

Mediation: roots in the past with projection in the future

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Resumen

Cuando se habla de mediación y de otros métodos de resolución de conflictos basados, en la gestión pacífica, constructiva y cooperativa de las discrepancias, parece que se está aludiendo a nuevos sistemas de gestión de conflictos. Una simple mirada a nuestra historia nos permite ver, que no es así, ya que, si bien, su forma de aplicación profesionalizada y el esfuerzo de teorización, realizado en las últimas tres décadas, puede considerarse innovador, la filosofía que subyace en estos sistemas, es tan antigua como pueda serlo la propia capacidad de razonar de los seres humanos. Por ello, la Mediación, ya sea ejercida formalmente por profesionales o informalmente entre amigos o familiares, no es ningún descubrimiento, sino más bien una feliz recuperación de técnicas basadas en principios ancestrales que hunden sus raíces en la capacidad de comprensión y diálogo propio de los seres humanos.

Abstract

When talking about mediation and other methods of conflict resolution based on peaceful, constructive and cooperative management of disagreement, we would seem to be talking about new systems for conflict management. Looking back at our history shows us how this is not the case however. Despite innovation in its theorisation and more professional application over the last thirty years, there is an underlying philosophy in these systems that could well be as old as human beings' ability to reason. Thus, mediation, whether carried out by professionals or informally by friends and relatives, is no new discovery, but rather the fortunate recovery of techniques based on ancestral principles rooted in people's ability to understand and dialogue.



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MEDIATION, A CLOSE TOOL IN THE HISTORY OF THE HUMAN BEING

When we talk about mediation and other conflict resolution methods based not only on confrontation (on the pursuit of “the official declaration of a winner” neither), but also on the peaceful, constructive, and cooperative management of discrepancies, it may seem that we refer to completely new methods. In fact it is not so because, even if the professional way in which it is applied and the theorization effort made in the last three decades may be considered as innovative, the underlying philosophy of those systems is so old as human beings’ reasoning ability may be.

Mediation, understood as the intervention of a third person in a dispute between two or more parties unable to decide and willing to get closer in their positions, is therefore very old, as old as society itself. We can find references about it in the Bible, the Coram, and in ancestral tribal cultures. According to Gulliver, in the African primitive cultures there was already a mediating institution called “moot”, which helped the parties to come to agreements in interests’ conflicts. Just as Coy affirms, Eastern cultures have also been using mediation for millennia. A good example is China, where mediation is deeply rooted and where great importance is given to the art of listening and little intervening.

When talking about mediation and how this system has been used and has developed throughout history, it is necessary to distinguish between:

1. The mediation used since old times as a mean to manage conflicts emerging between people in the same community. The mediator was a member of the community, with moral authority, a deep knowledge of habits and traditions, and respected by all the community members, who appealed to him so as to solve their differences. It could either be an aged person having social prestige and being revered and respected as such, or a person who, due to his special abilities (knowledge, wisdom, reliability...), had such respect (shaman or good man). (Sugiero “wise man” en lugar de “good man”)

2. On many occasions it is not only recommendable, but necessary, to use specific mediation techniques as punctual tools occasionally put into practice, or even usually used in non-structured, pedagogic-peaceful social interventions. We refer to punctual interventions in a variety of problems, most of them successfully carried out by technical staff from the social services. They apply mediation tools to cases demanding contention actions, strengthening family bonds or pacification, but without implying the application of a patterned or structured mediation process.

3. Informal mediation, which is commonly used by everybody to try to achieve closer positions between relatives or friends in situations where serious conflicts or differences have emerged. It is about those actions, generally spontaneous, which result from a collaborative willing in front of a difficulty and which all of us, at all times, guided by common sense rather than by a learned technique, have used in an informal way in the sphere of family or friendship relationships.

4. Professional mediation, which reappears in the seventies as a structured and technical methodology applied by an experienced professional with the adequate qualification in mediating techniques and strategies.

