

Mediation and the Right to Effective Judicial Protection in the Case-law of the Court of Justice of the European Union.

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Summary: The article focuses on the case law of the Court of Justice of the European Union in relation to mandatory mediation and its compatibility with the right to effective judicial protection. It analyses the general principles formulated in the Unibet and Impact judgments, in which the Court of Justice defined the limits of procedural autonomy of Member EU Member States through the principles of equivalence and effectiveness of EU law. On that basis, it subsequently develops a framework for assessing the compatibility of mandatory mediation with EU law. The key decision in Alassini constitutes the Court of Justice's first direct ruling on mandatory mediation, in which it recognised its admissibility under certain conditions. The subsequent Menini and Rampanelli judgment further refined the proportionality test established in Alassini and applied it for the first time to specific national legislation. The aim of this article is to critically evaluate how the Court of Justice has shaped the relationship between the right to effective judicial protection and mandatory mediation through its case law.

Keywords: mandatory mediation, EU law, effective judicial protection, right of access to a court, proportionality, CJEU case law, ECtHR case law

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1. Introduction

The case law of the Court of Justice of the European Union (CJEU) has long had a fundamental influence on the development of many areas of law, including alternative dispute resolution (ADR). Alternative dispute resolution is often presented in EU discourse as a more effective, faster and less costly alternative to court proceedings, but statistics show that its use in EU Member States remains limited. One of the instruments intended to support its development was the adoption of Directive 2008/52/EC on mediation.¹ This directive granted Member States broad discretion in its implementation, which raised a number of fundamental questions concerning the form, scope and limits of mediation in EU law.

It was in this context that a question of fundamental importance was referred for a preliminary ruling to the Court of Justice of the European Union, namely whether mediation, in particular in its mandatory form, is compatible with the right to effective judicial protection, as protected by Article 47 of the Charter of Fundamental Rights of the EU (the Charter) and Article 6 of the European Convention on Human Rights (the Convention). The obligation to attend an initial meeting with a mediator as a condition for the admissibility of a claim raises questions as to whether such a procedural requirement constitutes an unacceptable restriction on access to justice. Although the Court of Justice was initially cautious in its approach to alternative dispute resolution mechanisms, it has gradually played a key role in defining the balance between the efficiency of the judicial system and the protection of fundamental procedural rights of individuals.

Since procedural law is not comprehensively harmonised at EU level, the decisions of the Court of Justice, which defined the principles of equivalence and effectiveness and the principle of effective judicial protection (Unibet and Impact decisions, see below Chapter 1), play a key role in national procedural practice in the application of EU law. These principles then served as the basis for determining the criteria for assessing mandatory mediation. This is reflected in the Rosalba Alassini and Menini Rampanelli judgments (Chapters 2 and 3), in which the Court of Justice formulated the proportionality test for the first time and provided practical guidance on the conditions under which mandatory mediation can be considered compatible with the right to effective judicial protection. This line of case law thus establishes a comprehensive legal framework for assessing the compatibility of mandatory mediation with EU law.

¹ 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. (Hereinafter: Mediation Directive.)

Against this background, the main issue of interest of this paper is whether mandatory mediation is permissible under European Union law and, if so, under what conditions. Below we will endeavor to give answer thereto.

2. Basic framework for the application of national procedural rules

The case law of the CJEU has long been based on the premise that, in the absence of harmonised procedural rules at EU level, the regulation of procedural remedies for the protection of rights arising from EU law falls within the procedural autonomy of the Member States.² However, this autonomy is not unlimited and is subject to review by the Court of Justice. National procedural rules are limited by two principles defined by the Court of Justice in the 1970s. These are the principle of equivalence and the principle of effectiveness, which were formulated in the *Rewe-Zentralfinanz* case.³ The principle of equivalence means that actions based on EU law must not be subject to less favourable procedural rules than similar domestic actions. The principle of effectiveness, which was specified in the *Peterbroeck* judgment,⁴ prohibits procedural requirements from making it impossible or excessively difficult in practice to exercise rights conferred by EU law.

In relatively extensive follow-up case law, the CJEU clarified these principles, particularly in the *Unibet* and *Impact* judgments. These laid the foundations for the subsequent interpretation of the compatibility of procedural mechanisms with the right to effective judicial protection.

In the *Unibet* judgment⁵, the Court of Justice emphasised that the right to effective judicial protection does not require Member States to introduce special procedural measures to protect rights arising from EU law if the existing national

² This means that each EU Member State determines the procedural rules at its discretion (e.g. actions, time limits, remedies, etc.).

³ Judgment of the Court of Justice of 16 December 1976, *Rewe-Zentralfinanz*, Case C-33/76. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61976CJ0033>.

⁴ The principle of effectiveness was clarified by the Court of Justice in its judgment in *Peterbroeck* (C-312/93) in which it held that even procedural rules that appear to be neutral may be contrary to EU law if, in a specific case, they render the exercise of rights conferred by EU law practically impossible. Judgment of the Court of Justice of 14 December 1995, *Peterbroeck*, Case C-312/93. Available at: EUR-Lex – 61993CJ0312 – EN – EUR-Lex. (See also *Impact*, para. 46).

⁵ Judgment of the Court (Grand Chamber) of 13 March 2007, *Unibet*, Case C-432/05. Available at: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:62005CJ0432>. (Hereinafter: *Unibet*.)

procedural system provides sufficient means for their protection.⁶ At the same time, however, it noted that the procedural autonomy of Member States is limited by the principle of equivalence, according to which the procedural rules governing the exercise of EU rights must not be less favourable than those applicable to similar claims based on national law.

However, if national law lacks procedural means to provide such protection, individuals may rely on rights derived from EU law directly. Restrictions on access to the courts are permissible only if they do not render the exercise of rights under EU law impossible or excessively difficult.⁷ The Court of Justice confirmed that effective judicial protection is a fundamental principle of EU law and that any restriction on access to the courts must be compatible with the requirement of effective exercise of rights under EU law.

In light of these decisions, Unibet can be understood as a conceptual basis for considerations of the proportionality of mandatory mediation – that is, whether the obligation to undergo mediation before filing a lawsuit constitutes a reasonable and legitimate restriction on access to the courts.

