstracts

The second issue of 2021 of *Giustizia Consensuale* (published by Editoriale Scientifica) has just been released and it features:

Silvia Barona Vilar (Professor at the University of València) *Sfide e pericoli delle ADR nella società digitale e algoritmica del secolo XXI* (*Challenges and Pitfalls of ADR in the Digital and Algorithmic Society of the XXI Century*; in Italian)

> In the XX century, dispute resolution was characterized by the leading role played by State courts: however, this situation has begun to change. With modernity and globalization has come the search of ways to ensure the 'deconflictualisation' of social and economic relations and solve conflicts arising out of them. In this context, ADR – and now ODR – have had a decisive impulse in the last decades and are now enshrined in the digital society of the XXI century. ADR mechanisms are, in fact, approached as means to ensure access to justice, favouring at the same time social peace and citizens' satisfaction. Nevertheless, some uncertainties remain and may affect ADR's impulse and future consolidation: among such uncertainties are the to-date scarce negotiation culture for conflict resolution, the need for training in negotiation tools, the need for State involvement in these new scenarios, as well as the attentive look at artificial intelligence, both in its 'soft' version (welfare) and its 'hard' version (replacement of human beings with machine intelligence).

Amy J. Schmitz (Professor at the Ohio State University), **Lola Akin Ojelabi** (Associate Professor at La Trobe University, Melbourne) and **John Zeleznikow** (Professor at La Trobe University, Melbourne), *Researching Online Dispute*

Resolution to Expand Access to Justice

> In this paper, the authors argue that Online Dispute Resolution (ODR) may expand Access to Justice (A2J) if properly designed, implemented, and continually improved. The article sets the stage for this argument by providing background on ODR research, as well as theory, to date. However, the authors note how the empirical research has been lacking and argue for more robust and expansion of studies. Moreover, they propose that research must include consideration of culture, as well as measures to address the needs of self-represented litigants and the most vulnerable. It is one thing to argue that ODR should be accessible, appropriate, equitable, efficient, and effective. However, ongoing research is necessary to ensure that these ideals remain core to ODR design and implementation.

Marco Gradi (Associate Professor at the University of Messina), *Teoria dell'accertamento consensuale: storia di un'incomprensione* (*The Doctrine of 'Negotiation of Ascertainment': Story of a Misunderstanding*; in Italian)

> This article examines the Italian doctrine of 'negotiation of ascertainment' (*negozio di accertamento*), by means of which the parties put an end to a legal dispute by determining the content of their relationship by mutual consent. Notably, by characterizing legal ascertainment as a binding judgment vis-à-vis the parties' pre-existing legal relationship, the author contributes to overcoming the misunderstandings that have always denoted the debate in legal scholarship, thus laying down the foundations towards a complete theory on consensual ascertainment.

Cristina M. Mariottini (Senior Research Fellow at the Max Planck Institute Luxembourg for Procedural Law), *The Singapore Convention on International Mediated Settlement Agreements: A New Status for Party Autonomy in the Non-Adjudicative Process*

> The United Nations Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention'), adopted in 2018 and entered into force in 2020, is designed to facilitate cross-border trade and commerce, in particular by enabling disputing parties to enforce and invoke settlement agreements in the cross-border setting without going through the cumbersome and potentially uncertain conversion of the settlement into a

court judgment or an arbitral award. Against this background, the Convention frames a new status for mediated settlements: namely, on the one hand it converts agreements that would otherwise amount to a private contractual act into an instrument eligible for cross-border circulation in Contracting States and, on the other hand, it sets up an international, legally binding and partly harmonized system for such circulation. After providing an overview of the defining features of this new international treaty, this article contextualizes the Singapore Convention in the realm of international consent-based dispute resolution mechanisms.

