**Justice without Lawyers?**

**Insights from Italian Mediation**

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**Abstract:** This paper examines the influence of advocates’ participation on mediation outcome in Italy. Based on the data from the Italian Chambers of Commerce during the period 2011-2017, we define whether advocates’ involvement increases for the parties to the mediation the probability to enter into mediation agreement. We are interested in Italian mediation because of its mandatory character for selected categories of cases and the mandatory involvement of the professional lawyer (advocate) into these cases.

The goal of this study is to estimate empirically the impact of advocates’ participation on the mediation outcome in Italy. Thus, the analysis will focus on the evaluation of explanatory variables in terms of the probability for the parties to come to the agreement and close the dispute. Findings supply evidence on the puzzling role of advocates in mediation. It demonstrates that in the case of attorneys’ presence, the outcome of mediation mainly depends on their incentivess within the process of dispute resolution. Beyond the scholarly interest, such results have also straightforward policy implications.

The first thing we do, let's kill all the lawyers.” (*Henry VI, Part 2*, Act IV, Scene 2; Line 73)

1. ***Introduction***

The sentence pronounced by Dick the Butcher, one of the characters in the Shakespeare’s Henry VI, is of course an outrageous proposal. Yet it shows that at least since Shakespeare’s time, there is always been an ambiguous sentiment towards the role of lawyers. This ambiguity still persists in modern times further conveyed by media and movies that sometimes depict lawyers as sort of heroes fundamental to protecting the right of the weakest, and sometimes provide a sort of a narrow-minded individual subject a caricatural representation well represented by the iconography of lawyers given in the series “Les gens de la justice” by Honoré Daumier, a famous French XIXth century painter. Over the years a number of surveys have been conducted trying to understand the perception of lawyers by society and perhaps to identify elements for increasing their popularity.

This paper is not directed toward this direction but simply tries to answer the question of whether the presence of lawyers is always useful or whether sometimes the presence in a specific legal process can be useful or counterproductive. In order to test the hypothesis, the paper conducts an empirical investigation on mediation, a special form of dispute resolution, and more precisely test what is the impact of lawyers on it. The data have been collected ….

The answer is..

This paper does not question the usefulness of the lawyer in society, but following an established tradition in economics and one that has studied the behavior of politicians and even judges, it seeks to explore in a specific case, that of mediation, what the lawyer's contribution is.

1. Lawyers

Lawyer’s job exists almost since the inception of more structured societies. It emerged somehow spontaneously as a free activity in many places including ancient Greece and the ancient Roman empire to support weak parties in dispute and it then became soon a profession as far as individuals were unable to plea their cases in court and systematically needed more skilled people. In the beginning, these people were trained mostly in rhetoric, but very soon they specialized in law becoming then *iuris consulti*. They also started to demand a fee in exchange for their service. This path can be found in many societies to the point that the figure of the lawyer is an institution present in all the structured legal systems. They are a reguar component of enforcing instituions.

However, if lawyers seem to be fundamental in every legal system, their activity has always been regulated and one of the key points concerns their role, their relationship with the client, and their utility in law enforcement[[1]](#footnote-1). Increasingly a stream of literature is questioning whether an attorney’s advice is always useful or in specific settings it would be better to let consumers free of handling their legal matters pro se (Rigertas, 2014). We are entering this debate by studying the impact of role in mediation and trying to answer the question whether they are useful in the procedure. This research does not question the important role of lawyers in society. It simply applies the categories of law and economics by testing in a very specific procedure whether the attorney can be useful or whether its skills would probably better serve other domains.

Metaphorically and without any bloody implication as rather mentioned by Shakespeare, this paper is devoted to providing a partial answer to the question about to the impact of lawyers in the case of mediation.

More precisely the research starts from Italian data on mediation for assessing empirically whether the role of the lawyer benefits the efficiency of the system. Specifically, if the influence of lawyers’ participation on mediation outcomes in Italy. Based on the data from the Italian Chambers of Commerce during the period 2011-2017, we define whether lawyers’ involvement increases for the parties to the mediation and the probability to enter into a mediation agreement.

The goal of this study is to estimate empirically the impact of advocates’ participation on the mediation outcome in Italy. Thus, the analysis will focus on the evaluation of explanatory variables in terms of the probability for the parties to come to an agreement and close the dispute. For this paper, we will consider separately the advocates’ participation on behalf of the plaintiff and the defendant. In addition, attention will be paid to a range of variables characterizing the considered cases within the Chambers of Commerce. The probit and logit models will be utilized in order to study the relationship between the mediation outcome and the above-mentioned factors. The empirical study is done based on the original dataset.

This paper proceeds as follows. The next section deals with a puzzle of mediation and advocates. It gives an overview of the mediation legislation in the European countries, in particular with attention to the requirements of the advocates’ participation in the procedure. Also, the overview of the Italian rules will be provided. Section 3 provides the details of the data used. Then it proceeds in section 4 by presenting the methodology and the empirical approach. Section 5 goes on to discuss the findings of the analysis. Conclusions follow in section 6.

1. [John A. Crook](https://en.wikipedia.org/wiki/John_Crook_%28classicist%29), *Law and Life of Ancient Rome* (Ithaca: Cornell University Press, 1967), 90.
2. Robert J. Bonner, *Lawyers and Litigants in Ancient Athens: The Genesis of the Legal Profession* (New York: Benjamin Blom, 1927), 202.
3. ***Mediation and Advocates: why to analyse***
	1. ***Mediation and Laywers***

Mediation is one of the types of Alternative Dispute Resolution (the “ADR”). It is different from litigation and the other forms of private adjudication such as arbitration since it tries to foster negotiation facilitated by a neutral third party, i.e., the mediator. Its unique feature is thus the non-confrontation character. The parties do not engage in discordance but rather in a process of rapprochement, and they themselves choose the means of resolving the dispute and play an active role in this process. They are responsible for finding the solution best suited to them. This consensual approach increases the likelihood that the parties are able to maintain their commercial or other relations. Specifically, this non-confrontation character together with the direct participation of the parties in the decision-taking is the main feature distinguishing mediation from the judiciary process (Brown & Ayres, 1994). Mediation is generally a short-term, structured, task-oriented, and “hands-on” process. The mediator facilitates the resolution of the parties’ disputes by supervising the exchange of information and the bargaining process. The mediator assists with finding a common ground and dealing with unrealistic expectations of the parties. So, in a sense, she eliminates as much as possible wrong expectations of the parties due to misperceptions and asymmetric information. According to some scholar the mediator serves not as a “reality check” to the parties but also by having as a goal the settlement, she can perform the role of private counselling the two parties, back and forth thus favouring a sort of tâtonnement until parties reach an equilibrium (Doyle & Rogers, 1981.

