



Innovative Approaches to Dispute Resolution in Academia: Insights from the University of Bologna

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ARTICLE

ABSTRACT

This paper investigates the current mechanisms for managing and resolving internal disputes at the University of Bologna, aiming to enhance them through a comparative analysis with systems from the USA and Spain. The paper begins with an overview of current practices at the University of Bologna, including traditional adjudicative procedures and sanctions. It then delves into the role of the Ombudsperson in fostering ADR mechanisms. Subsequent Sections examine conflict resolution practices in American universities and explore the legal framework for conflict management in Spanish universities. The final Section presents the 'University Dispute Resolution' Project, which aims to implement an interest-based dispute resolution system at the University of Bologna. Drawing on international experiences, this paper seeks to bridge research gaps and enhance conflict resolution within the academic community in Bologna.

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How are conflicts managed at the University of Bologna? What systems, institutional figures, and mechanisms are used? Are these systems relying on parties' interests or rights?

Starting from these questions and the insights offered by international research, this paper aims to investigate – through the perspective of alternative dispute resolution (ADR) scholarship – the system currently adopted by the University of Bologna for resolving conflicts within the community and to advance proposals for further developments in the field. The decision to focus on the University of Bologna is twofold: firstly, the scope and purpose of this paper do not allow for an in-depth investigation of dispute resolution mechanisms deployed in all Italian universities; secondly, starting from an academic context familiar to the writers enables a more in-depth investigation.

The research objectives of the paper are based on two primary theoretical and scientific premises. On the one hand, in the last two decades, Italy has been undergoing a cultural shift regarding extrajudicial dispute resolution. ADR mechanisms have been deployed by the Italian legislature as a tool for tackling the inefficiency of the judicial system by incentivizing out-of-court dispute resolution and reducing the caseloads of courts.¹ As a result of various legislative efforts, such as the introduction of mandatory pre-action mediation² and court-ordered mediation,³ Italy has seen an average of over 150,000 mediation proceedings registered annually over the last five years, according to data published by the Ministry of Justice.⁴ Practitioners' interest in ADR has been constantly growing in the last decade; however, experts agree that non-adjudicative dispute resolution has not yet reached its full potential in everyday domestic legal practice in Italy.⁵ In this regard, some scholars call for a cultural change concerning the approach to disputes not only by legal practitioners (both lawyers and judges) but also, more generally, by Italian citizens.⁶ On the other hand, in the last decade Italian universities have embraced the challenge of kickstarting a cultural innovation in the approach to conflicts. Besides offering courses and programmes on ADR, experiential learning activities have emerged as a pivotal tool for equipping students with new skills needed to foster negotiated dispute resolution.⁷ The Italian academic community has also pursued the promotion of mediation 'in the field', by engaging with local courts.⁸ These efforts have contributed to the spread of a culture of ADR

1 Civil and commercial mediation, in particular, has received comprehensive regulation in the Italian legal system with Legislative Decree No. 28 of 2010, which transposed 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, in O.J. L 136, 24.5.2008, p. 3–8. For a general overview of mediation in Italy, see G Conte, 'The Italian Way of Mediation' (2014) *Arbitration Law Review*, 180.

2 Mandatory pre-action mediation applies depending on the subject matter of the dispute and requires parties to initiate a mediation procedure and make a serious attempt to settle the dispute before the judge can validly hear their case.

3 E Silvestri, 'Too much of a good thing: Alternative Dispute Resolution in Italy' (2017) 21 *Nederlands-Vlaams tijdschrift voor Mediation en conflictmanagement*, 29; S Dalla Bontà, 'The promise of consensual justice: The recent mediation reform in Italy' (2021) 26 *Zeitschrift Für Zivilprozess International*, 3.

4 Data are collected and updated by the Italian Ministry of Justice, see <https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST337881> (accessed 1 July 2024).

5 L Cominelli & A Jacqmin, 'Civil And Commercial Mediation In Italy: Lights And Shadows' (2020) 22 *Revista Da EMERJ*, 11.

6 P Lucarelli et al., 'Fitting the Forum to the Fuss While Seeking the Truth: Lessons from Judicial Reforms in Italy' (2020) 36 *Ohio State Journal on Dispute Resolution*, 213; M F Ghirga, 'Cultura della Mediazione' (2024) *Rivista di diritto processuale*, 45.

7 The ongoing pedagogical revolution was kick-started by the teaching project 'Conflict Managers of Tomorrow', established at the Law Faculty of University of Trento in 2010 with the aim of creating a generation of settlement-oriented young professionals, see: <<https://conflict-managers.com/>> (accessed 3 November 2023) and S Dalla Bontà (ed.), *Le parti in mediazione: strumenti e tecniche. Dall'esperienza pratica alla costruzione di un metodo* (Quaderni della Facoltà di Giurisprudenza dell'Università di Trento, 2020) available in open access at <<https://iris.unitn.it/handle/11572/269082>> (accessed 3 November 2023). The University of Milan has been offering, since 2011, the course 'Negotiation, Mediation, and Sustainable Conflict Resolution', which is co-taught by law and psychology professors and has given rise to an extremely innovative methodology for teaching negotiation skills, see: L Cominelli, 'Training Young Lawyers in the European Mediation Framework: It's Time to Devise a New Pedagogy for Conflict Management and Dispute Resolution' (2016) 2 *The Italian Law Journal*, 163; L Cominelli et al., 'Empowering Negotiating Skills in Law Professionals: Neuro-Cognitive Applications' in A D'Aloia & M C Errigo (eds.), *Neuroscience and Law: Complicated Crossings and New Perspectives* (Springer, 2020), 139. For a comprehensive overview of ADR teaching in Italy see: M Bove, 'Insegnare la mediazione nell'Università' (2023) *Giustizia Consensuale*, 169.

8 Starting from a pilot project at the University of Florence in 2012, several research programmes enabled early-career researchers to work with judges in order to review files of cases pending before the court and advising on their suitability for mediation. For an in-depth analysis of the results achieved, see E Guazzesi, 'I dati di Giustizia Semplice', in P Lucarelli (ed.), *Mediazione dei conflitti. Una scelta condivisa* (Utet giuridica, 2019), 173

and have introduced an increasing number of judges and lawyers to the benefits of negotiated dispute resolution. But is it sufficient, or can further improvements be made?

As we will discuss in the paper, from our perspective this cultural shift could be enhanced through the implementation of ADR systems specifically designed for the resolution of conflicts within the academic community. In foreign academic contexts, in fact, the deployment of dispute resolution systems inspired by ADR is well developed. Notably, in the USA and Spain, scientific research and legislative changes have led universities to implement internal mechanisms based on mediation, peer mediation, negotiation, and conflict coaching (see Sections 3 and 4 below). In the Italian context, as we will see further, these developments, currently overlooked by Italian scholarship, may contribute to strengthen the commitment of Italian academic communities towards ADR and non-adjudicative dispute resolution.⁹

1.1. RESEARCH APPROACH AND PLAN OF WORK

Although the topic of this research is certainly one which could be addressed from multiples perspectives, including a sociological and psychological approach, this paper is grounded in legal research on ADR. More specifically, for the purpose of assessing the current state of the art of dispute resolution within the Bolognese academic community and advancing proposals for its future development, the paper will draw from the dispute system design theory (DSD).¹⁰ DSD has been defined as ‘the applied science of designing the means to prevent, manage and resolve streams of conflicts’.¹¹ This approach focuses on identifying the optimal options, including both newer and traditional designs, by taking into account the ultimate goals of the systems, the stakeholders, the context and culture in which the systems operate, the processes currently available, and the overall accountability of the systems.¹² The DSD analytical framework highlights the distinction between interest-based and rights-based approaches to dispute resolution.¹³ Interest-based approaches focus on identifying and addressing the underlying needs and interests of the parties involved (e.g. negotiation and mediation). In contrast, rights-based approaches determine what parties are entitled to according to legal rules or practices (e.g. arbitration or other forms of adjudicative decision-making systems). The DSD literature contends that interest-based processes are superior to all others because they are less costly, more satisfactory, better at preserving relationships, and more likely to produce enduring outcomes.¹⁴ DSD models tend therefore to drive stakeholders toward mediation and similar forms of dispute resolution, while leaving adjudicative mechanisms as last-resort measures. DSD has already been successfully applied by legal scholars to investigate mechanisms for conflict resolution currently deployed by universities.¹⁵ It has been observed that

‘[u]niversities are laboratories for conflict due to their institutional uniqueness. Thus, they are primary candidates for an effective conflict resolution mechanism’.¹⁶

and <<https://www.unaltromodo.org/>> (accessed 2 November 2023). Similar initiatives have been undertaken at the University of Perugia and Trento, see S Dalla Bontà & E Mattevi (eds.), *Giustizia e mediazione: dati e riflessioni a margine di un progetto pilota* (Quaderni della Facoltà di Giurisprudenza dell’Università di Trento, 2022), available in open access at <<https://iris.unitn.it/handle/11572/335594>> (accessed 2 November 2023).

