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Tradición y modernidad: mediación en el derecho romano y mediación popular en China

Tradition and modernity: mediation in roman law and popular mediation in China

María Elisabet Barreiro Morales[1]
Universidade de Vigo

Summary: 1. Introduction. 2. Historical background to mediation. 3. Nature and principles of mediation. 4. Development of mediation in China. 5. People's mediation in China today. 6. Conclusions. 7. References.

Abstract: Mediation constitutes an alternative dispute resolution mechanism aimed at achieving consensual agreements between the parties involved, through the intervention of an impartial third party, known as the mediator. This procedure, which is voluntary and confidential in nature, fosters constructive dialogue and collaboration among participants, with the goal of reaching mutually satisfactory solutions. Although it is widely promoted in contemporary contexts, its origins trace back to Ancient Rome, where the figure of the *consilium domesticum* was employed to resolve family disputes. In today's legal framework, mediation has gained increasing relevance due to its multiple advantages, including procedural efficiency, cost reduction, and the alleviation of court burdens. Particularly illustrative is the case of the People's Republic of China, where mediation has been institutionalized as a fundamental pillar of the community justice system. Through popular mediation committees, citizens are actively involved in the resolution of interpersonal conflicts, thereby strengthening a culture of peace and social cohesion. In sum, mediation emerges as an effective and humanized alternative to the traditional judicial resolution of conflicts.

Keywords: Mediation; Mediator; Conflict; Popular Mediation, *consilium domesticum*.

[1] Ph.D. and Degree in Law (Faculdade de Dereito, Universidade de Vigo, Spain). Law Professor (Facultade de Dereito, Universidade de Vigo). ORCID: https://orcid.org/0000-0003-2806-5773. Email: maria.elisabet.barreiro.morales@uvigo.es.

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Resumo: La mediación constituye un mecanismo alternativo de resolución de conflictos orientado a la obtención de acuerdos consensuados entre las partes involucradas, mediante la intervención de un tercero imparcial, denominado mediador. Este procedimiento, de naturaleza voluntaria y confidencial, promueve el diálogo constructivo y la colaboración entre los intervinientes, con el propósito de alcanzar soluciones mutuamente satisfactorias. Si bien se trata de una herramienta ampliamente promovida en el ámbito contemporáneo, su origen se remonta a la Antigua Roma, donde se empleaba la figura del *consilium domesticum* para dirimir disputas familiares. En el contexto jurídico actual, la mediación ha adquirido una relevancia creciente debido a sus múltiples ventajas, entre las que destacan la celeridad procesal, la reducción de costes y la disminución de la carga judicial. En particular, el caso de la República Popular China resulta ilustrativo, dado que este país ha institucionalizado la mediación como pilar fundamental de su sistema de justicia comunitaria. A través de los comités populares de mediación, se facilita la participación activa de los ciudadanos en la solución de conflictos interpersonales, consolidando así una cultura de paz y cohesión social. En suma, la mediación se presenta como una alternativa eficaz y humanizada frente a la judicialización tradicional de los conflictos.

Palavras-Chave: Mediación; Mediador; Conflicto; Mediación Popular, Consilium Domesticum.

1. Introduction

Throughout history, there has always been the figure of someone who participated as an intermediary in the resolution of a conflict. Nowadays, this figure is embodied in the role of the mediator and the fundamental role he or she plays in mediation procedures.

The origin of mediation is not entirely clear, but we can already find in Roman law, with the institution of the consilium domesticum, and its function as a consultative body, the function of mediating when resolving any dispute arising within a Roman family. Subsequently, due to the fact that our legal system belongs to the ius civile, we can find the mediation procedure regulated in our legal system.

Thus, in Eastern countries, such as China, we can see that this institution also exists, but it is worth noting that the population participates in it directly, through the people's mediation committees. If in Roman law we can see that the mediation process was carried out within the family, to guarantee privacy and to prevent certain information from being made public, in Chinese society it is the people themselves who participate in this mediation procedure.

In the following lines, we will briefly address the main characteristics of each of the existing types of mediation, from the point of view of Roman law, and then focus on the popular mediation that has arisen in the People's Republic of China.

2.Historical background to mediation

It is difficult to situate the origin of mediation throughout history, since in most ancient civilisations, such as the Egyptians and Greeks, evidence of the existence of extrajudicial mechanisms for the resolution of conflicts was already found. However, due to the proximity of our law to Roman law and, as our legal system belongs to the *ius civile*, we can speak of a direct origin of mediation in an institution of Roman law, which is the *consilium domesticum*.

Within the Roman family sphere, there is an institution whose existence is supported by most of the Roman doctrine, the consilium domesticum or domestic court, although its scope of competence is far from being a peaceful issue in the

doctrine. Its scope of action is delimited, since it can only judge those persons who are under the parental authority of their corresponding *paterfamilias*, being a kind of body that complements the authority of the *paterfamilias* within the corresponding family group[2].

As for the nature of this court, it is not entirely clear, following a careful study of the existing sources, whether it was in fact a court of criminal or civil jurisdiction[3],The real purpose as well as the functioning of this domestic court becomes even more controversial.

With regard to the way of referring to such an institution, in the sources examined we have not found a unique way of citing it, which does not help us to affirm with certainty that such an institution really existed[4]. Among the terms used in this regard, we can highlight that of *domestici magistratus*, which appears in a fragment of Seneca's work, specifically in *De benef.* 3.11.2:

> Deinde alia condicio parentium est, qui beneficia, quibus dederunt, dant nihilo minus daturique sunt, nec est periculum, ne dedisse ipsos mentiantur; in ceteris quaeri debet, non tantum an receperint, sed an dederint, horum in confesso merita sunt, et, quia utile est iuventuti regi, inposuimus illi quasi domesticos magistratus, sub quorum custodia contineretur.

Or they also refer to a disceptator domesticus, as in Cicero's case, en *Pro Caec.* 2.6:

> Quod quoniam iam in consuetudinem venit et id viri boni vestri similes in iudicando faciunt, reprehendendum fortasse minus, querendum vero magis etiam videtur, ideo quod omnia iudicia aut distrahendarum controversiarum aut puniendorum maleficiorum causa reperta sunt, quorum alterum levius est, propterea quod et minus laedit et persaepe disceptatore domestico diiudicatur, alterum est vehementissimum, quod et ad graviores res pertinet et non honorariam operam amici, sed severitatem iudicis ac vim requirit[5].

