Giustizia consensuale No 2/2022: Abstracts

The second issue of 2022 of Giustizia Consensuale (published by Editoriale Scientifica) has just been released, and it features:

Ferruccio Auletta and **Alberto Massera**, ***Giustizia consensuale e p.a.: l'accordo bonario per i lavori, i servizi e le forniture nel quadro degli 'altri rimedi alternativi all'azione giurisdizionale'*** (*Consensual Justice and Public Administration: The Amicable Agreement for Jobs, Services and Supplies in the Framework of 'Other Alternative Remedies to Court Proceedings'*; in Italian)

> The paper examines the present state of the Amicable Agreement. Along with other alternative dispute resolution tools, such as the technical advisory board, arbitration, and negotiated settlements, the Amicable Agreement provides an alternative to litigation in the area of public procurement. Thanks to their experience in the field of public procurement within the Arbitration Chamber of public contracts of the Italian National Anticorruption Authority, the authors incorporate a practitioner's perspective into their analysis of the Amicable Agreement by referring to case law and to a broad range of doctrinal and legal sources.

Paolo Duret, ***Soft law, ADR, sussidiarietà: una triade armonica*** (*Soft Law, ADR, Subsidiarity: A Harmonic Triad*; in Italian)

> The present era is witnessing the simultaneous development of two phenomena: on the one hand, the steady increase in the use of the called soft law, which has expanded from the domain of international law to domestic legal systems; on the other hand, the widespread resort to instruments of dispute resolution that are alternative to litigation (ADR). The paper aims at assessing and examining the connection between soft law and ADR, both in a retrospective and prospective view, focusing in particular on emerging issues such as the recourse to 'nudging' and new technologies, along with forms of Online Dispute Resolution (ODR). The principle of subsidiarity acts as a common denominator between the two aforementioned phenomena. In particular, it allows shedding light on the meaning and implications of the

relationship between soft law and ADR within the framework of a novel understanding of the State and public administration.

Roberto Bartoli, ***Una breve introduzione alla giustizia riparativa nell'ambito della giustizia punitiva*** (*A Brief Introduction to Restorative Justice in the Context of Punitive Justice*; in Italian)

Restorative justice and punitive justice belong to different paradigms. Therefore, understanding this paradigm shift is key to the understanding of restorative justice itself. Through a 'close' comparison between these two paradigms, the author aims to capture the distinctive features of restorative justice in the context of criminal offences, i.e. community justice, dialogic justice, justice that attempts to heal the pain caused by criminal wrongdoing, and non-violent justice. Restorative justice has the potential to foster revolutionary change, especially in instances where restorative justice can provide a procedural tool that is complementary to punitive justice and a material alternative to punishment.

Beatrice Zuffi, *Azione di classe e ADR: un binomio in via di definizione* (*Class Action and ADR: A Pairing in the Making*; in Italian)

The paper provides a comparative review of selected legal systems (namely: the U.S.A., the Netherlands, and Belgium) which are at the forefront of fostering the use of ADR in compensatory class actions through laws and regulations. The author then analyses the Italian legislation on class action introduced by Law No 31 of 2019, focusing in particular on the solutions adopted to promote settlement agreements and assessing the feasibility of other alternative dispute resolution methods, such as mediation, negotiation, and arbitration in connection with or in lieu of the three-phase trial under Art. 840 bis ff. of the Italian Code of Civil Procedure.

Observatory on Legislation and Regulations

Mauro Bove, *I verbali che concludono la mediazione nel d.lgs. n. 149 del 2022* (*Mediation Reports under Legislative Decree No 149 of 2022*; in Italian)

The paper analyses the discipline of mediation reports under Legislative

Decree No 149 of 2022, highlighting its conformity to the provisions of Legislative Decree No 28 of 2010. The author outlines the features and scope of the procedures applicable to instances where a mediated settlement is not achieved and instances where mediation results in a settlement agreement to be included in the mediation report. In particular, the author examines the innovative regulation of mediation reports, which requires the use of digital signatures where mediation takes place online.

