Metodo Giuridico
Ius et Ratio • ISSN 3103-7305

ITALIAN JOURNAL OF LAW & CASE LAW • ISSN 3103-7305
CASE NOTE • CIVIL LAW & CIVIL PROCEDURE • 13 NOVEMBER 2026

Substantive Power of Attorney in Mandatory Mediation Proceedings

Limits on Delegation to Legal Counsel, Lack of Notarial Authentication, and Extinguishment of Summary Payment Claims under Italian Supreme Court of Cassation, Civil Division, Order no. 20992/2026

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Current Legal Framework as of 10 November 2026: Supreme Court case law consolidates the validity requirements governing substantive transactional powers of attorney granted to legal counsel in court-ordered mediation proceedings, coordinating the prior statutory regime with the amended text of Article 8 of Legislative Decree no. 28/2010 enacted by the Cartabia Reform.

ABSTRACT

This article examines the ruling of the Italian Supreme Court of Cassation, Civil Division, concerning **party representation in mandatory court-ordered mediation proceedings**. The order consolidates the judicial doctrine whereby personal attendance of the litigants constitutes the primary structural rule of the statutory conciliation system, permitting substitution of a disputing party solely by virtue of an ***ad hoc*** **substantive power of attorney** conferring express authority to dispose of the contested substantive rights. Such a transactional mandate cannot be replaced by an ordinary litigation power of attorney under Article 83 of the Italian Code of Civil Procedure, nor does appointed counsel possess statutory authority to **authenticate the principal's signature** for extrajudicial transactional activities. Within opposition proceedings against a summary payment order, invalid attendance by counsel alone entails failure to satisfy the statutory condition of procedural admissibility, resulting in the **revocation and extinguishment of the summary payment order** due to non-compliance with the procedural burden resting upon the respondent creditor.

Key Takeaways

- **Centrality of personal attendance:** Mandatory mediation requires genuine direct engagement between the substantive parties in order to bring to light the underlying interests behind the dispute.
- **Autonomy of transactional delegation:** A special power of attorney must unequivocally confer authority to dispose of the contested substantive rights and cannot coincide with a mere litigation mandate.
- **Lack of certifying authority:** Legal counsel has no statutory power to authenticate a client's signature affixed to a substantive power of attorney granted in counsel's own favour or to third parties for mediation proceedings.
- **Fatal procedural inadmissibility in summary order proceedings:** In litigation arising from opposition to a summary payment order, any defect in valid appearance falls upon the respondent creditor, entailing revocation of the payment order.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Civil Procedure

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 20 June 2026, no. 20992 — Party representation in court-ordered medi

Legal Principle / Editorial Headnote

In court-ordered mediation proceedings, a party who does not attend in person may be represented by legal counsel exclusively through the execution of a specific substantive power of attorney conferring authority to dispose of the disputed rights. Such transactional delegation falls outside the signature-authentication powers vested in counsel under Article 83 of the Italian Code of Civil Procedure; non-compliance precludes the valid institution of the conciliation procedure and entails, in opposition proceedings against a summary payment order, the procedural inadmissibility of the original pecuniary claim asserted by the respondent creditor.

01. PROCEDURAL BACKGROUND AND THE DISPUTE OVER OPPOSITION TO THE SUMMARY PAYMENT ORDER

The evolution of the statutory **condition of procedural admissibility** within the Italian civil procedural order reflects the consistent docket-reducing objective pursued by the legislature since Legislative Decree no. 28 of 4 March 2010. Within that institutional architecture, the execution of a valid **substantive power of attorney in mandatory mediation** serves as an indispensable safeguard ensuring that the preliminary conciliation meeting does not degenerate into an empty formalistic ritual. Where judicial proceedings originate in an *ex parte* summary payment phase and subsequently continue as full-cognizance opposition proceedings, verifying the **proper institution of the mediation procedure** acquires a preliminary and dispositive significance, bearing directly upon the admissibility of the underlying pecuniary claim originally asserted in the petition for a summary payment order.