In addition to the principle of equivalence, the principle of effectiveness is a key limitation on procedural autonomy, which was further developed in the *Impact* judgment.⁸ In this case, the Court emphasised that national rules must not render the exercise of rights under EU law practically impossible or excessively difficult. The Court of Justice set out the criteria for assessing compliance with this principle. The CJEU requires national courts to take into account the specific circumstances of the procedural framework in question, including the length of the proceedings, the financial burden, the procedural complexity and the risk of delay, which may significantly affect the position of the parties to the proceedings. The judgment thus represents a further step in the systematic development of the doctrine of effective judicial protection, which the Court of Justice has also applied in subsequent decisions, including those concerning mediation.

The case law in the *Unibet* and *Impact* cases shows that the Court of Justice does not examine national procedural rules in isolation but assesses their functioning within the overall procedural system. It is not the mere existence of a procedural restriction or preliminary stage that is decisive, but its practical effect on the possibility for parties to seek judicial protection. It is precisely

⁶ *Unibet*, para. 30.

⁷ *Ibid.*, paras 42, 43. The legal standing of a party to proceedings is determined by national law; however EU law requires that national procedural rules do not undermine the right to effective judicial protection and comply with the principles of equivalence and effectiveness.

⁸ Judgment of the Court (Grand Chamber) of 15 April 2008, *Impact*, Case C-268/06. Available at: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:62006CJ0268>. (Hereinafter: *Impact*.)

this substantive approach that makes it possible to assess whether procedural rules preserve real and effective access to the courts. These conclusions are also of fundamental importance in the field of out-of-court dispute resolution, in particular when it is introduced as a mandatory procedural preliminary stage to court proceedings. The obligation to undergo an out-of-court procedure, an information meeting or another form of conciliation may be a legitimate procedural tool, but only if it respects the limits arising from the principles of equivalence and effectiveness, as defined in the case law of the Court of Justice. In other words, such a procedure must not lead to discriminatory treatment of EU rights or effectively prevent or disproportionately impede access to the courts.

The Unibet and Impact case law thus establishes a general methodological framework according to which the right of access to a court is subject to certain procedural restrictions, but these restrictions must pass a test based on the principles of equivalence and effectiveness. This framework subsequently became the basis for assessing the compatibility of mandatory out-of-court procedures, including mediation, with the right to effective judicial protection, as developed by the Court of Justice in later case law. The case law shows how the Court of Justice seeks to strike a balance between the requirement for effective access to justice and the promotion of alternative mechanisms.

3. The birth of case law in the context of mediation: the Rosalba Alassini case

3.1. The right to effective judicial protection in the context of mediation: general case law framework

In the early days of the Court of Justice's case law, alternative dispute resolution mechanisms were not considered equivalent to judicial review, and there was concern as to whether such procedures could provide sufficient procedural protection, in particular the requirement for effective judicial protection and the effective exercise of rights⁹ arising from EU law.

In its case law, the CJEU has gradually addressed the question of the extent to which Member States may restrict direct access to judicial protection by offering or even requiring the use of alternative dispute resolution mechanisms, in light of the principle of effective judicial protection enshrined in Article 47 of the

⁹ National procedural rules must not render the exercise of rights conferred by EU law impossible or excessively difficult. See *Impact*, paras 43–49.

Charter¹⁰ and arising from Article 6 of Convention.¹¹ The content and limits of this right have been primarily developed by the case law of the European Court of Human Rights (ECtHR), to which the Court of Justice repeatedly refers in its case law.

The judgment in *Rosalba Alassini*¹² was unprecedented, as it was the first time that it explicitly assessed the compatibility of mandatory mediation with the right to effective judicial protection. In this case, the Court of Justice formulated for the first time the criteria according to which the proportionality and acceptability of mandatory mediation in relation to the right of access to a court can be assessed. In assessing the compatibility of mandatory mediation with the right to effective judicial protection, the Court of Justice draws on existing case law, in particular its own case law and that of the ECtHR. This case law framework was then systematically applied in the *Alassini* judgment.

The dispute itself arose in Italy between several customers (including Ms Alassini) and telecommunications service providers over the quality of the services provided.¹³ Under Italian law, consumers had to attempt to resolve the dispute out of court, usually through conciliation proceedings, before bringing an action. Consumers challenged this obligation on the grounds that it violated their right to effective judicial protection under EU law, as it effectively constituted an obstacle to access to the courts.

The essence of the questions referred for a preliminary ruling was whether mandatory mediation is compatible with the right to effective judicial protection. The Court of Justice had to assess whether the obligation to undergo mandatory mediation interferes with the very essence of the right of access to a court and whether it can, under certain conditions, be considered a legitimate means of achieving the objectives.¹⁴ At the heart of the matter was the assessment of whether

¹⁰ Charter of Fundamental Rights of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:12012P/TXT>.

¹¹ European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/d/echr/Convention_ENG.

¹² Judgment of the Court (Fourth Chamber) of 18 March 2010, *Rosalba Alassini and Others* (joined cases C-317/08 to C-320/08) v *Telecom Italia SpA*. Available at: <https://curia.europa.eu/juris/document/document.jsf?docid=79647&mode=lst&pageIndex=1&dir=&occ=first&part=1&text=&doclang=CS&cid=1533192>. (Hereinafter: *Rosalba Alassini* or *Alassini*.)

¹³ This was Directive 2002/22/EC on universal service, which was repealed on 20 December 2020 and replaced by the European Electronic Communications Code (Directive EU 2018/1808), which consolidated several directives into a single framework. The Directive aims to ensure the availability of basic electronic communications services at an affordable price for all users in the European Union, regardless of their geographical location, and to protect end-users' rights in an open and competitive telecommunications market. Available at: <https://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:32002L0022>.

¹⁴ These objectives may include, for example, reducing the workload of the courts or promoting amicable dispute resolution.

mandatory mediation constituted an unreasonable obstacle to access to judicial protection and whether it was consistent with the principle of effectiveness.