Within the mediation process, the parties should understand better each other’s business needs and look for a win-win solution that would uphold their respective interests. However, the result of the mediation always remains in the parties’ hands.

[United Nations Commission on International Trade Law (](https://uncitral.un.org/en)UNCITRAL) defines mediation as “…a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute”[[2]](#footnote-2). It worth noting that the expression “amicable settlement” places mediation in a very different position from other forms of dispute resolution. Where litigation or arbitration even when they push the parties to a settlement rely on the indirect incentives produced by the potential costs of the litigious alternative, so that in a sense the settlement itself is a sort of side effect, mediation seeks to directly identify and to eliminate the obstacles that hinder agreement between the parties. A number of scholars talk about overcoming the “psychological barriers” that hinders conflict resolutions (Mnookin, 1993) while others extended this reasoning to the case the picture can be further complicated by the strategic interaction (Brown & Ayres, 1994).

The idiosyncratic characteristics of mediation makes it not only alternative to litigation (and to arbitration) but very different in nature, so that one might legitimately wonder whether an attorney is equally needed for the parties and what it might be the beneficial role she might have.

Since the purpose of mediation is to find an agreement between the parties who peacefully identify a mutually convenient outcome, the presence of a lawyer may even interfere with this almost psychological internal process of identifying the appropriate non-litigious solution.

Interestingly in certain jurisdiction, including Italy not only mediation is mandatory selected categories of cases and but there is also the mandatory involvement of a lawyer.

The lawyer’s role in general is to guarantee the confrontation character of the process of dispute resolution and ensuring that the party has listened and his/her interests are protected. However, as a general rule the presence of a layer put the parties on a different foot, so that they do not directly participate to the dispute resolution, but in a sense, they leave the command to the lawyer and assume more the position of a spectator. Of course, they are informed about what is going one and they can take decisions concerning fundamental step of the trial such a accepting a settlement and so on, but the lawyer is somehow the “interpreter” of the procedure.

This is what economics define a principal-agent relationship in which the lawyer possess a higher authority and she may have different incentives from the client. In literature this kind of situations implies a situation of asymmetric information that can lead to decision not in the interest of the clients. The outcome can be simply of selecting a solution sub-optimal for the principal, i.e. the clients, but optimal for the agent, i.e. the lawyer. In other case the principal can be even may be directed towards activities that are in the agent's main interest. This is the case of the so-called supplier-induced demand (SID) in which the customer lacking of information is urged to make a choice that would not be done should the asymmetric information not attain. The SID has been extensively investigated in healthcare for the doctor-patient relationship and it affects the demand of the principal. Essentially SID refers to the “physician's alleged ability to shift patients' demand for medical care at a given price, that is, to convince patients to increase their use of medical care without lowering the price charged." While of course this situation occurs only when the economic incentives arec not taken over by professional ethics, the framework may apply euqaly outside medical professions, including the relationship lawyer-clients that in many respects resemble the doctor-patients relationship. A number of paper have for instance attributed to SID the substantial growth of litigation in some countries while in the meanwhile other commentators have raised the etichal issue and unbalances of the legal profession (Rigertas, 2014; Rodhe & Ricca, 2014).

For instance

LaBelle, R.; Stoddart, G.; Rice, T. (1994). "A re-examination of the meaning and importance of supplier-induced demand". *Journal of Health Economics*. **13** (3): 347–368. [doi](https://en.wikipedia.org/wiki/Doi_%28identifier%29):[10.1016/0167-6296(94)90036-1](https://doi.org/10.1016/0167-6296%2894%2990036-1). [PMID](https://en.wikipedia.org/wiki/PMID_%28identifier%29) [10138860](https://pubmed.ncbi.nlm.nih.gov/10138860).

It is important to understand the nature of mediation and advocates’ role in order to define whether the advocate’s involvement is favourable for the mediation process.

 International Chamber of Commerce defines mediation as “a flexible and consensual technique in which a neutral facility helps the parties reach a negotiated settlement of their dispute. The parties have control over the decision to settle and the terms of any agreement. Settlements are contractually binding and widely enforceable”[[3]](#footnote-3). Very similar mediation is understood by the European Union (the “EU”). Mediation is defined as “Structured and confidential process in which an impartial third person, known as a mediator, assists the parties by facilitating the communication between them for the purpose of resolving issues in dispute[[4]](#footnote-4). This or similar definition is suggested to be used by the EU Member States while making national laws on mediation[[5]](#footnote-5).

All the above definitions provide for the same features, *i.e.*, mediation is the process that should preserve the amicable settlement of the dispute between parties; the process should be facilitated by the neutral third party. The main purpose of the mediation is to find a win-win solution (if it exists) that would satisfy all the parties to the dispute. Such solution could satisfy only partially the interests of each party, so that they would have a chance to have better result while going for litigation, but mediation result should not have a loser and as such should not satisfy interests of one party only. In order to have the discussed positive outcome the parties should have full control over the process and try to find a win-win solution, *i.e.*, to conclude a mediation agreement; therefore, it is necessary that the parties participate personally at the process, so that they have immediate influence on the procedure.

In order to define whether an advocate could facilitate mediation, we need to understand what the advocate is and what his /her role is. According to the dictionary[[6]](#footnote-6), an advocate is a person who speaks or writes in support or defence of a person, cause, etc.; a person who pleads for or in behalf of another; a person who pleads the cause of another in a court of law.

The role of an advocate is to offer independent support to those who feel they are not being heard and to ensure they are taken seriously and that their rights are respected. It is also to assist people to access and understand appropriate information and services. Advocates serve their clients; they serve to legitimate power and to produce legitimacy. Advocates are trained to be a part of the adjudication process. Even non-lawyers might provide some advice, including about legal compliance or drafting, but only advocates are specifically trained to litigate and they do it professionally; indeed, it is in the nature of adjudication that only advocates can litigate (Markovits, 2014). Thus, advocates are trained to litigate and they do it, advocates serve their clients to ensure that they are heard and their rights are protected.

Advocates are generally not interested in partial satisfaction of their clients’ interested if there is a possibility to have full satisfaction. And as we noted above full satisfaction of one party’s interests inevitably leads to a win-lose solution that is not a case for mediation.

Based on the above, we should conclude that the mission of advocate looks like not compatible with the nature of mediation. Advocates are not interested in finding a win-win solution in case there is a possibility to ensure a better win solution for the client. Therefore, it is intuitive that the legislation should not encourage the involvement of advocates into the mediation process, at least should not provide for the mandatory advocate participation into mediation.