1.1 — Origin of the Summary Order Litigation and Court-Ordered Mediation

The litigation brought before the Italian Supreme Court of Cassation originated from a **summary payment order** (*decreto ingiuntivo*) issued by the Court of First Instance of Verona, ordering a commercial company to pay a sum exceeding eighty-eight thousand euros as the balance due for contractual services relating to motor-vehicle transport[1].

Filing a timely opposition pursuant to Article 645 of the Italian Code of Civil Procedure, the enjoined debtor contested the creditor's claim in its entirety, raising multiple accounting errors, the failure to credit payments already made, and the existence of **offsetting damages claims** arising from alleged delays and damage to the transported goods, while simultaneously asserting a counterclaim for affirmative relief.

While ordinary full-cognizance litigation was pending, the examining judge issued an order directing the parties to initiate **court-ordered mediation** pursuant to Article 5 of Legislative Decree no. 28/2010, requiring them to commence the conciliation procedure within the mandatory statutory time limit. At the sole session held before the selected mediation body, only the **legal representative of the opposing debtor company** appeared in person, whereas on behalf of the respondent creditor company only its litigation counsel attended, producing a private instrument bearing the principal's signature alongside a signature by counsel expressly designated as transactional acceptance. Having noted the impossibility of reaching an amicable settlement and having recorded the statement made by counsel for the respondent creditor declining to enter into the merits of conciliation, the mediator formally drew up the **minutes recording the failure to reach an agreement**.

1.2 — Procedural Defences Challenging the Validity of the Transactional Mandate

Upon resumption of the opposition proceedings, the opposing debtor company timely raised an **objection of procedural inadmissibility of the claim** asserted in the original summary payment petition, contending that the respondent creditor company had in law failed to participate in the court-ordered mediation. The defence argument rested on the premise that attending counsel lacked a valid transactional power of attorney, inasmuch as the written instrument had neither been authenticated by an authorized public official nor conferred express **authority to dispose of the contested substantive rights**. Notwithstanding that objection, the Court of First Instance dismissed the preliminary defence, holding that the general power to delegate was sufficient and that the attendance recorded in the mediation minutes precluded subsequent challenges not raised before the mediator; it thus revoked the original summary payment order on the merits while ordering the opposing debtor to pay a recalculated sum.

The Court of Appeal of Venice upheld that reasoning and dismissed the appeal on the assumption that the written authorization granted to counsel contained an explicit reference to the power to adopt conciliatory determinations, thereby establishing a valid ***ad hoc*** **substantive representation** for the initial mediation session. That appellate judgment prompted the unsuccessful debtor company to lodge an appeal before the Italian Supreme Court of Cassation, alleging infringement of Articles 5 and 8 of Legislative Decree no. 28/2010: the grounds of appeal fundamentally challenged the validity of unauthenticated substantive representation lacking dispositive transactional powers, reaffirming that failure by the party bearing the procedural burden in summary order opposition proceedings to appear validly in mediation inevitably entails the **procedural inadmissibility of the judicial claim**.

02. SUBSTANTIVE POWER OF ATTORNEY IN MANDATORY MEDIATION AND SIGNATURE AUTHENTICATION RULES

The systematic framework established by Legislative Decree no. 28 of 4 March 2010 assigns personal attendance of the disputing parties a structural rather than merely ceremonial function. The underlying rationale of the institution rests on the premise that extrajudicial conciliation draws its vitality from direct, informal dialogue between the actual holders of the contested legal relationship, guided by the facilitative techniques of an impartial mediator. Whenever a litigant is unwilling or unable to attend in person, transferring the corresponding powers onto the transactional plane requires the execution of a valid **substantive power of attorney in mandatory mediation**, whose formal and substantive

prerequisites demand a clear demarcation between procedural representation and the exercise of substantive power of disposal.