In this case, the Court of Justice systematically drew on existing case law, confirming its commitment to establishing a consistent and continuous line of case law on procedural issues relating to the protection of individuals' fundamental rights. The principle of effective judicial protection formulated in the Unibet case and the limits of procedural autonomy defined in the Impact case created a general framework that the Court of Justice also used in assessing the proportionality and compatibility of mandatory mediation with EU law.¹⁵

The Dokter case was also significant for the decision in the Alassini case.¹⁶ Although this case did not concern alternative dispute resolution or mediation itself, its conclusions were nevertheless adopted, applied and used as a basis for argument in the Alassini judgment. In the Dokter judgment, the Court of Justice ruled that the right to effective judicial protection is not absolute and may be subject to limitations if they pursue a legitimate aim and do not interfere with the very essence of that right.¹⁷

The Court of Justice followed up on this line of argument with another important decision in the Mono Car Styling case.¹⁸ In this case, it assessed the compatibility of Belgian industrial property law with EU law. The national legislation in question stipulated that, before bringing an action, the parties must attempt to reach a settlement before a professional body.¹⁹ This was a classic mandatory conciliation procedure, which was similar in nature to mediation, but was not mediation in the strict sense of the word. The Court concluded in the Mono Car Styling judgment that such an obligation is not incompatible *in abstracto* with EU law, provided that it does not deprive the parties of the possibility of effectively exercising their rights before the courts. It follows that a mandatory attempt at conciliation (or mediation) may be compatible with EU law if it does not restrict the exercise of substantive rights. The significance of the judgment is therefore

¹⁵ Rosalba Alassini, paras 61–70. The Court recalled that effective judicial protection is a general principle of EU law, based on Articles 6 and 13 of the Convention, in the sense that the right to judicial protection is not absolute but may be restricted if that restriction pursues a legitimate aim and preserves the essence of that right.

¹⁶ Judgment of the Court of Justice of the European Union of 15 June 2006, Dokter and Others, Case C28/05. Available at: <https://curia.europa.eu/juris/document/document.jsf?sessionId=F6B5F1EDCC5A645D03035B32DA46374D?text=&docid=55361&pageIndex=0&doclang=CS&mode=lst&dir=&occ=first&part=1&cid=3073752>

¹⁷ Dokter, para. 75.

¹⁸ Judgment of the Court (Fourth Chamber) of 16 July 2009, Mono Car Styling, Case C-12/08. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=72480&pageIndex=0&doclang=CS&mode=lst&dir=&occ=first&part=1&cid=1552951>.

¹⁹ Specifically, in the case of a professional body in the automotive industry (Comité paritaire pour la carrosserie).

also evident because the procedural rules of the Member States must not render the exercise of rights under EU law impossible or excessively difficult.²⁰ It lies in confirming and specifying the principle of effectiveness at the procedural level.

To strengthen its argument, the Court of Justice also referred to the established case law of the European Court of Human Rights (ECtHR), in particular the decision in *Fogarty v. the United Kingdom*.²¹ This judgment is key to defining the limits of the right of access to a court under Article 6(1) of the Convention and represents an important interpretative basis for the EU concept of the principle of effective judicial protection.

In *Fogarty*, the applicant lodged an application with the ECtHR, claiming that the dismissal of her action by the British courts on the grounds of state immunity constituted a violation of her right of access to a court under Article 6(1) of the Convention.²²

The finding of the ECtHR can be considered crucial, as it recognised that the right of access to a court is not absolute but may be subject to restrictions that are in accordance with the principle of proportionality.²³ However, when imposing restrictions, the court must be satisfied that the rights exercised are not restricted in such a way and to such an extent that the essence of the right is impaired – the principle of proportionality must be upheld and the restriction must pursue a legitimate aim.²⁴ The ECtHR concluded that the application of state immunity constituted a legitimate restriction pursuing the objectives of international relations and state sovereignty, and that in this case there had been no violation of Article 6(1) of the Convention.²⁵

The case law of the European Court of Human Rights represents the fundamental conceptual basis from which the Court of Justice proceeds. In its established case law, the ECtHR repeatedly emphasises that the right of access to a court under Article 6(1) of the Convention is not absolute. The first decision in which the court explicitly derived the right of access to a court was *Golder v. the United Kingdom*²⁶, where it formulated the existence of this right as an integral part of the right to a fair trial. This laid the foundation for a doctrine that was

²⁰ Rosalba Alassini, paras 48, 49.

²¹ Judgment of the European Court of Human Rights of 21 December 2000, *Fogarty v. the United Kingdom*, Case no. 37112/97. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-59886%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59886%22]})

²² *Fogarty*, paras 22, 23.

²³ *Ibid.*, para. 33.

²⁴ *Ibid.*

²⁵ *Ibid.*, para. 39.

²⁶ Judgment of the European Court of Human Rights (Plenary) of 21 February 1975, *Golder v. the United Kingdom*, Case no. 4451/70.

subsequently developed in later case law. Subsequently, in *Deweere v. Belgium*²⁷, the Court acknowledged the relative nature of this right, i.e. that access to court may be restricted if proportionality between the aim and the means is maintained. This idea was further developed in the judgment in *Ashingdane v. the United Kingdom*²⁸, in which the ECtHR introduced the requirement of proportionality between the aim pursued and the means used.

3.2. Conditions for the compatibility of mandatory mediation with the right to effective judicial protection: application in the Alassini judgment

On the basis of this interconnected case law of both European courts, a general framework gradually emerged, which the Court of Justice used as the basis for its decision in the *Alassini* case. This framework made it possible to assess whether national legislation making the bringing of an action conditional on the mandatory completion of mediation proceedings before an administrative authority is compatible with the right to effective judicial protection guaranteed by Article 47 of the Charter and, at the same time, Article 6 of the Convention.²⁹

The Court of Justice's answer to this question is apparent from the introductory passages of the *Alassini* judgment. The key wording of the decision is that making access to the courts conditional on a mandatory attempt at mediation is not in itself contrary to the right to effective judicial protection under Article 47 of the Charter and Article 6 of the Convention. However, this is subject to certain conditions being met, which the Court of Justice has defined comprehensively.³⁰ These conditions constitute the criteria that must be satisfied for mandatory mediation to be regarded as compatible with the principle of effective judicial protection.³¹

²⁷ Judgment of the European Court of Human Rights (Chamber) of 27 February 1980, *Deweere v. Belgium*, Case no. 6903/75.

²⁸ Judgment of the European Court of Human Rights (Chamber) of 28 May 1985, *Ashingdane v. the United Kingdom*, Case no. 8225/78.