In 2014, Directorate-General for Internal Policies has prepared the Report, which solicited the views of up to 816 experts from all over Europe, about using the Mediation Directive and the ways of its promotion in the Member States. Among measures to be implemented the Report considered “making legal assistance mandatory in mediations”. With an average of 2.9 points, Member States’ experts do not think legal assistance should be made mandatory in mediations. Malta, alone, viewed the measure as having a Positive Impact while fifteen countries (54%) viewed the measure as having a negative impact. It appears that the EU Member States do not support mandatory legal assistance for mediation (De Palo et al., 2014a). Italy’s answer coincides with the average (2.9 points)[[7]](#footnote-7).

* 1. ***Mediation in the European Union Countries***

In the frame of the Council of Europe and the EU instruments the legislators of the European countries have decided to reinvent, alongside the traditional justice system, ADR instruments allowing for solutions that are more rapid, more simple and less costly, but also more human and more durable as they are better adapted to particular situations and better equipped to restore or transform social relationships. The European Union, *inter alia*, concentrated on promoting the idea of mediation as a way of “maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured”[[8]](#footnote-8). ADR methods have been a topic of discourse in many nations for over thirty years, at least in the field of civil and commercial disputes. In the EU, the increasing focus on mediation was a consequence of years of mounting concern about court costs and congestion. During this period, the use of alternatives to litigating civil and commercial disputes was almost entirely voluntary, and subject only to limited legislative encouragement throughout the Member States. Consequently, very few litigants used mediation to resolve these disputes. As such, use of ADR, including mediation, is encouraged in the European Union countries in order to avoid court-based litigation and in such a way to save time and money, thus enabling citizens to secure their legal rights in an efficient way[[9]](#footnote-9). The Mediation Directive, which concerns mediation in civil and commercial matters, applies in all EU countries[[10]](#footnote-10). Despite the Directive expressly states that it applies only to cross-border disputes, it encourages the use mediation throughout the Member States and provides five substantive rules that give direction to the development of mediation in the Member States. These are: (1) it obliges each Member State to encourage the training of mediators and to ensure high quality of mediation; (2) it gives every judge the right to invite the parties to a dispute to try mediation first if she/he considers it appropriate given the circumstances of the case; (3) it provides that agreements resulting from mediation can be rendered enforceable if both parties so request. This can be achieved, for example, by way of approval by a court or certification by a public notary; (4) it ensures that mediation takes place in an atmosphere of confidentiality. It provides that the mediator cannot be obliged to give evidence in court about what took place during mediation in a future dispute between the parties to that mediation; (5) it guarantees that the parties will not lose their possibility to go to court as a result of the time spent in mediation: the time limits for bringing an action before the court are suspended during mediation[[11]](#footnote-11).

Mediation in the Member States is based on its national legislation. Below we suggest the table containing the information about the nature of the mediation (voluntary or mandatory/compulsory character) in the European countries and about the obligations of the lawyers/advocates to inform parties to the dispute about the possibility to resolve the dispute via mediation, without referring to the court and to assist during the mediation process.

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| --- | --- | --- | --- |
| ***Country*** | ***Nature*** | ***Obligation to inform about mediation*** | ***Participation/assistance of advocate*** |
| Austria[[12]](#footnote-12) | Mostly voluntary, but some cases are mandatory | There is no general obligation for lawyers to advise about mediation, apart from the fields where the use of ADR is compulsory. Lawyers should generally be aware of mediation | Possible, but not mandatory |
| Belgium[[13]](#footnote-13) | Voluntary | There is no duty for a lawyer to inform about mediation | Not mandatory, but allowed |
| Bulgaria[[14]](#footnote-14) | Voluntary, mandatory for divorce cases only | There is no duty for a lawyer to inform about mediation | Not mandatory, but possible  |
| Croatia[[15]](#footnote-15) | Voluntary, aside from the mandates concerning certain labour disputes | There is no duty for a lawyer to inform about mediation | Not mandatory, but allowed |
| Cyprus[[16]](#footnote-16) | Voluntary | Lawyers should inform their clients about the possibility of mediation | There is no express reference to duties of legal representatives and other professional participants |
| Czech Republic[[17]](#footnote-17) | Voluntary | There is no duty for a lawyer to inform about mediation | Not mandatory, but allowed |
| Denmark[[18]](#footnote-18) | Completely voluntary | There is no duty for a lawyer to inform about mediation | There are no specific provisions regarding duties of non-mediator participants in mediation |
| Estonia[[19]](#footnote-19) | Mediation is generally voluntary. However, Article 11 of the Conciliation Act directs that mediation may be a mandatory precondition to court proceedings when such a precondition is specifically stated in the law | It is highly recommended that lawyers, notaries and court personnel promote mediation proceedings, but they are not obliged to inform parties about mediation | Estonian law does not establish any duties for legal representatives involved in mediation proceedings |
| Finland[[20]](#footnote-20) | Voluntary | Legal counsels are required to assess whether the dispute could be settled or resolved by use of ADR by considering a range of aspects, from economics to the emotional impact on the client. In the preliminary hearing at the start of judicial proceedings, the judge has a duty to explore whether there is a possibility that the parties could settle their dispute | Outside counsel may be present during mediation proceedings, but it is not mandatory |
| France[[21]](#footnote-21) | Voluntary, except some family cases | Lawyers are not required to inform their clients of mediation before going to court | Outside counsel may be present during mediation proceedings, but it is not mandatory  |
| Germany[[22]](#footnote-22) | Completely voluntaryHowever, there is a piece of legislation that allows federal states to establish compulsory conciliation procedures as a pre-trial requirement for small claims cases (up to €750), defamation claims, neighbour disputes and certain claims arising from a violation of the General Equal Treatment Law | Lawyers should advise the most favourable way to resolve the dispute, so they should inform about ADR if this could favour the parties | Not mandatory, but allowed |
| Greece[[23]](#footnote-23) | Completely voluntary | There is a duty to inform about mediation | According to the Mediation Act, parties **must be assisted** by lawyers during the mediation process |
| Hungary[[24]](#footnote-24) | Voluntary, Court referred in administrative court proceedings, mandatory in actions for the termination of parental custody rights | There is no duty to inform about mediation | Not mandatory, but allowed |
| Ireland[[25]](#footnote-25) | Voluntary | There is a duty to inform about mediation | Outside counsel presence and/or representation during mediation sessions is allowed |
| Latvia[[26]](#footnote-26) | Voluntary | There is no duty to inform about mediation | Outside counsel presence and/or representation during mediation sessions is allowed |
| Lithuania[[27]](#footnote-27) | Voluntary | There is no duty to inform about mediation | The Mediation Law establishes no specific duties for legal representatives and other professional mediation participants |
| Luxembourg[[28]](#footnote-28)  | Entirely voluntary, apart from mandatory informational meeting on mediation for family disputes | Under the national rules for members of the bar, lawyers must consider all possibilities for resolving a dispute when advising clients, and they should, if applicable, provide information about using mediation | Outside counsel presence and/or representation during mediation sessions is allowed |
| Malta[[29]](#footnote-29) | Voluntary | There is no duty to inform about mediation | Article 25 of the Act states that a party may “be assisted by an advocate, legal procurator or any individual designated by him before or during the mediation” |
| The Netherlands[[30]](#footnote-30) | Voluntary | There is a duty to inform about mediation | Outside counsel may be present during mediation proceedings, but it is not mandatory  |
| Poland[[31]](#footnote-31) | Both contractual and court-referred mediation have a voluntary character | There is no general obligation, although the counsels (advocates) should advise about mediation in case it suits best to the case  | Allowed, but not mandatory |
| Portugal[[32]](#footnote-32) | Voluntary | Lawyers have a duty to cooperate, always to the benefit of their respective clients, in order to avoid unnecessary claims; they must advise their clients towards a just and equitable settlement | Allowed, but not required |
| Romania[[33]](#footnote-33) | Voluntary | Article 6 of the Mediation Law stipulates that “the judicial and arbitral courts, as well as any other authorities having jurisdictional duties should inform the parties of the possibility and benefits of using the mediation procedure and should advise them to use this method in order to settle the dispute between them” | Allowed, but not required |
| Slovenia[[34]](#footnote-34) | Voluntary | The Judicial ADR Act requires the court, not lawyers necessarily, to provide the option of alternative dispute settlement to the parties in each case, unless the judge deems this to be inappropriate under the circumstances | Allowed, but not required |
| Slovakia[[35]](#footnote-35) | Voluntary | There is no duty to inform about mediation | Allowed, but not required |
| Spain[[36]](#footnote-36) | Voluntary | There is no duty to inform about mediation | Allowed, but not required |
| Sweden[[37]](#footnote-37) | Voluntary | There is no duty to inform about mediation | Allowed, but not required |
| United Kingdom[[38]](#footnote-38) | Voluntary | Solicitors are required, under the Civil Procedure Act of 1997, to inform clients about ADR early in the proceedings | Allowed, but not required |