Finally, the term domesticum iudicium is also used to refer to this family council, as in the case of Seneca, en *Contr*. 2.3.18:

> Cestius ac figura declamavit ut rogaret patrem, tamquam (non) exoratus esset raptae pater; deinde ad hanc sententiam transit: numquid peiorem causam habeo, si apud alterum iudicem vici? Eadem figura declamavit et Hispo Romanis, sed transit mollius: scio quid respondere possit mihi: facile est

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[2] BRAVO BOSCH, M. J. "El *iudicium domesticum*", *Revista General de Derecho Romano*, nº 17, 2011. p. 1–3., in which she talks about this family institution, questioned by many, but defended by most of the doctrine.

[3] VOLTERRA, E. *Il preteso tribunale domestico in diritto romano.* Giuffre, Milano, 1948, *Scritti giuridici* II. *Familia e Successioni*, Ob. cit., p. 130: "È fin troppo chiaro che manca ogni riferimento per poter classificare questa pretesa "giurisdizione"(la quale si applicherebbe solo alle persone *in potestate*) come giurisdizione civile o come giurisdizione criminale ed è anche chiaro come non possa in alcun modo considerare come pronunzia di *verba legittima,* né come dichiarazione di norma applicabile alla specie, nè come statuizione discrezionale del diritto da parte di un organo imparziale e nemmeno come espressione di *imperium*".

[4] BRAVO BOSCH, M. J. *Mujeres y símbolos en la Roma republicana. Análisis jurídico-histórico de Lucrecia y Cornelia*, Madrid, 2017, p. 153.

[5] According to this passage, the term *disceptator domesticus* refers to a kind of mediator or arbitrator belonging to the same family, who was called upon for minor matters, while for those of greater importance or rank, not only the mediation of a friend was called upon, but also the rigor of a judge.

> domestico iudicio satis facere; videro de te, cum ad raptae patrem veneris.

Cicero, *in L. Pisonem.* 40:

> Ad horum omnium iudicia tot atque tanta domesticum iudicium accessit sententiae damnationis tuae, occultus adventus, furtivum iter per Italiam, introitus in urbem desertus ab amicis, nullae ad senatum e provincia litterae, nulla ex trinis aestivis gratulatio, nulla triumphi mentio; non modo quid gesseris sed ne quibus in locis quidem fueris dicere audes.

And, finally, Tertullian, in *Apologeticum,* 1.1:

> Si denique, quod proxime accidit domesticis iudiciis, nimis operata infestatio sectae huius os obstruit defensioni: liceat veritati…ad aures vestras pervenire.

What is clear is that it was a collective body, as a projection that sought to justify in the social sphere, any type of act on the part of the *paterfamilias*, when he exercised one of his powers in situations and cases of gravity. What has not been clarified by the various studies of the sources carried out to date is whether the jurisdictional power of the *paterfamilias* automatically excludes the holding of any kind of *iudicium publicum*[6].

The addressees of the ruling provided by the *iudicium domesticum* will, in any case, be the *filii familias*, since, for example, a slave is not subject to the *patria potestas* but to the *dominica potestas* of his corresponding master, and therefore, in no case are they part of the family environment.

The *filii familias* have a civil relationship with their respective *paterfamilias* and therefore the *consilium domesticum* can exercise its jurisdictional power over them. Let us remember that in ancient Rome, the kinship that was really valid was the civil one and not the natural one, since with the civil one the agnatic family was formed. In this sense, the natural father had no power whatsoever over his children; however, in some exceptional cases, the natural father was in charge of judging his own child. This intervention was carried out by means of a senatorial delegation authorising the natural father to exercise this jurisdiction.

We can take as an example the case of Decimus Junius Silanus, whose natural father, Titus Manlius Torquatus, tried him for the crime of *crimen repetundarum*. To this end, we would echo a fragment from the work of Valerius Maximus, in which he narrates events that took place in 140 BC when the *praetor* Decimus Junius Silanus was accused before the Senate of the crime of *crimen repetundarum*[7]. Faced with these facts, the praetor's father, Titus Manlius Torquiatus, asked the Senate for the power to judge his own son, which was granted. The fact that the *pater naturalis* needed this authorisation from the Senate to be able to try his own son helps us to clarify the scope of action of the paterfamilias and the consilium domesticum when prosecuting an act in the private sphere without interfering, at any time, in the iudicium publicum which would have to be carried out to try this type of serious crime[8].

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[6] BRAVO BOSCH, M. J. "El *iudicium domesticum*", *Revista General de Derecho Romano*, nº 17, 2011, Ob. cit., p. 4.; BRAVO BOSCH, M. J. *Mujeres y símbolos en la Roma republicana. Análisis jurídico-histórico de Lucrecia y Cornelia*, Madrid, 2017, Ob. cit., p. 147: "Otra indefinición que necesita respuesta es la de no haberse planteado con anterioridad en las fuentes conocidas si la potestad jurisdiccional del *paterfamilias* es excluyente de cualquier otro juicio (de carácter público), o si por el contrario nos encontramos ante un juicio complementario del principal estatuido por el Estado Romano, que le cede facultades jurisdiccionales, pero sin renunciar al papel protagonista en la condena de los actos susceptibles de ser perseguidos".

[7] BAUMAN, R. A. "Family Law and Roman Politics", In: *Sodalitas*, *Scritti in onore di Antonio Guarino*, V. 3, Nápoles, 1984, p. 1294.

[8] BRAVO BOSCH, M. J. "El *iudicium domesticum*", *Revista General de Derecho Romano*, nº 17, 2011, Ob. cit., p 10; Valerio Máximo, 5.8.3: "*T. autem Manlius Torquatus, propter egregia multa rarae dignitatis, iuris quoque ciuilis et sacrorum pontificalium peritissimus, in consimili*

The existence of this institution has always been full of controversy in the doctrine, since some defend the existence of this institution, while others show their total rejection of such a possibility[9].

The fact that a natural father, by means of the authorization granted by the Senate in this respect, could prosecute his own son over whom he no longer exercised any kind of power, since he was not part of his agnatic family, formed by civil kinship, the really important one for Roman law, has also been reliably questioned.

We must highlight the work of BONFANTE, in relation to his political theory of the family, which we have already discussed, since he affirms the existence of this domestic court and equates its functioning with the sovereignty of a state[10].This author argues that the *consilium domesticum* is a body with a proper jurisdiction, which functions in parallel to the public one, but in a private sphere.