This fourth kind of mediation, structured and professionalized, leads us to differentiate its current conception as a methodology applied by a professional expert from its previous use, basically informal or based on tradition or habits, but under no circumstances systematic or structured.

When we refer to mediation, in the sense of point number 4, i.e. as a methodology of technical and patterned conflicts’ intervention, we are in the face of a complex system which is applied through a process led by a professional, the mediator, who combines and gathers, in a studied way, elements stemming from different disciplines that make up the unique mechanism of mediation. For this reason, mediation is a pluridisciplinary system that requires dominating techniques and resources from different fields of knowledge:

- From conflictology, since conflict is the basic material with which we work and, therefore, a careful

analysis and dissection of the crisis may help differentiate more clearly the conflict's structure from the coincident and dissenting elements, the acknowledged and the hidden elements. And according to all these elements, we design the most adequate intervention for each case.

- From negotiation, in order to foster consensus starting from different positions, needs, and interests, but bearing in mind the common points of interest, the resources, and the real possibilities existing.

- From psychology, in order to give an appropriate answer to difficult situations due to the emotional, cognitive or behavioural alterations that usually occur in those cases and directly redirect the process progress towards attitudes of dialogue, acknowledgment, and consensus.

- It is also necessary to know the legal framework within which the conflict develops in order to avoid that the parties would work assuming engagements legally unfeasible or even detrimental that mean the parties or their children's relinquishing the rights that cannot be waived. Whatever the initial profession of the mediator may be, in no case does it mean doing legal advisory. This task must be left to the lawyers who formally act as such and who, in many cases, must act as legal advisors so that the parties also have the necessary legal security during the mediation process.

- It is indispensable being trained in communication techniques in order to understand and help understand the verbal language and the language that goes beyond the words so as to overcome the communication difficulties and to favour the interaction, the listening ability, and the mutual comprehension.

- All mediations imply a learning process with pedagogical consequences and elements. The opportunity to apply to new conflict situations the resources learned, the philosophy, and the background acquired is also undeniable.

- Knowing the sociological environment, the structural reality in which people act, and the social resources they have at their disposal, may be essential on many occasions to understand the initial social situation and the difficulties or characteristics typical from the environment, which quite often permeate and determine the conflict's root itself.

The adequate combination of this variety of different elements results in mediation. It does not imply acting as a lawyer, psychologist, conflictologist, negotiator, pedagogue, social worker or sociologist.... Just as a

professional mediator who uses all the plural knowledge and resources that mediation provides him with in order to direct the process towards a change of attitudes, the comprehension of the other one, and the securing of the consensus points.

Consequently, when we talk about mediation we refer to a specific methodology which, although multidisciplinary, is nourished and inspired on different sources, which moves forward for a better definition of its method and for a wider comprehension of itself and its possibilities, just as Marlow mentions in his work "Mediación Familiar. Una práctica en busca de una teoría"¹. This methodology is put into practice through a process guided by a professional who acts impartially facilitating the dialogue between the parties and favouring the assumption of constructive commitments and agreements.

Mediation, therefore, whether it is formally exercised by professionals or informally between friends or relatives, is not a discovery. It is rather a happy recuperation of techniques based on ancestral principles having their roots in the dialogue and comprehension ability typical from human beings and above the aggressive tendency and the use of violence. These techniques have evolved and they are nourished by the progress in the field of psycho-social sciences and by a deeper knowledge of the character, the emotions, the reactions and the complexity of human relationships and interactions.

A SHORT HISTORIC AND GEOGRAPHIC TRIP

At the end of the 19th century, mediation was being applied in the U.S.A. to solve the emerging conflicts between workers and employers. Initially mediation was used as a mean to avoid strikes and the economic problems that such strikes provoked to the Community. Several religious creeds have also used mediation. For instance, the Jewish immigrants in the U.S.A. had a Jewish religious court founded in New York in 1920 and that still exists under the name of Jewish Conciliation Board.