As we can see, the only country that provides for mandatory participation of an advocate in the mediation process (apart from Italy, which will be discussed further) is Greece. However, many countries have adopted the rule in their legislation that requires the lawyers to inform their clients about the possibility to use mediation as an alternative to litigation.

* 1. ***Legislation background in Italy***[[39]](#footnote-39)

The first attempt to regulate mediation in Italy was mentioned in the Italian Civil Code in 1865. Further, mediation was used in the context of public safety provisions in 1931. Then in 1940, court mediation was added into the Code of Civil Procedure. During the 1960s, mediation was used in labour disputes, and in 1973, mediation and conciliation were formally established in the Code of Civil Procedure (Law No. 533). In December 1993, the chambers of commerce established mediation and arbitration commissions for the purpose of resolving disputes among companies and between companies and their clients. And in 2003, Legislative Decree 5/2003 initiated mediation for dispute resolution in certain financial and in all corporate matters.

However, mediation was not widely used in Italy until the Italian Parliament issued Law Decree No. 69 in June 2009, which recognised mediation as an option to be used for dispute resolution for civil and commercial disputes and also granted the Italian government the power to adopt a legislative decree on mediation, which resulted in the enactment of Legislative Decree No. 28 in 2010 (effective on 21 March 2011) and implemented mandatory mediation. Based on Decree No.28/2010, there was an obligation to refer to mediation before going to the court for certain civil cases. It should be understood that mandatory mediation was introduced in order to increase the efficient administration of civil justice by referring to the judicial process only if no other dispute resolution method can be pursued (Gabellini, 2010). The goal was to increase the instruments and methods available to solve disputes “in support” of the judicial system, thus, mediation was used in addition to — not as an alternative for — the judicial process (Ibid). However, the above obligation stated in Article 5.1 of Decree No. 28/2010 was challenged before the Constitutional Court of Italy, as it is violating Article 24 of the Italian Constitution[[40]](#footnote-40). The Constitutional Court held that the aforesaid provision on mandatory mediation is not in violation of the Italian Constitution or the European Directive on mediation.

However, the mandatory mediation was barred as it violated Article 77 of the Constitution[[41]](#footnote-41). According to the Court[[42]](#footnote-42), the law was enacted in an “excess of legislative power” as the requirement for preliminary mediation was contained in the Governmental Act (Legislative Decree 28/2010), but that issue was not indicated by the Parliamentary Act (Law 69/2009), which delegated power to the executive branch to issue detailed rules on mediation.

After the mentioned Decision of the Constitutional Court, the original mediation rules were rewritten, opting again for mandatory mediation with several modifications, *inter alia*, litigants are now allowed to withdraw from the mediation process at the initial stage for a nominal cost if they believe that settlement is unlikely; several incentives and sanctions are added; the parties should participate in the mediation assisted with their advocates (Article 5.1-bis and Article 8). On 21 June 2013, Law Decree No 69 was approved by the Italian Government, and these new mediation rules were converted into law by the Parliament on 9 August 2013 (effective on 20 August 2013). Originally, the mandatory mediation rules were reintroduced for four years, ending in September 2017. In June 2017, the provision about mandatory mediation turned to be permanent[[43]](#footnote-43).

According to Article 5 of Decree No. 28/2010, the following cases are subject to mandatory mediation: tenancy, land rights, partition of property, hereditary succession, leases, loans, rental companies, medical and sanitary malpractice, defamation by the press of other means of advertising, contracts, insurance and banking and finance. The new legislation also introduces new rules for mediation, as well as introducing a non-mandatory procedure, which applies to any civil and commercial litigation regarding matters other than those listed above.

Apart from the mandatory participation of the advocate in the mediation procedure, there are other advocate’s obligations in regards to mediation. A lawyer must clearly inform his/her clients, in writing, about the option of mediation as an alternative to litigation. He/she must also provide information about tax breaks available to parties who participate in mediation. The client may void the attorney-client contract if the lawyer fails to provide this information.

It should be noted that despite the mandatory participation of the advocate is provided only to mandatory mediation, those who opted for voluntary mediation are also entitled to have the presence of an advocate, but not mandatory[[44]](#footnote-44).

Thus, Italy is one of two EU countries that contain provision about mandatory assistance of advocate within the mediation process. Such a provision was introduced to the legislation upon lawyers’ pressure after Decree 28/2010 was boycotted by Italian Bar Association (Matteucci, 2015). As a result, Italian mediation practice could be divided into several blocks that include the following periods (1) mediation was mandatory, but advocates were not obliged to participate, (2) mediation was voluntary only, no requirement about advocates’ participation, (3) return of mandatory mediation and introduction of mandatory assistance of advocates.

