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THE PROGRESSIVE SPREAD OF ADR: THE EXAMPLE OF THE HEALTH SECTOR

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Abstract: *The instrument of mediation is a growing phenomenon. The EU legislation leaves the individual states the definition, articulation and differentiation of the various types of alternative dispute resolution. In Italy the mediation procedure in the health sector has still to be invented since at the moment.*

Key words: *alternative dispute resolution, conciliation, mediation, health sector.*

1. Introduction: the varied landscape of alternative methods of dispute resolution

In an increasingly globalized world, where social and economic dynamics are far more complex, the ability to resolve conflicts is probably an index in weighing the civic profile of a society. If there are multiple possibilities to solve conflicts peacefully, with the satisfaction of the contenders, in a short time and using simplified procedures, the depth of the society will undoubtedly be stronger: then reconcile and/or mediate words sound like watch words in the presence of conflicting positions.

In recent years the activities of mediation (in Italy traditionally defined "conciliation") has increased (almost) exponentially. It often seems to constitute a real service to the user, who sees their needs for justice better met in the face of a dispute with a business operator.

The increase in the use of the instrument of mediation, however, is a growing phenomenon that sees all (the activity of) out-of-court settlement of disputes, an explicable development - according to many - especially because of the malfunctions of the most traditional way of doing justice [1]. Speaking of out-of-court settlement of conflicts and, more generally, *alternative dispute resolution* (ADR) means, basically, to refer to a number of alternative methods of dispute resolution, both judicial and extrajudicial, based on the lowest common denominator to replace the pronouncement of an organ with legal agreements between the parties in conflict containing satisfactory solutions for all the contenders.

It should be noted immediately that all the types of ADR are not immediately identifiable, because the phenomenon is varied: there are mixed forms, characterized by the fact that they basically aim at the resolution of conflicts, and - above all - are focused on the power recognised by the parties to deal with own disputes. These forms often occur in an informal, simple, flexible and fast way and are intended to favour access to justice. They are not really alternatives but rather complementary to justice being carried out in the traditional way [2]. For example, conciliation and arbitration both fall in ADR methods, but are quite different. It would be better then to associate the

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phenomenon ADR, or at least its fair share, rather than to the idea of alternative justice, to the idea of *a different way of judging.*

The roots of *a different way of judging* are in the U.S. and coincide precisely with the form of arbitration that was activated in 1768 at the Chamber of Commerce of New York. But the cradle of conciliation is located in Italy and precisely in the first Code of Civil Procedure of 1885, which in the art. 1 states: "The conciliators, when required, must work to resolve disputes". The intent of the legislator, however, is not reflected in Italian practice and this said Italian rule is virtually ignored - except for the so-called judicial conciliation. Unlike in the U.S., where, since the second half of the XVIII century the use of all forms of alternative dispute resolution has been growing: in fact the institution of the American *Arbitration Association*, which today deals with a large number of arbitrations, dates back as far as 1926. In Italy, as mentioned, the provisions of the Code have remained silent for a long time and *alternative justice* has spread to other sectors: for example, in the sequence conciliation-arbitration, it has grown into niche areas, such as sport. In the list of the Italian experience "*tout court* conciliation" we will include the conciliatory activities carried out by the Ombudsman and the Chamber of Commerce as well as a series of experiments, such as in the health sector.

The variety of tools contained in the unifying feature of ADR is clearly not only Italian, and in order to simplify the study, for some time now even at international level, the tendency is to distinguish between alternative methods so-called *adjudicative* (valuation methods that lead to a real decision rendered by a third party - who is not – however - a judge in the classic sense) and *non adjudicative* (conciliatory methods that entrust the solutions to the parties): mediation is a classic example of the latter while arbitration is the prototype of the former.

The various methods attributed to the *not adjudicative* have had somewhat greater success probably because one wants to believe in the assumption according to which any dispute could be solved through agreement between the parties to avoid the imposition of a decision reached by a court.