Alberto M. Tedoldi, *La mediazione civile e commerciale nel quadro della riforma ovvero: omeopatia del processo* (*Civil and Commercial Mediation in the Framework of the Reform: Homeopathy of the Process*; in Italian)

The essay focuses on and looks to expand the knowledge of civil and commercial mediation as regulated by Legislative Decree No 28 of 2010 amended by Legislative Decree No 149 of 2022. The legislative provisions appear to foster the use and development of mediation as a full-fledged dispute resolution process, beyond its function as a tool complementary to litigation. In this, mediation provides an appropriate and comprehensive dispute resolution instrument which addresses the legal relationship in its entirety, rather than the single components of res in judicium deducta, and allows achieving an all-round, durable settlement. 'The civil process is dead, long live the mediation!'.

Pietro Ortolani, *The Resolution of Content Moderation Disputes under the Digital Services Act*

Online content on social media platforms gives rise to a wide range of disputes. Content moderation can thus be understood as a form of online dispute resolution, whereby the platforms often balance legal entitlements against each other. This article looks at content moderation through the lens of procedural law, providing an overview of the different dispute resolution avenues under the Digital Services Act (DSA). First, the article sets the scene by describing the overall architecture of the DSA. Against this background, specific provisions are scrutinized, dealing with notice and action mechanisms, statement of reasons, internal complaint handling, and out-of-court dispute settlement. Furthermore, the article considers the interplay between the DSA and the European regime of cross-border litigation. Finally, some general conclusions are drawn regarding the DSA'S 'procedure before

substance' regulatory approach.

Observatory on Practices

Antonio Briguglio, *Conciliazione e arbitrato. Contaminazioni* (*Conciliation and Arbitration. Cross-fertilization*; in Italian)

In this paper, the author addresses the topic of the interplay between conciliation and arbitration. In spite of the former being a non-adjudicative ADR procedure and the latter a fully adjudicative ADR process, there are some aspects of cross-fertilization between the two. The author pays particular attention to 'conciliatory' elements, whose relevance is greater in arbitral awards than in judicial decisions. In the second part of the paper, the author focuses in detail on the recent Singapore Convention on International Settlement Agreements Resulting from Mediation, which introduces a different element of cross-fertilization between arbitration and conciliation. In particular, the author investigates the meaning and practical implications of the Convention, which basically puts settlement agreements on an equal footing with arbitral awards for purposes of international recognition and enforcement.

Silvana Dalla Bontà, *La (nuova) introduzione e trattazione della causa nel processo di prime cure e i poteri* lato sensu *conciliativi del giudice. Un innesto possibile?* (*The (New) Introduction and Handling of the Case in the First-Instance Proceedings and the Court's Conciliatory Powers* Lato Sensu*. A Possible Graft?*; in Italian)

After providing an overview of the new Italian regulation on pleadings and hearings in civil cases before the courts of first instance as introduced by Legislative Decree No 149 of 2022, the paper focuses on the conciliatory powers of the courts, i.e. court-ordered mediation, judicial conciliation, and judicial offer to settle. In particular, the analysis aims to explore if, when, and how these judicial conciliatory powers could be effectively exercised at the new pleading and hearing stages. While uncovering the weaknesses of the recent reform of Italian civil procedure, the author argues that the development of good practices would provide a solution to most of the issues raised by the new legislation. To that end, Civil Justice Observatories could

play a pivotal role in achieving lasting solutions through a bottom-up approach that fosters the interaction of different civil justice actors.

Carolina Mancuso and **Angela M. Felicetti, *Sistemi di* dispute resolution *per le università: primi spunti di riflessione*** (*Dispute Resolution Systems for Universities: First Considerations*; in Italian)

The paper aims to explore some innovative foreign teaching and research experiences (namely, in Spain and in the United States) concerning the dissemination of mediation, conflict management techniques and, more broadly, the culture of alternative dispute resolution in academia. The analysis intends to connect such initiatives with the vibrant Italian panorama, which is rich in experiential teaching initiatives and infused with its own developing tradition of conflict management through student ombudspersons. The ultimate goal of the investigation is to identify new directions for the dissemination of the ADR culture in Italian high education institutions.

In addition to the foregoing, this issue features the following book review by **Luciana Breggia***:* **Tommaso GRECO**, ***La legge della fiducia. Alle radici del diritto*** *(The Law of Trust. At the Roots of Law*; in Italian*),* Bari-Roma, Editori Laterza, (2021; reprint 2022), VII-XVI, 1-171.