However, some authors do not share BONFANTE's view on the existence of this "domestic" institution with its own jurisdictional nature. Among them, one of the authors who have most criticized the existence of the *consilium domesticum*, thus positioning himself in favor of a jurisdictional power on the part of a *pater naturalis*, is VOLTERRA, insisting, moreover, that the intervention of the paterfamilias is no obstacle to the holding of a public trial or to any work that the Senate might have to carry out. This author not only criticizes the purpose and functioning of the *consilium domesticum*, but also points out that the doctrine which defends the existence of the institution has not even taken care to clarify the terminology referring to it, such as consilium, iudicium or simply the term domesticum. VOLTERRA states that the power of the paterfamilias is not a jurisdiction as such, so the complementary purpose of the consilium domesticum, of the power of the *paterfamilias*, lacks a jurisdictional nature as well[11].

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facto ne consilio quidem necessariorum indigere se credidit: nam cum ad senatum Macedonia de filio eius D. Silano, qui eam prouinciam optinuerat, querellas per legatos detulisset, a patribus conscriptis petiit ne quid ante de ea re statuerent quam ipse Macedonum filiique sui causam inspexisset. summo deinde cum amplissimi ordinis tum etiam eorum, qui questum uenerant, consensu cognitione suscepta domi consedit solusque utrique parti per totum biduum uacauit ac tertio plenissime die diligentissimeque auditis testibus ita pronuntiauit: 'cum Silanum filium meum pecunias a sociis accepisse probatum mihi sit, et re publica eum et domo mea indignum iudico protinusque e conspectu meo abire iubeo'. tam tristi patris sententia perculsus Silanus lucem ulterius intueri non sustinuit suspendioque se proxima nocte consumpsit. peregerat iam Torquatus seueri et religiosi iudicis partis, satis factum erat rei publicae, habebat ultionem Macedonia, potuit tam uerecundo fili obitu patris inflecti rigor: at ille neque exequiis adulescentis interfuit et, cum maxime funus eius duceretur, consulere se uolentibus uacuas aures accommodauit: uidebat enim se in eo atrio consedisse, in quo imperiosi illius Torquati seueritate conspicua imago posita erat, prudentissimoque uiro succurrebat effigies maiorum [suorum] cum titulis suis idcirco in prima parte aedium poni solere, ut eorum uirtutes posteri non solum legerent, sed etiam imitarentur".

[9] DONADIO, N. "Iudicium domesticum: riprovazione sociale e persecuzione pubblica di atti commessi da sottoposti alla patria potestas", *INDEX. QUADERNI CAMERTI DI STUDI ROMANISTICI*, V. 40, nº 21, 2012, p. 175–195.

[10] BONFANTE, P. *Corso di diritto romano, Diritto di familia*, V. I, Roma, 1925, Ob cit. p. 73–74, in which he analyses the nature of the consilium domesticum and its functioning, emphasising that the way the paterfamilias acts in judging the members of the family can be considered as a proper jurisdiction, since it has a certain parallelism to the public jurisdiction that is in the hands of the State.

[11] VOLTERRA, E. *Il preteso tribunale domestico in diritto romano.* Giuffre, Milano, 1948 *Scritti giuridici* II. *Familia e Successioni*, Ob. cit., p. 141: "L'episodio remonta al 140 a.C. e sia nella versione liviana, sia in quella immaginosa di Valerio Massimo, probabilmente costruita sulla prima, dimostra anche esso la mancanza di ogni giurisdizione familiare", para continuar en p. 107 y ss.: "La verità e che nel campo della famiglia romana è erroneo parlare di giurisdizione del *paterfamilias*. L'attività di questo rispetto al sottoposto non può affatto considerarsi né come una giurisdizione interna del gruppo famigliare, né come espressione del potere giurisdizionale dello Stato. Essa non consiste né in attuazione della legge, né in un rendere giustizia nel caso concreto, né si esprime in un atto processuale. […] "La condanna, invece data dal padre, appare essere una manifestazione della *patria potestas*, un atto di esclusiva iniziativa del *pater*, non già l'applicazione obbligatoria di un *munus* o di un ufficio pubblico a

Due to the lack of clarity about this institution in the existing legal and literary sources, together with the numerous terms used to designate the *consilium domesticum*[12], it is difficult to define its exact composition and purpose. There is no doubt that the authority of the paterfamilias over all the members under his parental authority is irrefutable, but we find it hard to believe, and above all to defend, that the family court had a complementary function to the authority of the paterfamilias. In all the sources consulted, the central figure on which the family pivots is the paterfamilias and very few mention this *consilium domesticum*, so we believe that its function was purely consultative, supporting the institution of the family and whose sphere of action should not extend beyond it.

This consultative nature of the *iudicium domesticum* comes from the name it receives in some cases as *consilium domesticum*, implying that it is an advisory, consultative body of the family, that is, a "council" whose main purpose would be to defend and support the decisions of the *paterfamilias*, the highest authority of the family institution, and thus always respect the *mores maiorum*[13].

We believe that, in reality, following the position of BRAVO BOSCH[14], we would be dealing with a merely consultative body which, under no circumstances, could be compared to a conventional court, since its scope of action would not go beyond the strictly family sphere and it was convened in extremely serious matters.

To a certain extent, it bears some resemblance to civil mediation, but it is limited to the strictly family sphere. By convening this council, the aim is to mediate, to avoid a judgment outside the family, which generates negative opinions outside the family[15]. By means of extrajudicial family mediation, as with the convening of the *consilium domesticum*, the aim is to resolve, in an efficient manner, disputes within the same family unit, without the intervention of a third party, i.e. a judge or any public authority, at any time.

Although the two institutions are similar, there are also some differences. Whereas in the *consilium domesticum* the resolution of the conflict is exclusively in the hands of the *paterfamilias*, in mediation this is not the case, as a mediator is appointed and the decision making is in the hands of the parties involved in the process[16].

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questo spettante, è chiaro que Livio usa qui la terminologia *iudicium publicum*, *iudicium domesticum*".

[12] ORESTANO, R. s.v. "*Consilium*", *NNDI*, nº IV, Turín, 1981, p. 222: "Il termine *consilium*, che se etimologicamente deriva da *consulere*, consultare, sembra indicasse anzitutto il luogo ove si deliberava, poi il corpo delle persone in esso riunite e solo per traslato l'*aluid faciendi aut non faciendi excogitata ratio*. Testimonianza di quest'esistenza si hanno anche, per ogni periodo, nel campo familiare, in ordine a decisioni del *paterfamilias* prese dopo aver consultato un *consilium* di parenti o di amici".