Observatory on Legislation and Regulations

Ivan Cardillo (Senior Lecturer at the Zhongnan University of Economics and Law in Wuhan)**,** *Recenti sviluppi della mediazione in Cina* (*Recent developments in mediation in China*; in Italian)

This article examines the most recent developments on mediation in China. The analysis revolves around, in particular, two prominent documents: namely, the '14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035' and the 'Guiding Opinions of the Supreme People's Court on Accelerating Steps to Motivate the Mediation Platforms of the People's Courts to Enter Villages, Residential Communities and Community Grids.' In particular, the so-called 'Fengqiao experience' ? which developed as of the 1960s in the Fengqiao community and has become a model of proximity justice ? remains the benchmark practice for the development of a model based on the three principles of self-government, government by law, and government by virtue. In this framework, mediation is increasingly identified as the main echanism for dispute resolution and social management: in this respect, the increasing use of technology proves to be crucial for the development of mediation platforms and the efficiency of the entire judicial system. Against this background, the complex relationship becomes apparent between popular and judicial mediation, their coordination and their importance for governance and social stability: arguably, such a relationship will carry with it in the future the need to balance the swift dispute resolution with the protection of fundamental rights.

Angela D'Errico (Fellow at the University of Macerata), *Le* Alternative Dispute Resolution *nelle controversie pubblicistiche: verso una minore indisponibilità degli interessi legittimi?* (*Alternative Dispute Resolution in Public Sector Disputes: Towards an Abridged Non-Availability of Legitimate Interests?*; in Italian)

> This work analyzes the theme of ADR in publicity disputes and, in particular, it's understood to deepen the concepts of the availability of administrative power and legitimate interests that hinder the current applicability of ADRs in public matters. After having taken into consideration the different types of ADR in the Italian legal system with related peculiarities and criticalities, it's understood, in the final part of the work, to propose a new opening to the recognition of these alternative instruments to litigation for a better optimization of justice.

Observatory on Jurisprudence

Domenico Dalfino (Professor at the University 'Aldo Moro' in Bari), *Mediazione e opposizione a decreto ingiuntivo, tra vizi di fondo e ipocrisia del legislatore* (*Mediation and Opposition to an Injunction: Between Underlying Flaws and Hypocrisy of the Legislator*; in Italian)

> In 2020, the plenary session of the Italian Court of Cassation, deciding a question of particular significance, ruled that the burden of initiating the mandatory mediation procedure in proceedings opposing an injunction lies with the creditor. This principle sheds the light on further pending questions surrounding mandatory mediation.

Observatory on Practices

Andrea Marighetto (Visiting Lecturer at the Federal University of Rio Grande do Sul) and **Luca Dal Pubel** (Lecturer at the San Diego State University), *Consumer Protection and Online Dispute Resolution in Brazil*

> With the advent of the 4th Industrial Revolution (4IR), Information and Communication Technology (ICT) including the internet, computers, digital

technology, and electronic services have become absolute protagonists of our lives, without which even the exercise of basic rights can be harmed. The Covid-19 pandemic has increased and further emphasized the demand to boost the use of ICT to ensure access to basic services including access to justice. Specifically, at a time when consumer relations represent the majority of mass legal relations, the demand for a system of speedy access to justice has become necessary. Since the early ’90s, Brazil has been at the forefront of consumer protection. In the last decade, it has taken additional steps to enhance consumer protection by adopting *Consumidor.gov*, a public Online Dispute Resolution (ODR) platform for consumer disputes. This article looks at consumer protection in Brazil in the context of the 4IR and examines the role that ODR and specifically the *Consumidor.gov* platform play in improving consumer protection and providing consumers with an additional instrument to access justice.

In addition to the foregoing, this issue features the following book review by *Maria Rosaria Ferrarese* (Professor at the University of Cagliari): Antoine Garapon and Jean Lassègue, *Giustizia digitale. Determinismo tecnologico e libertà* (Italian version, edited by M.R. Ferrarese), Bologna, Il Mulino, 2021, 1-264.