2.1 — The Mandatory Distinction Between Technical Legal Representation and Substantive Agency

On a doctrinal level, Supreme Court case law has progressively clarified that technical legal assistance provided by litigation counsel and substantive agency on behalf of a party constitute conceptually distinct legal institutions governed by separate statutory regimes[2]. An ordinary **litigation power of attorney** (*procura alle liti*) granted pursuant to Article 83 of the Italian Code of Civil Procedure vests counsel with *ius postulandi* and the associated powers to conduct court proceedings, yet it neither transfers ownership of the underlying substantive legal relationships nor confers authority to perform acts of extraordinary administration or enter into settlement agreements in an extrajudicial forum. Participation in mediation proceedings does not fall within the category of typical procedural acts; rather, it constitutes a preliminary or incidental negotiation activity governed by private autonomy.

It necessarily follows that attendance solely by counsel holding a judicial litigation mandate is not equivalent to appearance by the party. Although the legal system does not prohibit appointing the very same lawyer retained for technical legal assistance to act simultaneously as a substantive transactional agent, such an appointment requires a separate juridical act specifically aimed at conferring **authority to dispose of the contested substantive rights** before the mediation body. Absent that independent substantive authorization, legal counsel attending the mediation session acts merely as a technical adviser, resulting from a substantive standpoint in the complete non-appearance of the represented party.

2.2 — Statutory Limits on Certifying Powers: Why Counsel Cannot Authenticate the Delegation

The most acute operational tension concerns the authentication regime governing the signature affixed to a special power of attorney executed for mediation proceedings. Under positive Italian law, an attorney's power to certify the authenticity of a client's handwritten signature represents a strictly construed statutory derogation from the general rules on public certifications, expressly confined by Article 83 of the Code of Civil Procedure to judicial pleadings and litigation mandates. That **exceptional certifying authority** is insusceptible of analogical extension to private transactional or extrajudicial instruments, such as powers of attorney for the conclusion of contracts or for participation in alternative dispute resolution procedures external to state jurisdiction.

> Legal counsel's statutory power of signature authentication is strictly confined to judicial acts within court proceedings and cannot be extended to substantive transactional agency, since disposing of contested rights in mediation requires prior public verification of the principal's identity.

A consequence of decisive practical importance flows directly from this statutory framework: where a party elects to be substituted by its own litigation counsel at a mediation meeting, the corresponding substantive power of attorney can under no circumstances be authenticated by the appointed counsel. A legal practitioner has no authority to attest with public faith to the certainty of a principal's identity outside the strictly judicial sphere, nor may counsel authenticate an instrument conferring dispositive substantive powers directly upon counsel's own person. A signature affixed by counsel bearing a mere notation of acceptance or a purported certification of conformity cannot cure the lack of authentication by a **public official duly authorized by statute**, leaving the instrument devoid of the requisite legal certainty.

2.3 — Formal Requirements of the Instrument and Prior Transactional Identification of the Principal

The requirement of prior, incontrovertible identification of the delegating party reflects the substantive constraints inherent in the power to waive or settle contested rights. Pursuant to the general principle enshrined in Article 1392 of the Italian Civil Code, a power of attorney has no effect unless conferred in the form prescribed for the contract that the representative is authorized to conclude. In the mediation context, where the intended physiological outcome consists in executing conciliation minutes capable of judicial homologation and of producing binding settlement effects, prior verification of the principal's identity and informed dispositive intent constitutes an indispensable safeguard for the **certainty of legal transactions**.

Submitting at a mediation session a delegation drafted on a separate sheet lacking notarial or municipal administrative authentication reduces the document to a mere unauthenticated private writing, incapable of reliably proving the authorship of the declaration and the genuine conferral of substantive powers. The absence of valid signature certification exposes any resulting settlement agreement to future challenges alleging lack of authority and deprives the mediation body of essential preliminary verification. From this perspective, the Italian Supreme Court of Cassation reaffirmed the strict **ineffectiveness of transactional representation** lacking statutory formal safeguards, equating attendance by counsel not validly vested with an authenticated substantive power of attorney to the complete and unjustified absence of the party itself.