[13] Grosso, G. (1948). *L'esame di coscienza di uno storico ei problemi del piu antico sviluppo costituzionale romano*. Giuffre, Milano, 1948, p. 125: "Come motivi del conservarsi nel vigore della *patria potestas*, pur quando la *civitas* ha un compiuto ordinamento penale, possono pensarsi i seguenti: da un lato il desiderio del *pater* di sottrarre il *filius* alla umiliazione della pena pubblica e anche, di mostrare il proprio lealismo verso la *civitas*; dall'altro, in quest'ultima, lo scarso interesse di diminuire un'autorità, che si esplica anche in suo favore. In età storica la giustizia paterna si esercita con le più gravi sanzioni in casi ove lo Stato stesso potrebbe intervenire: si ha quindi una intelligente applicazione di un istituto arcaico".

[14] BRAVO BOSCH, M. J. *Mujeres y símbolos en la Roma republicana. Análisis jurídico-histórico de Lucrecia y Cornelia*, Madrid, 2017, Ob. cit., p. 159.

[15] GONZÁLEZ FERNÁNDEZ, A. I. *La mediación como método de resolución de controversias*. 2022. Tesis (Doctoral) - Escola Internacional de Doutoramento, Universidade de Vigo, 2022. Available at: http://hdl.handle.net/11093/3762, p. 30: "Tanto con la mediación como con el *consilium domesticum* se pretende resolver todos los conflictos planteados en el núcleo familiar sin la necesidad de que trascienda más allá de lo estrictamente necesario, quedando todo ello dentro del entorno familiar".

[16] VALLEJO PÉREZ, G. *La mediación familiar en el sistema jurídico español: de su implantación legislativa a sus retos futuros*. Reus Editorial, Madrid, 2019, p. 68: "El eje central de la Mediación Familiar es el mediador, actividad que puede ser desarrollada tanto por persona física como por persona jurídica, de carácter público o privado. [...] En todo caso la Mediación Familiar ha de ser dirigida por un mediador que ostente titulación universitaria

The *consilium domesticum* is a predecessor of mediation because of its purpose, as it was intended to avoid more serious problems within the family institution and to prevent them from becoming public, thus preserving the honour of the family and all its members[17].

3. Nature and principles of mediation

As we said before, mediation is an institution present in our Spanish legal system but which has its origins in Roman law. It is difficult to define it, due to its interdisciplinary nature, which, depending on the profession of the person who formulates the concept of mediation, can be defined in one way or another. We, as jurists, will stick to its concept from the legal perspective and its use as a conflict resolution tool.

The term mediation comes from the Latin adjective *medius-a-um*, already used in imperial Rome to refer to those persons who offered to establish peace between the parties to a conflict, i.e. it already had the meaning of "mediator, mediator, negotiator"[18].

However, mediation gained momentum in the United States after the crisis of 1929. From then on, it emerged as an instrument for resolving labor disputes and spread to other legal areas. In the 1960s and '10s, such was the boom in this new method that began to be theorized and implemented as an alternative means of dispute resolution to the judicial system. The convulsive historical and social situation in the USA during those decades led to the search for alternative methods to the judicial route for the resolution of disputes[19].

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en las carreras de Derecho, Psicología, Trabajo Social u otras Ciencias Sociales y estar inscrito en sus respectivos colegios profesionales, en su caso. Además, deberá acreditar una formación específica en Mediación Familiar con los requisitos que reglamentariamente se establezcan, así como estar inscrito en el Registro Público de Mediadores Familiares de la Comunidad Autónoma de Canarias".

[17] LÁZARO GUILLAMÓN, C. ZAMORA MANZANO, J. L., "Algunas consideraciones sobre la mediación: perspectiva histórica y on line dispute resolution", *Revista General de Derecho Romano*, nº 24, 2015, p. 3–5: "El repaso del iter histórico de la mediación permite realizar una reflexión sobre el dato innegable de que es una forma de resolución de conflictos consustancial a la historia de la humanidad. La mediación se ha ido adaptando a las distintas culturas y sociedades en función de sus características sociológicas. En este punto, el Derecho romano es un claro ejemplo en ofrecer a las partes en desacuerdo la posibilidad de obviar la vía estrictamente judicial, nos referimos a la posibilidad de gestionar el consenso a través de la *transactio*. En sentido general, la transacción del Derecho romano arcaico era producto de un pacto cuya finalidad era que las partes evitaran la prosecución de un litigio o que pusieran fin a uno ya comenzado. Así, el pacto (o la transacción) se vislumbra como una forma de acuerdo de autocomposición amistoso que tenía lugar entre ofendido y ofensor al accionar un proceso ante el Pretor renunciado, a través de ese acuerdo, al juicio que se estaba preparando, es decir, se producía la renuncia a las pretensiones mutuas de forma que la construcción del acuerdo era el objetivo que, además, restablece la paz poniendo fin al conflicto. Esto significaba la aprobación de un convenio realizado por los litigantes antes de dirigirse al tribunal que, precisamente, tendía a evitar dicho rumbo".

[18] BRAVO BOSCH, M. J. "Sobre el nuevo Decreto-Ley 5/2012 y la mediación familiar", *Revista General de Derecho Romano*, nº 18, 2012, p. 2.

[19] VALLEJO PÉREZ, G. *Métodos alternativos de resolución de conflictos en derecho romano. Especial referencia a la mediación*. Dykinson, Madrid, 2018, p. 153–154: "Efectivamente, esas décadas fueron bastante convulsas en los Estados Unidos de América, ya que una serie de fenómenos históricos y sociales, tales como las protestas en las Universidades, la tensión entre las distintas comunidades interraciales, la repulsa a la guerra de Vietnam, la lucha por los derechos de la mujer y el aumento del número de divorcios, provocaron un importante incremento de la conflictividad, y como consecuencia, la imposibilidad, por parte de las autoridades, de ofrecer soluciones adecuadas a dichos conflictos, sin olvidar que algunos de estos colectivos no tenían un acceso fácil al sistema judicial, por suponer un alto coste económico, o no tenían confianza alguna en él. Todo ello propició la búsqueda de soluciones fuera de los tribunales".

This gave rise to ADR [Alternative Dispute Resolution] methods, also known as ADR (Alternative Dispute Resolution Methods), and in particular mediation[20].It began to be used in various contexts, such as to solve neighborhood, racial or even social conflicts. Subsequently, its use was extended to resolve marital disputes, as well as the consequences derived from them. It began to be used in the area of family disputes and was found to be a fairly effective method of dispute resolution, as well as being quick and inexpensive. Moreover, the parties to the process had resolved their conflict with a high degree of satisfaction, so that ADR methods were found to be an effective way of resolving disputes without resorting to the courts, thus also avoiding the collapse of the courts[21].

