

## 1. How was mediation introduced in your country?

The Argentine Republic has a Federal System of Government where the National State and Provincial States coexist. The regulation of Mediation is a power that is understood to be reserved to the latter. Because of this, we must keep these two areas in mind to carry out the analysis.

We can set the beginning of Mediation at the National level in November 1991, since it was on that date that the Ministry of Justice of the Nation, with the support of the Inter-American Defense Agency (AID) and the Information and Cultural Service of the U.S. Embassy (Usis), took place the first introductory course to mediation<sup>1</sup>.

This idea began to be profiled in Decree 1480/92<sup>2</sup>, which before the existing judicial crisis orders the institutionalization and development of mediation to be declared of national interest as a non-adversarial method of conflict resolution.

This decree instructs an Honorary Commission<sup>3</sup> to develop a national mediation bill. A Corps of Mediators is created that will operate within the Ministry of Justice and will set out the basic principles of the institution.

It also empowers the Portfolio of Justice to request the Supreme Court to designate courts of the first instance in each case or through the respective National Chambers of Appeals. In these, the pilot experience of mediation would be carried out, it is particularly advisable to establish this procedure in the civil field, for all matters in which property actions containing compensation claims are attempted, and in family actions<sup>4</sup>.

Concerning this experience carried out in the Civil Jurisdiction Courts of the Federal Capital, a level of settlement of 53.22%<sup>5</sup> is achieved.

Besides, the legislation invites the provinces<sup>6</sup> and, where appropriate, the municipalities, to adopt the rules of their respective field similar to those contained in this decree. In January 1995, resolution 008/95 created the School of Mediators within the scope of the National Directorate of Legal Extension of the Ministry of Justice.

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<sup>1</sup>Cons. PERAZOLO, MARCELO PABLO, Mediation as a Social Prevention System, L.L., March 31, 1995, 3-4.

<sup>2</sup>(ADLA, LII-C, 3108), dated 19 August 1992, to be published in Official Gazette No. 27456, 24 August 1992.

<sup>3</sup>The commission consisted of Dr Gladys S. Alvarez, Antonio Boggiano, Luis Mauricio Gaiborois, Remo Entelman, Elena Y. Highton de Nolasco and Mario Ernesto Kaminker. All of them performed their duties in honorary form.

<sup>4</sup> Ministerial resolution 983/93 put in place a pilot experience for the period of one year in 10 federal capital courts (7 assets and 3 family) and by ministerial resolution 535/94 the Corps of Mediators was established.

<sup>5</sup>These data were taken from PERAZOLO, ob. Cit., p. 4.

<sup>6</sup>Currently, the Ministry of Justice collaborates in the training of mediators with the provinces of Rioja, Santa Cruz, Tierra del Fuego, Tucuman, Salta, Santa Fé, Córdoba, with which it signed agreements on its occasion for that purpose.

## **2. What were the main challenges you faced in introducing mediation into your country?**

The three main challenges of Mediation concern:

A) Strengthen the social legitimacy of mediation to enshrine itself as a tool for peacemaking and constructive approach to conflicts:

- 1.- To achieve a culture of mediation for the better use of society and to establish itself as a method of conflict resolution.
- 2.-To legitimize the role of the mediator in the face of society, to make known the goodness of the system and to expand the field of action.
- 3.- Establish itself as a valid and recognized alternative to the dispute, train responsible system agents and promote and disseminate the goodness of the procedure by facilitating access to justice for all.

B) Hierarchy of the role of the mediator in all areas:

- 1.- Increased promotion and awareness of legal professionals.
- 2.- Increased professionalization of Mediators.
- 3.- Access and increase of fees.

C) Implementation of state policies for dissemination of mediation:

- 1.- That it be established as a true public policy necessary for social pacification.
- 2.- Training in mediation at all educational levels.
- 3.- Inclusion in curriculums of different university and tertiary careers and the curriculum of the training of police and security forces.

### **3. How have you addressed these challenges?**

Towards the future, mediation should be seen within a broader field that emphasizes the work of conflict prevention, management and resolution processes in other areas such as organizations, administration, education, etc. However, not forgetting other RAD processes that may be useful as the case may be such as arbitration, intermediate formulas such as Mediation/Negotiation/Conciliation/Arbitration, etc.

It requires overcoming seeing RAD as "alternative" methods to think of "appropriate" processes, with the idea that for each type of conflict there can be a strategy that is better suited to their management. Although from the origin of mediation in Argentina it was thought in all areas, they are concentrated in the judicial fields, community issues and educational experiences, with a strong look from mediation, giving less importance to other RAD forms.