Coming back to the beginning of this section and referring to the nature of mediation and role of advocate, we would conclude that advocates’ participation should not favour mediation, but *vice versa*, too different are their goals. In order to confirm this hypothesis, this research is done based on the data provided by several mediation organisations.

1. ***Data Description***

This analysis is done based on the data provided by four Chambers of Commerce of Italy (of cities of Crotone[[45]](#footnote-45), Pisa[[46]](#footnote-46), Turin[[47]](#footnote-47), and Verona[[48]](#footnote-48)). The dataset covers the period of 2011 – 2017.

Appendix 1 provides the summary statistics for 5,305 cases. However, we only analyse 3,526 cases that have some outcome, positive – in case the parties come into agreement as the result of mediation and negative – in case mediation does not lead to an agreement between parties. The remaining 1,779 cases were skipped as there was no mediation procedure in the cases; they were “ignored” by mediators[[49]](#footnote-49). The data demonstrates that the majority of cases under analysis have negative outcome (about 80% of cases).

Our main interest is motivated by the puzzle described in Section 2. This paper would like to figure out whether the participation of advocate on behalf of the plaintiff and/or the defendant leads to the positive outcome of mediation. The data shows that plaintiffs were represented by advocates in 3,559 cases while only 1,336 where defendants was represented by the advocates–that could be partially explained by the requirement of the Mediation Law of Italy (Article 5.1-bis). In case of multiple plaintiffs/ defendants, if at least one of them is represented by the advocate, our “Advocate” variable equals 1; thus, the variable equals 0 only in case no one has an advocate.

Figure 2.1. plots data on Advocates’ presence in mediation by years. It includes separately data on advocates’ presence for plaintiffs, defendants, as well as cases where both parties were assisted by advocates.



Figure 2.1. Advocates’ Presence in Mediation

For the analysis, the following characteristics of the cases are also used: the price of the case (requested by the plaintiff, not adjudicated upon the procedure), nature of the procedure (mandatory or voluntary), duration of the procedure (in days), number of plaintiffs and defendants involved into the case. In addition, we control the results for the moment when the mediation procedure started. The variable “Reform” that indicates whether the mediation started before or after 20 August 2013 when the provision on the mandatory participation of the advocate in cases of mandatory mediation was added.

We do not analyse the merit of the cases because of the peculiarity of the dataset provided. We have description of the case merit only for mandatory mediation, and the voluntary mediation (about 15% of cases) does not contain the description of the case, but it is just included into the group “other”. Therefore, case merit is partially covered by “nature of case” variable.

1. ***Empirical Analysis***
	1. ***Methodology***

The dependent variable (the outcome of mediation) is a categorical variable, which can take on the meanings: 1 (positive) in case where there is a mediation agreement between the parties or 0 (negative) if the mediation does not end with an agreement. The main independent variables of interest are also categorical variable. Therefore, we need to take a decision on which method applicable to categorical variables fits better our dataset. Based on the model interference, which will be discussed more in Robustness section, we see that both logit and probit full models could be used for our data analysis (Agresti, 2007). As known, the difference between logit and probit models lies in the assumption about the distribution of the errors (Hanck et al, 2019). For purposes of this research, it is decided to adopt both methodologies and to verify whether the result is stable.

The probit model that we wish to ﬁt is:

Pr (Y = 1│X1…X10) = Φ (β0 + β1AvvP + β2AvvD+ β3PoC + [1]

β4Ref + β5Dur + β6Nat + β7NumP + β8NumD + β9Yearfe + β10Provincefe)

where Y is the case outcome, Φ is the cumulative normal distribution. We also have a vector of regressors X, and year and province fixed effects. The parameters β are estimated by maximum likelihood.

As for the logit model,

Pr(Y = 1│ X1…X10) = F(β0 + β1AvvP + β2AvvD+ β3PoC + β4Ref + [2]

β5Dur + β6Nat + β7NumP + β8NumD + β9Yearfe + β10Provincefe)

where Y is the case outcome, and F(z) = ez/(1 + ez) is the cumulative logistic distribution. X is the vector of case characteristics. Year and province fixed effects are added.

Among the variables used in this analysis, Price of the case (PoC), Duration and Number of parties are continuous variables while the others are categorical variables. We control for Year and Province (time and entity fixed effects) that are used as interaction. The combined fixed effect model allows to eliminate bias from unobservables that change over time (years) but are constant over provinces, as well as it controls for factors that differ across provinces but are constant over time (Hanck et al, 2019).

* 1. ***Results***

Our results are shown in Table 2.2, which includes the results for both logit and probit models. Referring to Equations 1 and 2 above, our interest is the probability to have a positive outcome of mediation in case of presence of advocate representing the plaintiff and/or defendant. Column 1 of Table 2.2 demonstrates the results of probit regression, and Column 2 of the Table contains the Logit regression results. Row 1 (AvvP) of Table 2.2 reveals the negative effect of the presence of plaintiff’s advocates on the probability to have an agreement between parties of mediation. The result is statistically significant at 1% level. Row 2 (AvvD) of Table 2.2 provides for the effect of having an advocate on behalf of the defendant. And here the result produced by both models is positive, which means that in contrast to the advocates representing the plaintiffs, the presence of advocates representing defendants force the positive outcome of mediation, *i.e.*, making the mediation agreement. This result is significant at 5% level.

For robustness purposes we also run logit regression[[50]](#footnote-50) for Turin Chamber of Commerce. The obtained results are generally the same as for the full population of cases of four chambers (positive influence for defendants’ advocates and negative influence for plaintiffs’ advocates). Both results are statistically significant for Turin data at 1% level.

* 1. ***Robustness***

The data provided by different Chambers of Commerce is not identical in the meaning of number of cases and their distribution within the periods, for instance, not all the datasets contain information for all the years within the period under research (2011 – 2017), also some information is missing as each dataset was completed by the chamber representatives based on their specific practice. Therefore, the MCAR test was run in order to test whether there is a relationship between the missing data and or any values, observed or missing (Greene, 2012). In such a way we confirm that some data is missing in random and it does not influence our results.

This research deals with a binary outcome and as noted the binary logit and probit regression models are suitable models to fit for this type of data (Agresti, 2007). In order to be sure that the chosen model suits the data, we proceeded with the fitting test and compared the Akaike's information criterion / Bayesian Information Criterion of Different models (Williams R, 2018). Based on the tests results, we defined that both logit and probit models are suitable. Table 2.1 provides for the detailed analysis of the suggested models and their comparison that allowed taking a decision. Both models produced similar statistically significant results.

In addition, the ROC curves were drawn for the models. The area under the curves of approximately 0.8 indicates acceptable discrimination for the models (Powers, 2011; Tilford et al., 1995)[[51]](#footnote-51).