⁹ Lucarelli et al. (n 6); Ghirga (n 6); Bove (n 7).

¹⁰ DSD is a highly interdisciplinary approach as it involves organizational theory, law, economics, human resources management, organizational development, political science, public affairs and social psychology. For references see, *inter alia*, W Ury et al., *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass, 1998); K Shariff, ‘Designing Institutions to Manage Conflict: Principles for the Problem Solving Organization’ (2003) 8 *Harvard Negotiation Law Review*, 133; L Blomgren Amsler et al., *Dispute System Design: Preventing, Managing, and Resolving Conflict* (Stanford University Press, 2020).

¹¹ Blomgren Amsler et al. (n 10), 7.

¹² S Smith & J Martinez, ‘An Analytic Framework for Dispute System Design’ (2009) 14 *Harvard Negotiation Law Review*, 129–33.

¹³ Blomgren Amsler et al. (n 10), 34.

¹⁴ Ury et al. (n 10), 10–19.

¹⁵ N Palmadesso, ‘Student mediators solving campus conflict: the efficient shift from discipline to dispute resolution’ (2017) 72 *Dispute Resolution Journal*, 55–86. See also: N Katz & L Kovack, ‘Higher education’s current state of alternative dispute resolution services for students’ (2016) 4 *Journal of Conflict Management*, 5–37; J Meyer Schrage & N Giacomini (eds.), *Reframing Campus Conflict: Student Conduct Practice Through the Lens of Inclusive Excellence* (Routledge, 2020).

¹⁶ Palmadesso (n 15), 55.

In light of the primary educational objectives of academic institutions, a DSD model for universities should aim to engage members of the academic community in viewing conflicts as educational opportunities and chances for personal growth. This approach fosters a positive perception of conflicts. Moving to the identification of the stakeholders, academic communities are composed of several categories of members, including students, PhDs, faculty members, administrative and service personnel. The variety of stakeholders requires careful consideration, as each category has different and specific interests and system dysfunction can often be traced back to the failure to adequately involve and recognize the interests of key stakeholder groups.¹⁷ Also, power dynamics within the community may hinder the successful implementation of interest-based designs.¹⁸ In many educational systems, universities are organized – at least partially – as campuses, where members of the community share working and living spaces. Each university, regardless of the individual characteristics of the national educational system, can certainly be described as a community of thinking, devoted to teaching, learning and research, open to diversity of opinions within the community and to dialogue with the outside world. As a consequence of the individual institutional setting, academic communities face a variety of conflict dynamics, including ‘horizontal conflicts’ between members of the same categories (e.g. conflicts among students, disputes among faculty or staff members) and ‘vertical conflicts’ that involve individuals and the institution or another community member in a superior hierarchical position (e.g. conflict between a student and a professor or a member of the administrative staff, a PhD student and a professor, etc.). Some of these conflicts may also qualify as workplace disputes, which constitute a subset of community disputes. The DSD analytical framework will guide our investigation into the current mechanisms for managing and resolving internal disputes at the University of Bologna (Section 2). To develop proposals for new mechanisms, this research will also employ a methodological approach based on two comparative studies. These studies provide relevant examples of the actual implementation of interest-based systems of dispute resolution in universities, focusing on cases from the United States and Spain (see Sections 3 and 4 below). Finally, the paper will introduce the analytical framework and describe the set-up of the ‘University Dispute Resolution Project’ (UDR), which is currently ongoing at the University of Bologna (Section 5).

2. DISPUTE RESOLUTION MECHANISMS AT THE UNIVERSITY OF BOLOGNA: STATE OF THE ART

This Section aims to outline the primary mechanisms for resolving disputes within the University of Bologna as they stand today. As we will describe further, the University employs ‘adjudicative’ procedures to resolve disputes that involve disciplinary sanctions. These procedures are based on the following rights-based scheme: (i) establishment of obligations as stipulated by Faculty Regulations, Codes of Conduct, and similar documents; (ii) breaches of these Regulations or Codes by members of the University community; (iii) initiation of disciplinary procedures that ensure procedural safeguards (including the right to a fair hearing, the adversarial principle, and the proportionality of sanctions); and (iv) imposition of sanctions by an impartial and collegial body specifically constituted for managing such procedures.¹⁹ In this context, disciplinary procedures address what could be referred to as ‘more serious violations’, involving vertical conflicts²⁰ that affect the university as an institution on one side and its members on the other.

There are also additional institutional bodies dedicated to solving disputes within the university community that may not necessarily involve violations of University Regulations and Codes, and hence do not involve disciplinary procedures in most cases.²¹ These ‘less

¹⁷ Smith & Martinez (n 12), 131.

¹⁸ A Kinon, ‘Power Before Interests in Dispute System Design’ (2012) 17 *Harvard Negotiation Law Review*, 273–287.

¹⁹ For more details, see G Tripi, ‘I procedimenti disciplinari nei confronti dei docenti universitari’ (2004) *Il lav. nelle p.a.*, 967; M Capece, ‘Le regole del procedimento disciplinare dei docenti universitari dopo la legge 30 dicembre 2010, no. 240’, available at <www.ammministrativamente.com> (accessed 9 July 2024).

²⁰ For the distinction between vertical and horizontal conflicts see Section 1.1 above.

²¹ In this context, we should also mention the Bologna ‘confidential counsellor’ <<https://www.unibo.it/en/university/organisation/trusted-advisor>> (accessed 9 July 2024). This role is ‘meant as a means of assurance, prevention and intervention in order to uphold and enforce the values listed in the Code of Ethics and Conduct and in the Code of Conduct for the Prevention of Sexual and Moral Harassment’; it was first established by

severe disputes' (which will be discussed below) involve figures such as the students' Ombudsperson. As we will explain, the students' Ombudsperson represents a 'confidential and informal information resource, communication channel, complaint-handler and dispute resolver'²² between the University as an institution, professors/researchers, the administration staff, and students. The Ombudsperson operates differently from disciplinary committees, primarily because they lack sanctioning authority; instead, when receiving a request from a student, they conduct informal fact-finding inquiries, liaise with other University institutions or directly involved parties in conflict, and subsequently provide (re)solutions and answers to the student.²³ Given these premises, this Section aims to demonstrate, through the analysis of the main dispute resolution mechanisms (and their operational processes) at the University of Bologna, that purely interest-based resolution systems are not currently provided by the University.