The first works on mediation were written in the U.S.A. in the sixties. The mediation's momentum arises to answer a social tendency that was fighting to recover the main role in the management of their own conflicts, especially those family conflicts resulting from separa-

1 Marlow, Lenard, "Mediación Familiar. Una práctica en busca de una teoría" Editorial Granica 1999

tions and divorces, which begin to spread in the sixties in the U.S.A. owing to new tendencies and values implying a larger freedom in interpersonal relationships and changes in the traditional family structure.

It is also from then that the first practical experience comes. It consisted of professional services of family mediation –as we understand it nowadays– and appeared with the creation of the Conciliation Department of the Family Court in Milwaukee, Wisconsin, which later on was reproduced in many other states (California, Florida, etc.). Canada soon joined this first mediation experiences and today is internationally well-known the Family Mediation Service of the Montréal Court.

Mediation arrives in Europe at the end of the seventies. Since then it has been put into practice in different European countries, either with an explicit legal recognition, as pilot experiences or with local or general implementation. Nevertheless, it is not until the mid nineties that it is legally backed. The United Kingdom, Belgium, Austria and France are the countries that have incorporated a more detailed regulation of mediation, without forgetting the autonomic laws (10 at this moment) of family mediation that have been passed in Spain's different autonomous regions.

We may take England as an example of one of the European countries where mediation is more spread and consolidated and which counts on the necessary and efficient collaboration of lawyers. According to Lisa Parkinson, 70% of the cases coming to mediation had been derived by lawyers. The regulation of divorce was introduced in England by the Family Law Act in 1996, which turned family mediation into an omnipresent institution which is attributed a huge capacity to achieve the principles inspiring the new legislation. Even though, later on, the British government decided to suspend the application of Part II of the Family Act 1996, that decision did not directly affect the family mediation included in Part III.

Mediation appears as voluntary even though the Family Law Act 1996 uses two ways to promote that the parties would try to solve their conflict through family mediation. On the one hand, it stipulates that the party or parties wishing to obtain divorce, before submitting the marriage breaking statement –necessary to initiate the divorce proceeding–, will have to attend, at least three months in advance, an informative session in which, among other things, they should have been informed about the existence and functioning of the family mediation. Once they have submitted their breaking statement, the court may still ask them to attend another meeting where they will be informed about

mediation and where they will be offered the possibility of choosing this procedure.

This mechanism does not give rise to reservations since the Recommendation R-98 does not consider it to be contrary to the volunteering principle that the member States may establish, as a requisite previous to the beginning of a separation or divorce process, the need that the parties meet a mediator so that he would inform them about the mediation process and its advantages.

In Fact, in Spain many experts, either mediators or jurists related to mediation and to family conflicts' management, raise their voices from different autonomous regions to claim the creation of a regulation on this issue. The question would be that, previous to the bringing of a litigious action on family issues, the parties would have proved having attended, at least, an informative session on mediation. The purpose is to overcome the ignorance on mediation and its advantages by avoiding the mediation's rejection just because of not knowing its meaning and the benefits it can bring to the parties and their children. This measure has been running for years in Buenos Aires and in different states of North-America to everybody's total satisfaction. According to different contrasted studies and statistics, the compulsory attendance to this first informative session has enormously contributed to the spreading and general use of mediation in those societies where it has been implemented. The mandatory character of the first informative attention has not damaged at all the later putting into practice of mediation. On the contrary, in the surveys done on users that did not know the meaning of mediation and were obliged to attend the informative session, it was detected the same degree of satisfaction as in the mediations voluntarily initiated by the parties. Furthermore, in some cases the users that initially did not know about mediation thanked having attended the informative session since, otherwise, they would have persisted on their ignorance of this methodology and would not have started a mediation which, as they acknowledge, has been very positive to manage their discrepancies.

In Spain, even if most autonomous regions count on Mediation Services and there exist 10 current family mediation laws, articulating this way of a previous and obligatory informative session would not be possible unless the Civil Indictment Law (Ley de Enjuiciamiento Civil, LEC, 2001), that applies all over Spain and regulates the legal proceeding, is reformed in line with that.