It is also necessary to consolidate public policies beyond speeches and legal frameworks, and that does not depend on the civil servant on duty to push them forward. Mediation training began with an "instrumental" look, emphasizing the parts of mediation, procedure and techniques. With the path travelled it is necessary to strengthen the construction of the theoretical frameworks that support this practice.

Today the Covid-19 pandemic confronts us with other challenges: the construction of protocols for online mediation.

In legislative matters, the adjustment to the new terminology of the Civil and Commercial Code, especially in family matters, is pending. Argentina has come a long way, however much remains to be done to definitively incorporate mediation and other RAD processes into the culture of conflict prevention and management in our society.

### **4. What are the factors that have supported mediation growth in your country?**

Taking into account the implementation and development of mediation in Argentina, based on changes and adaptation, and according to the evolution of the country in all areas, we can mention as important factors the following:

1. Introduction of alternative dispute resolution systems in Argentina: the most relevant achievement in mediation is the implementation since 2011 of the access system to Online Mediation Services, which is governed by its own rules and guidelines for carrying out relationships and communications in a highly agile manner. For the future, the deployment of this system is expected across the scope.

2. Detect and make visible through professionals in the field of mediation and sociology the conflict created and fuelled by both internal and global situations: health or economic crises, internal and external migration movements, refugee crises, etc.

Attempting to resolve the chronic problems of Latin American justice systems, which, together with authoritarian political regimes, have had a harmful psychopolitical impact on most people, which is minimized by a widespread perception of futility or inaccessibility to justice. Causes such as barriers to opportunity, high cost, education and language have helped the general public perceive access to these systems as denied.

3. Positive examples of free access by the general population to a specialized mediation service are being disclosed, to be applied:

-In March 2013, a virtual platform for remote mediation was incorporated in the Province of Salta, thanks to an agreement between the Ministry of Justice and ODR Latin America.

To understand the value of this service, it is important to take into account Professor Elisavetsky's words: "From the point of view of concerns, online conflict management, using new information and communication technologies, clearly falls within the sphere of competence of conflict resolution professionals, since we manage conflict solutions for individuals, companies and governments, in situations where the legislation of each country, is exceeded, by transnationality, by the transnationality of each country. The use of the technology in conjunction with the methods of negotiation and mediation or arbitration allows preventing and/or resolve disputes and/or reduce the cost of resolving them. (...) if new professionals are trained at the intersection of new technologies, with online dispute resolution methods, very soon, most organizations will adopt these mechanisms, as a vital part of their strategies of linking with internal and external clients, bodies and governments." ("New information and communication technologies applied to conflict resolution")

-The National Directorate of Alternative Dispute Resolution Media of the Ministry of Justice has a Mediation Center. It is a free service that can be requested by party attorneys or individually by anyone involved in a dispute. The reception of the service is subject to the availability of resources that the centre has. For more information, you can turn to the Mediation Center and hold an orientation interview with the on-call mediator.

-National and International Technical Assistance: La Di.Na.M.A.R.C. provides technical assistance to public and private institutions, provincial and national governments, responding to written demands regarding the development and implementation of mediation projects such as planning and organization of mediation centres or mediation training programmes, being recommended in all areas.

4. The involvement and contribution of the new generations (second and third generations living abroad) both professionals in the field of mediation and individuals who had the opportunity to travel, study and train abroad are highlighted. In this way, bring a different vision and an open perspective to the understanding of the cultural richness that is reflected in all aspects that determines the proper functioning of a country.

## **5. Where do you see mediation in your country in the next 5 years?**

The future of mediation and the evolution of any professional and social field of the country is conditioned by the development of education, the desire to adapt people to the new realities presented by the future and above all, by the involvement of professionals in the field of mediation. We can brush a few points that we value as important:

1. Give the native recognition of measurement in our lives and concretize the culture of mediation in Argentina and the cultural diversity that enriches it.

2. To influence the need to increase training actions in mediation at all social, academic and professional levels: to assess and enjoy the important social, professional and individual benefits. Specialization and acquisition of technical resources adapted to the new world reality as the need for communication; especially the ODR system, by mediators who are professionally engaged in mediation.

3. Development of legal and regulatory instruments, not only adapted to the national level but also international so that it can be recognized (according to development and method) and applied by any country and nationality.

4. Find a system with which this mediating activity is materially organized: public or private system, judicial or extrajudicial, onerous or free, individual or institutional, nevertheless facilitating access to mediation according to the need and demand of the population:

-As for the vulnerable population, because of their social and economic situation, the creation of low-cost economic or free services through public administrations will facilitate their access.