2.1 EXPLORING THE 'TRADITIONAL ADJUDICATIVE' WAY: DISCIPLINARY PROCEDURES AND SANCTIONS

The University of Bologna employs traditional adjudicative systems for resolving disputes and addressing violations of its Code of Ethics and Conduct²⁴ as well as individual guarantees. In particular, the Code of Ethics and Conduct delineates the fundamental values of the University community, promoting the recognition and respect of individual rights and freedoms, as well as the acceptance of ethical and social responsibilities towards the institution. It defines the rules of conduct within the community and towards all individuals who directly or indirectly interact with the University. The Code governs internal relationships among members of the university community and external relationships to prevent any form of discrimination and abuse, regulate conflicts of interest, improve the working environment, foster virtuous behaviours, and prevent unethical or illegal conduct. For the purpose of the paper we should briefly underline that the Code is divided into different titles and sections aimed at: (i) ensuring academic integrity and ethical conduct in research and teaching²⁵ (title I, section II); (ii) emphasizing merit, equity, non-discrimination, and equal opportunities²⁶ (title I, section III); (iii) ensuring responsibility, independence, and avoiding conflicts of interest²⁷ (title I, section IV); (iv) encouraging practices for the spreading and disseminating of knowledge (title I, section V); and (v) identifying students' responsibilities under the degree programme, which includes, under Article 26, the active participation in educational activities and the adoption of collaborative behaviours, especially during tests, where students must refrain from disruptive, obstructive, or dishonest conduct towards other students and the institution. Acts such as plagiarism or copying texts, or any behaviour that may prevent a correct evaluation of the test, are contrary to the principles of the Code (title II, section I).²⁸

the European Commission Recommendation 92/131 of 27 November 1991, concerning the protection of the dignity of women and men, and by the European Parliament Resolution A3-0043/94. The EC Directives on anti-discrimination were incorporated into Italian law with the approval of Legislative Decree 81/2008 on health and safety. This role of the confidential counsellor is characterized by neutrality, impartiality, and confidentiality: it supports students but does not function as a dispute resolution mechanism. Therefore, it will not be addressed in this paper.

²² M Rowe, 'Options, functions, and skills: What an organizational ombudsman might want to know' (1995) 11 *Negotiation Journal*, 103. On this subject, see also the contribution of L Cominelli, 'L'alba di una nuova professione: la pratica dell'organizational ombudsman', available at <https://unimi2013-my.sharepoint.com/:b:/g/personal/Luigi_cominelli_unimi_it/EQ0iN6lmHzpFnPtmut7Kt0UBeD9hp5yn1rQim4uMr2bTXg?e=xuxFa8> (accessed 9 July 2024).

²³ According to the International Ombuds Association (IOA) definition: 'Art. 4.1. The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and - with permission and at Ombudsman discretion - engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves'. For more information, see <<https://www.ombudsassociation.org/about-us>> (accessed 18 November 2024).

²⁴ The Code is available at <[codice-etico-e-di-comportamento \(unibo.it\)](http://codice-etico-e-di-comportamento.unibo.it)> (accessed 7 July 2024).

²⁵ E.g., Article 4 addresses freedom, autonomy, and excellence in research and teaching, while Article 5 governs relationships with students.

²⁶ E.g., Article 13 prohibits the abuse of one's position in internal and external relations.

²⁷ E.g., Article 14 encourages the University staff to report conflicts of interests.

²⁸ The other two titles referred to are: (i) 'Rules of conduct in service activities' which include rules to prevent corruption and to properly use information technology, social media and social network; and (ii) consequences in case of violations of the code.

All members of the university community (i.e., professors and researchers, administrative staff, students) are required to be aware of and comply with the Code, and to act according to their role and responsibility. In fact, any individual who believes they have suffered harm or has knowledge of a Code violation may submit a written report to the head of their department or other institutional figures. Reports, as we will see further, are examined impartially, respecting the dignity of the involved persons, the confidentiality of the information, and the adversarial principle. Furthermore, they can initiate a disciplinary procedure. On the one hand, when a violation of the Code (that also integrates disciplinary responsibility) is realized by university personnel (i.e. professors or administrative staff)²⁹ the University Rector initiates the procedure before the Disciplinary Board,³⁰ adopting sanctioning measures provided by specific University Regulations.³¹ On the other hand, when a violation of the Code is realized by students, it may result in disciplinary sanctions under the Students' Disciplinary Regulation.³² Similarly, when there have been activities aimed at improperly altering the outcome of examinations or preventing a correct evaluation of them, the professor may annul the test or the examination results and report the incident to the competent Division or Campus managers for the initiation of a disciplinary proceeding as per the Students' Disciplinary Regulation.

Given these premises and the scope of this paper, we should stress that the aforementioned Disciplinary Regulations governing both university personnel and students are designed following a traditional rights-based and adjudicative mechanism. In the case of violations of specific duties³³ and obligations,³⁴ in fact, a procedure based on the adversarial principle between the parties is solely aimed at imposing disciplinary sanctions.³⁵ As mentioned above, interest-based dispute resolution mechanisms before reaching the stage of imposing sanctions are not provided. Furthermore, the disciplinary procedures for students and faculty professors/researchers, while distinct from each other, share fundamental similarities in their procedural frameworks.³⁶

In the context of this article, it is sufficient to highlight that both of the disciplinary procedures are governed by rigorous procedures that ensure respect of the adversarial principle and the principle of the proportionality of the sanction inflicted with the gravity of the violation.³⁷ These procedures involve disciplinary committees appointed by the faculty Rector (students' commission) or by the academic Senate (professors' and researchers' board), comprising academic members and (only for students' disciplinary procedure) selected students. For students, the procedure starts within thirty days of the Rector becoming aware of the alleged misconduct. This involves notification of charges, the opportunity for the accused to submit written observations, and the right to be heard by the disciplinary committee which makes

²⁹ For further reference on the Italian legislation, see Article 3, paragraph 2, of Legislative Decree no. 165 of 30 March 2001, for obligations and duties of public employees and Article 2, paragraph 4, of Law no. 240 of 30 December 2010 for the concept of disciplinary responsibility.

³⁰ In other cases the Academic Senate decides, based on the Rector's proposal.

³¹ See the <[Regolamento di funzionamento del Collegio di Disciplina ai sensi dell'art. 10, l. n. 240/2010 e dell'art. 33 dello Statuto di Ateneo — Normateneo \(unibo.it\)](#)> (accessed 7 July 2024) to explore the functioning of the disciplinary board.

³² See <[Regolamento dei procedimenti disciplinari degli studenti — Normateneo \(unibo.it\)](#)> (accessed 7 July 2024).

³³ See Article 2 of the Students' Disciplinary Regulation, available at <[Regolamento dei procedimenti disciplinari degli studenti — Normateneo \(unibo.it\)](#)> (accessed 7 July 2024).

³⁴ See the Regulations for the Functioning of the Disciplinary Board pursuant to Art. 10, Law no. 240/2010 and Art. 33 of the University Statute, available at <[Regolamento di funzionamento del Collegio di Disciplina ai sensi dell'art. 10, l. n. 240/2010 e dell'art. 33 dello Statuto di Ateneo — Normateneo \(unibo.it\)](#)> (accessed 7 July 2024). According to Article 12 disciplinary infractions constitute the following behaviours by professors and researchers: (i) failure to fulfil office duties; (ii) irregular conduct; (iii) severe insubordination; (iv) habitual failure to fulfil office duties; (v) habitual irregularity of conduct; and (vi) any acts that undermine the dignity or honour of professors and researchers.

³⁵ In this regard, Article 4 of the Students' Disciplinary Regulation (n 33) specifies that members of the Students' Disciplinary Commission must recuse themselves in situations outlined in Article 51 of the code of civil procedure. Likewise, Article 4 of the (professors' and researchers') Disciplinary Board (n 34) list the cases where each member of the board has the obligation to recuse themselves and where the accused can request the disqualification of a board member.

³⁶ See, for the students, the Students' Disciplinary Regulation (n 33) and for professors and researchers the (professors' and researchers') Disciplinary Board Regulations (n 34).