03. ALLOCATION OF THE PROCEDURAL BURDEN IN SUMMARY ORDER PROCEEDINGS AND CONSEQUENCES OF NON-APPEARANCE

Grafting mandatory mediation onto summary payment proceedings requires delicate systematic coordination in order to identify which litigant bears the procedural burden of initiating and properly conducting the conciliation process. Opposition proceedings against a summary payment order entail a structural split between the formal procedural position of the opposing debtor (acting as formal claimant in the opposition) and the substantive position of claimant, held by the respondent creditor. Failure to execute a valid **substantive power of attorney in mandatory mediation** in favour of the individual appearing before the mediator directly shapes the outcome of the litigation, governing the very survival of the pecuniary claim originally asserted through the summary payment procedure.

3.1 — The Respondent Creditor as Bearer of the Burden Under Penalty of Procedural Inadmissibility

Settled uniform case law of the Civil Division of the Italian Supreme Court of Cassation has unequivocally established that, once interim rulings granting or staying provisional enforceability under Articles 648 and 649 of the Code of Civil Procedure have been issued, the burden of pursuing court-ordered mediation rests exclusively upon the **substantive claimant — namely, the respondent creditor**[3]. Indeed, it is the petitioning creditor who asserted the pecuniary claim and holds the legal interest in preserving the enforceable order, whereas the opposing debtor would suffer an unwarranted penalty if its opposition were declared procedurally inadmissible due to another party's inaction or omission. That allocation remains unaltered even where the opposing debtor has filed counterclaims, as the entire litigation remains anchored to the substantive initiative of the respondent creditor.

From an operational standpoint for counsel representing the respondent creditor, discharging the statutory burden is not exhausted by merely filing a mediation request with the conciliation body; it requires the **actual personal attendance** of the party at the initial meeting or, alternatively, appearance by a representative vested with a valid, duly authenticated

transactional power of attorney. Attendance by legal counsel lacking notarial authentication is legally equivalent in every respect to non-appearance by the burdened party. As observed with regard to the procedural inadmissibility of appeals before the Court of Cassation and the strictness of formal statutory time-bars (*decadenza*), procedural dismissal strikes the claim of the substantive claimant who failed to comply with statutory requirements, entailing revocation of the summary payment order and extinguishment of the summary title, much like disputes concerning the formal prerequisites of an enforceable instrument in banking litigation.

3.2 — Distinguishing Absence of the Initiating Party from Non-Appearance of the Invited Respondent

Grasping the exact operational scope of the statutory system requires a rigorous **distinction** between the conduct of the party bearing the burden to initiate mediation and that of the invited counterparty[4]. The sanction of procedural inadmissibility does not apply indiscriminately to any absence from the mediation table. On the contrary, non-appearance by the invited respondent operates in a fundamentally different manner: where the initiating party has properly commenced the procedure and appeared in person before the mediator, unjustified absence by the counterparty neither paralyses judicial proceedings nor prevents satisfaction of the **statutory condition of procedural admissibility**.

Were the respondent's absence to trigger procedural inadmissibility of the claim, the defendant would become the absolute arbiter of the claimant's constitutional right of access to judicial protection, capable of blocking court proceedings through sheer inaction. Consequently, unlike cases in which the initiating party fails to appear validly, non-attendance by the invited party triggers solely the statutory financial and evidentiary sanctions — namely, a **mandatory order to pay a sum equal to the unified court fee** to the State budget and the court's power to draw adverse evidentiary inferences under Article 116 of the Code of Civil Procedure. Regarding procedural objections in court, counsel contesting admissibility must raise the relevant objection no later than the first hearing following the conclusion of the mediation procedure, demonstrating through the mediation minutes the absence of a valid **substantive power of attorney in mandatory mediation** on the part of the burdened counterparty.

04. CONCLUSIONS AND SYSTEMATIC SCOPE FOLLOWING THE CARTABIA REFORM

The order under review consolidates an interpretive line of authority that now finds express statutory codification in the amended text of Article 8(4) of Legislative Decree no. 28 of 4 March 2010, as revised by Legislative Decree no. 149 of 10 October 2022. In enacting the Cartabia Reform, the legislature codified the principles developed by Supreme Court case law, expressly providing that parties must participate personally in mediation proceedings and that substitution by a representative is permitted exclusively in the presence of **justified grounds**, through the conferral of substantive conciliation powers upon an agent fully informed of the facts of the dispute.