Even within the EU, the heterogeneity of methods of ADR representing a different way of resolving the conflict procedure to the case in court is emphasized: the mechanisms for resolving disputes can range from decisions binding recommendations or agreements between the parties. The different procedures have different characteristics and are more or less effective depending on the circumstances. Which of these procedures is most appropriate depends on the nature of the dispute to be resolved.

2. The attempt to reconcile past and future: the legal framework

With the conciliation, the way of resolving the conflict is obviously very different from the classic civil proceedings and may represent a real "additional" opportunity (usually prodromic to the trial) to the parties in order to protect their rights. Conciliation is characterized by the prevalence of the collaborative spirit in place of the antagonist one; orientated towards negotiation instead of conflict; the attempt to seek to find the solution rather than determining who is right or wrong. In reconciling, the basic idea is that the parties are not necessarily considered as rivals, with conflicting interests, but being fair opponents can reach a fair agreement, facilitated by a third party that acts as mediator and whose action is basically to give coherence and balance to the conflicting relationship.

The element of will is crucial when speaking of out-of-court dispute resolution models. On the basis of this rule, in fact, one can single out three particular types of ADR: conciliation, mediation and arbitration. In Italy the first seems to be the

most commonly used. One has just to think of conciliatory activities carried out by the Chamber of Commerce. This type is characterized by the quality of the work done by the conciliator, a person who strives (even in a *creative* sense) for the parties to agree, but makes no decision on the merits of the application of one or other party. But the success of conciliation in Italy was until very recently far from the level that the legislator would have wanted to achieve and the introduction of *obligation* has done very little to achieve this (as in the work process), probably because both a culture of conciliation and the real intention of the parties to reach agreement outside the traditional antagonism trial is lacking. But where there is strong awareness of the need for joint resolution of the conflict, conciliation works and elements such as speed and low cost of the procedure will facilitate the request and use.

The arbitration is opposite to conciliation: in this model we rely on a third party for the promulgation of a decision that may have the effect of a sentence. The arbitration meets two important limitations: it can not be imposed by law because otherwise you restrict self-determination of the parties and is often associated with a costly process so you can almost justify the conduct of wavering legislators towards arbitration in areas such as procurement of public works.

Finally, there is mediation, defined almost as *mid way*. The mediator, the third party, unlike the conciliator who only verifies if there is a chance of agreement, gives an assessment on the outcome of the dispute, but is not an arbitrator because the mediator does not decide in the technical sense (in fact, if the parties do not agree you start the trial). In the Italian doctrine one has begun to speak of mediation to steer away from those models of conciliation already present in the system, but with little success, and to approach the type of *mediation* of the Anglo-Saxon world. In both cases, however, it is essentially cooperative and non-formal forms of dispute resolution in which creative innovative and non coded solutions are sought: the third party assists the parties in identifying and articulating the interests, priorities and needs of all at stake. In practice, the two terms (conciliation and mediation) are often used in an equivalent manner. We can not ignore, however, that you can meet with difficulty when defining the contours of the mediation. Because it is not easy to distinguish the term in legal systems as diverse as the Anglo-Saxon, based on the system of common law or as the Italian one, based on the system of civil law. It can be argued, however, that in Italy you can use the conciliation for the civil and commercial sector and the mediation for the family sector, social, educational and criminal.

The study of assonance and dissonance of these two techniques and how they will be reflected in the Italian system is likely to be the responsibility of the doctrine that will be analyzed in depth art. 60 of Law n. 69/2009 (*Government Delegation for mediation and conciliation of in civil and commercial disputes)* and its decree of implementation, decree n. 28/2010.