³⁷ See Articles 5 and 7 of the Students' Disciplinary Regulation (n 33) and Articles 5, 6 and 11 of the (professors' and researchers') Disciplinary Board Regulations (n 34).

decisions based on majority agreement among its members who are present.³⁸ Similarly, faculty and researchers are subject to disciplinary proceedings overseen by a disciplinary panel. This panel is tasked with evaluating infractions, which may include breaches of professional conduct or academic responsibilities. As is the case with the students' disciplinary procedure, faculty and researchers are afforded the right to a fair hearing, including notification of charges, the opportunity to respond in writing, and to present their case to the disciplinary committee.³⁹

Sanctions for both students and faculty members/researchers vary based on the severity of the misconduct, ranging from admonition to temporary suspension from academic duties or dismissal from office.⁴⁰ Throughout these procedures, principles of proportionality and fairness guide the application of disciplinary measures, ensuring equitable treatment and safeguarding the integrity of academic and professional standards at the institution. Now, given the framework of disciplinary (right-based) systems, is it possible to contemplate the integration of mediation and conciliation mechanisms involving 'consensual' and interest-based approaches? As we examine in Section 4 below, in Spain, the Law 3/2022 has moved in this direction, requiring universities to amend their disciplinary regulations by introducing ADR systems aiming to nudge people towards interest-based dispute resolution models.⁴¹

2.2 TOWARDS INTEREST-BASED DISPUTE RESOLUTION: THE ROLE OF THE OMBUDSPERSON

As mentioned in the introduction, this Section briefly focuses on the analysis of the figure known as the students' Ombudsperson ('*Garante degli studenti*') within the University of Bologna. Generally speaking, the role of the students' Ombudsperson is increasingly entrusted with conflict management in Italian universities and contributes to promoting a cultural shift towards interest-based dispute resolution and the use of restorative justice techniques. As of today, out of 77 higher education institutions operating in Italy, 31 have established the position of the Ombudsperson or similar roles.⁴² In line with international experiences, such as the overseas Ombudsperson (see Section 3 below) and the Spanish *defensoría universitaria* (see Section 4 below), many Italian universities have institutionalized the Ombudsperson's role through specific internal regulations. These regulations define scope, appointment procedures, duration, functions, competencies, operational methods, etc., despite the lack of a formal national legal framework.⁴³ The development of the Ombudsperson's role outside a top-down legislative framework (unlike in the US and Spain) is particularly commendable and ethical. It aligns with literature that advocates for socially sustainable environments in universities, where tools for peaceful conflict resolution are not only educational values to be spread within the academic community but also effective systems for managing conflicts

³⁸ See Article 5 of the Students' Disciplinary Regulation and note 33.

³⁹ See Articles 5–10 of the Students' Disciplinary Regulation and note 33.

⁴⁰ Under Article 13 of the (professors' and researchers') Disciplinary Board Regulations (n 34), the sanctions include: (i) written reprimand; (ii) suspension from office and salary for up to one year; and (iii) dismissal from office without loss of pension or allowances. Under Articles 8–11 of the Students' Disciplinary Regulation, the sanctions vary in duration depending on whether the students are enrolled in undergraduate programmes, specializations, professional courses, or doctoral programmes. The sanctions include: (i) warnings; (ii) exclusion from one or more exams or final evaluation for a certain period of time; and (iii) temporary suspension from the University for up to a certain period of time, which includes all academic records, exams, and educational activities.

⁴¹ G de Palo, 'The easy opt out model settles the perennial dispute between voluntary and mandatory mediation' (2023) 1 *Giustizia Consensuale*, 285–316, who explains that, with an easy opt out model, 'once provided [with] an understanding of how mediation could work for them by participating in a session to experience the process, disputing parties may freely choose to abandon the process' (...) in fact 'when making choices, people are inclined to choose the default option rather than the option that requires them to act and make efforts (...) people can be nudged away from sub-optimal decisions based on biases and errors but still maintain their autonomy and their self-determination'. See also, R Thaler & C Sunstein, *Nudge: Improving decisions about health, wealth, and happiness* (Yale University Press, 2008).

⁴² Cross-referenced internal and informal research has been conducted by the current students' Ombudsperson of the University of Bologna, in collaboration with the support secretariat for the Ombudsperson. Among the 31 Ombudspersons, a minority are external figures to the university, while most are faculty members or members of the administrative staff.

⁴³ In some cases, this role is referred to as 'university ombudsperson' (e.g., the University of Campania Luigi Vanvitelli) or simply 'ombudsperson' (e.g., the University of Florence). Consequently, requests can be submitted not only by students but also by faculty members, researchers, and administrative staff. In other cases (e.g., the University of Bologna or the University of Basilicata), the ombudsperson is primarily dedicated to the well-being of students.

among it. The Ombudsperson serves then as an initial institutional figure with whom students (including doctoral and postgraduate candidates) and sometimes university staff can interact as part of a community, in case of conflicts.⁴⁴ In this context, the students' Ombudsperson at the University of Bologna is a long-established figure, frequently approached by students both individually and collectively, whose autonomy, independence,⁴⁵ and transparency are especially emphasized. This is evident from the detailed annual reports published on the University's website, the analysis of which provided significant initial data for this study.⁴⁶ As stipulated in the '*Garante degli studenti* Regulation' (issued with D.R. no. 1491 of 7 December 2012), the Ombudsperson is tasked with promoting direct dialogue among students, ensuring that teaching and research activities do not infringe upon their rights and interests, and are conducted in accordance with the University's values and rules.⁴⁷ For the management of cases, under Article 3 of the aforementioned Regulation, the '*Garante*' has the authority to take all necessary steps for fact-finding, while respecting anonymity,⁴⁸ which is inherently linked to the confidentiality of the role, as well as its autonomy and independence. This autonomy is of significant importance, as the independence of the entity, held by a third party, ensures impartiality and neutrality.

From a methodological standpoint, the analysis will focus on the reports of the Ombudsperson's activities from the last five years, providing an initial mapping of conflicts within the University. This analysis was complemented by an interview with the current Ombudsperson, offering clearer insights into the operational methods of the role and enabling an evaluation of a potential new (and integrated) interest-based dispute resolution system to be implemented at the University of Bologna. In particular, this Section will focus on three main aspects: (i) the operational and procedural methods employed by the Ombudsperson in carrying out their duties; (ii) mapping the types of cases that students most frequently bring to the attention of the '*Garante degli studenti*'; and (iii) addressing issues of 'jurisdiction'.

Regarding the operational and procedural methods of the Ombudsperson in handling cases, first of all it should be noted that all requests must be submitted via e-mail and must clearly state the nature of the request. This process acts as a filter for cases that fall outside the Ombudsperson's role. Following the submission, the '*Garante*' responds almost immediately with an e-mail acknowledging receipt of the case, a technique that provides reassurance to students, making them feel heard from the start. After taking on the case, the Ombudsperson conducts all necessary investigative actions to evaluate it, which often requires collaboration with other university institutions. In this regard, during the interview, the '*Garante*' emphasized the importance of a regular dialogue and discussion with these institutions (at least monthly) to fully understand the internal dynamics of the University.

Once the investigation is complete, usually within a couple of days, the '*Garante*' either accepts or rejects the case, following a discussion with the student if deemed necessary or requested. Another interesting point concerns the number of cases submitted to the Bolognese Ombudsperson. Since 2012, when the role was established by the new university Statute, the

⁴⁴ F Teller, 'Mediazione come processo educativo' in M A Foddai (ed.) *La scelta della mediazione* (Giuffrè, 2009), 1-29.

⁴⁵ As in other universities, in Bologna as well, the choice has been made to appoint an ombudsperson who is an external person to the university.

⁴⁶ The role has been in operation from the academic year 2003-2004 to 2012 under the title of 'university ombudsperson'. Since 2012, as prescribed by the current Statute, it has been operating under the title of 'students' Ombudsperson'. For the purposes of this research, only the activities of the current students' Ombudsperson have been taken into account.

⁴⁷ In particular, Article 3 of the '*Garante degli studenti* Regulation' specifies that 'the students' Ombudsperson, in particular: a) receives reports concerning abuses of any form or type, dysfunctions, deficiencies, delays, violations of law or principles of good administration, failure to respect the values and rules stated in the University's Code of Ethics or the principles and rights indicated by the University Statute, committed during administrative procedures or in relation to acts or behaviors, including omissions or acts aimed solely at creating an intimidating, hostile, degrading, humiliating, or offensive environment, committed by faculty members, other university personnel, or attributable to Bodies, General and Peripheral Administration; b) takes all necessary steps for the investigation of facts; c) considering the functions of Bodies, Structures, and Administrative Offices as well as the characteristics of the case, promotes and verifies a prompt and effective resolution of the reports received; d) if noting acts or behaviors referred to in point a) of this paragraph, for which faculty and/or other university personnel may be held responsible and/or if they do not cooperate as required for the purposes of point c) of this paragraph, reports and refers the facts to the competent bodies as per Article 8 of this regulation; e) submits the annual report and urgent reports as per Article 7 of this regulation'.