The second precaution stipulated on the Se. 29 of the Family Act is more problematic since it provides

that the State will not give the benefit of free justice in a divorce legal proceeding if the Commission for Legal Assistance considers that, according to the concurrent circumstances, it would have been possible and appropriate to submit the conflict's resolution to the family mediation. According to Martín Casals, this implies an indirect way of constraining poor people, which infringes the voluntariness principle because it binds the no realization of Mediation to an economic damage and it is discriminatory since it only affects the less favoured classes.

As for France, family mediation is implanted and developed in the eighties from the Quebec experience. It starts as a private practice within associations that are worried about family matters. In 1995 it is legally recognised through the act no. 95-125 of February 8th, concerning the organization of jurisdictions and the civil criminal and administrative proceeding, which was developed in 1996 through the Decree 96-652 of July 22nd, concerning the judicial conciliation and mediation. This regulation does not only refer to family mediation and it does not include it to its greater extent, since the extra-judicial mediation, called in France "independent mediation", is left aside. But both texts have a significant importance in the sense that they indicate the judge that he can intervene in a way different to the case resolution emanating from his authority and, although they start from the parties' previous consent, they provide the judge with an important prominence. The judge, once having the parties' consent, can assign a third person having the requested conditions to hear the parties and compare their points of view so as to allow them to find a solution to the conflict they meet in. It is also pointed out that the mediation can be asked to an individual or to an association. It is established that the mediator must keep silence concerning the third parties and that the verifications and statements gathered cannot be dealt with the judge in charge of solving the litigation and cannot be used in any other instance unless the parties agree with it. More recently, the new law on divorce adopted by the Parliament on May 26th, 2004 (Law no. 2004-439 of May 26th, concerning divorce), coming into effect on January 1st, 2005, says specifically: "The judge can suggest the weds a mediation measure and, after having their agreement, assign a family mediator, stop, and proceed". On the other hand, the "National Advisory Council on Family Mediation", created by a decree, elaborated its own definition of mediation in 2003, becoming thus a fostering element for mediation in France.

Apart from England and France, other countries have introduced mediation in their respective legisla-

tions owing to the European Council Recommendation R(98) 1, adopted on January 21st, 1998, which advises the member States, firstly, to introduce and promote family mediation or, if it is the case, to reinforce the existing family mediation, and to adopt or empower all the measures they may consider necessary with the aim to put into practice the principles suggested to promote and use family mediation as the ideal mean to solve family conflicts.

Concerning Spain, at the beginning of the eighties people start talking about mediation and the possibilities of its putting into practice. The obvious advantages of applying a method based on dialogue, cooperation between the parties, and the facilitation of an impartial third party, made different professional sectors, especially those related to the judicial sphere (lawyers, psychologists, some judges, social workers and educators...), approach this concept.

The introduction of divorce through the law 30/1981 of July 7th, where the regulation of marriage in the Civil Code is modified, meant an important step towards the implementation of mediation since, although the law did not regulate it, offered the possibility of putting it into practice in the family crises linked to a marriage breaking.

This possibility offered by the law, together with the knowledge of important experiences from other countries, generated an increasing interest from both the academic and the professional spheres. The initial reflections and works were followed, at the end of the eighties, by the first experiences, some of them very interesting, in the judicial sphere and basically concerning family issues, but without forgetting the incipient mediation and reparation programs applied in crimes and offences committed by minors.

The advance of mediation in the nineties was slow and very much discussed, although it was fostered by the success of the first practical experiences and backed by several Recommendations of the European Council -especially the R (98)-. The change of century led to a first takeoff supported by the first autonomic laws on family mediation that appeared in Spain: Catalonia, Valencia, and Galicia, who passed their respective laws in the year 2001. The law 15/2005 of July 8th includes the family mediation for the first time in a state text, both in the foreword and in the modification of the Civil Indictment Law, in the sense that the judge can suspend the advance of the process if the parties decide to start mediation.

