Artículos científicos

Justice and mediation: proposals from european practitioners and trainers for a culture shift

Justicia y mediación: propuestas de profesionales y formadores europeos para un cambio de cultura

Justiça e mediação: propostas de profissionais e instrutores europeus para uma mudança de cultura

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Recepción: 21 Febrero 2025
Aprobación: 16 Junio 2025

Acceso abierto diamante

Abstract

Despite the benefits of mediation, in most European countries it is in minimal demand as an Alternative Dispute Resolution (ADR) system. This article analyses the views of mediation practitioners and trainers from eight different countries regarding two fundamental questions: what is going wrong, and what can be done to reboot the system? The results offer a vital contribution to the process of considering legislative and social changes to improve citizens' access to justice, including the need to promote mediation in schools, improve relationships with those involved in law (especially the legal profession), and make mediation compulsory in certain areas.

Keywords: mediation, justice, alternative dispute resolution systems, culture, Europe.

Resumen

A pesar de los beneficios de la mediación, en la mayoría de los países europeos su demanda como Medio Adecuado de Solución de Controversias (MASC) es mínima. Este artículo analiza las opiniones de profesionales y formadores en mediación de ocho países diferentes respecto a dos cuestiones fundamentales: ¿qué está fallando y qué se puede hacer para reiniciar el sistema? Los resultados ofrecen una contribución esencial al debate sobre los cambios legislativos y sociales necesarios para mejorar el acceso de los ciudadanos a la justicia, incluyendo la necesidad de promover la mediación en las escuelas, mejorar las relaciones con los actores jurídicos (especialmente la profesión legal) y hacer obligatoria la mediación en ciertas áreas.

Palabras clave: mediación, justicia, sistemas alternativos de resolución de conflictos, cultura, Europa.

Resumo

Apesar dos benefícios da mediação, na maioria dos países europeus sua demanda como Meio Adequado de Solução de Conflitos (MASC) é mínima. Este artigo analisa as opiniões de profissionais e formadores em mediação de oito países diferentes sobre duas questões fundamentais: o que está falhando e o que pode ser feito para reiniciar o sistema? Os resultados oferecem uma contribuição essencial para o debate sobre as mudanças legislativas e sociais necessárias para melhorar o acesso dos cidadãos à justiça, incluindo a

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necessidade de promover a mediação nas escolas, melhorar as relações com os atores jurídicos (especialmente a profissão jurídica) e tornar a mediação obrigatória em certas áreas.

Palavras-chave: mediação, justiça, sistemas alternativos de resolução de conflitos, cultura, Europa.

1. INTRODUCTION

For decades, the administration of justice has been beset by structural inefficiencies that have made it difficult for it to play the role it should in society. Users should see their justice system as their own; it should be accessible, understandable and relatively quick, and yet no citizen would use these terms to describe their experience in the courts. Certain European countries have been considering profound reforms to the judicial system for some years, with a view to improving citizen satisfaction and trust in the courts. France is one such state, with Law no. 2016-1547 on Modernising Justice in the Twenty-First Century and Law no. 2019-222 of 23 March on the 2018-2022 Programming and Reform of the Justice System, which identify the key issues of congestion, delays, complexity and high costs and commit to digitalising court proceedings to improve efficiency, as well as increasing human resources and simplifying procedures to make justice quicker and more accessible. In Spain, the Organic Law 1/2025, of January 2, on measures for the efficiency of the Public Justice Service, emphasizes viewing justice as a public service and prioritizing reforms to enhance its legitimacy (the degree of trust in and credibility of justice) and efficiency (the system's capacity to produce effective and timely responses), bringing it closer to citizens.

There has undoubtedly been significant progress in recent years in terms of the understanding of the court system as a public service, and one which is today underpinned by new paradigms (Blanco Carrasco, 2020) that emphasise the need to provide a response that is, moreover, effective, expeditious and coherent, with all stakeholders participating and all elements of the dispute taken into account. The concept of deliberative justice stands out among these new paradigms. Its starting point is the idea that administration of justice is not merely contentious and not to be monopolised by the courts or the legal profession, but rather belongs to civil society as a whole (Niembro Ortega, 2019). As such, there is a clear need to offer spaces where citizens can negotiate and take part in decision-making, with institutions such as juries. Another noteworthy paradigm is therapeutic justice, which focuses on the idea that law is also a social force, the application of which has social consequences. These consequences are not necessarily detrimental, as citizens often perceive them to be, as justice in its true sense is also an instrument for transformation and social harmony (King, 2008; Wexler, 2005). The objective is to offer interdisciplinary and holistic attention that takes into account all aspects of a dispute, whether legal, psychological or social. This creates an important role for non-legal professionals, such as psychologists or social workers (Waldman, 1998). This is particularly important in certain areas such as the family context, where the courts have proven unable to offer emotional assistance to families and the sluggishness of their responses has often rendered solutions unworkable (Avedillo, 2015). Those involved in law have long argued that the legal relationships that are settled in family court proceedings are often extremely personal and are all imbued with an inevitable emotional charge that must be taken into account when providing a response, since failure to do so could pave the way for solutions that are "unenforceable and certain to cause unhappiness to the members of the group" (Biezma López & Fariña Rivera, 2020). Finally, it is worth highlighting the concept of restorative justice in the criminal context, which is based on the view that criminal or harmful conduct causes material damage but also has an emotional or psychological impact that must be incorporated when producing an overall solution to the conflict. Opportunities are created for the perpetrator to apologise to victims and ask for their forgiveness, as well as to reach agreements to redress damage caused (Johnstone, 2001).