From the 1970s onwards, ADR methods began to be used in Europe as an option before initiating legal proceedings. The precursor country was the United Kingdom, and their use subsequently spread throughout the old continent. Subsequently, they also began to be used in the criminal courts in Austria, Germany and France. The use of ADR gradually became established in the various European legal systems due to its great effectiveness in conflict resolution.

ADR methods have developed most profoundly in countries with a common law system, because in these legal systems, as they are more flexible and practical when it comes to establishing agreements, the formulas of ADR methods are already included in any judicial process. In countries where the Civil Law system is predominant[22], in countries such as ours, judicial authority is very important, so the development and evolution of ADR methods are not as important as in common law countries[23].

Self-compositive methods of conflict resolution, including mediation, are characterized by the fact that they are flexible methods that allow the parties to resort to them for conflict resolution. As VALLEJO PÉREZ points out, the mediation procedure consists of a flexible succession of acts, always within the legislative framework that indicates the minimum requirements to be fulfilled, but whose main role is that of the mediator, who is in charge of giving the correct direction to reach free, lasting agreements that satisfy all parties[24].

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[20] GONZÁLEZ FERNÁNDEZ, A. I. *La mediación como método de resolución de controversias*. 2022. Tesis (Doctoral) - Escola Internacional de Doutoramento, Universidade de Vigo, 2022. Available at: http://hdl.handle.net/11093/3762, Ob. cit., p. 38 y ss.: "Estos métodos cuentan con un desarrollo más importante en los países que cuentan con un sistema de *common law*, donde las fórmulas de ADR cuentan con un amplio bagaje y están contempladas ya en el seno del proceso judicial. Sin embargo, en los sistemas jurídicos continentales, la autoridad judicial tiene todavía un papel significante que hace que el desarrollo de estos métodos alternativos no sea tan importante ni esté tan desarrollado como en los anteriores"; *Ibid.,* "Los MASC como eje de una justicia sostenible, eficiente y transparente en un contexto tecnológico", en *Justicia restaurativa y medios adecuados de solución de conflictos*, / coord. por Cristina Ruiz López, Selena Tierno Barrios; Gregorio Serrano Hoyo (dir.), Nicolás Rodríguez García (dir.), 2022, p. 229–242.

[21] BARONA VILAR, S. *Solución extrajurisdiccional de conflicto: "Alternative Dispute Resolution" (ADR) y derecho procesal,* Tirant lo Blanch, Valencia, 1999, p. 15–18.

[22] CUADRADO GAMARRA, N. "Diferencias entre los sistemas romano-germánicos (civil law) y de common law y su repercusión en la inteligencia artificial", *Revista de la Facultad de Derecho Universidad Complutense de Madrid*, nº II, 2005, p. 4–7.

[23] GONZÁLEZ FERNÁNDEZ, A. I. *La mediación como método de resolución de controversias*. 2022. Tesis (Doctoral) - Escola Internacional de Doutoramento, Universidade de Vigo, 2022. Available at: http://hdl.handle.net/11093/3762, Ob. cit., p. 38–41; CHONG, H. Y.; MOHAMAD ZIN, R. "Selection of dispute resolution methods: factor analysis approach", *Engineering, Construction and Architectural Management*, V. 19, nº 4, 2012. https://doi.org/10.1108/09699981211237120, p. 428–443; POSNER, R. A. "The summary jury trial and other methods of alternative dispute resolution: Some cautionary observations", *The University of Chicago Law Review*, V. 53, nº 2, 1986. https://doi.org/10.1007/978-1-4757-4038-7_6, p. 366-393.

[24] TORRE DELGADILLO, V.; SOLÍS DELGADILLO, J. M. "El arbitraje y la mediación, más que propuestas, una necesidad para el acceso a la justicia en materia de propiedad intelectual", *Justicia*, nº 34, 2018. https://doi.org/10.17081/just.23.34.2895, p. 340–357; RODRÍGUEZ-DOMÍNGUEZ, C.; ROUSTAN, M., "Inclusión/Focalización de menores en mediación familiar:

Unlike judicial proceedings, whose phases are meticulously regulated by law, the form of the mediation procedure is not as relevant as in a judicial procedure, which is why we say that it is a more flexible procedure than a judicial one.

Orality, throughout the mediation procedure, is essential, as it is an oral procedure that takes place in a succession of meetings between the parties and the mediator. The oral nature of the procedure means that two fundamental principles come into play: immediacy and concentration. The principle of immediacy means that the proceedings take place in front of the mediator, so that the parties have direct access to the procedure at all times. With regard to concentration, this means that the procedure is held in a series of face-to-face sessions, which can be adapted at any time, depending on each procedure and the parties, adapting them to the context required[25].

The mediation procedure is a structured procedure, subject to a series of general and specific principles, which we will discuss below.

The first of these principles is that of voluntariness and free disposition. This principle constitutes the basis of the entire mediation procedure and is an intrinsic characteristic of it. This voluntariness, by the parties to the procedure, must be present both at the time of submitting the dispute to mediation throughout the procedure and at the time of reaching an agreement between the parties, which must also be voluntary. However, not only the parties are subject to this principle, but it also applies to the mediator, who is free, beforehand, to assess the conflict and decide whether or not to accept it[26].

The second principle to be taken into account is the very personal nature of mediation. It is an essential and classic principle of mediation as it affects both the mediator and the parties. As far as the mediator is concerned, it affects him/her in the sense that he/she must attend the mediation sessions without delegating this action to any other person, although there are situations in which this option is possible, but with the prior consent of both parties to the procedure. As far as the parties are concerned, they must act on their own, so they cannot at any time be defended or represented by a lawyer or solicitor, i.e., they attend and follow the mediation process on their own[27].

The obligation of confidentiality is another principle present in any mediation procedure. The data provided or worked with throughout the procedure must be kept secret. This is intended to create an atmosphere of trust between the parties, so that they can express their concerns, needs and interests freely and without fear[28].

The principle of good faith is also important in any mediation procedure. Each of the parties must be willing to make their needs and different points of view known, in order to reach an agreement that is satisfactory for both. This principle is present throughout the process, not only in the parties, but also through the mediator, since the ultimate goal is to achieve a solution to the dispute in question, bringing the different positions of each of the parties closer together.

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revisión de estudios y propuestas futuras", *Papeles del Psicólogo*, V. 36, nº 3, 2015, p. 198–206; GALVÁN, E. S.; JIMÉNEZ, J. J. M. "Necesidad de un procedimiento de mediación: una propuesta", In: *Mediación es justicia. El impacto de la Ley 5/2012, de mediación civil y mercantil: actas del III Simposio "Tribunales y Mediación"*, Madrid: Huygens, 2014, p. 413–420. ISBN 978-84-15663-35-5.