This recognition of family mediation by the autonomic legislations and even by the common rules, as well

as by some professional sectors, has not had the same social repercussion. If we take into account the real rate of existing family conflict, the citizens' use of mediation can be considered as scarce. For this reason we can talk about the system's infra-utilization, especially if we think of its potential according to the high number of conflicts that are judiciary managed through a litigious action.

At this moment, after having passed ten autonomic laws and having modified the LEC to include the family mediation, we may consider that in Spain, as in many other countries, we are already in a second stage as for the mediation introduction process. At the first stage it was necessary to define what we were talking about when referring to mediation, to elaborate a model, to obtain legal recognition and to design an intervening methodology. At this second stage, even though it is not a fix model or a totally peaceful definition accepted by all, there is a certain consensus as for the essential mediation lines, their purpose, and the cases to which it can be applied and how to carry it out.

The main difficulty of this second phase was, rather than the legal recognition of mediation, the social recognition not in the sense of defining a model, but in the sense of improving the practice in order to have better results and more credibility.

This social acknowledgment of the mediation concept is essential to spread its use and to consolidate it as a usual method for conflicts' management. We are far from this ideal situation in which mediation would be considered and used as the first option in conflicts' resolution; but the proliferation of mediation services all over Spain and the data, provided by the different services and programs running, show its progressive implementation and a significant increase in the number of people that approach to and choose mediation. As an example of this positive evolution, we can take the following table with the data provided by the Catalonia's Family Mediation Centre, Justice Department, Autonomous Government of Catalonia.

STATISTIC EVOLUTIVE TABLE OF THE CATALONIA'S FAMILY MEDIATION CENTRE²

Basic figures					
	Period 2002/ 2004	Year 2005	Year 2006	Year 2007	Year 2008 ³
Requests	450	495	1002	1245	1460
Judicial derivations	67	33	244	370	600

The desirable purpose would be that mediation and other methods of peaceful conflicts' management would progressively stop being residual or "alternative" practices to the litigious systems based on interests' confrontation and would become the usual systems meaning the first option based on the application of common sense, the reasoning capacity, and the dialogue fostered by a third party. It would be desirable to, "alternatively", as a second possibility or in a subsidiary way, have recourse to the "traditional" or litigious systems based on the interests' contraposition, when the application of mediation or other peaceful intervention systems had not been possible or had not given a result by consensus.

With the practice of these years and taking into consideration the evolution from a certain perspective, we can state that the two current big interest axes to promote mediation and make a qualitative and quantitative shift rely, on the one hand, on giving to all the citizens the necessary information concerning the value and characteristics of mediation so that, according to an appropriate knowledge, mediation would be an option widely used by all the citizens; and on the other hand, to improve the mediation action so as to offer a good service, useful for every single person and for the whole society and generating credibility and confidence in the system.

2 Data provided by the Catalonia's Family Mediation Centre (CMFC), Justice Department, Autonomous Government of Catalonia. The parameter "requests" refers to the mediation formal requests, compiled from an official form signed by the applicant. In more than six thousand informative sessions per year offered to the citizens by professionals from the CMFC about the characteristics and advantages of mediation the attendants did not sign the application form.

As for the "finished mediations", it refers to those initiated and without disallowance, reaching agreements or not.

The gap in the figures between "requests" and the finished mediations is due to different causes:

1. In many cases the second party to the conflict did not accept to initiate the mediation, wrongly assuming that the mediation would favour the party that requested it or as a reaction to the request made by "the other".
2. In some cases the mediation was not initiated owing to the spontaneous disallowance from one or both parties. In many cases the disallowance was brought on by other professionals.
3. Reconciliation of the parties' positions previous to initiate the mediation.

3 Data as from September 22nd, 2008.

MAKING MEDIATION KNOWN: TO INFORM

The first axis concerning the spreading of knowledge is an element essential to the advance and consolidation of mediation. If people do not have the necessary information about mediation, its characteristics, and the benefits it can bring to their conflict's management, they will not be able to choose this system because of their ignorance. Therefore, citizens will not appeal to the mediation services, even if they are available and offer good quality services, because they do not know them or do not know how and with what they can help them.

