Giustizia consensuale No 1/2025: Abstracts

The first issue of 2025 of *Giustizia consensuale* (published by Editoriale Scientifica) has been released, and it features:

Cesare Cavallini (Professor at Bocconi University, Milan), **L'arbitrato come processo e giustizia consensuale** (*Arbitration as a Process and Consensual Justice*; in Italian).

> The essay aims to analyze the phenomenon of private autonomy and consensual justice in arbitration as it has evolved through various reforms. The goal is to highlight arbitration as a process and a form of consensual justice that is alternative yet distinct from ordinary judicial proceedings and fully aligned with constitutional principles. This objective becomes even more significant when compared to the very different and controversial issues discussed in American legal doctrine, which instead point to an unceasing erosion of rights through a blending of public interferences in arbitration and private ones in ordinary justice, raising concerns about the legitimacy of private autonomy within the framework of civil protections under constitutional scrutiny.

Orsola Razzolini (Professor at the University of Milan) and **Ivana Sechi** (Head of the Institutional Affairs Service of the Guarantee Commission on the Implementation of the Law on Strikes in Essential Public Services), **Sciopero nei servizi pubblici essenziali e giustizia consensuale. ruolo della**

commissione di garanzia e ricerca del consenso nel governo del conflitto (*Strikes in Essential Public Services and Consensual Justice: The Role of the Guarantee Commission and the Pursuit of Consensus in Conflict Governance*; in Italian).

> This paper examines the Italian law regulating strike in essential services from a consensual justice perspective. In particular, the law is mainly focused on the agreement between the social parties about the rules of the conflict while the strike independent authority — a technical and impartial body — is tasked with supplementary duties, particularly following the 2000 reform. The paper focuses on the independent authority's provisional regulation and considers recent case law, referendums, and the authority's rulings on interpretive or enforcement issues. The increase in the number of provisional regulations adopted in recent years raises several research questions. Is the social parties' consensus still the core of the regulation? There has been a shift in the last years from social parties to the independent authority mainly due to transformations of the productive organizations as well as to the crisis of collective bargaining and the increasing fragmentation of both unions and employers' associations.

Observatory on Legislation and Regulations

Charlotte Teuwens (Ph.D. Researcher at KU Leuven), **Stien Dethier** (Ph.D. Researcher and FWO fellow at KU Leuven) and **Stefaan Voet** (Professor at KU Leuven and UHasselt), **The Venice Principles: Strengthening the Independence of Ombudsmen, and Beyond**.

> This article critically analyses the 25 'Principles on the Protection and Promotion of the Ombudsman Institution', or in short, the 'Venice Principles'. It gives a comprehensive overview of the different Principles, organised along four essential themes: legal basis, appointment and selection, competences and powers, and immunity, independence and the relationship with other authorities. In addition, it takes a more holistic view on the framework created by the Venice Commission. While the implementation of the Venice Principle does not come without its challenges, not unlike other instances where international instruments have to be implemented, the Principles primarily present Ombudsman institutions withimmense opportunities. With the Principles in hand, Ombudsmen are well-equipped to

reflect on and reimagine their core value of independence.

Luca Dal Pubel (Faculty Lecturer at San Diego State University), **ADR and ODR in North America: Evolution, Regulation, and Future Prospects**.

This article provides a comparative analysis of Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) in the United States (U.S.), Canada, and Mexico, three countries that share geographic proximity and strong economic ties but differ in legal traditions and cultural approaches to dispute resolution. While the U.S. has fostered a decentralized, business-driven ADR and ODR landscape, Canada has nstitutionalized ADR within its judicial system and embraced ODR as a means to enhance access to justice. In contrast, Mexico has pursued a more state-led approach, constitutionally recognizing ADR as a fundamental right while expanding consumer-focused ODR initiatives. By examining the legal frameworks, regulatory developments, and real-world applications of ADR and ODR in these three nations, this article applies the functional method of comparative law to explore how each legal system addresses common dispute resolution challenges, emphasizing the practical effects and societal outcomes of different approaches.

Observatory on Jurisprudence

Silvana Dalla Bontà (Professor at the University of Trento), **La giustizia consensuale 'presa sul serio'. la disciplina dei costi della mediazione al vaglio del giudice amministrativo** (*Consensual Justice 'Taken Seriously': Mediation Costs Under Review by the Administrative Judge*; in Italian).

This paper draws on Judgment No. 5489, issued by the Administrative Tribunal of Lazio on 17 March 2025, which upheld the reasonableness and constitutionality of mediation costs introduced by Italy's recent civil justice reform through Legislative Decree No. 149/2022. The judgment affirms that the increased fees provide fair and adequate compensation to both the mediation provider and the mediator. At the same time, they encourage parties and their counsel to engage in mediation with seriousness, as mandated by Article 8 of the reformed Italian Mediation Act. This provision requires parties and their lawyers to cooperate in good faith, discuss the core issues, and work toward a mutually acceptable resolution. Recognising

the rationale behind the judgment, the paper argues that the revised fee scale enhances the effectiveness of mediation—both by elevating the professionalism of mediators and by increasing parties' awareness of the value of the mediation process.

Observatory on Practices

Francesca Locatelli (Associate Professor at the University of Bergamo), **Il procedimento negoziale nel sistema giuridico** (*Negotiated Procedure within the Legal System*; in Italian).

