

Justice Outside the Court

An Ethnography of Emotions in Commercial Mediation

[E.CoM – Justice Outside the Court](#) is a *Swedish Research Council* innovative research project (2024-2027), Principal Investigator Dr. Alessandra Minissale. Its aim is to study the role of emotions in commercial mediation through a comparative analysis based on data collected in different legal and cultural contexts: Italy and England.

In the international landscape, mediation is one of the most established systems available to settle disputes outside the court. On the official EU website, we read that mediation ‘helps to avoid the worry, time, and cost associated with court-based litigation’. References to emotions are rare in legal discourses, even less when they are about commercial conflicts. In fact, both legal and economic cultures have conventionally disregarded emotions as an inherent human weakness that can only undermine rational decisions. Emotion-free rationality, however, is a myth that does not exist in the real world, where emotions continuously guide our actions.

Emotions are particularly crucial to conflict resolution, but in the commercial sphere, they have received scant attention due to the widespread assumption that business people act in a purely logical, rational manner, putting their feelings aside. The proposed project aims to fill this gap in the literature by exploring the ‘invisible’ emotional dimension of commercial conflicts handled through mediation.

Mediation is an ideal setting to conduct this investigation due to its less scripted and rule-bound structure compared to court litigation. This study wants to achieve a deep and nuanced understanding of the social dynamics at play in commercial conflicts going beyond the mere breach of contractual obligations. This is essential to comprehending how commercial conflicts can be solved outside the court system, where commercial relationships are normally destroyed. Specifically, this study seeks to answer the following research questions: How do emotions guide commercial disputants’ and mediators’ actions and decisions in each stage of the mediation process? How do mediators recognize and manage disputants’ emotions in commercial conflicts? In what way do commercial mediators make sense of their own emotions and actions in relation to their duties of impartiality and neutrality?

This research will be entirely conducted by Dr. Alessandra Minissale, who has a Double PhD in Sociology (Uppsala University) and Legal Studies (Bologna University) and is currently a Postdoctoral researcher at Uppsala University and the Institute of Legal Informatics and Judicial Systems in Bologna. Dr. Minissale has been invited to conduct part of her research at the University of Oxford, Centre for Socio-Legal Studies (CSLS) during the spring of 2025. Dr. Minissale will use ethnographic methods to collect data in Italy and England through shadowing of mediators, observation of mediations, and semi-structured interviews with mediators.

This research has been ethically approved by the Swedish Ethical Authority (Beslut 2024-01968-01-573867 *Etikprövningsmyndigheten*) and by the Research Ethics and Integrity Committee of the National Research Council of Italy (Prot. N. 0200240, 11/06/2014 – UOR: SI000002).

Participation

Participation is voluntary and anonymous. During mediation observations, Dr. Minissale will seek informed consent from both the parties and the mediator. The same procedure will be followed before shadowing and interviewing each mediator. All personal data as well as references to businesses, their services and products will be replaced with fictitious names. Participation will not entail any additional workload for the mediators who decide to join. Mediators will be able to freely agree on the conditions of their involvement and cancel their previously agreed availability at any time without consequences.

Handling of personal data

Personal data as well as references to businesses, their services and products may be collected during the recording of interviews. As mentioned, such data will be replaced with fictitious names. The names of mediators will only be collected to maintain contact during the data collection and presentation phase of the research results. Their names will be saved on separate, encrypted files and stored on the Uppsala University official software, Allvis. Transcripts will be coded and numerically catalogued. Interviews will be recorded on digital devices and transferred to encrypted non-networked media (memory pen or external hard disk) and stored in special security cabinets. A backup copy of the recordings will be kept in a second security cabinet. This material will only be accessible to Dr. Minissale. The notes taken during mediation observations will not contain personal or commercial data, or references to products and services, as the use of fictitious names will be contextual to their writing. All collected data will only be used for scientific purposes and in accordance with the conditions set out herein. Only anonymised parts of the interviews and extracts from the notes will be mentioned in scientific publications related to the research project. The University of Uppsala has been authorized to collect and process personal data with the authorisation no. UU-DsO 2018/475, issued by the Data Protection Officer, in the person of the responsible person Jacob Håkansson, on 21/12/2018.

Risk mitigation measures

The risks associated with the collection and processing of personal data or references to businesses, their services and products are minimised through the protection mechanisms protection described above. The obligations assumed by data controllers are defined by the Grant Agreement Swedish Research Council number 2023-06542, the provisions of the University of Uppsala (<http://www.uu.se/om-uu/dataskyddspolicy/>) and any written agreement/authorisation signed between Dr. Minissale and the heads of the mediation bodies.

Results and publications

The results of this research project will be published in research monographs, scientific articles and presentations at national and international conferences. The results may also be disseminated at seminars and other training contexts. Short, anonymous excerpts of transcribed interviews and observations may be used in all of the above contexts. The results may also be used in scientific contexts such as public debates or conferences. Seminars/lessons based on the research results will be offered to the research participants. Any profits from the above-mentioned publications will not be shared with research participants. More information on E.CoM - 'Justice Outside the Court' project can be found via the following link:

<https://www.uu.se/en/departmentsociology/research/justice-outside-the-court-an-ethnography-of-emotions-in-commercial-mediation>.

Contact

Alessandra Minissale, Uppsala University and IGSG-CNR. Via Zamboni, 26 Bologna.

Email: alessandra.minissale@uu.se

Phone: +393381708227