²⁹ It is particularly important to note that the Court of Justice found support in the case law of the European Court of Human Rights. In accordance with Article 52(3) of the Charter, it interpreted the right to effective access to a court in accordance with Article 6 of the Convention. Although the Court of Justice did not explicitly refer to any specific ECtHR decision in the *Alassini* judgment, its approach is consistent with cases in which the ECtHR has allowed for the possibility of restricting the right to a court, provided that a legitimate aim is pursued and proportionality is maintained (e.g. *Deweere v. Belgium*, *Kudła v. Poland*).

³⁰ KRAMER, X. *Mandatory Mediation Procedures in Effective Access to Courts: CJEU Sets Down Criteria*. 11 July 2017. Conflict of laws. [online]. Available at: <https://conflictoflaws.net/2017/mandatory-mediation-procedures-v-effective-access-to-courts-cjeu-sets-down-criteria/>

³¹ Rosalba Alassini, para. 67.

In the Alassini case, the Court of Justice systematically formulated for the first time six cumulative conditions that must be met in order for mandatory mediation to be compatible with the right to effective judicial protection.³² These conditions can be understood as institutional safeguards to ensure that mandatory mediation does not exceed the limits of legitimate restrictions on access to the courts. These conditions are as follows:

- the outcome of mediation must not result in a binding decision for the parties,
- mediation proceedings should not cause a significant delay in court proceedings,
- the limitation periods for claims must be suspended during mediation,
- mediation must not entail significant costs,
- participation in mediation must not be exclusively linked to the use of electronic means, i.e. it should be accessible to all persons, and the obligation to undergo mediation must not prevent the parties from applying to the court for interim measures.³³

The Court of Justice has left it to the national courts to assess whether specific national legislation meets these conditions, which must be verified in each individual case to determine whether mandatory mediation actually preserves effective access to the courts.

In essence, these criteria are intended to ensure that mandatory mediation does not exceed the limits of legitimate restrictions on the right to judicial protection under Article 47 of the Charter. In doing so, the Court of Justice has effectively established a normative framework for the admissibility of mandatory mediation in EU law.

Advocate General Juliane Kokott played a key role in formulating this test, presenting in her opinion the theoretical basis for applying the principle of proportionality in the area of access to a court.³⁴ She acknowledged that the obligation to undergo mediation constitutes an interference with the right of access to court, but that this right is not unlimited.³⁵ Such a restriction may be permissible if it pursues a legitimate objective of general interest and does not constitute a disproportionate interference with the very nature of the right to effective judicial protection.³⁶ The Court of Justice adopted and developed this formulation,

³² Rosalba Alassini, paras 54–59.

³³ The article deals with preliminary measures below in the context of case law.

³⁴ Opinion of Advocate General Juliane Kokott in the Rosalba Alassini case, delivered on 19 November 2009. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=73696&pageIndex=0&doclang=CS&mode=lst&dir=&occ=first&part=1&cid=6595977> Hereinafter: Opinion of AG Kokott in Cases C-317/08 to C-320/08.

³⁵ Opinion of GA Kokott in Cases C-317/08 to C-320/08, para. 47.

³⁶ *Ibid.*, para. 58.

thereby transforming the principle of proportionality from a theoretical principle into a specific legal test applicable to mandatory mediation.

At the same time, it follows from the judgment that the Court of Justice's approach can be described as more pragmatic, as it did not require formal perfection of the Italian legislation, but was satisfied that the Italian legislation essentially fulfilled the conditions.³⁷

The Court also adopted an explicit quotation from Advocate General Kokott's opinion, according to which there is a less restrictive alternative to mandatory conciliation, as purely voluntary out-of-court dispute resolution does not constitute a sufficiently effective means of achieving the objectives in question.³⁸ The Court of Justice thus made clear its position that voluntary mediation alone may not be sufficiently effective and that certain restrictions on access to the courts may therefore be justified if they comply with the principle of proportionality.

The Alassini judgment thus ultimately became the basis for applying the proportionality test in the context of mandatory mediation. The Court emphasised that mandatory mediation must not disproportionately restrict access to the courts and that its compatibility with EU law is conditional on the effectiveness of judicial protection being preserved.³⁹ In the literature, there is an interpretation according to which the obligation to participate in mediation is fulfilled by the mere attempt at mediation, not by continuing the proceedings until their conclusion.⁴⁰ The judgment paved the way for EU Member States to enshrine certain forms of mandatory mediation in their national legal systems without fear of conflict with EU law.

The fundamental conclusion of the Alassini judgment is the confirmation that the right of access to a court is not absolute but may be restricted, provided that its essence is preserved and the restriction pursues a legitimate aim. It also systematically defined for the first time the conditions under which mandatory mediation may be compatible with the right to effective judicial protection. This also created a normative framework that allows for the compatibility of mandatory out-of-court dispute resolution mechanisms with EU law.

The Court of Justice has shown continuity in its decision-making practice. It is noteworthy that the selection of previous case law by the Court of Justice was

³⁷ The fact that the Italian Government is pursuing legitimate objectives of general interest was also confirmed by the Advocate General in her Opinion in Cases C-317/08 to C-320/08, para. 45.

³⁸ Rosalba Alassini, para. 65.

³⁹ *Ibid.*, paras 61–67.

⁴⁰ JAGTENBERG, R. Het Alassini arrest en verplichte bemiddeling. *Nederlands-Vlaams tijdschrift voor mediation en conflictmanagement*. 2010, no. 2, pp. 35–43. [online]. Available at: <https://pu.re.eur.nl/en/publications/het-alassini-arrest-en-verplichte-bemiddeling>

instrumental rather than mechanical. The Court did not seek factual similarities between individual cases, but rather general principles that would support its legal argumentation. This approach showed that the doctrine of proportionality, as applied by the Court of Justice, has its theoretical roots in the case law of the European Court of Human Rights.

4. Development of case law in the field of mediation: the Menini and Rampanelli case

4.1. Application of the proportionality test in the context of mandatory mediation

The Court of Justice explicitly followed up on the conclusions of the Alassini judgment on this issue in the Menini and Rampanelli case.⁴¹ In this decision, it further developed the application of the proportionality test and applied it for the first time to specific national legislation in practice, thereby providing a practical interpretation. While the Alassini case had a broader impact on the procedural framework for mediation, the Menini and Rampanelli judgment focuses specifically on consumer relations and interprets Directive 2013/11/EU on alternative dispute resolution⁴² in conjunction with Directive 2008/52/EC on mediation.