As long as the data was provided by the Chambers of Commerce of four provinces, cases from the same province tend to be correlated. In addition, corresponding information on the chamber of commerce where the mediation was done could be the same for cases from the same chambers. Therefore, in estimating the standard error of the parameter estimates, the usual maximum likelihood method cannot be used, as it assumes the observations to be independent (Jayatillake at al, 2001). Therefore, an adjustment is required for this province effect in estimating the standard errors of the parameter estimates. The standard errors are adjusted based on the Huber formula (Freedman David A., 2006).

In addition, as noted above in para 4.1. the year and entity fixed model is used to capture possible bias from unobserved factors that could change over time being constant over provinces, as well as it controls for factors that differ across provinces being constant over time. Logically, running logit regression for Torino chamber of commerce in order to control the obtained result, the data is controlled for time fixed effects only.

To summarise, our regressions’ results are statistically significant and provide for one more puzzling result, about the dependence of the influence of the advocate based on the party he/she represents.

1. ***Discussions***

Our empirical results reveal a result that does not give a full confirmation of our hypothesis of what the influence of the advocates should be. Based on the completely different nature of two institutions and taking into account the role of the advocates we have described in detail in Section 2 above, we would expect that the presence of the advocate in the mediation process should have a negative influence on the result of mediation. However, our results demonstrate that the advocates’ influence on mediation outcome is not as straightforward as expected. The influence depends on the party of the conflict that is represented by the advocate.

We have received the empirical confirmation of our feeling as for the advocates representing plaintiffs. At the same time, our results demonstrate that our expectation of the influence of the advocates representing the defendant is not confirmed, *i.e.*, that the advocates’ presence in such a case is favourable.

Our research covered the periods when the presence of advocates was mandatory according to the law and those when this legal provision was invalid. The results remain stable for the whole period that forces us to consider that the results are not depending on the legislation requirement and introduction of the mandatory presence of the advocate within the mediation procedure. We consider that the factor that defines the influence of the advocate within the mediation procedure is its role and nature of the advocate *per se* in combination with the features of the mediation as the procedure and its goals. As according to the law, the advocate must represent the plaintiff in cases of the mandatory mediation, we have a situation of the forced participation of the plaintiff and his/her advocate in the procedure. Thus, the advocate, in this case, serves his/her client and do his/her best to have full satisfaction of the client’s interests. As discussed above, mediation is not a place for full satisfaction of the interests, but rather a place to look for a win-win solution. Therefore, plaintiffs’ advocates, often willing to move to litigation influence negatively on the possibility to have a mediation agreement. Simultaneously, the defendant generally agrees more voluntary for a partial result as the process is not initiated by him/her, and his/her advocate assists to close the conflict with the minimal loss for the client.

Our results demonstrate that the introduction of the mandatory advocates’ participation has not influenced positively on the level of positive outcomes with their participation. Therefore, we consider that such a legislation requirement does not favour mediation development in Italy, but even produces an opposite result as without advocate some plaintiffs maybe could be more “*pro-mediative*”. We believe that these results have straightforward policy implications, especially in Italy, where the requirement about mandatory advocates became permanent recently. The results could be used while considering possible changes to the mediation regulation in Italy.

1. ***Conclusions***

This paper provides evidence on the puzzling role of advocates in mediation. It demonstrates that in the case of advocates’ presence, the outcome of mediation depends mainly on the role and goals of the advocate within the process of dispute resolution. Beyond the scholarly interest, such results have also straightforward policy implications. Italy, that declares its willingness to develop ADR, including mediation, could consider the possibility to leave the parties to the dispute to decide on their own on the necessity to have or not to have an advocate. Of course, we cannot be sure that the parties stop to go to a mediator with the legal counsel as soon as it is not mandatory anymore, but we can expect that as soon as they realise that the advocate is not a must anymore, they are free to make a different decision. Surely, we will be able to assess the influence of the change only after the legislation is changed and effective for a period of time, *i.e.*, the practice of its application is available.

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Appendix 1. Summary statistics

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | e(count) | e (sum\_w) | e(mean) | e(Var) | e(sd) | e(min) | e(max) | e(sum) |
| Outcome  | Outcome | 3,526 | 3,526 | .19654 | .1579568 | .3974378 | 0 | 1 | 693 |
| Plaintiff’s advocate | AvvP | 5,305 | 5,305 | .6708765 | .2208428 | .4699392 | 0 | 1 | 3,559 |
| Defendant’s advocate | AvvD | 5,305 | 5,305 | .2518379 | .1884511 | .4341095 | 0 | 1 | 1,336 |
| Price of the case | PoC | 5,209 | 5,209 | 9.928982 | 3.48566 | 1.866992 | 0 | 17.72753 | 51,720.07 |
| Reform | Ref | 5,305 | 5,305 | .6972667  | .2111256 | .4594841 | 0 | 1 | 3,699 |
| Duration of the mediation | Dur | 5,293 | 5,293 | 55.26998 | 1,948.019 | 44.13637 | 0 | 867 | 292,544 |
| Nature of the procedure | Nat | 5,305 | 5,305 | .1479736 | .1261012 | .3551073 | 0 | 1 | 785 |
| Number of Plaintiffs | NumP | 5,297 | 5,297 | 1.320181 | 2.275108 | 1.508346 | 1 | 73 | 6,993 |
| Number of Defendants | NumD | 5,293 | 5,293 | 1.567542 | 3.081085 | 1.755302 | 0 |  39 | 8,297 |



|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|   |  | Count | Mean | Sd | Min | Max |
| Outcome |  | 3,526 | .19654 | .3974378 | 0 | 1 |
| Plaintiff’s advocate |  | 5,305 | .6708765 | .4699392 | 0 | 1 |
| Defendant’s advocate |  | 5,305 | .2518379 | .4341095 | 0 | 1 |
| Price of the case |  | 5,209 | 9.928982 | 1.866992 | 0 | 17.72753 |
| Reform |  | 5,305 | .6972667 | .4594841 | 0 | 1 |
| Duration of the mediation |  | 5,293 | 55.26998 | 44.13637 | 0 | 867 |
| Nature of the procedure |  | 5,305 | .1479736 | .3551073 | 0 | 1 |
| Number of Plaintiffs |  | 5,297 | 1.320181 | 1.508346 | 1 | 73 |
| Number of Defendants |  | 5,293 | 1.567542 | 1.755302  | 0 | 39 |
| N |  | 5,305 |   |   |   |   |

Table 2.1. Models comparison

Akaike's information criterion and Bayesian information criterion test

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Model | Obs | ll(null) | ll(model)  | df | AIC | BIC |
| Logit | 3,436 | -1663.622 | -1441.048 | 3 | 2888.095  | 2906.521 |
| Probit | 3,436 | -1663.622 | -1439.988 | 3 | 2885.975 | 2904.401 |
| OLS | 3,436 | -1650.519 | -1402.987 | 3 | 2812.174 | 2830.6 |

Fitstat test

|  |  |
| --- | --- |
| Model |  |
| Measures of Fit for Logit of Outcome |  |
| Measures of Fit for Probit of Outcome |  |
| Measures of Fit for Regress (OLS) of Outcome |  |

The model with the smaller BIC is preferred, *i.e*. if BIC1 – BIC2 < 0, model 1 is preferred. If BIC1 – BIC2 > 0, the second model is preferred.