If the statistics show a high degree of usefulness and efficiency in the conflict management (agreements rate around 76 %)⁴ and the users that have done mediation openly show their satisfaction, we can conclude that we have an excellent instrument of proven value for conflicts' management. But, at the same time, it is inefficient, not "per se", but because it is rarely used due to its total lack of presence in the social conscience and to the ignorance about the advantages that its application implies.

This ignorance can only be fought by teaching the advantages of a cooperative management of conflicts, the appropriateness of mediation, and the peace philosophy behind it. It is essential to promote the information concerning its characteristics and its value as a constructive instrument to deal with the conflict, by transmitting to the citizens the benefits that mediation can bring, in the emotional, relational, and material spheres, to all the people being involved in the conflict, especially the children when it is about family conflicts.

The transmission of these values inherent to mediation can be done directly, getting to people through the big mass media, television, radio or press, or through the information provided by the professionals from the different services of citizens' assistance.

In the case of spreading information through the mass-media, we can point out two main objectives:

- First, to make mediation known, to inform about its value in the conflicts' management, its characteristics, and the personal and family benefits that its usage implies. This objective may possibly be reached through the presence of mediation in cultural programs, programs on nowadays issues, and general information programs.

- Second, its socialization or introduction in culture to turn mediation into a popular, usual system, easy to access, close to the real needs of people, experienced and seen as useful by the citizens themselves. This objective could also be promoted through programs, films or series with more ludicrous contents, entertaining, where people could feel their own conflicts reflected and where mediation would appear as a reliable, useful, close and efficient system in case of crisis.

The other basic source of information is the one given by the different services of direct assistance to citizens: social services of town halls or of other local organizations, services of legal advice managed by lawyers' associations, local police, psychologists, social educators or workers from schools, hospitals, health centres... The information given in these centres is essential because it means facilitating the mediation resource to a large number of citizens that are users of those services. People, in front of a conflict that worries them, usually look for help among the closest technicians and professionals, who may give to them orientations about how to act in their case. If these technical teams are prepared and inform them adequately about mediation, many people will have the opportunity to know and choose that way.

The orientation given by lawyers and procurers is also essential. The lawyer, in those cases where parties have serious difficulties to communicate and come to an agreement, may lead them to mediation. There they will work on relationship and more personal issues, leaving the legal advisory to the lawyer, who will look after the appropriate legal implications and consequences of the case. The collaboration between mediator and lawyer will necessarily redound to the user's satisfaction, who sees that his problem is having a global and more satisfactory answer since his conflict has been approached not only from the legal point of view, but also from a more personal and human perspective.

As Marlow says in the above mentioned work, *divorce is a personal crisis with certain legal consequences, rather than a legal problem... it is about helping both parties to do an emotional and legal divorce.*

In those countries where mediation is more consolidated, the implication of lawyers in deriving cases towards mediation is essential. In England, thus, according to data provided by Lisa Parkinson at the "International Congress on Mediation", held by the Autono-

⁴ Date provided by the Catalonia's Family Mediation Centre. It corresponds to the average of mediations done in cases where mediation was applied before starting the law proceeding.

mous Government of Madrid on March 13-14, 2007, in the United Kingdom 70% of the mediations carried out had been derived by lawyers.

In Spain, this landscape is still difficult to imagine. But there are more and more lawyers who, in front of complex conflicts and irreconcilable positions, suggest to their clients the possibility of mediation and derive them to mediation services, either to work all the discrepancy points or a specific part, keeping some parts for the negotiation between lawyers.