2.1 In search of a definition

In order to find a correct definition, we should recall the content of the article 1, 3 of the Model Law on International Commercial [3]: *"For the purposes of this Law, conciliation means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator ") to assist them in their attempt to reach an amicable settlement of their disputes arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute"*. The definition aims to highlight the features of the convergence procedure. The aim is to find an agreement between the parties,

which is satisfying and profitable, and the result of the mediation process of a neutral third party. In the Model Law Conciliation emerges what is clearly the substantial difference between conciliation/mediation (here there is no difference between the terms) and the ordinary process of dispute resolution (as well as arbitration). Parties shall endeavor to find a common solution and are committed to adopt it directly, without external imposition of judges or arbitrators. The strategy of the third party is to realize and focus, thus preventing the conflict from becoming more complicated by giving precedence to uncontrolled animosity between the parties. The third party actively uses various techniques of communication and negotiation to guide the parties towards the realization of a realistic constructive agreement (for example taking into account the financial condition of the parties), using the technique of reasoning to the full. He must play an active role to enable him to examine all items, useful in resolving the dispute (an even more important active role considering that, as part of court procedures, the parties often act without the assistance of an attorney). The conciliator/mediator must take account of the people in front of him, of the component of human behaviour, not just of the legal reasons, to finally produce a result that satisfies everyone. And it is the satisfaction of the parties, which should indirectly produce a deflationary effect on the traditional litigation, especially in modern multicultural societies (with multiple values, requests, roles), where conflicts are more easily created and rules of law may be less effective.

Passing to the EU level, the rules do not specify strict norms for ADR, or provide alternative methods as the only mediation or conciliation. The guidelines, rather, focuses on the fundamental principles of justice, including alternative: independence and impartiality of the ADR' bodies; guarantee the adversarial; effectiveness of the procedure (free or moderate cost of the procedure for the rapid adoption of the decision); consequentiality between extrajudicial and judicial protection (in accordance with article 6 of the European Convention on Human Rights that the access to courts is a fundamental right). You can see the continuous encouragement to develop a range of flexible solutions that are proportionate to the problem, efficient, responsive and understandable to the general public. But only in the Green Paper of 2002 you can find various definitions or explanations that better specify their contours [4]: 1. the *arbitration* procedure is excluded from non-judicial dispute resolution processes conducted by a neutral third party; 2. matters relating to inalienable rights and affecting public policy (the right of the people and family, competition law, consumer law) are excluded from the framework of the ADR in the Green Paper; 3. the terms used most commonly in practice and in national laws - that is, mediation and conciliation - are not "used systematically in the Green Paper, but only in the context of a particular national legislation or specific work by an international organization".

In light of the (not) mentioned in the community documentation, it is for the Italian law to identify its own definition of conciliation and differentiate from the term mediation, even if the Directive of 2008 [5] on mediation in civil and commercial matters in cross-border disputes the Community the legislator surprisingly comes up with a definition and seems to use the term *mediation* as a synonym for conciliation: by "*mediation*" we mean a structured process, regardless of the denomination, where two or more parties to a dispute attempt themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties, suggested or ordered by a court or prescribed by the law of a Member State.

2.2 The conciliation/mediation in the Italian rules: *a semantic clarification*

The EU legislation thus leaves the individual states the definition, articulation and differentiation of the various types of ADR, and only sets what are the basic principles on which different procedures must be guided. The Italian legislator, as already mentioned, does not merely lay down rules on conciliation in various areas or on other forms related to the ADR, but over time has tried to develop a unified framework however without convincing results. Only recently - and specifically with art. 60 of Law n. 69/2009 - the national legislator has provided an organic framework for *a general statute* of extrajudicial conciliation under the present legislation". In fact by providing in paragraph 2 that the reform "in respect of and in conformity with Community law and in accordance with the principles and guidelines referred to in paragraph 3, achieves the necessary coordination with other regulations", you are to have an effect on all conciliatory cases already covered in legal system. The legislator further specifies that the object of dispute must relate to *available rights*, should not be denied access to justice and the mediation should be aimed at reconciliation and performed by professional and independent bodies allocated permanently to the service of Conciliation. For this purpose, at the Ministry of Justice, a register of the Dispute Settlement Body will be set up. The above-mentioned article also allows the Councils of Bar associations to institute, at the courts, conciliation bodies, which, for their functioning, make use of the staff of the same Councils (even those enrolled by law in the register). Conciliation bodies in councils of professional bodies can also be set up for disputes in particular matters. Given the specificity, the conciliator can make use of experts, from the register of consultants, and qualified specialists of the courts. It's therefore the duty of the lawyer, before the commencement of proceedings, to inform the client of the possibility of using the institution of conciliation. Finally, the legislator, in addition to providing for enforcement of the conciliation report, should not forget to include incentives or rather tax concessions or legal costs and to indicate the shortest time possible for the procedures (in fact, in observance of the need to reduce the times of justice it has been ruled that the conciliation procedure cannot exceed four months).