[25] VALLEJO PÉREZ, G. *Métodos alternativos de resolución de conflictos en derecho romano. Especial referencia a la mediación*. Dykinson, Madrid, 2018, Ob. cit., p. 224 y ss.; ELIÇABE-URRIOL, D. J. B. *La mediación: claves para su comprensión y práctica*, Editorial Tritoma, Madrid, 2009, p. 75.

[26] SERRANO GÓMEZ, E. "Artículo 6: voluntariedad y libre disposición", In: *Mediación en asuntos civiles y mercantiles: comentarios a la Ley 5/2012*, Madrid: Editorial Reus, 2012, p. 101–108; VARELA GÓMEZ, B. J. "Artículo 10. Las partes en la mediación", In: *Comentarios a la Ley 5/2012, de mediación en asuntos civiles y mercantiles,* Valencia: Tirant Lo Blanch, 2013, p. 143. ISBN 978-84-9033-849-0.

[27] GARCÍA VILLALUENGA, L. *Mediación en conflictos familiares. Una construcción desde el Derecho de Familia*, Reus, 2006, p. 238–239.

[28] SOLETO MUÑOZ, H. "La mediación en asuntos civiles", In: *Mediación y resolución de conflictos: técnicas y ámbitos*, Madrid: Tecnos, 2017, p. 361–364.

Mutual respect between the parties is a key issue at all stages of the mediation process. It is an extension of the above-mentioned principle of good faith. During the mediation procedure, the parties undertake not to take legal or extrajudicial action against each other, to collaborate in the process, to support the mediator's work in order to reach a final agreement that satisfies all parties to the procedure.

Apart from the importance of the principles of good faith and mutual respect between the parties, we must bear in mind, as GONZÁLEZ FERNÁNDEZ states, that flexibility must prevail throughout the process: "This translates into the need to adapt to the circumstances of each specific case, which is presented as a fundamental characteristic or principle in mediation. Compared to other methods of conflict resolution, such as litigation or arbitration, mediation is presented as a less formalist procedure, not subject to prefixed rules, with the will of the parties and the mediator prevailing at all times"[29].

With the enactment of Law 5/2012, of 6 July, on mediation in civil and commercial matters, advantage has been taken of the introduction of technical means in the mediation process, as stated in Article 24[30].

The main benefit of mediation is that it is a method by which the parties present their needs, interests and claims in order to resolve their difficulties, with the help of a third person, the mediator, who tries to bring the parties together and communicate with each other in order to reach an effective agreement for all. All of this contributes to resolving the dispute outside the judicial process, as it is complementary, less costly and quicker.

4. Development of mediation in China

Mediation [调解 tiáojiě] has been established as a method of conflict resolution in China throughout the 20th century. After the establishment of the People's Republic of China in 1949, the government opted for mediation as the main instrument for conflict resolution [调解 为主 Tiáojiě wéi zhǔ]. During this time, the government promoted a system of mediation at all levels of society, and the population eventually accepted it.

Subsequently, until the 1980s, mediation was a highly praised and successful system. This system was based on the formation of popular mediation committees established mainly at the grassroots level. By involving society directly

[29] GONZÁLEZ FERNÁNDEZ, A. I. *La mediación como método de resolución de controversias*. 2022. Tesis (Doctoral) - Escola Internacional de Doutoramento, Universidade de Vigo, 2022. Available at: http://hdl.handle.net/11093/3762, Ob. cit., p. 110–114.

[30] LÁZARO GUILLAMÓN, C. ZAMORA MANZANO, J. L., "Algunas consideraciones sobre la mediación: perspectiva histórica y online dispute resolution", *Revista General de Derecho Romano*, nº 24, 2015, p. 7 and ss.: "En el contexto de la UE, existe un interés institucional por promover el desarrollo de los medios electrónicos en las disputas, sobre todo poniendo especial énfasis en el ámbito relacionado con el consumo. [...] En este sentido, se ha desarrollado un nuevo marco europeo de ADR y ODR (*Online Dispute Resolution*) en materia de consumo a raíz de la promulgación de la Directiva 2013/11/UE del Parlamento y el Consejo, de 21 de mayo de 201316 y del Reglamento (UE) nº 524/2013, ya que ha supuesto dar un paso más en la introducción de las TIC en la gestión y resolución de los conflictos. Así, ambas normativas comparten como objetivo principal: contribuir, a través de un alto nivel de protección del consumidor, al buen funcionamiento del mercado interior; la Directiva 2013/11/UE, garantizando a los consumidores la posibilidad de presentar reclamaciones contra los comerciantes ante entidades que ofrezcan procedimientos ADR independientes, imparciales y transparentes (art. 1 de la directiva); y el Reglamento (UE) nº 524/2013, ofreciendo la posibilidad de hacerlo en línea, mediante una plataforma europea de resolución de litigios on line que facilite la resolución extrajudicial, evitando hacer frente a largos y costosos trámites judiciales, especialmente los derivados de compras transfronterizas on line. En los primeros meses de 2015 se llevará a cabo un ensayo de la funcionalidad técnica y la usabilidad de esta plataforma de resolución de litigios en línea y del formulario de reclamación, que hará la Comisión junto con expertos de los Estados y representantes de los consumidores y de los comerciantes".

in the resolution of their conflicts, it was possible for the people to resolve these conflicts themselves, without having to go to court.

At the end of the 1970s, with the death of Mao and the end of the Cultural Revolution, China began a period of major reforms and opening up. With all this, the power of the state moved away from Chinese society and stopped supporting it so directly, since under Mao's government, the people were the center of the nation and all policies revolved around them, and this also affected the mediation system. The people no longer saw their disputes as guaranteed to be solved through mediation, so they rejected this route and went directly to court. As a result, the courts and tribunals had to deal with a large number of lawsuits and, faced with this new situation and the collapse of the judicial system, the government decided to take action.

Thus, faced with this increase in disputes and the need to resolve them, the movement called Grand Mediation [大调解 Dà tiáojiě] was born. With this procedure, the aim is to proceed to mediation when the judicial procedure has already begun, and it can be carried out at any stage of the mediation, at the request of the parties or by the judge himself.

Nowadays, and especially since 2010, the focus in China has shifted towards out-of-court mediation procedures, in which a collaborative system of dispute resolution is carried out, with mediation between individuals, administrative, commercial and even judicial bodies. However, and despite the fact that this type of mediation has been encouraged more, compliance with its agreement cannot be guaranteed in the same way as an agreement signed through the courts. Therefore, in order to ensure the enforcement of such an agreement, China's Civil Procedure Law, enacted in 2012, provides that the courts may issue a ruling to confirm the validity of the settlement agreement, previously established by the parties, so that it can be enforced through judicial channels[31].