The judges, public prosecutors, and, under their responsibility, all the judicial system play also an essential role. If the judges, in general, would opt for mediation and would derive those conflict cases that they would consider appropriate for mediation, or all those where they would feel it feasible, there would be much more cases where the parties would have the opportunity to solve their discrepancies through this method. In this sense, the experience of intra-judicial mediation supported by the Judiciary General Council and started the year 2006 at the courts of Madrid, Barcelona, Sevilla, Palma de Mallorca, Pamplona and Málaga, with the necessary implication of the judges and their judicial offices, with completely satisfactory results, represents a real milestone in Spain as for mediation in the judicial sphere. This experience has meant an important advance in mediation and has allowed establishing cooperation, building protocols, improving derivation circuits and increasing the number of people and litigations that had been informed and had got a positive answer thanks to mediation. To sum up, it is an experience that may become the starting point of the progressive generalization of mediation in the judicial sphere. In fact, even though this experience was established just for the year 2006, it goes on working and evolving positively. The number of courts involved has increased and so has done the number of users that can benefit from it in more cities and courts than the six which, admirably, initiated this experience.

IMPROVING MEDIATION PRAXIS

The qualification of the mediator, together with the necessary spread and information that we saw above, is the second essential axis for an appropriate implementation and consolidation of mediation at this current stage. Only a good training for the mediators, together with the necessary practice, can support an appropriate intervention and, finally, generate the users' reliability on the system. In mediation we work with interests and

needs, but also with such a sensitive material as feelings, emotions, rancour, frustrations, excluding perspectives... An inappropriate intervention may come to produce negative consequences in the evolution and management of the conflict. The mediator needs to have, apart from his previous educational basis, an essential specific training based on the adequate theoretical-practical knowledge of the different elements and techniques comprised in the system. Only an appropriate and complete qualification will allow developing this methodology and applying it with professionalism and responsibility. A satisfied user is a source of new cases that come to mediation thanks to the positive recommendation done by the first user. And thus, the credibility and the usage are geometrically multiplied as the number of satisfied users increases. On the contrary, having a bad experience logically leads to advise against mediation. If this bad praxis would spread, it would mean a serious harm to its normal consolidation. Given that the present ignorance about mediation generates a certain lack of confidence, which is not strange but rather inherent to any innovative system, if we add inappropriate actions to this logical and initial lack of confidence, we may contribute to discredit the system before it is even consolidated.

Apart from the initial specific qualification, it is necessary to have a continuous training allowing the mediator to update his knowledge by exchanging his experiences with other mediators, by submitting his own cases to the analysis of other experts, and by acquiring information about new tools, actions, and useful intervening forms that appear in the mediating doctrine and practice. The exchange of experiences and knowing new technologies and advances allows improving the method itself and the way of applying it.

In those countries where mediation is more consolidated, a significant specialization of the mediators is happening, even if it occurs within a single action sphere. In the United Kingdom, for instance, within family conflicts, there are mediators specialized in conflicts about minors' kidnapping; they even come to specialize according to the destination country of the kidnapped minor. It proves the importance of dominating the differentiating and determining elements of the particular case, such as the legislation and cultural characteristics of the specific country since, undoubtedly, they condition the conflict and must be taken into consideration as for the way and kind of mediating intervention.

Here we also begin to feel that specialization is essential since, for instance, mediation in judicial cases has certain specificities and a special complexity that

make it particularly complex. This is why it is necessary to know the coincident notes in those cases, the added difficulties of communication, and the legal framework in which they develop in order to guarantee an appropriate action duly coordinated with all the other legal operators intervening in the legal management of the case (judges, prosecutors, lawyers...).

DETECTION OF CULTURAL DIFFICULTIES IN FACE OF MEDIATION

The advance and consolidation of mediation is slow but progressive, although it copes with difficulties that must be taken into consideration if they are to be adequately overcome, so as to facilitate mediation and other instruments for the peaceful and collaborative management of conflicts.

Some of the most significant and prevailing obstacles in our habits against which currently mediation comes up are:

- the almost spontaneous clash reaction against the other when the person feels in conflict with him;
- the will to win and show that one holds the real truth and that the other is completely wrong;
- the difficulty to put reason and common sense in front of the negative emotions that prevent us from being objective and looking at the situation from a certain perspective;
- the difficulty to establish a dialogue with the person having discrepancies with, in order to deal with and overcome them together;
- in front of the most serious conflicts, the habit of letting or even demanding another one to decide on our behalf (with the obvious intention that he would agree with us).