-As for the work of professional mediators, effective quality control mechanisms (unified and internationally recognized code of technology) need to be implemented: professional materials, specialized training, etc.

-Recognition of professional activity scientifically; we cannot live on voluntarism or what we know how to do, but rather we should document cases, subject them to the "criticism" of fellow mediators, discover the training needs of mediators, and become accustomed to the supervision of our work, and the need for methodological recycling.

-To recognize professional and legal achievements in the field of mediation at the international level. We cannot forget that conflict can be of all kinds: international, labour, political, neighbourhood, community, school, or any other way imaginable, so the contribution of each country and culture is fundamental and facilitates international understanding and recognition.

-To make known the multiple versions or assessments about the appropriate techniques or methodology: facilitating, valuational, linear, transformative, circular-narrative, intercultural, online, etc., so that the professional or the person can feel identified with one or the other of the aforementioned methods.

## **6. What are the concerns of access to mediation/ODR services facing your country?**

The main contributions that arose in the Workshop of exchange of experiences between lawyers, mediators, academics and coordinators of specialized services in the field of mediation are as follows:

A. Participants agreed that mediation promotes dialogue and increases people's autonomy. This is expressed in the ability and willingness to think, choose and act independently and is associated with authenticity, in the sense that the person with autonomy exercises his free will and his right to express his real desires and needs.

B. The system should strengthen mediator training, generate greater suitability and ensure quality in professional performance. There are differences between those who emphasize the value assigned to basic training and those who think about the need for specialization for specific areas of mediation.

C. Another idea to improve training expresses the need to professionalize it through the creation of a specific career that integrates training for the role of the mediator with interdisciplinary fields in a more transversal understanding that allows to build own and legitimate identity in the fields of performance and academic accreditation.

D. Another aspect that was highlighted is the need to deepen the scope of the dissemination of mediation, in broad terms and particularly in the field of law, given the limited understanding of the assumptions of the method and the limited information on results handled by legal operators.

E. Concerning the importance given to interdisciplinarity without distinction of themes, there is an inconsistency between theory and practice. It states the importance of interdisciplinary contribution in comedy and yet it is not exercised mostly, expressing some resistance to the idea of equipment or of all being mediators alike. As daunting factors are noted: the scale of fees, the limitation of the regulations that require the mediator to be a lawyer and the absence of multidisciplinary human resources prepared in mediation.

F. Mediation dealing with damages with the intervention of the insurance company, on the one hand, recognizes the existence of bad practices between mediators and lawyers and, on the other hand, refuses to exist. This allows you to glimpse corporate codes that prevent the modification of these practices.

G. Mediation on patent and trademark issues was not seen as a collaborative mediation space but as a bargaining space between lawyers; mediations with companies raised the difficulty of having the participation of actors with decision-making power. It was confirmed that banks will meet when they are required to apply for credit collection not using mediation for resolution.

H. In institutional mediation services with groups of actors in vulnerable situations, significant contradictions were presented by highlighting the need for interdisciplinarity for mediation, while reducing it to the Community level, justifying its exclusion from the preliminary ruling mediation.

I. The appointment of the mediator on a proposal from the requester through the sending of a list of mediators with different addresses is considered a formality.

## **7. How is your country addressing problems with access to mediation/ODR services?**

In recent times, especially since the pandemic period, the problem of access to Mediation Services through the electronic environment has been addressed, which has its own rules and guidelines for conducting relationships and communications in a highly agile manner. This is checked in the way we do business, form strategic alliances, interact in networks, save and share information in the cloud among people who know only virtually. These people belong to different countries and cultures, so conflicts that can end up in the courts are generated.

State justice can hardly provide an adequate response to such particular litigation, involving citizens from different countries, with different cultures and languages, from different jurisdictions and legislation, and where procedures are time-consuming. This is where knowledge and training in interculturality are essential.

Electronic dispute resolution systems add confidence to network transactions that support the growth of trade and other related activities. More and more sites and centres are providing or willing to provide ODR services. This drives new trends in the modernization of justice, which involves the use of computer tools and applications, as well as living up to the technological moment.

Finally, it is important to point out that, with efficient alternative dispute resolution systems and specialized professionals, the decongestion of the courts will be their direct and expected consequence. However, the important thing is that mediators are sought for the quality of their service and their communication skills, as well as the correct application of their techniques, and not because it is a low-cost option in the face of uncertainty and extension of the judicial process.

To generate greater certainty in business in the electronic environment, alternative online dispute resolution methods must continue to be promoted as a value option for achieving justice in all cases.

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