From the perspective of EU law, this was an interpretation of the ADR and mediation directives, while from the perspective of national law, it was an assessment of Italian legislation,⁴³ specifically Article 5 of Legislative Decree No 28/2010,⁴⁴ adopted as part of the transposition of the Mediation Directive. This provision stipulated that participation in mediation proceedings was a condition for the admissibility of legal action in certain types of civil and commercial disputes.⁴⁵

In 2010, Italy introduced mandatory mediation for selected types of civil and commercial disputes, with non-participation in mediation being

⁴¹ Judgment of the Court (First Chamber) of 14 June 2017, Menini and Rampanelli, Case C-75/16. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=191706&pageIndex=0&doclang=CS&mode=lst&dir=&occ=first&part=1&cid=3600837>. Hereinafter: Menini and Rampanelli.

⁴² Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes. Hereinafter: ADR Directive.

⁴³ Menini and Rampanelli, para. 15.

⁴⁴ Decreto legislativo n. 28/2010. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:sta:to:decreto.legislativo:2010-03-04:28>. Hereinafter: Legislative Decree.

⁴⁵ Legislative Decree No. 28/2010, Article 5 (1 bis). In 2022, the category of disputes was expanded through the Cartabia reform (Legislative Decree No. 149/2022 of 10 October 2022).

sanctioned.⁴⁶ This legislation raised doubts as to its compatibility with EU law, which came to light in the *Menini and Rampanelli* case. This was a consumer dispute arising from a credit agreement in which the Italian court stayed the proceedings because, under national law, the bringing of an action was conditional on a mandatory attempt at mediation, and referred questions to the Court of Justice for a preliminary ruling on the compatibility of this provision with EU law.⁴⁷

The first preliminary question concerned the compatibility of Italian legislation on mandatory mediation, which stipulates that an attempt at mediation is a condition for the admissibility of a lawsuit, with Article 47 of the Charter with the right to effective judicial protection, and with the principles of effectiveness and equivalence. The second preliminary question focused on the nature of the penalties for non-participation in mediation proceedings, specifically whether the obligation to pay an amount corresponding to the court fee⁴⁸ is compatible with EU law in terms of maintaining access to justice and consumer protection.

In relation to the first question, the Court of Justice's finding that the ADR Directive does not affect the scope of the Mediation Directive is crucial.⁴⁹ It recalled that although the Mediation Directive primarily has cross-border scope, nothing prevents Member States from extending national mediation rules to purely domestic disputes. The Court of Justice took into account the opinion of the Advocate General, according to which the extension of the national scope of Regulation No 28/2010 cannot in itself lead to an extension of the material scope of the Mediation Directive.⁵⁰ For this reason, the Court concluded that it was not necessary to rule on the relationship between the Mediation Directive and the ADR Directive in the case at hand, as the Mediation Directive did not apply to the dispute in question. At the same time, the two directives are not in conflict with each other, as each has a different purpose, operates in parallel and complements the other.⁵¹

As regards the answer to the first question itself, the Court did not consider it necessary to rule again on whether a Member State may make access to the

⁴⁶ See The Italian Mediation Law on Civil and Commercial Disputes. [online]. Available at: <https://mediatorsbeyondborders.org/wp-content/uploads/2017/09/The-Italian-Mediation-Law.pdf>

⁴⁷ The consumers stopped repaying their debts, and the bank initiated proceedings against them for a payment order under Italian procedural law. See KRAMER, Xanda. *Mandatory Mediation Procedures in Effective Access to Courts: CJEU Sets Down Criteria*. 11 July 2017. Conflict of laws. [online]. Available at: <https://conflictolaws.net/2017/mandatory-mediation-procedures-v-effective-access-to-courts-cjeu-sets-down-criteria/>.

⁴⁸ Italian legislation regulated the situations in which a court may draw inferences within the meaning of Article 116(2) of the Italian Code of Civil Procedure.

⁴⁹ *Menini and Rampanelli*, para. 30.

⁵⁰ Opinion of Advocate General Henrik Saugmandsgaard Øe delivered on 16 February 2017 in *Menini and Rampanelli*, para. 60. Available at: <https://eur-lex.europa.eu/legal-content/EN/TEXT/HTML/?uri=CELEX:62016CC0075>. (Hereinafter: Opinion of AG Øe in Case C-75/16).

⁵¹ Opinion of GA Øeho in Case C-75/16, para. 61.

courts subject to a mandatory attempt at mediation, as it had already resolved this issue in previous case law, in particular in the Alassini case. This approach may be seen as an expression of judicial continuity – the Court of Justice does not return to issues that have already been clearly defined in its case law and focuses instead on the practical application of existing principles.

In relation to the second preliminary question, the Court addressed three fundamental aspects that are of key importance for the assessment of mandatory mediation from the perspective of EU case law.⁵² First, it was necessary to determine whether the ADR Directive must be interpreted as precluding national legislation such as that at issue in the main proceedings, which makes the use of mediation compulsory as a condition for the admissibility of an action. Secondly, the Court examined whether the Directive allows the consumer's participation in mediation to be made conditional on mandatory representation by a lawyer, and, thirdly, it examined whether national legislation may limit the possibility for consumers to avoid mediation only to cases where they demonstrate the existence of a legitimate reason, and whether such a limitation must be assessed in terms of its proportionality in relation to the right to effective judicial protection.

4.1.1. Mandatory use of mediation as a condition for the admissibility of an action and the question of the principle of voluntariness

In the first part of this question, the Court of Justice, no longer focusing on the relationship between the directives but rather on the material scope of the ADR Directive, considered whether that directive was applicable at all to the Italian legislation at issue in the main proceedings. It pointed out that the ADR Directive does not apply to all disputes involving consumers, but only to those that meet three cumulative conditions.⁵³ The first of these conditions is that the referring court must verify that the opposition to the order for payment and the application for suspension of provisional enforceability were lodged by the consumer and not by the trader. The second condition requires that the procedure in question complies with and meets the requirements of EU law laid down in Article 4(1) (g) of the ADR Directive.⁵⁴ The third condition is that the procedure in question must be entrusted to an alternative dispute resolution entity.⁵⁵

⁵² Menini and Rampanelli, para. 37.