The following guidelines for magnitude of BIC difference are proposed (Raftery, 1995):

|  |  |
| --- | --- |
| Absolute difference | Evidence |
| 0-2 | Weak |
| 2-6 | Positive |
| 6-10 | Strong |
| >10 | Very Strong  |

|  |  |
| --- | --- |
| Receiver/relative operating characteristic curve for Logit  | Receiver/relative operating characteristic curve Probit |
| Figure 2.2. ROC curve Logit  | Figure 2.3. ROC curve Probit |

Table 2.2. Probit and Logit Models

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) | (2) | (3) |
| VARIABLES | Probit | Logit | Logit Torino |
|  |  |  |  |
| AvvP | -0.274\*\*\* | -0.466\*\*\* | -0.574\*\*\* |
|  | (0.0297) | (0.0566) | (0.184) |
| AvvD | 0.604\*\* | 1.139\*\* | 0.950\*\*\* |
|  | (0.287) | (0.519) | (0.157) |
| PoC | -0.0910\*\* | -0.153\* | -0.264\*\*\* |
|  | (0.0425) | (0.0826) | (0.0393) |
| Reform | -0.202 | -0.313 | 0.0255 |
|  | (0.359) | (0.639) | (0.539) |
| Duration | 0.00519\*\*\* | 0.00885\*\*\* | 0.00768\*\*\* |
|  | (0.000897) | (0.00193) | (0.00175) |
| Nature | 0.109 | 0.190 | 0.437\*\* |
|  | (0.0854) | (0.159) | (0.204) |
| NumP | -0.0184\*\*\* | -0.0325\*\* | -0.0507 |
|  | (0.00572) | (0.0139) | (0.0672) |
| NumD | -0.0110 | -0.0157 | -0.0103 |
|  | (0.0415) | (0.0735) | (0.0521) |
|  |  |  |  |
| Province FE | YES | YES | NO |
|  |  |  |  |
| Year FE | YES | YES | YES |
|  |  |  |  |
| Constant | 1.093\*\*\* | 1.871\*\*\* | 0.282 |
|  | (0.319) | (0.598) | (0.398) |
|  |  |  |  |
| Observations | 3,436 | 3,436 | 2,057 |