This new conceptual framework has propelled the appearance and development of a series of systems intended to improve and simplify procedural responses, as well as to offer alternatives that are more suitable, flexible and efficient, foster collaboration and dialogue, and increase user satisfaction and trust in terms of the administration of justice (Blanco Carrasco, 2009). This means that there is a need for the court system itself to boost the use of other systems, or of third parties, to attempt to find out-of-court solutions (San Cristobal Reales, 2013). Mediation undoubtedly stands out among all these Alternative Dispute Resolution (ADR)

systems, a term commonly used in Anglo-Saxon countries. In Spain and many Latin American countries, however, the term "Métodos Adecuados de Solución de Controversias" (MAS) is increasingly used to emphasize that these mechanisms are not only legitimate alternatives but are also an integral part of the justice system, even if they often take place outside the courtroom (Tomás García, 2011). In this text, we adopt the interpretation of ADR *as Appropriate Dispute Resolution*, to reflect this broader understanding of these mechanisms as suitable and embedded within formal justice systems.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on mediation in civil and commercial matters had a highly positive impact in terms of promoting and providing impetus for mediation. All EU Member States now have specific mediation regulations, including Portugal (Law no. 29/2013 on mediation), Italy (Legislative Decree 28/2010 on mediation in civil and commercial matters), Greece (Law 4640/2019 on mediation) and Spain (Law 5/2012 on mediation in civil and commercial matters). However, and despite all these efforts, subsequent studies (European Commission 2016) show only a small number of mediation service users compared to the scale of the regulatory and institutional push to encourage its use. A decade ago, De Palo (2014) published a macro study conducted across all European countries reporting that there were fewer than 500 mediations per year in the majority of countries. In some jurisdictions, such as Spain, the figure amounted to 2,000, and only four exceeded 10,000 mediation processes per year: Italy, Germany, the Netherlands and the United Kingdom. No similar studies have been conducted since then, but the literature continues to state that despite high success rates (De Palo & Keller 2012), the push to establish mediation as an alternative system for resolving disputes has failed (García-Longoria Serrano, 2011; European Parliament, 2011).

The literature has attempted to identify the reasons for this failure, and suggestions have included differences concerning the understanding of mediation (García Villaluenga & Váquez de Castro, 2014, pp. 22-23), a lack of institutional support (European Commission, 2016) and particularly a lack of a "mediation culture" (Boqué Torremorell, 2003). This issue will be the specific focus of this article. Apart from a few exceptions, most European citizens are reluctant to turn to a non-judicial third party to resolve their disputes, particularly when that third party does not guarantee a solution and requires payment for their services (European Union Agency for Fundamental Rights and Council of Europe, 2016). The main political and legislative challenge, as argued by De Palo et al. (2014), is to change the pro-litigation culture featuring the preconception that the courts are the best option (García-Longoria-Serrano, 2011).

The purpose of this article is to identify the position of renowned and experienced mediation professionals and trainers from eight countries with respect to two fundamental issues that correspond to the two aims of this research: what is currently failing in terms of establishing mediation as a dispute resolution system, and what can be done to efficiently promote recourse to mediation? The results from interviews and three discussion groups involving experts from highly diverse backgrounds confirm the findings of previous studies but also add new elements that have not been sufficiently emphasised.

2. METHODOLOGY

2.1. Research Techniques

Qualitative research was carried out to achieve the aforementioned aims, and the data analysed are the result of seventeen interviewees and three discussion groups.

The semi-structured interview script was divided into three parts. This article explains the results from part one, concerning the situation of alternative dispute resolution mechanisms in general and that of mediation within their field of intervention in particular. The following questions were asked: What experience do you have of ADRs? What do you think these systems contribute to resolving the conflicts you encounter on a daily basis? What are the main disadvantages, shortfalls or limitations that might affect these systems? What

measures should be adopted to overcome them? Are there any experiences or services that you consider particularly useful, or questionable? For what reasons?