⁵³ Ibid., para. 40.

⁵⁴ The judgment sets out, in particular, the requirements of independence, impartiality, transparency, effectiveness, speed and fairness.

⁵⁵ It emphasises that the entity must comply with Article 4(1)(h) of the ADR Directive and be listed in accordance with Article 20(2) of the ADR Directive, which is notified to the European Commission.

As regards the second and third conditions, the Court pointed out that the questions referred for a preliminary ruling do not specify whether the Italian compulsory mediation procedure is actually conducted before a recognised ADR entity, nor whether that entity meets the requirements laid down in the ADR Directive. It was therefore for the referring court to verify those criteria and assess whether they were met. Subject to those verifications, the Court concluded that the ADR Directive is applicable to the Italian legislation at issue in the main proceedings and must therefore be interpreted in the light of the right to effective judicial protection under Article 47 of the Charter.⁵⁶

In the *Menini and Rampanelli* judgment, the Court of Justice dealt in detail with the issue of the voluntary nature of mediation. The principle of voluntariness is a fundamental feature of mediation, as it means that the parties act without external coercion and that mediation is based on their willingness to find an agreement.⁵⁷ As the Court of Justice pointed out, the first sentence of Article 1 of the ADR Directive expressly uses the term ‘voluntary’, but the second sentence of that article also allows Member States to make participation in alternative dispute resolution procedures compulsory, provided that such an obligation does not impede the exercise of the right of access to the courts. A similar concept of voluntariness appears in the Mediation Directive, on which the Court of Justice also relies.⁵⁸ The definition of the very essence of voluntariness provided by the Court of Justice in this judgment is of fundamental importance. According to its interpretation, the voluntary nature of mediation does not lie in the fact that the parties can choose whether to undergo mediation, but in the fact that the parties retain control over the course of the procedure – they conduct the mediation at their discretion, can terminate it at any time and are not forced to accept the outcome if they disagree with it.⁵⁹

The Court further emphasised that the Italian legislation, which introduced a mandatory attempt at out-of-court dispute resolution as a condition for access to the courts, does not jeopardise the objectives of the ADR Directive, as it respects the fundamental principles of voluntariness and effectiveness. This interpretation is also consistent with the judgment in *Alassini*, to which the Court expressly referred, thereby confirming the consistency of case law not only on

⁵⁶ *Menini and Rampanelli*, para. 44.

⁵⁷ See SHTEFAN, A., PRYTYKA, Y. *Mediation in the EU: Common characteristics and advantages over litigation*. ProQuest, 2021, pp. 184-185. [online]. Available at: <https://www.proquest.com/docview/2705075462?accountid=16730>

⁵⁸ See Article 3(a) of the Mediation Directive and also Article 5(2) of the Mediation Directive.

⁵⁹ See recital 13 of Directive 2008/52/EC on mediation. See also CJEU holds that mandatory mediation is not inherently precluded by EU law. *Herbert Smith Freehills Kramer*: 4 July 2017. [online]. Available at: <https://www.hsfkramer.com/notes/adr/2017-07/cjeu-holds-that-mandatory-mediation-is-not-inherently-precluded-by-eu-law>.

issues of the compatibility of mandatory mediation with the right to effective judicial protection.⁶⁰

A particularly important point in the decision is the reminder that fundamental rights are not absolute but may be restricted under certain conditions, provided that the restriction pursues a legitimate aim and is not disproportionate in relation to that aim.⁶¹ The Court of Justice thus reaffirmed the application of the principle of proportionality, which is the central criterion for assessing the admissibility of mandatory mediation. It concluded that the requirement of mandatory mediation as a condition for the admissibility of an action is compatible with the principle of effective judicial protection, provided that the conditions set out in the Alassini judgment are met.⁶²

4.1.2. Mandatory legal representation and (penalties for) non-participation in mediation

With regard to the issue of mandatory legal representation of consumers, the Court expressly referred to the wording of Article 8 of the ADR Directive, according to which parties to alternative dispute resolution procedures may be represented or assisted by a third party, but this is not mandatory.⁶³ In its judgment, it explicitly stated that the Directive must be interpreted as precluding national legislation which requires consumers to be represented by a lawyer during mediation. Such a restriction would be contrary to the principle of effectiveness and would make it disproportionately difficult for consumers to access out-of-court dispute resolution.

The second preliminary question focused on the issue of withdrawal from mediation proceedings and penalties for non-participation in mediation. The Court emphasised that Member States must ensure that parties have the possibility to withdraw from mediation at any time, at any stage of the proceedings, if they are not satisfied with its progress, which is directly in line with the interpretation formulated in the Alassini judgment.⁶⁴

In relation to Italian law, the penalty mechanism provided for in Article 8 of Legislative Decree No 28/2010 stipulates that if a party fails to participate in mediation without a valid reason, the court may draw conclusions in the subsequent court proceedings when assessing the evidence within the meaning of Article 116(2) of the Italian Code of Civil Procedure.⁶⁵ At the same time, the court may

⁶⁰ Menini and Rampanelli, paras 53, 54.

⁶¹ Ibid., para. 45.

⁶² Ibid., para. 85.

⁶³ See Article 8(b) of the ADR Directive and also Article 9(1)(b) of the same Directive.

⁶⁴ Menini and Rampanelli, para. 67.

⁶⁵ At the time of the judgment, the penalties for non-participation in mediation were regulated in Article 8(4-bis) of Legislative Decree No. 28/2010, but the Cartabia reform – Legislative

impose on the participant an obligation to pay an amount to the state budget corresponding to the standard court fee.⁶⁶ The Court of Justice found that such a system of sanctions is not contrary to EU law, provided that it is proportionate and does not impede effective access to the courts. It expressly stated that imposing a penalty only for failure to participate in mediation without a valid reason (and not for terminating participation during the proceedings) is compatible with the ADR Directive. However, it is for the referring court to assess the specific proportionality of these penalties.⁶⁷ At the same time, it took into account that the Italian system guarantees a swift and effective procedure and therefore meets the requirement of proportionality within the meaning of Article 47 of the Charter.