The paper offers a critical reflection on the role of negotiated ADR within today's civil justice system, framing the discussion around the need to move beyond a purely deflationary logic toward a perspective that recognizes their systemic dignity. The analysis begins by examining the cultural barriers and cognitive dissonances that continue to hinder the reception of these mechanisms, both in legal practice and in legal education. Within this framework, the paper advocates for a procedural – rather than merely processual – approach to the study and teaching of negotiated ADR, one that acknowledges their nature as structured proceedings governed by distinct phases and principles. The contribution further argues in favour of a technical-procedural model for negotiation, highlighting the importance of its structured and methodological dimension, and calling for a more active role of legal scholars in legitimizing it both theoretically and pedagogically. Finally, it stresses how the integration of negotiation into legal training is not only a practical necessity, but also a clear sign of a paradigm shift in the very conception of the legal profession.

Filippo Noceto (Ph.D. at the University of Genova), **Consulenza tecnica in mediazione. Profili sistematici e criticità applicative** (*Expert Evidence in Mediation: Systematic Framework and Application Challenges*; in Italian).

This paper aims to provide a critical analysis of the recent developments concerning the expert witness testimony in mediation, highlighting its potential practical implications and outlining possible directions for reform of the current regulatory framework.

Conference Proceedings

Marina Caporale (Associate Professor at the University of Modena and Reggio Emilia), **Risoluzione alternativa delle controversie: (ri)conciliarsi con la Pubblica Amministrazione** (*Alternative Dispute Resolution: (Re)Conciliation with the Public Administration*; in Italian).

> Considering the many facets of ADR, 'public' ADRs, here intended in the broadest sense, meaning those involving a public administration in any capacity, are increasingly gaining ground. Identifying the characteristics of these ADRs and the hallmarks of alternatives – today interpreted more as diversity, consensuality, and integration with the jurisdiction that ADRs embody – challenges the categories of administrative law and administrative justice. However, before delving into the now numerous public ADRs, it is necessary to first examine those institutions that, while involving a public administration, do not, as in the case of ombudsman.

Marina Evangelisti (Associate Professor at the University of Modena and Reggio Emilia), **Per un breve profilo dell'arbitrato in diritto romano** (An Outline of Arbitration in Roman Law).

> This article describes the main features of arbitration in Roman law. It is a legal institution that offers an alternative method to prevent and resolve disputes without going to trial, and it was widely used by the Roman people over the centuries. This legal figure demonstrates the possibility of a useful dialogue between our history and the needs of the present.

Chiara Spaccapelo (Researcher at the University of Modena and Reggio Emilia), **L'arbitrato e la giustizia civile. Un modello per la Pubblica Amministrazione?** (*Arbitration and Civil Justice: A Model for the Public Administration?*; in Italian).

> The paper examines the relationship between arbitration and public administration, questioning whether arbitration may also serve as an effective model for resolving administrative disputes. After reconstructing the systematic framework of ADR and the role of arbitration within civil jurisdiction, the author focuses on the specific features that characterize arbitration involving public entities, addressing key theoretical and practical issues such as the arbitrability of legitimate interests, the relationship between subjective rights and administrative powers, and the admissibility of

‘arbitrato irrituale’. Particular attention is devoted to arbitration in public procurement, whose use is currently severely restricted due to an overly cautious regulatory framework. The concluding remarks call for overcoming judicial and legislative mistrust and for a broader enhancement of arbitration within the administrative domain, in line with the principles of efficiency, subsidiarity, and reasonable duration of proceedings.

Chronicles

Cristina M. Mariottini (European Institute of Public Administration, Luxembourg), **Bridging Borders Through Dialogue: The Establishment of the International Organization for Mediation (IOMed)**.

The Convention on the Establishment of the International Organization for Mediation (IOMed), adopted in Hong Kong on 30 May 2025, marks a significant step in the institutionalisation of mediation as a means of settling international disputes. The Convention applies to three categories of disputes: inter-State disputes; disputes between States and nationals of other States, including investor-State matters; and international commercial disputes between private parties. It affirms mediation as a voluntary, non-adjudicative process grounded in consent, neutrality, and procedural fairness, while also establishing a rule-based framework for the conduct of proceedings, the legal status of mediated settlements, and their potential enforcement through domestic legal systems. This article examines the normative foundations, institutional design, and procedural architecture of the IOMed Convention. It situates the Organisation within the wider system of international dispute resolution, noting its conceptual links to the Singapore Convention on Mediation, the ICSID Convention, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Particular attention is given to issues of legitimacy, enforceability, and inclusivity, as well as to the Convention’s capacity-building mandate and its potential to expand access to mediation across diverse legal and geopolitical contexts. The analysis highlights IOMed’s role in advancing a more coherent, structured, and institutionally anchored model of international mediation.

Finally, this issue features the following **Book Reviews**:

A book review by **Mauro Grondona** (Professor at the University of Genoa): **Tommaso DALLA MASSARA, Gaetano RAMETTA (a cura di),** *Il volere che si fa norma – Quaderno primo. Dialoghi tra giuristi e filosofi*, Bologna, il Mulino, 2024, 5-158.

A book review by **Davide Castagno** (Researcher at the University of Turin): **Loïc CADIET, Thomas CLAY**, *Les modes alternatifs de règlement des conflits*, 4ª ed., Lefebvre Dalloz, Paris, 2025, 1-201.

A book review by **Francesco Ciccolo** (Ph.D. candidate at the University of Messina) and **Claudio Orlando** (Ph.D. candidate at the University of Messina): **Antonio CAPPUCCIO, Stefano RUGGERI** (a cura di), *Antichi e nuovi modelli di giustizia partecipata e cultura della giurisdizione. Verso una tutela penale più umana ed egualitaria*, Wolters Kluwer/CEDAM, Milano, 2024, I-XII, 1-645.