Maybe this is not the place to analyze the effect of Article n. 60, but here at least it is worth noting that the distinction between mediation and conciliation in the mentioned article almost tends to overlap the two cases, perhaps with the intention of "wanting to ferry [these two models] without trauma towards the well-established international terminology". Then, it may be noted that these norms can influence a regulations which until recently had essentially governed two models of conciliation: "one, the so-called common law model, which takes advantage of the entire freedom of negotiation for individual citizens allowed by the legal system, but lacks some features which would ensure a greater success. The other, [defined as] the model of corporate conciliation, [which] essentially meets the fundamental principles recognized at international level in several aspects, such as the binding nature of the clause, the effectiveness of the report, the substantial effects of the application and so on" [6]. These models are derived from the analysis of the subject - often sectional - that over the years has worked for conciliation and that finds its strength especially in the law n. 580/1993 on the reorganization of the Chamber of Commerce.

Overall, the rules cited in the laws respect the fundamental principles on conciliation decreed at international level, such as privacy, the effectiveness of the report, the constraint clauses, economic incentives, etc. But we see fragmentation of the interventions and, therefore, a

reorganization was more than necessary. For the purpose specified here, it should be noted that precisely the ministerial decree 222/2004 implemented by the decree 5/2003 contains a definition of conciliation which includes that of mediation: "service rendered by one or more persons, other than a court or arbitrator, impartial with respect to the interests in conflict, with the purpose of settling an existing dispute or one which may arise between the parties, trough ways that in any case favour their autonomous agreement" and the definition of conciliator: "person which, individually or collectively, carries out the conciliation service, and in any case deprived of the power to make binding decisions or judgments for the recipients of the same service" (Article 1, 1, d, e).

3. The enforcement of rules*: mediation aimed at reconciling*

The enactment of Legislative decree (Ld). n. 28/2010 gives effect to the authorization (delegated) to the government with the said Article 60 on the introduction of mediation aimed at reconciliation of civil and commercial disputes. With this measure a general framework on the subject is established for the first time, making some important changes compared to the previous context, that is, where this instrument was already provided for. The ultimate aim of the decree is to use mediation as a deflationary instrument of litigation in the hands of the ordinary justice: this is evident looking through the list of areas included in art. 5,1 for which mediation is *a condition of admissibility* from the twelve months following the entry into force of this measure. It involves matters with a high rate of litigation for which there is an elevated use of ordinary justice and ranges from housing and inheritance, compensation for damage arising from the use of vehicles to medical liability. In all other matters, the mediation may be initiated on a voluntary basis, both before and during the trial. The decree foresees, in fact, that one of the parties at any time may file an application for mediation with an approved organization for the resolution of civil and commercial litigation. It's also stipulated that mediation can be requested by the court. In practice, when the trial has already started, the court, having considered factors such as the nature of the case and the conduct of the parties, may invite the parties present to resort to mediation bodies. If the parties adhere, then, at the invitation of the court, the trial will be delayed for as long as is necessary.

We can now outline the provisions of Ld n. 28. As part of the relationship between ordinary and mediation trial we can have: mandatory mediation (matters referred to in art. 5, 1), wilful mediation and the one requested by the court. But, looking at profiles of a more substantial nature, it is possible to distinguish two forms of mediation aimed at the conciliation: the first defined as "facilitativa" (supporting, facilitating, etc.), in which the mediator helps the parties to reach an agreement (on their relationship), and a second type "adjudicative" which consists of a proposal for conciliation done by the mediator if the agreement is not reached spontaneously. Of course the option remains for the parties to decide whether to accept or not the proposal and this is because, regardless of how you can reach an agreement, you must always keep in mind that the logical starting point of the conciliation is to share the results, the achievement of which requires the cooperation of all parties involved (the parties, the consultants of the parties and the mediator).