The answer to the second preliminary question thus confirmed that the ADR Directive does not preclude national legislation which provides for proportionate penalties for failure to participate in mediation without a valid reason, but at the same time excludes mandatory legal representation or restrictions on the possibility of terminating mediation. Mandatory mediation is thus understood in EU law not as a compelled settlement, but as a mandatory attempt at out-of-court dispute resolution, which must respect the principles of proportionality, effectiveness and voluntariness.

The Court of Justice further confirmed its previous case law from the Alassini judgment, according to which a mandatory mediation system must not prevent the parties from seeking interim measures. At the same time, it stated that it is for the national court to verify whether, in exceptional cases where it is necessary to take interim measures, the dispute resolution procedure allows or does not prevent such measures.⁶⁸ In the Menini and Rampanelli case, the Court of Justice reiterated this with reference to the Alassini judgment.⁶⁹

Finally, the Court of Justice also ruled on the conditions under which the obligation to participate in mediation can be considered to have been fulfilled, which is of particular importance for legal practice. It stated that the obligation to undergo mediation is fulfilled by the mere attempt to initiate it, i.e. by participating in the initial information meeting with the mediator.⁷⁰ From that moment on, the parties have the right to terminate the process at any time without being

Decree No. 149/2022 moved them to Article 12-bis. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2010-03-04;28>. According to the Italian Code of Civil Procedure, these are procedural consequences enabling the court to draw *argomenti di prova*, that is, evidentiary inferences, from a party's non-participation of one party in mediation, which the judge may later take into account when assessing the evidence.

⁶⁶ Menini and Rampanelli, para. 17.

⁶⁷ Ibid., para. 70.

⁶⁸ Rosalba Alassini, paras 59 and 67.

⁶⁹ Menini and Rampanelli, para. 61.

⁷⁰ Ibid., para. 70.

subject to sanctions. This interpretation confirms that mandatory mediation under European law must not be a forced settlement, but only a mandatory attempt at out-of-court dispute resolution, which must remain within the limits of proportionality and voluntariness.

4.2. The proportionality test as the key to mandatory mediation

The proportionality test, which the Court of Justice first formulated in the *Alassini* judgment, was confirmed and further developed in the *Menini and Rampanelli* case. It reiterated that mediation under the Mediation Directive is compatible with EU law if it respects the principle of effective judicial protection and fulfils the conditions laid down by case law. This emphasis was also supported by the opinion of Advocate General Henrik Saugmandsgaard Øe, which constitutes an important interpretative element that was reflected in the reasoning of the Court of Justice itself. The Advocate General stated that the obligation to undergo mediation as a condition for bringing an action may be compatible with the right of access to a court, provided that procedural safeguards are maintained.⁷¹ The Court of Justice essentially adopted this conclusion and formulated its key considerations on that basis.

As mentioned above, in its judgment, it expressly referred to the opinion of the Advocate General, in particular with regard to the question of extending the application of Legislative Regulation No 28/2010 to domestic disputes, which cannot in itself lead to an extension of the scope of the Mediation Directive.⁷² In assessing the nature of mandatory mediation, the Court further emphasised that what is decisive is not whether mediation is mandatory or voluntary, but whether the right of the parties to access judicial protection is preserved. In this context, it relied on point 75 of the Opinion, according to which Member States retain legislative autonomy as long as the useful effect of the ADR Directive is ensured.⁷³ In his Opinion, Advocate General Øe referred to *Alassini and Others* and stated that the considerations adopted by the Court of Justice in that judgment are applicable to national legislation imposing the mandatory use of other forms of alternative dispute resolution, such as mediation.⁷⁴

This line of case law, culminating in the *Menini and Rampanelli* judgment, represents a fundamental shift in the European concept of mediation. In it, the Court of Justice explicitly acknowledged that Member States may make access

⁷¹ Opinion of Advocate General Øe in Case C-75/16, para. 79.

⁷² *Menini and Rampanelli*, para. 34.

⁷³ *Ibid.*, para. 51.

⁷⁴ *Ibid.*, para. 55.

to the courts conditional on a mandatory attempt at mediation, provided that such a provision is proportionate and preserves the essence of the right to effective judicial protection. The proportionality test has thus become a key criterion for the legitimacy of mandatory mediation in EU law.

The case law of the Court of Justice confirms that the conclusions adopted in the *Menini and Rampanelli* case represent a permanent interpretative framework for the interpretation of the Mediation Directive. Even in its most recent decisions, such as the judgment in *Investcapital*⁷⁵, the Court of Justice directly refers to its earlier opinion that EU law does not preclude mandatory mediation or mandatory information meetings on mediation, provided that this obligation does not prevent effective access to the courts.⁷⁶ This confirms the stability and continuity of the interpretation of Article 5(2) of the Mediation Directive, according to which there is considerable scope for national regulation, but limited by the requirement to maintain judicial protection. At the same time, it should be noted that the Mediation Directive itself does not impose an obligation on Member States to introduce mandatory mediation but merely allows for such legislation on condition that it is proportionate and voluntary.

In conclusion, it can be said that the case law of the Court of Justice has created a comprehensive interpretative framework that allows Member States to introduce various forms of mandatory mediation, but only on condition that the essence of the right to effective judicial protection is preserved. This framework also requires that any national legislation on mandatory mediation must be subject to a proportionality test, which is a key criterion for assessing its compatibility with EU law. Mediation is understood here not as a restriction on access to the courts, but as a procedural tool pursuing the legitimate objectives of EU law.

5. Conclusion

This article focused on a systematic reflection of the case law of the Court of Justice of the European Union concerning mandatory mediation and the gradual development of a general framework within which Member States may restrict access to the courts through mandatory out-of-court dispute resolution mechanisms. It aims to analyse *how the Court of Justice of the European Union, through its case law, has shaped the general framework for assessing mandatory*

⁷⁵ Judgment of the Court of Justice of 3 September 2024, *Investcapital*, Case C-658/23. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290002&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=2092714>.

⁷⁶ *Investcapital*, para. 23.

mediation and its compatibility with EU law, and how it balances legitimate objectives with the protection of fundamental procedural rights.