It is about usages, habits, reactions and cultural concepts largely rooted in our society and whose force cannot be underestimated if we want to contribute decreasing its effect in order to let the way free for other cultural parameters more open, logical, peaceful and collaborative on which the peaceful conflicts' management should be based.

CONCLUSIONS

In order to support the progressive consolidation of mediation and other collaborative systems of conflicts' management in our society, it is essential to bear in mind

the nature and the personal and social bonds of the above mentioned obstacles and to work in order to achieve a change, or at least a serious questioning of the cultural schemes, prejudices, belligerent attitudes and traditional actions largely adopted in front of conflicts. On the other hand, we also point out the necessary collaboration between the different legal operators who may get involved in the normal use of these methods (judges, prosecutors, lawyers, procurers, and staff of the judicial offices). Their recommendation to clients or users and their positive attitude towards mediation is fundamental.

And all this without forgetting the two factors previously discussed: the first one is to reinforce and enlarge the transmission of the necessary information to all the potential users about the characteristics and the usefulness of mediation, either through mass media or privately through the services of individual assistance to people. The second one, not less important, is to look after an adequate qualification of the professional mediators so as to grant a good praxis resulting in the users' satisfaction.

These two elements feedback each other since both directly have a bearing on the spreading of their implementation and on the fundamental social recognition, without which mediation would have difficulties to consolidate as a method of conflicts' management highly valued and widely used.

To conclude, if we want that mediation would stop being a system applied in a residual way, resources must be activated to promote those two key elements that refer to the information addressed to all the citizens and to the training the mediators must have. A change of system and values, as mediation is, cannot be carried out immediately or in a rush and perhaps would not be appropriate neither; especially if what we intend is to achieve a constructive and rational evolution of our system of conflicts' management in order to offer appropriate and ground answers to the needs and real problems of the citizens.

The perseverance and effort being made nowadays by so many professionals who believe in mediation, the support of institutions, and the confidence of those people having used the system, will turn into positive results and undeniable changes, not immediately, but progressively. We are opening a new way that follows the path of the progress and advance of our civilization which, with clear advances and withdrawals, opens itself to new formulae, more peaceful and rational, to understand and manage the relationships, encounters, and misunderstandings among people. ■

Mediation Seminar in Copenhagen during COP15



Place: Glyptoteket, Copenhagen – www.glyptoteket.com

Date: The 10th and 11th December 2009

During eleven days in December 2009 delegates from throughout the world will meet in Copenhagen for the 15th Conference of the Parties - COP15 - to the United Nations Framework Convention on Climate Change, UNFCCC. The Denmark meeting is crucial for the international climate change negotiations. The climate change crisis challenges people throughout the world to invent and implement innovative ways to mitigate and thwart climate changing causes and effects. The crisis calls for new methods for nations and people to overcome differences and work together with the objective of preventing and resolving conflict arising because of limited resources and/or the effects of climate change.

In a Manifesto from 9th July 1955 issued in London, Albert Einstein and other leading scientists urged humanity to find peaceful means for the settlement of all matters based on new ways of thinking. An important new way of thinking features the use of the collaborative, participatory, and pluralistic conflict resolution processes like mediation and facilitation. Construction of a new global conflict prevention and resolution infrastructure is critical to a comprehensive international climate change policy. Such construction will be a major part of the Copenhagen Mediation Seminar, with discussions of conflict prevention and resolution. Our aim is to gather 100 mediators to create a new Manifesto showing the infrastructure to peaceful conflict resolution.

Please already now reserve this important seminar for 100 mediators attending from all parts of the world. More information will come shortly.

Gregg Walker, Tina Monberg, and Kenneth Cloke of Mediators Beyond Borders - Jens Emborg, Mie Marcussen, Lone Clausen, and Vibeke Vindelov of Nordic Mediators