⁴⁸ Except in cases of explicit waiver of anonymity, where disclosing the identities of the parties involved is necessary for resolving the case.

number of cases has progressively increased: from 116 in 2012 to 314 in 2023,⁴⁹ with a peak of 438 in 2020.⁵⁰ From the analysis of the reports of the last five years, it should be noted that conflicts addressed to the Ombudsperson can be categorized into five main areas: (i) administrative, which encompasses all bureaucratic aspects related to students' academic careers; (ii) academic, which encompasses the academic aspects of students' careers, including the management of study plans, exam sessions and academic schedules; (iii) financial, which includes matters related to fee payments, scholarships, and other benefits and privileges provided by the University; (iv) infrastructural, that concerns safety aspects, the hygiene of university facilities, and the suitability of spaces available to students; and (v) relational, which pertains to students' relationships with the faculty and administrative offices of the University. Comparing the number of cases in these major areas, it becomes evident that the most common issues are related to academic and economic-administrative matters. Specifically, the cases related to the academic area are numerically higher than the others, even though they can often be easily resolved by the Ombudsperson through direct communication with the department director and/or the course coordinator, or sometimes even with the professors themselves. On the other hand, economic and administrative issues frequently fall outside the 'Garante's jurisdiction' since they do not have the powers to influence changes in the university regarding economic-administrative rules and regulations. As an example, we should mention the conflicts arising from the rejection of scholarships or other financial aid applications, either due to late or incomplete submissions or lack of essential requirements. In such cases, the Ombudsperson's role is to provide support to students by explaining the regulations, which often prove to be difficult to understand and unclear.⁵¹ As briefly mentioned before, some requests fall outside the 'Garante's jurisdiction', due to different reasons, which include, for example: (i) overlapping with another university body, like the 'confidential counsellor',⁵² who supports students primarily with issues of discrimination, moral, psychological, sexual harassment or mobbing; (ii) cases of students from other universities; and (iii) more complex conflicts (involving staff members and the university as an institution), often leading to litigation in the courts. Examples include conflicts arising from exclusion from scholarships or other financial support (also due to false or misleading information), non-payment of University fees, issues related to admission tests for university and specialized courses, and even conflicts involving employment relationships with the University. The Ombudsperson certainly represents a mechanism for resolving disputes within the university community, oriented more towards a 'consensual' approach than the traditional disciplinary systems, but not yet fully interest-based.⁵³ This is because, at the end of the procedure it is still the Ombudsperson who decides whether to accept or reject the student's request. In this context, using a DSD approach, proposals for inter-university mediation systems coordinated with the Ombudsperson's activities might be suggested, drawing from international experiences. The 'Garante' could, in fact, 'serve' as an initial point of contact for students (and staff, if applicable), who could rely on their experience for an initial assessment of the conflict, followed by a referral to a university mediation body that could manage cases most suitable for mediation. Naturally, the prerequisite would be

⁴⁹ While the number of instances may not be statistically significant in relation to the student body of the University of Bologna, it is nonetheless important for our analysis because it constitutes a dispute resolution mechanism leaning towards an interest-based approach.

⁵⁰ In that case, however, the increase is also likely to be attributable to the effects of Covid-19 and the significant organizational challenges that the university had to face.

⁵¹ From the Ombudsperson's report of the academic year 2021, it emerges that many requests pertained to scholarship applications issued by the University of Bologna in collaboration with ER-GO, which is the agency of the Emilia-Romagna Region that provides support and services for students enrolling at a University or an Institute of Higher Artistic and Musical Education located in Emilia-Romagna; for more information, see <<https://www.er-go.it/esplora-i-benefici/benefici-erogati-da-er-go/borsa-di-studio>> (accessed 18 November 2024). In this context, many students had their scholarships revoked for not meeting the merit-based requirements specified in the regulations or reported that their financial aid applications were rejected due to incomplete documentation; whilst other students requested a review of their status to be eligible for financial support. Appropriate investigations were always carried out by the 'Garante', in full collaboration with ER-GO, but it was not possible to accommodate most of these requests because they did not fall under the duties and powers of the Ombudsperson's authority.

⁵² See note 21.

⁵³ In this regard, it is noted that although the literature generally characterizes the ombudsperson as an interest-based dispute resolution system, see L Blomgren Amsler et al, 'Dispute System Design and Bias in Dispute Resolution' in *Dispute System Design* (n 10), 913 and S Smith & J Martinez (n 12), 123 ff., the data collected for this research has shown that the same cannot be said for the Ombudsperson of Bologna who does not employ mediation techniques, but rather adjudicative ones.

the voluntariness of the procedures. As highlighted by the current Ombudsperson during the interview, considering that the mediation activity mentioned above would be suitable for involving not only individuals but also, depending on the conflict, the public administration itself (as in Italy the universities are mostly public bodies), many of the issues that have always surrounded mediation with public administrations would re-emerge. In fact, in civil-commercial cases, it is known that public administrations often decide not to participate in the mediation process due to overly cautious decisions by officials and managers who fear the possibility of incurring fiscal liability if they agree to an amicable settlement. However, it should be noted that, to address this behaviour, the new Legislative Decree 149/2022 on civil justice reform, incorporating aspects that emerged from the Luiso Commission⁵⁴ and the Alpa Commission,⁵⁵ has introduced a 'fiscal shield' for representatives of administrations, except in cases of fraud or gross negligence.⁵⁶ We will see what concrete effects result from the application of this provision, which aims to facilitate the participation of public administrations in the mediation process and also promote a cultural shift that, in the future, could lead to the acceptance of purely internal systems focused on conflict mediation.

3. CONFLICT RESOLUTION ON CAMPUS IN THE USA

The North American legal system represents a role model for the seamless integration of ADR mechanisms in the public court system, as envisaged in Professor Sander's 'multi-door courthouse'.⁵⁷ From the 1970s onwards, the 'ADR movement' has successfully influenced the educational content offered by law schools in the USA, leading to the introduction of specific courses and programmes on negotiation and mediation⁵⁸ and to the development of related legal clinics.⁵⁹ Clinical education on ADR has been providing a significant contribution to the consolidation of a culture of out-of-court dispute resolution, by shaping the attitude of generations of practitioners. For several decades now, USA law students have been actively participating through clinics in organizations dedicated to ADR services. Clinics encompass a wide range of practices, such as court-annexed mediation, *pro bono* mediation for citizens in need, community mediation services, and various other *ad hoc* ADR services across all areas of the law. These learning experiences have contributed to the creation of generations of practitioners who are considered to be world-renowned experts in out-of-court dispute resolution.

In parallel with a well-established tradition of experiential teaching, North American scholars have extensively researched conflict management within university campuses, giving rise to a substantial body of literature on the subject and a wide range of projects and experiences.⁶⁰ Research found that the most common institutional approach to conflict management adopted

⁵⁴ In this regard, the Commission's project has envisaged that the liability of the individuals who sign a conciliation agreement is limited to damages resulting from wilful misconduct by the official or for damages caused by their omission or inaction. For more information on this matter, see page 25 of the Report, available at <https://www.giustizia.it/cmsresources/cms/documents/commissione_LUIISO_relazione_finale_24mag21.pdf> (accessed 22 November 2023).

⁵⁵ See <https://www.giustizia.it/cmsresources/cms/documents/Alpa_relazione_articolato_7mar2016.pdf> (accessed 18 November 2024) and M Lupano, 'La riforma della mediazione' <<http://www.judicium.it>> (accessed 22 November 2023).

⁵⁶ The new Legislative Decree 149/2022 has indeed introduced a new Article 11-*bis*, entitled 'conciliation agreement signed by public administrations' which states that for representatives of public administrations, as referred to in Article 1, paragraph 2, of Legislative Decree March 30, 2001, no 165, liability is limited to acts and omissions committed with intent or gross negligence.

⁵⁷ F Sander, 'The Multi-Door Courthouse' (1976) 3 *The Barrister*, 18. For a comparative overview, see M Cappelletti, 'Alternative Dispute Resolution Process within the Framework of the World-Wide Access-to-Justice Movement' (1993) 56 *Modern Law Review* 282.