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

1. For example in the ancient Rome under the emperor Claudius there was a a fee ceiling of 10,000 sesterces (Crook, 1967). [↑](#footnote-ref-1)
2. Article 2 of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation"), adopted 20 December 2018. Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf>. [↑](#footnote-ref-2)
3. <https://iccwbo.org/dispute-resolution-services/mediation/>, visited 25 July 2019. [↑](#footnote-ref-3)
4. CEPEJ, Ad hoc CEPEJ working group entrusted with the harmonisation of the definitions used by CEPEJ, Meeting report of the 4th meeting, January 23-24, 2019, Appendix II: Document CEPEJ(2018)2PROV8. Available at: https://rm.coe.int/rapportreunion-bologne-en-23-24-janvier-2019/1680933333. [↑](#footnote-ref-4)
5. European Handbook for Mediation Lawmaking adopted at the 32th plenary meeting of the CEPEJ Strasbourg, 13 and 14 June 2019. Available at: <https://rm.coe.int/cepej-2019-9-en-handbook/1680951928>. [↑](#footnote-ref-5)
6. https://www.dictionary.com/browse/advocate. [↑](#footnote-ref-6)
7. The following scale is used: 1. Extremely negative impact; 2. Negative impact; 3. No significant impact; 4. Positive impact; 5. Extremely positive impact. [↑](#footnote-ref-7)
8. Introduction to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Official Journal of the European Union 2008, item L 136/3). [↑](#footnote-ref-8)
9. <https://e-justice.europa.eu/content_eu_overview_on_mediation-63-en.do>, last update 18.01.2019. [↑](#footnote-ref-9)
10. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, *OJ L 136, 24.5.2008, p. 3–8.* [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. The Austrian Act on Mediation in Civil Matters (‘Bundesgesetz über Mediation in Zivilrechtssachen, Zivilrechts-Mediations-Gesetz’), came into effect in 2004. [↑](#footnote-ref-12)
13. Mediation procedure is codified in one of the chapters of the general Code of Civil Procedure, called the Code judiciaire/Gerechtelijk Wetboek. The provisions on mediation were formally enacted on 21 February 2005, and they entered into force on 30 September 2005. [↑](#footnote-ref-13)
14. Law on Mediation of 2004 with amendments made in 2007 and 2011 (Promulgated in State Gazette No. 110/17.12.2004, last amended, SG No. 27/1 April 2011); Regulation No 2 as of 15 March 2007 (last amended, SG No. 29/ 8 April 2011). [↑](#footnote-ref-14)
15. The Mediation Act (NN, No 163/03), entered into force on 24 October 2003 was amended in 2009, and on 9 February 2011 a new Mediation Act was passed (NN, No 18/11), entered into force in full on the accession date of the Republic of Croatia to the European Union. [↑](#footnote-ref-15)
16. The Law “On Certain Aspects of Mediation in Civil Matters” No 159(1)/2012 was enacted to transpose the EU Mediation Directive into Cyprus’s national law. [↑](#footnote-ref-16)
17. The Mediation Act No 202/2012 as of 2 May 2012, became effective on 1 September 2012. [↑](#footnote-ref-17)
18. The Danish Administration of Justice Act, the legal code governing court procedure includes the formal provisions for how legal actions are to be administered and includes clauses governing mediation. [↑](#footnote-ref-18)
19. The Conciliation Act as of 18 November 2009, entered into force on 1 January 2010, implements the Directive 2008/52/EC into Estonian law. [↑](#footnote-ref-19)
20. The Mediation Act on Court Mediation and Confirming Settlements in Courts entered into force on 21 May 2011. [↑](#footnote-ref-20)
21. A general framework for mediation was established by the Act *(loi)* of 8 February 1995, amended by the Order of 16 November 2011 which transposed EU Directive 2008/52/EC into French law. [↑](#footnote-ref-21)
22. The Mediation Act (*Mediationsgesetz*), Article 1 of the Act to promote mediation and other procedures for out-of-court dispute settlement of 21 July 2012, published: *Bundesgesetzblatt I*¸ p. 1577, entered into force on 26 July 2012.  [↑](#footnote-ref-22)
23. The Mediation Act (Article 178-206 of Law 4512/2018 published 17/1/2018). [↑](#footnote-ref-23)
24. Act No LV of 2002 on Mediation. [↑](#footnote-ref-24)
25. Mediation Bill 2012 (Draft Bill), approved in March 2012. [↑](#footnote-ref-25)
26. There is no separate act regulating mediation. Latvia implemented the Directive 2008/52/EC by making amendments to already existing Latvian laws. [↑](#footnote-ref-26)
27. The Law on Conciliatory Mediation in Civil Disputes as of 15 July 2008 No X-1702 (Version of 1 January 2019 is used currently) transposed the Directive 2008/52/EC into Lithuanian law. [↑](#footnote-ref-27)
28. The Act of 24 February 2012 creates a national legislative framework for mediation in civil and criminal matters by adding a new title to the New Code of Civil Procedure. The Act transposes Directive 2008/52/EC. [↑](#footnote-ref-28)
29. The Mediation Act as of 21 Decembre 2004 (Chapter 474 of the Laws of Malta). The amending Act came into force on 14 January 2011 by L.N. 10/2011. [↑](#footnote-ref-29)
30. Parliamentary Proceedings II 2012/3, 33 723. [↑](#footnote-ref-30)
31. Every legal field has its own acts and codes which contain particular regulations about the mediation procedure, including Act of 17 November 1964 Code of Civil Procedure and the Act of 23 April 1964 Civil Code. Act of 10 September 2015 (valid starting 1 January 2016) introduced a number of changes to the Polish Code of Civil Procedure. [↑](#footnote-ref-31)
32. The Mediation Law No. 29/2013 as of 20 April 2013. [↑](#footnote-ref-32)
33. The Mediation Law 192/2006 was published in the Romanian Official Journal on 22 May 2006. [↑](#footnote-ref-33)
34. The Act on Alternative Dispute Resolution in Judicial Matters (ZARSS, *Uradni List RS* (UL RS; Official Gazette of the Republic of Slovenia) No 97/09 and 40/12 – Fiscal Balance Act (ZUJF)), adopted on 19 November 2009, came into force on 15 June 2010. The Mediation in Civil and Commercial Matters Act (ZMCGZ, UL RS No 56/08) as of 23 May 2008, published on 6 June 2008, and entered into force on 21 June 2008, transposed the provisions of the Directive 2008/52/EC into Slovenian law. [↑](#footnote-ref-34)
35. The Mediation Act No. 420/2004 with further changes and amendments. [↑](#footnote-ref-35)
36. Real Decreto - ley 5/2012 on mediation in civil and commercial matters, dated 5 March 2012, transferred the Directive 2008/52/EC into Spanish law. This Royal Decree was updated by Law 5/2012 dated 6 July 2012, which became effective on 28 July 2012. [↑](#footnote-ref-36)
37. The Act on Mediation in Certain Civil and Commercial Disputes as of 16 June 2011 entered in force on 1 August 2011, transferred the Directive 2008/52/EC into Swedish law. [↑](#footnote-ref-37)
38. The Civil Procedure Act of 1997, c. 12, introduced the Civil Procedure Rules, which were intended to enable courts to deal with cases justly, manage cases actively, and require parties to help the courts do so while encouraging the use of ADR. [↑](#footnote-ref-38)
39. For an overview of mediation history are used the Giuseppe De Palo and Chiara Massidda’s contributions to *The Variegated Landscape of Mediation Regulation*, edited by Manon Schonewille and Dr. Fred Schonewille, and ‘*Lead 5.4 Million Thirsty Horses to Water, and the Vast Majority Will Drink*’ by Giuseppe De Palo that are taken from “Rebooting’ the mediation directive: Assessing the Limited Impact of its Implementation and Proposing measures to Increase the Number of Mediation in the EU”, Brussels 2014. [↑](#footnote-ref-39)
40. Article 24 of the Constitution of Italy: “Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law”. [↑](#footnote-ref-40)
41. Article 77 of the Constitution of Italy: “The Government may not, without an enabling act of the Parliament issue a decree having force of law”. [↑](#footnote-ref-41)
42. Decision No 272 dated 06 Decembre 2012, published on 12 Decembre 2012 in G.U. [↑](#footnote-ref-42)
43. Law No 96 dated 21 June 2017, published 23 June 2017 in G.U. [↑](#footnote-ref-43)
44. Circolare 27 novembre 2013 of the Ministry of Justice of Italy “Entrata in vigore dell’art. 84 del d.l. 69/2013 come convertito dalla l. 98/2013 recante disposizioni urgenti per il rilancio dell'economia, che modifica il d.lgs. 28/2010. Primi chiarimenti”, prot.168322. [↑](#footnote-ref-44)
45. Servizio di Conciliazione della Camera di Commercio di Crotone è iscritto al n. 25 del Registro degli Organismi di Mediazione tenuto dal Ministero della Giustizia e gestisce le procedure di mediazione previste dal D.Lgs. 28/2010. [↑](#footnote-ref-45)
46. Lo Sportello di Conciliazione della Camera di Commercio I.A.A. di Pisa è iscritto al n. 13 del Registro degli Organismi di Mediazione tenuto dal Ministero della Giustizia e gestisce le procedure di mediazione previste dal D.Lgs. 28/2010. [↑](#footnote-ref-46)
47. Servizio di Conciliazione della Camera di Commercio di Torino è iscritto al n. 122 del Registro degli Organismi di Mediazione tenuto dal Ministero della Giustizia e gestisce le procedure di mediazione previste dal D.Lgs. 28/2010, cancellato dal Registro il 8/11/2017. [↑](#footnote-ref-47)
48. Lo Sportello di Conciliazione della CCIAA di Verona è iscritto al n. 42 del Registro degli Organismi di Mediazione tenuto dal Ministero della Giustizia e gestisce le procedure di mediazione previste dal D.Lgs. 28/2010. [↑](#footnote-ref-48)
49. The cases that are ignored, *inter alia*, include the following: the cases are presented to more than one mediation institution; cases are not subject to mediation according to the law; absence of the decision of the parties to mediate the case. [↑](#footnote-ref-49)
50. As we demonstrated both models produce compatible results; therefore, we run logit regression only for additional check for a separate Chamber of Commerce. The Turin Chamber of Commerce is chosen as the Turin dataset contains more cases, and because the dataset contains the population of cases that will not be changed in future (subsequently the result will remain stable even in future) as the Chamber in case does not provide mediation services anymore, its registration in the Mediation register is cancelled in 2017. [↑](#footnote-ref-50)
51. Please refer to table 2.1 for Curves themselves. [↑](#footnote-ref-51)