In addition to drawing a general framework of mediation and its procedure and to put the conciliation as a condition of admissibility, the Ld. n. 28 regulates in an original way even the role of mediators and the role of professional bodies. In fact the art. 16 foresees that public or private bodies giving guarantee of efficiency and reliability, at the request of the interested party, may constitute bodies delegated to managing the mediation proceedings

concerning a civil or commercial dispute relating to available rights. In this context an important role is played by professional associations, who, having the possibility of establishing conciliation bodies on matters reserved to their jurisdiction (Art. 19), will ensure the spread and practical application of the instrument of mediation.

In view of what has previously been written, it can be argued that the development and implementation of conciliation in Italy is the result of the failure of judicial conciliation, of the positive experience of conciliation carried out by the Chamber of Commerce, of the continuing sluggishness of the civil justice in the regular courts and the drive to spread this institution coming from both an international and Community level. As seen, the Italian Code of Civil Procedure has always known the institution of conciliation, which is entrusted to the magistrate with the direct presence of the parties (court conciliation). However, if the attempt is effected, it is seen as a hindrance, since the court procedure has now started and seem relentlessly prodromal at pursuing other results, which are certainly not conciliatory. Moreover, this attempt is led by one party, the judge, who has no special preparation on conciliation techniques: we can not deny, in fact, that it is difficult to find in the same person the attitude of the conciliator whose primary purpose is to promote agreement between the parties and the style of the court that, in the event of failure of conciliation, will be called upon to decide judicially on the same dispute. The idea that the mediator does not belong to the judiciary has its reasons: the attempt towards agreement takes place outside of a trial, and is managed by an entity that acts as a *professional* mediator [7].

4. Mediation in the health sector

The conflict between patients and health workers is a growing phenomenon and there is a substantial increase in requests for damages from alleged medical professional liability. Complaints are lodged through the courts channelling such disputes into civil and criminal trials generating serious consequences (as the so-called *defensive medicine*) [8] which affects the relationship between the medical profession and society.

With the entry into force of Ld. n. 28/2010, the Italian legislator has provided another way to address the very complex phenomenon of malpractice of the health system. It introduces, in fact, medical liability among the subjects for which the use of mediation will become mandatory. It opens the way to a different mode of tackling various kinds of conflict, probably by restoring the heart of the doctor-patient relationship, simply ignored in the court approach. In fact, because of the procedural rules laid down by the codes, the possibility of a direct confrontation between the protagonists is denied. The court trial follows a paths that ends with a sentence which, while ending the dispute, leaves the conflict between the protagonists open and unresolved. The use of mediation may provide responses more consistent with the needs of the parties, creating the conditions for communication and collaboration; it can lead them to redefine the terms of the conflict, considering they have a common and mutual problem to solve.

The application of this model may be declined in different ways and find out new responses different from those coming from the trial. However, the mediation procedure in the health sector has still to be invented since at the moment, in Italy, you can find only the procedure used in civil and commercial fields: it is a model that can be taken as the benchmark, but needs to be largely rewritten and adapted to the complexity of the health sector. Even the experiments already under way nationally move with caution and are awaiting confirmation from who has promoted them. Mediation in health care should, however, not only restore the doctor-patient relationship, but should also recognize an

important role of the insurance companies, whose participation is fundamental for the success of the new model. To build the best mediation procedure we should, in fact, take advantage of the skills that already exist on medical accidents and health damages: for example the contribution of hospital managers and insurance executives who for years have been dealing with risk management. The first problem to solve, however, seems to be the definition and skills of the mediator who should be a good psychologist, expert in communication and negotiation techniques and, last but not least, a lawyer possessing wisdom and authority. It's necessary to point out, in fact, that reconciliation cannot be improvised and has to be carried out by professional experts of dispute and of techniques of mediation and that this very characteristic is the strong point of reconciliation and is among the main reasons for the success of the institution. It is a challenge, the results of which can be viewed trough experimentation and with time.