The rigorous statutory construction set forth by the Italian Supreme Court of Cassation alerts legal practitioners to the severe risks inherent in informal delegations within a defence team. Drafting a valid **substantive power of attorney in mandatory mediation** requires counsel to verify not only the objective breadth of the dispositive powers granted by the client, but also the formal validity of the instrument and the public authority of the certifying official. Relying on unauthenticated private writings or attempting to exercise notarial authentication powers not vested in legal counsel exposes the client to irremediable statutory forfeitures (*decadenza*), which in summary order opposition litigation result in the immediate **revocation and extinguishment of the summary payment order** with preclusive effect on the asserted action.

The following summary table outlines a comparative overview of the key dimensions of party representation in mediation, contrasting the prior statutory regime with the framework established by the Cartabia Reform:

Operational Dimension	Prior Statutory Regime (Legislative Decree no. 28/2010)	Cartabia Reform Framework (Legislative Decree no. 149/2022)
Personal attendance	Established by Supreme Court case law on the basis of the teleological rationale of mediation.	Expressly codified under Article 8(4), permitting derogation solely upon justified grounds.
Delegation to legal counsel	Permitted via an *ad hoc* special substantive power of attorney conferring dispositive powers over contested rights.	Grantable to a representative informed of the facts and vested with the requisite substantive settlement powers.
Signature authentication power	Excluded for appointed legal counsel under Article 83 of the Code of Civil Procedure in extrajudicial matters.	General principle reaffirmed: authentication by an authorized public official required for dispositive transactional acts.
Consequence of initiating party's absence	**Procedural inadmissibility** of the judicial claim, entailing revocation of the summary payment order against the respondent creditor.	**Procedural inadmissibility** confirmed, accompanied by strengthened statutory financial sanctions.

References & Authorities Cited

Statutory Provisions

- Articles 5 and 8 of Legislative Decree no. 28 of 4 March 2010 — Mediation aimed at the conciliation of civil and commercial disputes, statutory condition of procedural admissibility, and personal attendance of the parties.
- Legislative Decree no. 149 of 10 October 2022 — Implementation of Law no. 206 of 26 November 2021 delegating the Government to enhance the efficiency of civil proceedings and revise the statutory framework governing alternative dispute resolution instruments (Cartabia Reform).
- Article 83 of the Italian Code of Civil Procedure — Litigation power of attorney, scope of technical legal representation, and statutory limits on counsel's authority to authenticate the principal's signature.

Article 1392 of the Italian Civil Code — Formal requirements governing powers of attorney for the conclusion of transactional and settlement agreements disposing of substantive rights.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 20 June 2026, no. 20992** — Party representation in court-ordered mediation, lack of a validly authenticated substantive power of attorney in favour of legal counsel, and procedural forfeiture incurred by the respondent creditor in summary order opposition proceedings. Outcome: appeal upheld and claim declared procedurally inadmissible. Para.: [1] and [2] of the grounds of appeal.

2. **Italian Supreme Court of Cassation, Civil Division, Judgment of 5 July 2019, no. 18068** — Personal attendance of parties assisted by legal counsel in mandatory mediation and prohibition against authentication of a substantive power of attorney by appointed counsel. Outcome: first ground of appeal upheld, judgment under appeal quashed, and claim declared procedurally inadmissible. Para.: [2] of the reasoning.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 2 July 2024, no. 18106** — Allocation of the burden of initiating mediation in opposition proceedings against a summary payment order, insufficiency of a mere litigation power of attorney, and requirement of a special substantive power of attorney. Outcome: appeal declared inadmissible. Para.: [5.1] of the reasoning.

4. **Italian Supreme Court of Cassation, Civil Division, Order of 15 April 2026, no. 9608** — Structural distinction between non-appearance of the initiating party, which bars procedural admissibility, and non-appearance of the invited counterparty, which triggers solely the statutory financial sanctions under Articles 8 and 12-bis of Legislative Decree no. 28/2010. Outcome: appeal dismissed. Para.: [3] of the reasoning.

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