⁵⁸ Most famous amongst these is Harvard's Program on Negotiation founded by Professor Fisher. On the evolution of the educational offers in US law schools, see C Menkel-Meadow, 'To Solve Problems Not to Make Them: Integrating ADR in the Law School Curriculum' (1993) 46 *SMU Law Review* 1995.

⁵⁹ J Stark, 'Preliminary Reflections on Establishing a Mediation Clinic' (1996) *Clinical Law Review* 457.

⁶⁰ See in the early 1980s the case of the 'Center for Mediation in Higher Education' established by the American Arbitration Association in New York described by J McCarthy, 'Conflict and mediation in the academy' (1980) 32 *New Directions for Higher Education*, 1. For an overview of the phenomenon of conflict management in US universities, see W Waters, 'The History of Campus Mediation Systems: Research and Practice' (1999) *CNCR-Hewlett Foundation Seed Grant White Papers*, 10; and J Katz-Jameson, 'Diffusion of a Campus Innovation: Integration of a New Student Dispute Resolution Center into the University Culture' (1998) *Mediation Quarterly*, 129.

by US universities has been the establishment of ombudspersons offices, with over 300 offices in American universities, according to a survey conducted in 2015.⁶¹ In some States, such as Florida, this dispute system design choice is mandated by law.⁶² The literature highlighted that the role of ombudsperson is often assigned to individuals external to the university community, typically practitioners with expertise in ADR, who employ a spectrum of conflict management techniques.⁶³ However, some scholars emphasize the importance of deep familiarity with the academic environment, advocating for the role to be undertaken either by former professors or administrative staff.⁶⁴ It is also interesting to note that, according to data collected by the International Ombudsman Association,⁶⁵ these offices do not necessarily limit their function to students' issues: many university ombudspersons in the USA also handle complaints from staff, and some exclusively deal with staff-related conflicts. Drawing from the lessons of dispute system design, ombudspersons tend to diversify their services so as to maximize their impact on the well-being of the community. In addition to establishing specialized offices, American universities are extensively offering training in conflict management skills to staff members, faculty and students, including individuals from all academic disciplines.⁶⁶ One of the most successful experiences with training programmes concerns the initiative undertaken by the State of Georgia in 1994. The State offered centralized training activities for administrative staff of all universities, published guidelines on dispute management and offered a consultation service for their implementation. The whole operation led to the coordination of dispute resolution procedures in 30 different universities, resulting in 'possibly the largest comprehensive, integrated conflict management system (ICMS) in higher education'.⁶⁷ Besides training programmes and ombudspersons' offices, a 2013 study conducted on over 100 North American institutions has mapped an extraordinary variety of disputes resolution services made available to members of academic communities, from traditional facilitation interventions to conflict coaching and even restorative practices.⁶⁸ In some cases, universities provide mediation services which deal with campus disputes or issues involving community members, including workplace mediation for staff and mediation for students' disciplinary matters.⁶⁹ The catalogue of experience is extremely rich and diverse.

Building on academia's extensive use of persuasive reasoning and collegiality, peer mediation has been specifically investigated as a tool particularly suitable for the academic environment.⁷⁰ In brief, peer mediation requires the intervention of a third party who is specifically trained to act as a mediator and, at the same time, belongs to the parties' same community, with a similar status within the community. The implementation of this type of system is increasingly common in lower-grade schools, as it offers the dual benefit of resolving disputes and, more importantly, promoting the acquisition of relational skills by volunteer mediators, as well as establishing an atmosphere of trust and collaboration within the institution. Conflict coaching is another tool believed to be particularly effective in the academic context.⁷¹ It is defined as 'a dyadic process in which a conflict coach trained in conflict resolution works with a client to develop the client's understanding of the conflict, interaction strategies, and interaction

61 Katz & Kovack (n 15), 5.

62 Since 2011, Florida's K-20 Education Code (Title XLVIII, par. 1006.51) mandates every university to establish the role of a student ombudsman and disclose the operating rules of the procedures.

63 Katz & Kovack (n 15), 9.

64 R Shelton, 'The Institutional Ombudsman: A University Case Study' (2000) *Negotiation Journal*, 81.

65 The data collected by the International Ombudsman Association, updated in 2017, is available at <<https://www.ombudsassociation.org/ombuds-toolkit>> (accessed 23 November 2023).

66 See the example of the Texas A&M University: N Watson et al., 'Integrating Social Justice-based Conflict Resolution into Higher Education Settings: Faculty, Staff, and Student Professional Development through Mediation Training' (2018) 36 *Conflict Resolution Quarterly*, 10. For an overview of training programmes, see Katz & Kovack (n 15), 20.

67 D Yarn, 'Designing a Conflict Management System for Higher Education: A Case Study for Design' (2014) 32 *Conflict Resolution Quarterly*, 87.

68 Katz & Kovack (n 15), 13.

69 *ibid* 15; N Katz, 'Mediation and Dispute Resolution Services in Higher Education' in A Georgakopoulos (ed.), *The Mediation Handbook: research, theory, and practice* (Routledge, 2017), 178.

70 McCarthy (n 60), 32; Palmadesso (n 15), 58.

71 N Geist Giacomini & P Porter, 'The Art Of Coaching: Transferring Interpersonal and Group Conflict Resolution Skills to a One-on-One Setting' in Meyer Schrage & Giacomini (n 15), 144.

skills'.⁷² Conflict coaching services are often provided informally by ombudspersons, although the coach role can also be undertaken by trained volunteers, whether students or faculty members. Notably, this approach had the benefit of allowing unilateral participation and it enables community members to access new competences and acquire skills, becoming exposed to the culture of ADR. Despite pinpointing some dispute resolution tools as more efficient or appropriate, the literature on the subject is mostly based on case studies. To this day, scholars have just scratched the surface of the plurality of approaches adopted in practice and in diverse contexts by USA academic communities.⁷³ In Cornell's 'Campus Mediation Practicum' course, for example, after undergoing training students mediate real cases referred from the Cornell Judicial Administrator's Office regarding allegations against Cornell's Code of Conduct. Stanford's students peer mediation programme is focused on interpersonal disagreements between students.⁷⁴ At UC San Diego, disputes among faculty members are co-mediated by two professors trained in this skill for over 40 hours.⁷⁵ Finally, the North American literature also points out a challenge in mapping the phenomenon of dispute management in higher education institutions.⁷⁶ Some universities purposefully avoid using specific terminology (mediation, conflict resolution centres, etc.) to describe the ADR services they offer, deeming these terms overly formal and intimidating for users. Instead, they prefer terms with less defining connotations, such as 'facilitated discussion' or 'shuttle diplomacy', to describe the activities carried out by ombudspersons and similar offices, especially in systems devoted to staff issues. Despite its considerable fragmentation, the USA landscape demonstrates a well-established culture of interest-based conflict management and resolution within academic communities and offers multiple points for reflection for European institutions willing to implement new mechanisms or improve those currently adopted.

4. CONFLICT MANAGEMENT IN SPANISH UNIVERSITIES: EXPLORING THE LEGAL FRAMEWORK

Among the European countries, Spain is at the forefront in research⁷⁷ and legislation regarding dispute system design for universities.⁷⁸ The decision to explore and enhance ADR systems for conflict management in universities in Spain, similar to Italy, stems from the need to foster a socially sustainable environment. This approach is grounded in the belief that understanding conflict dynamics and the ability to manage them is fundamental to human development within a specific social group. In this regard, Spanish literature, which began addressing the topic in the early 2000s, has identified mediation as a means to manage justice within universities and simultaneously educate about conflict. In particular, from the study of relational dynamics, it has become evident that the university environment is susceptible to a diverse range of conflicts, influenced by various factors including education, organization, work, and even family.⁷⁹

⁷² See the definition proposed by R Brinkert, 'State of Knowledge: Conflict Coaching Theory, Application, and Research' (2016) 33 *Conflict Resolution Quarterly*, 383.