Currently, there are four types of mediation in China, which we will briefly discuss in the following lines and then focus on the most important of them, the popular mediation.

The first of these is intra-judicial mediation, which takes place in the middle of court proceedings. Most of the cases that are resolved in this type of mediation are civil matters, although the law also establishes that mediation can be carried out in both criminal and administrative matters. As mentioned above, mediation can take place at any stage of the proceedings and is provided for in the Civil Procedure Law of the People's Republic of China. This type of mediation takes place before a judge, although it is part of the court procedure itself. Once the parties reach an agreement, the court makes a settlement agreement 调解书 which, like the court judgment, can be enforced by the court. Since 2016, an attempt has been made to separate the mediation procedure from the court procedure and, to this end, a mechanism has been established to link the court litigation with the mediation procedure [诉讼与调解对接机制 Sùsòng yǔ tiáojiě duìjiē jīzhì]. Thus, the court assigns the case to a mediator who is in charge of conducting the mediation procedure, disassociating the judge himself from this activity.

The second type of mediation we can mention is administrative mediation, which is carried out when an attempt is made to resolve disputes by the staff of an administrative body or an institution whose purpose is to resolve disputes. In addition, there is also consumer mediation, through consumer associations or other consumer protection organisations. The purpose of this type of mediation is consumer protection and to reach agreements between consumers and businesses. This type of mediation, also known as "official mediation", originated in the Qin dynasty when high-ranking officials were competent to mediate disputes among the population. Chinese territory, at that time, was divided into administrative divisions, called 乡 [Xiāng] and these, in turn, into smaller administrative units consisting of

[31] People's Republic of China. *Civil Procedure Law of the People's Republic of China* [中华人民共和国民事诉讼法], June 2017, articles 194 & 195.

a certain number of houses (亭 [tíng] or 里 [lǐ]). It was there that these officials exercised their mediating duties between the population[32].

Administrative mediation was different from private mediation, as it was conducted by officials or civil servants of the administration. Private mediation, however, was conducted by members of the family group. They also differ in that private mediation is governed by civil, moral and, above all, customary rules, which are present in almost all aspects of daily life in Chinese society, while administrative mediation, on the other hand, is governed by civil or administrative rules[33].

We should also take into account a specialised type of mediation, which is mediation in a particular labor sector. Among them, we can highlight the mediation established by some industrial associations which, in turn, is subject to the supervision of the relevant industrial authorities. We can also mention another type of mediation, also industrial, but which is initiated by the people's mediation committees themselves. We can say that the latter is a sub-type of the popular mediation that we will discuss below.

5. People's mediation in China today

People's mediation is an out-of-court dispute resolution activity under the supervision of the People's Mediation Committee. Through this type of mediation, the parties in dispute voluntarily negotiate and reach an agreement, with the help of guidance and advice from the people's mediator.

We understand popular mediation as the process by which a series of civil disputes are mediated by a popular mediation committee, which in turn are organisations established to resolve disputes between citizens.[34]

This type of mediation was a pioneering initiative of the Communist Party of China (CPC). It is currently the most widely used type of mediation in China and is regulated in the People's Mediation Law of the People's Republic of China of 2010. It is also recognised in Article 111, paragraph 2, of the 1982 Constitution of the People's Republic of China, which states that: "Residents committees and villagers committees shall establish people's mediation, public security, public health and other subcommittees to handle public affairs and public services in the residential areas to which they belong, mediate civil disputes and help maintain public order; they shall convey residents' opinions and demands and make proposals to the people's government"[35].

Furthermore, the Organic Law of the People's Courts of the People's Republic of China states, in Article 22, that one of the tasks of the People's Courts is to direct and supervise the work of the People's Mediation Committees[36].

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[32] HILMER, S. *Mediation in the People's Republic of China and Hong Kong*. Eleven International Publishing, The Hague, 2009, p. 8.

[33] RÍOS LAGOS, M. R. "La mediación en China continental: Orígenes y regulación actual", *Ars Boni et Aequi*, V. 14, nº 2, 2018. https://doi.org/10.23854/07192568.2018142Rios89, p. 87–111.

[34] LEE, J. K. L. "Mediation in Mainland China and Hong Kong: Can they learn from each other?", *Asian-Pacific Law & Policy Journal*, V. 16, nº 1, 2014, p. 101–121.

[35] People's Republic of China. *Constitution of the People's Republic of China* [中华人民共和国宪法], March 2018. Available at: http://en.npc.gov.cn.cdurl.cn/constitution.html#, was adopted at the Fifth Session of the Fifth National People's Congress on 4 December 1982 and promulgated and put into effect by a proclamation of the National People's Congress on 4 December 1982.

[36] People's Republic of China. *Organic Law of People's Courts of the People's Republic of China* (Revised in 2018) (Presidential Decree No. 11) [中华人民共和国人民法院组织法 (2018 修订) (主席令第十一号)], October 2018, was adopted at the Second Session of the Fifth National People's Congress on 1 July 1979 Revised in accordance with the Decision on Amending the Organic Law of the People's Courts of the People's Republic of China adopted at the Second Session of the Standing Committee of the Sixth National People's Congress on 2 September 1983.

As mentioned above, the People's Mediation Law of the People's Republic of China mainly regulates this type of mediation[37].Article 3 sets out a number of principles to be taken into account by the People's Committees when mediating disputes:

1. To conduct mediation activity on the basis of the principles of free will and equality of the parties.

2. Comply with state legislation, regulations and policies.

3. Respect the rights of both parties and prevent the parties from accessing other channels (administrative, judicial or arbitration) to solve the conflict or to protect their rights.

As stated by RÍOS LAGOS and whose position we share, we can conclude that the law is a clear example of the importance of dispute resolution, as well as the achievement of harmony and stability in Chinese society[38].

Chapter II of the Chinese People's Mediation Law contains the regulations that apply to people's committees or commissions. Committees are legally established organisations for settling disputes between people. People's committees exist at the neighbourhood or village level, and can also be found within some enterprises and public institutions.

Mediation committees could consist of a minimum of three members and a maximum of nine. Article 8 of the law stipulates that members must include women and ethnic minorities.