4.1 Some experience

Since the citizens' complaints for medical liability are increasing, in recent years the application of ADR it has been experimenting even in the health sector.

Among the experiences worthy of mention there is the Veneto regional law n. 15/2009. The rules concern the management of extra-judicial disputes in health sector and are dictated mainly by the growth of disputes regarding medical malpractice and the increase of claims for damages. The overcompensation has as consequence the overdeterrence in the medical profession and in hospitals, and, consequently, in insurance companies: in essence, the risk of incurring legal proceedings might lead doctors to abandon those specializations most at risk or to resort to unnecessary diagnostic tests before any intervention and in this way start the above-mentioned mechanism of defensive medicine. This would increase the risks to health of the patient, the costs of health care and of insurance premiums with the exit from the market, in some cases, of insurance companies or even the refusal to insure doctors working in sectors most vulnerable to the risk of damages. The Veneto region sets rules designed to remedy the increase in insurance premiums, to contain the phenomenon of defensive medicine: the region wanted to make available to citizens and (public and private) health institutions a legal support and a facilitation for negotiations that parties can freely choose in order to find joint solutions in relation to claims for medical damages, enabling users to meet their demands more quickly and health bodies to reduce the financial and administrative burdens of a long and expensive litigation. The Constitutional Court intervened on this law [9], ruling that it does not violate the principles of the Ld. n. 28, and in particular art. 5 according t which the use of mediation process is prodromal, a condition of admissibility to the trial.

A few years ago, in 2005, the Medical association in Rome made a settlement procedure especially for health sector: the *Accordia* project [10]. The project aims to test a new procedure for conciliation in disputes between the doctor/dentist and patient. The mechanism is simple and can be divided broadly into two phases. In the first phase, the patient who complains of damages turns to Accordia bodies which accept the claim and submit it within 30 days to a Technical Committee, an independent body composed of a magistrate (president), two lawyers, two coroners and an insurance expert. The Committee conducts an initial review and expresses (always within 30 days) an opinion on the possibility of amicable settlement of the dispute. Only in the case of a positive opinion the second step (the conciliatory phase) starts: in this phase the doctor and eventually his insurance company are consulted on their willingness to accept the conciliation. If they accept the parties may initiate the mediation procedure before the Chamber of

Conciliation of Rome who decides on the dispute. One of the most interesting aspects of the model is the cost of the procedure: in fact there is no cost, because everything is supported by the Medical association of Doctors and Dentists of the province of Rome and the Insurance Companies participating in the project.

Again a few years ago, another region, Emilia-Romagna, has worked on a different project for risk management and litigation also in health sector. More specifically the project, which involved some local health agencies and insurance companies, seems to indicate encouraging results about the amount and the cost of claims. The project aims to analyze the litigation processes and develop the skills available achieving improvements in the efficiency of viable solutions. Three areas are examined: conflict mediation, extra-judicial conciliation, forensic medicine. About conflict mediation, you have to take into account that effective communication with the user and the ability to establish positive relationships (or to recover those that are broken or have degenerated into mutual accusations) are the main instrument to contain disputes. That's why since 2005 each health agencies has provided a consistent educational activity for mediators of the conflict: through mediation and listening techniques, it could create space and time proper to meet the parties. In reference to extra-judicial conciliation, it should be noted that in recent years various health agencies have enhanced the commitment in the areas of legal and insurance, establishing a closer relationship with the managers of insurance companies, achieving better results in significantly improving the resolution of claims. To improve the management of litigation, then, it is proceeding with the analysis of the experience and the start up of organizational activities to respond to the function of mediation: in various health agencies it has been activated experimentally a mediation point or monitoring activities of conciliation and specific agreements with insurance companies for the joint management of claims. The idea is to create guidelines for a stable conciliation procedure, a project of training in health bodies for the introduction of conciliation; an assessment of the impact of new model for managing the litigation and the possibility to transfer project results to all agencies in the regional health system.