⁷³ N Watson et al., 'Integrating Social Justice-based Conflict Resolution into Higher Education Settings:' (n 68); see also J Meyer Schrage & M Thompson, 'Creating a Community of Inclusive Excellence Using a Spectrum Model Approach to Campus Conflict' in Meyer Schrage & Geist Giacomini (n 15), 101.

⁷⁴ For further information, see <<https://icil.stanford.edu/icil-programs/peer-mediators/peer-mediators-faqs>> (accessed 10 November 2023).

⁷⁵ Information is available at <<https://facultydiversity.ucsd.edu/mediation/faculty-mediators.html#Faculty-who-have-successfully-c>> (accessed 10 November 2023).

⁷⁶ S Klinger & M Maffie, 'Conflict Management Systems in Higher Education: A Look at Mediation in Public Universities' (2011) 3 *Dispute Resolution Journal*, 17.

⁷⁷ Since the early 2000s, Spanish literature has highlighted the need to establish a university 'orientation office' where students can seek support and assistance in their transition to university life. Building on these premises, aiming at promoting 'well-being' in the university environment, initiatives have been developed to institutionalize mediation systems within universities. See H Salmerón Pérez, 'Los servicios de Orientación en la Universidad. Procesos de creación y desarrollo' (2001) *Ágora digital* <<https://rabida.uhu.es/dspace/handle/10272/3453>> (accessed 17 November 2023).

⁷⁸ The legislation has proved to be in line with research findings on the topic. From 2001, with the *Ley orgánica* 21 December 2001, no 6, Spanish universities were encouraged to establish the figure of the ombudsperson, aimed at improving university coexistence.

⁷⁹ J Torrego Seijo, 'Presentación' in J Torrego Seijo (ed.) *Resolución dconflicos desde la acción tutorial*, *Resolución dconflicos desde la acción tutorial* (B.O.C.M, 2003); M Gonzalo Quiroga, 'La Mediación como

Based on these theoretical premises, Spanish universities are now implementing innovative research projects aimed at mapping conflicts within universities and developing tools and/or institutional roles for conflict management. These efforts also aim to foster a cultural change in the university environment, which has historically been resistant to such actions.⁸⁰ The legal foundation for the experiences gained to date can be traced back to the *Ley orgánica* 6/2001.⁸¹ Notably, this law introduced the figure of the university ‘Ombudsperson’ a single-entity role incorporated into university statutes. This role has a dual function: on the one hand, it serves as a body ensuring and overseeing the rights and freedoms of students, faculty, and administrative staff. On the other hand, it aims to improve university cohabitation. Additionally, at a higher level, noteworthy for their coordination and promotion of a restorative culture within universities, we can find two entities: the ‘*Conferencia Estatal de Defensoría Universitaria*’,⁸² which brings together the ombudspersons of various Spanish universities under different names (e.g., *valedores*, *mediadores*, *tribunal de garantías*, *sindic de greuges*, etc.), and the ‘International University Conference for the Study of Mediation and Conflict (CUEMYC)’, dedicated to spreading the culture of mediation.⁸³ Furthermore, the idea of complementing the role of the university Ombudsperson with individuals trained in mediation techniques and communication strategies for peaceful conflict management has led to the development of various projects.⁸⁴ Some notable examples include: (i) the Conflict Mediation and Advisory Unit (‘UNIMAC’) at the University of La Laguna,⁸⁵ (ii) the University Community Care Service (‘SACU’) at the University of Huelva;⁸⁶ (iii) the University Center for Conflict Transformation (‘GEUZ’) at the University of the Basque Country;⁸⁷ and (iv) the role of the university inspector, established in 2004 at the Complutense University of Madrid.⁸⁸ A significant step forward, as mentioned, is represented by the ‘*Ley de convivencia universitaria*’.⁸⁹ This law definitively abolishes the academic discipline regulation of 1954, which was based on a pure punitive (rights-based)

herramienta de los Objetivos de Desarrollo Sostenible en la naciente Ley de Convivencia Universitaria: Propuesta UNIMEDIA’ (2021) *Revista de educación y derecho*, 281.

⁸⁰ R Martínez Martín & A Lozano-Martín, ‘Sustainability and conflict management in the university environment. Analysis of students of the degrees in labour relations and human resources, and social work at the university of Granada (Spain)’ (2021) *Sustainability* 13431 <<https://doi.org/10.3390/su132313431>> (accessed 17 November 2023), which presents the results of a study conducted at the University of Granada. This study primarily aimed to map inter-university conflicts and highlighted the existence of three types of conflicts: student-student, student-teacher, and student-administrative staff. S Grau Company et al., ‘La mediación universitaria: un recurso de orientación. Experiencia en la universidad de Alicante’ (2016) *International Journal of Developmental and Educational Psychology*, 365, where the experience of the University of Alicante is recounted, aimed at implementing the institutional role of the mediator as a resource for the consensual resolution of conflicts.

⁸¹ The text is available at <<https://www.boe.es/buscar/pdf/2001/BOE-A-2001-24515-consolidado.pdf>> (accessed 17 November 2023); I Liz Muñoz et al., ‘La mediación en las instituciones de educación superior. Estudio comparado entre España, Perú y Ecuador’ (2021) *Horizontes Rev. Inv. Cs. Edu* <http://www.scielo.org.bo/scielo.php?pid=S2616-79642021000500041&script=sci_arttext> (accessed 17 November 2023).

⁸² See <<https://cedu.es/>> (accessed 17 November 2023).

⁸³ The ‘*Conferencia de universidades para el estudio de la mediación y el conflicto*’ is an association established in 2012, aimed at promoting research and knowledge on the topic of mediation. Currently, it represents approximately 50 Spanish, European and American universities. See, for more information <<https://cuemyc.org/>> (accessed 21 November 2023).

⁸⁴ Even if, in fact, the ombudsperson can also perform mediation tasks, typically the figure lacks specific training in mediation techniques aimed at actively listening to the parties, motivating them, and assisting them in finding a solution to the conflict.

⁸⁵ ‘*La Unidad de mediación y asesoramiento de conflictos mediación y asesoramiento de conflictos*’ <<https://www.ull.es/servicios/unidad-de-mediacion-y-asesoramiento-de-conflictos-unimac/>> (accessed 21 November 2023).

⁸⁶ ‘*Servicio de atención a la comunidad universitaria*’ <<https://www.uhu.es/sacu/conocenos>> (accessed 21 November 2023).

⁸⁷ ‘*Centro universitario de transformación de conflictos*’ <<https://geuz.es/>> (accessed 21 November 2023).

⁸⁸ Among its functions is also the provision of mediation services and support in conflict management. However, this role has been subject to criticism in academic literature, as it is not autonomous and independent from other institutional figures within the university (e.g., inspectorate, office of the vice-director, etc.). On this topic, see Gonzalo Quiroga (n 79), 293.

⁸⁹ Ley n. 03/2022, in force from 24 February 2022. In the Preamble to the law, it is stated that universities, in exercising their autonomy established by the Constitution, may develop measures that foster and stimulate active coexistence and shared responsibility among all members of the university community. In this regard, they may also promote the use of alternative dispute resolution methods, such as mediation, which can be more effective in addressing certain behaviours and conflicts among members of the university community belonging to the same or different sectors.

approach, and instead promotes alternative methods of conflict resolution within academia.⁹⁰ The law also establishes principles for constructing a disciplinary regime for university students, leaving it to individual universities to develop mandatory rules for ‘university coexistence’ to address issues of violence, discrimination, harassment, etc.⁹¹ In this context, universities are encouraged to promote the use and implementation of ADR systems, including mediation, based on principles of voluntariness, confidentiality, equity, impartiality, good faith, mutual respect, and flexibility. The law clearly demonstrates a preference for the use of mediation (art. 8), understood here as an ADR method, rather than resorting to sanctions. In this regard, even before the law came into effect, literature proposed the creation of unified mediation systems – organized according to the same framework in all universities – and fully integrated with other university bodies. An interesting proposal in this context is the ‘UNIMEDIA’ Project, ‘*Servicio Único de Mediación*’, an autonomous and independent institute that would collaborate with the Ombudsperson, seeking their intervention in cases requiring a technical-professional mediation service.⁹² The cooperation between the two university bodies – organized based on collaborative protocols – would also be facilitated by the evaluation of conflict management experts, who could act as a ‘filter’ to analyse the type of each conflict and whether it is suitable for mediation. The proposal aims not merely to create another option among the available ‘choices’ but rather to establish an efficient and comprehensive system capable of generating greater trust. This model is intriguing and raises insights into the potential implementation of such comprehensive systems within the University of Bologna, working in synergy with the students’ Ombudsperson.