An analysis of selected key judgments shows how the Court of Justice has gradually constructed a proportionality test and how it has balanced the promotion of effective procedural tools with the protection of the fundamental right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the EU and Article 6 of the European Convention on Human Rights. In doing so, it has gradually shaped its interpretation by methodically anchoring it in the general principles of EU law and by developing its reasoning through subsequent case law or by supplementing its arguments with inspiration from the case law of the European Court of Human Rights.

The line of case law from the Unibet judgment through Impact to the key decisions in Rosalba Alassini and Menini Rampanelli has led to the establishment of a coherent normative framework within which Member States may make access to the courts conditional on a mandatory attempt at mediation. The key outcome of the Court of Justice's decision-making practice is the development and gradual refinement of the proportionality test, which has become a key criterion for assessing the compatibility of mandatory mediation with the right to effective judicial protection. This test was first systematically formulated in the Alassini judgment, which defined six cumulative conditions that must be met in order for mandatory mediation not to constitute a disproportionate restriction on access to the courts and thus be compatible with the principle of effective judicial protection.

In the subsequent judgment Menini Rampanelli, the Court of Justice did not address the general admissibility of mandatory mediation, but rather its practical impact in terms of the obligation to participate, penalties for non-attendance at an information meeting with a mediator, the issue of voluntariness and mandatory representation by a lawyer. The Court's reasoning thus represents a shift towards a more specific, pragmatic interpretation, which emphasises whether mediation in the national context actually preserves effective access to the courts. According to the Court of Justice, mandatory mediation is compatible with EU law not *per se*, but only if it pursues a legitimate objective, does not make access to the courts practically impossible or excessively difficult, and preserves the essence of the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the EU and Article 6 of the European Convention on Human Rights.

The analysis also shows that, when balancing legitimate objectives in relation to the protection of fundamental procedural rights, the Court of Justice relies on a combination of the proportionality test and the principle of preserving the essence of the right of access to a court. Its reasoning and arguments are based on the case law of the European Court of Human Rights, which understands

access to a court as a relative right. There is a considerable degree of consistency between the Court of Justice of the European Union and the European Court of Human Rights in assessing the effectiveness of judicial protection in the sense that it is not the formal existence of a procedural condition that is decisive, but its impact on the possibility of effectively exercising rights.

In answer to the research question posed, mandatory mediation is permissible under EU law if it passes the proportionality test, which is a key tool for balancing the procedural autonomy of Member States and the protection of the fundamental right of access to justice. This framework provides Member States with discretion for introducing mandatory mediation, but at the same time sets clear limits, the exceeding of which would lead to a violation of EU standards of effective judicial protection.

List of references

- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by UNICE, CEEP and the ETUC.
- 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.
- Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes.
- Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.
- European Convention on Human Rights.
- Charter of Fundamental Rights of the European Union.
- Judgment of the Court of Justice of 14 December 1995, *Peterbroeck, Van Campenhout & Cie SCS v Belgian State*, Case C-312/93.
- Judgment of the Court of Justice of 15 June 2006, *Dokter and Others*, Case C-28/05.
- Judgment of the Court of Justice of 16 December 1976, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland*, Case 33/76.
- Judgment of the Court of Justice of 3 September 2024, *Investcapital*, Case C-658/23.
- Judgment of the Court of Justice (First Chamber) of 14 June 2017, *Menini and Rampanelli v. Banco Popolare – Società Cooperativa*, Case C-75/16.
- Judgment of the Court of Justice (Fourth Chamber) of 16 July 2009, *Mono Car Styling SA (in liquidation) v. Dervis Odemis and Others*, Case C-12/08.
- Judgment of the Court of Justice (Fourth Chamber) of 18 March 2010, *Rosalba Alassini and Others v. Telecom Italia SpA*, Joined Cases C-317/08 to C-320/08.
- Judgment of the Court of Justice (Grand Chamber) of 13 March 2007, *Unibet (London) Ltd and Unibet (International) Ltd v. Justitiekanslern*, Case C-432/05.
- Judgment of the Court of Justice (Grand Chamber) of 15 April 2008, *Impact v. Minister for Agriculture and Food and Others*, Case C-268/06.

- Judgment of the European Court of Human Rights of 21 December 2001, case of Fogarty v. the United Kingdom, no. 37112/97.
- Judgment of the European Court of Human Rights (Chamber) of 27 February 1980, case of Deweer v. Belgium, no. 6903/75.
- Judgment of the European Court of Human Rights (Chamber) of 28 May 1985, case of Ashingdane v. The United Kingdom, no. 8225/78.
- Judgment of the European Court of Human Rights (Plenary) of 21 February 1975, case of Golder v. The United Kingdom, no. 4451/70.
- KRAMER, Xanda. *Mandatory Mediation Procedures v Effective Access to Courts: CJEU Sets Down Criteria*. 11 July 2017. Conflict of laws. [online]. Available at: <https://conflictoflaws.net/2017/mandatory-mediation-procedures-v-effective-access-to-courts-cj-eu-sets-down-criteria/>.
- Opinion of Advocate General Henrik Saugmandsgaard Øe delivered on 16 February 2017 in Menini and Rampanelli, Case C-75/16.
- Opinion of Advocate General Juliane Kokott delivered on 19 November 2009 in Rosalba Alassini and Others, Joined Cases C-317/08 to C-320/08.
- JAGTENBERG, R. Het Alassini arrest en verplichte bemiddeling. *Nederlands-Vlaams tijdschrift voor mediation en conflictmanagement*, 2010, no. 2, pp. 35-43. [online]. Available at: <https://pure.eur.nl/en/publications/het-alassini-arrest-en-verplichte-bemiddeling?>
- SHTEFAN, A., PRYTYKA, Y. *Mediation in the EU: Common characteristics and advantages over litigation*. ProQuest, 2021, pp. 184-185. [online]. Available at: <https://www.proquest.com/docview/2705075462?accountid=16730>.
- STEHLÍK, V. *Application of national procedural rules in the context of European Union law*. Leges, 2012, p. 77.
- The Italian Mediation Law on Civil and Commercial Disputes. [online]. Available at: <https://mediatorsbeyondborders.org/wp-content/uploads/2017/09/The-Italian-Mediation-Law.pdf>.