

IL SISTEMA DI TUTELA STRAGIUDIZIALE DELL'ARBITRO BANCARIO FINANZIARIO.

Abstract

This study concerns the activities of the organisation established in 2009 at Bank of Italy to out - of - court financial and banking disputes.

The objective is to identify the legal nature of this proceeding, that seems to be a cross between the notoriously known as Alternative Dispute Resolution (arbitration and conciliation - mediation).

For this reason, the starting point of this study was to identify the national and supranational legal sources of protection system of ABF. These sources have allowed the identification of socio - cultural context that has led to the introduction of art. 128-*bis* T.U.B. and its founding process in our legal system.

Then, the first chapter is characterized by the description of ABF organs, the technical Secretariat and the deciding Organ, taking care of issues related to the independence and impartiality of this organism. Doubts originated by the doctrine arise from the role played by technical Secretariat and by the deciding Organ in the procedure *ex art. 128-bis* T.U.B. Then the attention has been moved on the legal classification of the subjective position of intermediaries and customers, proceeding parties before the ABF.

In the next chapter, the attention was on the general proceeding, highlighting the competence, the type of protection and the objective application. The study gives a particular attention to the issues about the compensation of damages and precontractual negotiations. On the other side, the attention falls to the determinant constraints on the legal action before the ABF, including the conditions of admissibility, and the stages - preliminary, investigation and decision - in which the proceeding is articulated.

The greatest attention has been devoted, in the third chapter, to the final act of the procedure, which nature is the subject of the authoritative doctrine's

discussion. To this end, it appears the analysis of the various functions of proceeding before the ABF.

The reference is to the conciliatory - deflative function of civil litigation: this purpose also derives from the condition of admissibility of judicial application for financial and banking disputes, introduced by art. 5, p. 1, d.lgs. n. 28/2010. This provision in fact makes the ABF procedure alternative to mediation proceedings, disciplined from d.lgs. n. 28/2010. The theme is addressed in the first section of the third chapter.

There also is a reference to «*specific - delaying*» function that the procedure *ex art. 128-bis T.U.B.* perform on the Bank of Italy administrative supervision procedure. The theme is analysed in the second section of the third chapter.

There also is a final reference is to the «*nomofilattica*» function pursued by ABF, that provides banking and financial intermediaries the correct interpretation of the rules that they have to respect in their relationships with customers. The theme is analysed in the third section of the third chapter.

Thanks to the study of these three functions, it has been possible to value the final act of the procedure *ex art. 128-bis T.U.B.*, its efficacy between the parties and, in general, the legal effects' production.

These observations helped to identify the protection tools, that the intermediary and the costumer may bring before, during or at the end of the ABF proceedings.

The result is, on the one side, the analysis of the proceedings *ex art. 128-bis T.U.B.* relationship with the civil process, with the mediation - conciliation proceedings, and with the arbitral proceedings; on the other, the analysis of its relationships with the administrative procedure for supervision of Bank of Italy, regulated by act n. 241/1990.

The remarks about the legal nature of ABF close this study.