5. PERSPECTIVE FOR THE FUTURE

The experiences discussed above clearly show that academia is increasingly moving towards negotiated conflict management, mediation, restorative practices, and generally towards promoting a model of peaceful and sustainable coexistence within the community. In this model, conflict is not seen negatively but as an educational moment and an opportunity for personal growth when managed consciously. All the experiences discussed in the article, whether aimed at promoting mediation training with innovative teaching techniques or implementing internal ADR systems, serve the dual purpose of education and conflict resolution.⁹³

The tools used by the universities that emerged in this paper are diverse, ranging from clinical experiences to the implementation of the American Ombudsperson or the Spanish ‘*defensoría universitaria*’ and the Italian ‘*Garante degli studenti*’, to the promotion of conflict coaching and peer-to-peer-mediation techniques, and the development of integrated mediation mechanisms. It is not the purpose of this article to compare the above-mentioned experiences. However, broadly speaking, these can all be considered examples of the current shift toward interest-based dispute resolution services that have emerged within universities in recent years. In light of this significant innovative trend, at the University of Bologna we envision the gradual creation of a fully interest-based dispute resolution system in the form of a ‘mediation centre’ or ‘desk’, which will be discussed in the following Section.

5.1. THE ‘UDR’ PILOT PROJECT OF THE UNIVERSITY OF BOLOGNA

In this regard, as anticipated, a new pilot project has recently been financed by the Italian Ministry of University and Research on dispute resolution mechanisms in universities, carried on

⁹⁰ The said disciplinary regulation, known as the ‘*Reglamento de Disciplina Académica de los Centros Oficiales de Enseñanza Superior y de Enseñanza Técnica*’ was described by the Minister for Universities, Manuel Castells, in a speech to the House of Deputies on 25 May 2021, as unconstitutional and undemocratic.

⁹¹ The disciplinary power is then significantly reduced and used only to address the most serious infractions (e.g. those that disturb or impede the normal functioning of teaching and research activities).

⁹² See Gonzalo Quiroga (n 79), 295 ff., who identifies three types of collaborative models between the two figures: vertical, open, and linear. In the first model, the mediation unit would operate only upon the request of another university body (director, deputy director, etc.); in the second model, all members of the student community could freely request the intervention of the mediation unit; in the third model, it is envisioned that the conflict management request would be placed in a ‘circuit’ aimed initially at evaluating the conflict and then assigning it to the most appropriate management unit (Ombudsperson, mediation unit, etc.).

⁹³ M Marinaro, ‘La formazione alla mediazione dei conflitti. Spunti di riflessione e percorsi di riforma’ <<http://www.judicium.it>> (accessed 22 November 2023).

by a research team at the University of Bologna, in collaboration with the University of Verona.⁹⁴ The general purpose of the University Dispute Resolution Project, in line with the objectives of Italy's Recovery and Resilience plan (PNRR) and the recent systematic reform of the Italian civil procedural law,⁹⁵ is to promote the culture of mediation in universities and, more particularly, to fill the knowledge gap about the dynamics of conflict existing within the university community (especially among students), as well as to identify the most appropriate techniques for managing them. In this context, the project intends to activate a research programme – which could influence the welfare of the student community (and beyond) – aimed at studying the dynamics of conflict and their management within the University of Bologna. To this end, the Project will carry out a systematic study of the international literature developed in the field, while also promoting at the University of Bologna initiatives and activities aimed at raising awareness within the students' community on the issue of conscious, responsible, and self-determined management of conflicts (within academia). In addition, the Project will create a centre (a 'peer-mediation desk'), coordinated by experienced staff, dedicated to conflict coaching and peer-to-peer mediation for managing conflicts among students. Specially trained students will actively participate in the activities of the desk, making direct application of the techniques learned and, ultimately, spreading in the student community new mechanisms for conflict management.

As highlighted above, the aim of the Project is also to contribute to the implementation of a research programme on the topic of university mediation, a field of research that remains completely unexplored in Italy to date. Furthermore, the 'mediation desk' – when it becomes operational – will have different functions: (i) providing students interested in the project with specific training in conflict coaching and peer-to-peer mediation; and (ii) allowing these trained students to put into practice the techniques learned through a 'desk' service available to the entire student community. These mediation techniques, in fact, work, specifically, for social conflicts in a given group and operate through the intervention of people belonging to the group itself, who play the role of mediators or coaches. In this regard, it has been noted that students are more likely to accept mediators or coaches who are their peers, being perceived as free from institutional influences or other authorities;⁹⁶ in addition, they are better able to understand the dynamics underlying the conflict presented to them.

In conclusion, as highlighted above, peer-to-peer-mediation and conflict coaching may foster a climate of trust and collaboration within an institution that reflects positively on all relationships within and outside of it. Furthermore, the 'mediation desk' will work in synergy with the students' Ombudsperson of the University of Bologna, who usually deals with the resolution of student-staff members disputes ('vertical' conflicts). In this regard, the collaboration with the 'Garante' will be particularly useful, not only for the purposes of scientific research, but also for the students themselves who, as part of the training received at the 'mediation desk', will be able to work – respecting the privacy of the parties – on real case studies of conflicts. The ultimate aim of the Project is to propose a 'tailor-made' system for inter-university conflict resolution. In this regard, an important step of the research will be dedicated to the mapping of the student-student conflicts, through a systematization of disputes categories by macro-areas. A recent example of this activity has been provided by the Spanish '*Ley de convivencia universitaria*',⁹⁷ where conflicts are categorized according to their severity. With regard to the University of Bologna, an *ad hoc* categorization should be developed and it should include by way of example: conflicts of integration (e.g., defamation, harassment, discrimination,

⁹⁴ The project falls within the scope of the research PRIN funding 2022 ('*Progetti di Rilevante Interesse Nazionale*'), as planned by Directorate Decree no. 104 of 2 February 2022; for more information, see <<https://www.mur.gov.it/it/atti-e-normativa/decreto-direttoriale-n-104-del-02-02-2022>> (accessed 18 November 2024). The Project is coordinated by Professor E Zucconi Galli Fonseca of civil procedural law at the University of Bologna and will last two years, starting from the end of September 2023. For more information, see <<https://site.unibo.it/mediazione-universitaria-udr-prin/it>> (accessed 6 July 2024).

⁹⁵ Legislative Decree n. 149, 10 October 2022, <<https://www.gazzettaufficiale.it/eli/id/2022/10/17/22G00158/sg>> (accessed 18 November 2024).

⁹⁶ R Cantrell Schellenberg et al., 'Reducing Levels of Elementary School Violence with Peer Mediation' (2007) 10 *Professional School Counselling*, 475–481. R Harris, 'Unlocking the Learning Potential in Peer Mediation: An Evaluation of Peer Mediator Modeling and Disputant Learning' (2005) 23 *Conflict Resolution Quarterly*, 141–164; L Gogos, 'Peer Mediation: Equipping Student Leaders With The Ability To Resolve Internal Conflicts' (2020) 21 *Cardozo Journal of Conflict Resolution*, 349–360.

⁹⁷ See above, note 89.

destruction of the university's historical-cultural heritage and house-sharing issues in public student halls); conflicts related to the violation of values and rules set out in the Codes of Ethics and Regulations of the universities, or conflicts arising in the course of group work, curricular and extracurricular internships. The categorization – of which these types of conflicts are merely examples, given that the research is not yet complete – will also facilitate the identification of mechanisms (if any) currently employed for the management of such conflicts. It is precisely in this field that there is room for improvement and for new interest-based systems, drawing inspiration from the discussed models.

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The authors have no competing interests to declare.

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