Chapter III establishes the role and work of the people's mediators. Article 14, second paragraph, states that the government, through the administrative department of justice under the People's Government at the county level, is responsible for providing them with the necessary training to achieve their qualification as mediators. This body will carry out training on a regular basis. The same article also sets out the requirements to be met by anyone wishing to become a mediator. Among them, we can mention that he/she must be an adult Chinese citizen, with some legal knowledge and a certain minimum level of culture. In addition, he or she must exercise his or her role as a mediator in accordance with the principles of impartiality, enthusiasm and decency[39]. Depending on the case, one or more mediators may act in the procedure, depending on the needs of the procedure, who will be appointed by the people's mediation committee or by the parties to the procedure.

The procedure is regulated in Chapter IV of the Act. It can be initiated by one of the parties or by the people's mediation committee. The initiative of the committee is rare, as one of the fundamental characteristics of the mediation procedure is its voluntary nature. However, Article 32 of the Law on People's Mediation provides for this possibility when a dispute is likely to be resolved by means of a people's mediation procedure and the people's courts of first instance themselves may notify the parties of the initiation of such a mediation procedure. The courts also have the function of promoting mediation as a method of conflict resolution and thus avoiding the parties' often unnecessary access to judicial proceedings.

Once the procedure has been completed, the parties reach an agreement, which can be either in writing or verbally. Article 29 of the People's Mediation Act sets out the requirements that the written agreement must meet[40].

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[37] People's Republic of China. *Civil Mediation Law of the People's Republic of China* (Presidential Decree No. 34) [中华人民共和国人民调解法 (主席令第三十四号)], August 2010, was adopted by the Standing Committee of the Eleventh National People's Congress of the People's Republic of China at its Sixteenth Meeting on 28 August 2010, and is hereby promulgated and shall come into force on 1 January 2011.

[38] RÍOS LAGOS, M. R. "La mediación en China continental: Orígenes y regulación actual", *Ars Boni et Aequi*, V. 14, nº 2, 2018. https://doi.org/10.23854/07192568.2018142Rios89, Ob. cit., p. 87–111.

[39] People's Republic of China. *Civil Mediation Law of the People's Republic of China* (Presidential Decree No. 34) [中华人民共和国人民调解法 (主席令第三十四号)], August 2010, articles 8–14.

[40] Among the requirements that this agreement must fulfil, the following stand out: complete identification of the parties, facts and causes of the conflict, the responsibility assumed by

Article 32 and subsequent articles also set out the jurisdiction to which the parties submit in the event that the mediation agreement is not complied with and they wish to go to court.

As far as we can see, it is a fairly complete, flexible procedure, in which the basis is the voluntary nature of the parties. However, what stands out is that almost anyone can be a mediator, which is especially noticeable in the great difference in legal knowledge that a mediator has from a rural area to an urban area. In fact, around 40% of mediators do not have completed basic and compulsory school education[41]. All of this means that this mediation procedure is not carried out with all the necessary guarantees to ensure that it is carried out in an optimal manner.

6. Conclusions

Mediation is a heterocompositional method of conflict resolution as it involves a decisive third party outside the conflict, i.e. the mediator. For some, it is a negotiation facilitated by a third party who assists the parties in resolving the conflict. It is a private, voluntary, informal and non-binding process, so the outcome depends on the full will of the parties involved in the process.

In Roman law we can find the figure of the *consilium domesticum*, whose function is closely related to family mediation. The *consilium domesticum* was convened to resolve a conflict within the family in order to prevent an external trial from taking place that would be detrimental to the family's honor. It was a consultative body that was convened to advise the *paterfamilias* in making decisions in cases where illegal acts had been committed by a member of the family. Its mission, like family mediation, was the resolution of conflicts arising within the family nucleus, without it transcending into the public sphere.

In our legal system, mediation is a mechanism through which the parties seek a solution to a conflict and in which they set out their needs, interests and claims. They access this mechanism voluntarily and, above all, it is a very flexible procedure that can be adapted to the needs of any of the parties in any part of the process. Moreover, it can be quicker and less costly than going to court.

However, we believe that in Spain this procedure is not given the necessary value, or what is not the same, it is not sufficiently promoted. Citizens often prefer to go to court because they believe that this way, we have greater guarantees of defense and that our rights will not be violated. However, there are many types of mediation, and mediators are highly qualified and prepared to be able to provide the parties with any type of agreement in which the preferences of both parties are satisfied.

In the People's Republic of China, however, a type of mediation that goes beyond the family sphere and even involves citizens was born and promoted. With the establishment of the People's Republic of China, there was a resurgence of mediation through the People's Committees for mediation. For a few years, disputes between parties were resolved between them with the help of a third party, without

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each of the parties, the content, the form of compliance and the deadlines established for the fulfilment of the agreement between the parties. It is also stipulated that the verbal agreement takes effect from the moment the parties agree to it, and the written agreement takes effect from the moment each party and the mediator sign it with their fingerprints.

[41] LEE, J. K. L. "Mediation in Mainland China and Hong Kong: Can they learn from each other?", *Asian-Pacific Law & Policy Journal*, V. 16, nº 1, 2014, p. 187 y 188; HUANG, Y. "A rational thinking of the People's Mediation System of China", *Canadian Social Science*, V. 8, nº 2, 2012, p. 140–144. http://dx.doi.org/10.3968/j.css.1923669720120802.2011, p. 14 y ss.: "As a result, although people's mediators are required under the People's Mediation Law to stick to principles, make legal reasoning and explain the relevant laws when assisting the disputants, many of them only aim at settling the dispute and avoid the burden of investigating either facts or law as they are incompetent to determine the liability of parties based on law. This problem, however, is even more serious in some rural areas in China, as most well-educated people leave those areas to live in the cities for better job opportunities and very often those who still stay in their hometowns are rarely qualified for the mediation work".

the need to go to court, through a system that was cheaper, more flexible and more direct between the parties. Popular mediation subsequently fell into disuse in the early 1980s, but following the enactment of the Law on Popular Mediation in 2010, there has been a renewed attempt to encourage its use for dispute resolution. However, there is a big difference in the way a procedure is conducted in a rural area of China compared to a more developed urban area where the population is more educated. The purpose of this procedure is to resolve all disputes in a peaceful way, respecting the parties, but often it is the mediator's lack of academic training that is at fault. The mediator must guarantee that the procedure is carried out in a fair and transparent manner, always guaranteeing the rights of each of the parties. If the mediator does not have the appropriate training or is unaware of any type of legislation or regulation that may apply to the procedure, the parties are exposed to a situation of defenselessness when they see that the mediation process is not carried out with the appropriate guarantees.

For this reason, it is necessary that the authorities, administrative institutions and other bodies continue to provide specialized training so that a person can exercise the role of mediator in an appropriate manner, not just anyone can be a mediator.

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