5. Some final conclusion

From what has been submitted, it is evident in the preparatory phase for the final implementation of Ld. n. 28 that who already has experience in mediation is at an advantage and can manage the new process more efficiently. You may well ask, however, if the mediation aimed at reconciliation will be able to respond to the demand of greater justice and be a good investment to help overcome the slugghisness of the Italian system of justice. An almost chronic disease for Italy, which, as noted, has been under observation from the Council of Europe for some time for its inability to ensure a reasonable duration of trials. In the *Doing Business Report* 2010 it is clearly shown that the slow processes constitutes one of the major impediments to the productive development of Italy since it generates uncertainty in trade and deters foreign investors. We must not forget, however, that the crisis in the justice system had already emerged from the pages of *The defects of the law*, published by L.A. Muratori in 1742: there are ancient and strong roots related to the confused mass of laws, to the lack of clarity of its texts, to the multiplicity of interpretations by the courts and to the litigation often fueld in a futile way. One can not therefore be too demanding in respect of an instrument of conciliation, it can not be the panacea of evil that plagues the judicial process. With regard to the resolution of conflicts, the effectiveness of the ADR methods in other countries shows that the success of the

mediation and the conciliation will be all the greater if there is a general stronger belief in the goodness of these instruments, a direct and indirect involvement of the institutions and serious intention of the parties to help resolve the dispute.

Critics of alternative justice argue that the ADR is actually an obstacle to justice because only in very few cases does it prevent the start of the trial, the only way of ensuring a legitimate satisfaction of the opposing parties. However, the ways of conciliation are decidedly less expensive than legal proceedings, the former having moreover the aim of prevention rather than a definitive contrast of the parties; the latter a therapeutic action against a disease which has already arisen.

Surely the conciliation must be seen as a response to current demands of justice and the increase of conciliation in the different sectors is perhaps a demonstration of how users will require a new way of asserting their rights. Since not all the conciliation models are the same nor all satisfactory (you can have a satisfactory conciliation if you can find a good balance between the parties and an appropriate response in terms of quality, including with regard to timing and methods used to provide it), it will be extremely interesting in a few years to evaluate the effects of this new model also in the health sector.

Notes

1. See details on the spread of mediation in De Angelis, M.: *La conciliazione in materia di comunicazioni*. Macerata, in *CORECOM nuove funzioni e ruolo istituzionale*, in press.
2. We agree with those who affirm that the acronym ADR should be meant for *Appropriate dispute resolution* (in Alternative Conflict Resolution Methods, Zeno Şuştac and Claudiu Ignat, Bucarest, 2008, passim).
3. The "model" was developed in 2002 by the *United Nations Commission on International Trade Law* (Uncitral): http://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/03-90953_ Ebook.pdf
4. This Green paper is related to alternative ways of dispute settlement in civil and commercial matters: http://eur-lex.europa.eu/LexUriServ/ site/en/ com/2002/com2002_0196en 01.pdf
5. http://eur-lex.europa.eu/LexUriServ/ LexUriServ.do?uri=OJ:L:2008:136:00 03:0008:EN:PDF
6. Orlandi, C. G.: *La conciliazione consensuale extragiudiziale: il quadro normativo internazionale, comunitario e nazionale*. in «Le Istituzioni del federalismo», n. 6, 2008, p. 754.
7. Dissemination of conciliation practices has taken place mainly in the civil and commercial fields, with a definite imbalance in relation to the administrative sphere: perhaps because in the relationship between public administration and citizens there is already a series of instruments designed to filter legal action. The use of such instruments, however, has not and does not produce the desired effect (ombudsman, citizens' charter, etc.) and therefore it might be assumed that soon the application of ADR procedures will invest public administrations with more strength.
8. This is a phenomenon strongly associated with the increase of litigation against doctors. These are no longer free in diagnostic and therapeutic choices but are increasingly influenced by the need to avoid behaviors that may place them at risk of judicial complaints.
9. Sentence 14 may 2010 n. 178
10. See http://www.ordinemediciroma.it/ OMWeb/Files/Documenti/accordia.ht m#SchedaTecnica