A protocol was developed for the discussion groups that followed the same structure as the interviews.

ATLAS.ti version 9 software was used for the discourse analysis, with a total of 13 pre-prepared codes grouped into four categories (contributions, limitations, improvements and relations with other professions), producing a total of 407 citations.

2.2. Participants

The sample was made up of mediation trainers and professionals from eight countries: Belgium, Spain, Portugal, the United Kingdom, Italy, Sweden, Norway and Finland. A total of 17 participants were interviewed (E1-E17) and there were three discussion groups (FG1, FG2 and FG3) with 22 participants (P1-P22), producing a total of 39 participants. Out of this total, 74.4% were women (29) and 25.6% were men (10). Average participant age was 51.2 years, with a standard deviation of 8.3. This is explained by the selection criteria of people with good reputations and extensive professional or training experience. Study participants had 16.7 years of experience on average, with a standard deviation of 7.1. The main aim of this study was to offer an interdisciplinary view, and so professionals from various disciplines were invited to participate (16 social workers, 10 lawyers, 6 psychologists, 6 from other professions and one without university qualifications). Over half of the participants (58.9%) had experience as mediators, with 38.4% working as professional mediators and 28.2% qualified trainers who conducted mediation on an irregular basis. Almost half of interviewees (48.7%) specialised or intervened in the family area, followed by interdisciplinary (30.7%) and community (10.2%).

2.3. Procedure

The 17 interviews (E1-E17) were conducted with 6 teachers at higher education institutions and 11 professionals from four countries (Spain, Portugal, the United Kingdom and Belgium). Snowball sampling was used for the interviews, as interviewees offered their own contacts to increase the sample. This was essential given the comparative nature of the research, spanning several countries.

The first discussion group (FG1) was made up of 11 participants (P1-P11), comprising trainers and professionals trained in mediation and members of the Complutense Mediation Institute (*Instituto Complutense de Mediación*). The second group (FG2) comprised five participants (P12-P16), all but one of whom were trainers and social workers, with training and/or research lines related to mediation. There were six participants in the third discussion group (FG3) (P17-P22), none of whom had specific training in mediation. The aim was to identify the participants' opinions in relation to the function of mediation as traditionally implemented by other professions, in addition to their knowledge of mediation as a form of ADR. FG3 acted as the control group, in order to show awareness of this topic in non-specialist fields.

One methodological limitation of this study is the absence of direct users of the system (e.g., parties involved in conflicts or members of the community) among the interviewees. While professionals and a control group were included, the lack of user perspectives may limit the representativeness and depth of the findings.

3. RESULTS

3.1. Participation and responsibility in dispute management

All study participants felt that collaborative dispute management strategies were clearly better than adversarial systems. Any decision imposed by a third party, including one that benefits one of the parties, ends

up being seen as a punishment (E13). The experts consulted in this study stated that mediation fundamentally offers two significant features: participation and responsibility.

In terms of participation, interviewees stated that mediation essentially provides a space for dialogue and facilitation (E1, E3), through collaboration and empowerment (E15) based on respecting and listening to the other party (E9), giving them the opportunity to express how they see the dispute and to hear themselves (E1). This process enables participants to understand the other party's position by "standing in their shoes" (E3, E5).

But perhaps the main contribution of mediation is the allocation of responsibility for the decisions made. Exercising free will means having the freedom to take decisions but also, fundamentally, committing to resolving disputes and honouring the agreements reached. The participants in this study were keen to highlight the duty to help citizens to be mature and take responsibility for finding solutions, without delegating to third parties when there is a chance of an agreement but it might be difficult and demanding from a personal perspective (E13, E3, E14). Despite these advantages, participants confirmed that when the time comes to choose a dispute resolution mechanism, citizens are still turning to the courts.

> *"In this type of family-related dispute, I think it's ridiculous that people end up in court before they talk" (E4).*

Conflict is seen as something negative and hence to be avoided or resolved in our culture. This way of seeing conflict is so deeply engrained in the popular consciousness that even mediators themselves find it difficult to avoid.

> *"As mediators, we know that conflict just happens. As long as you know it's going to happen, it's fine, and you just have to find a way through it. I think there should be a lot more of that in many more professions" (E4).*

> *"In my work, in reality it's a matter of understanding that conflict is normal. But if mediators themselves understood that, they'd be acting very differently in their own lives, and that hasn't been my experience" (E1).*

Changing how citizens and professionals deal with conflict would involve a significant culture shift. While this process has started, it requires impetus. There are already initiatives in various areas to raise awareness and train citizens on collaborative dispute management, particularly in the family context, with mediation in situations involving separation and divorce or the coordination of parenting in parental conflicts. However, the expert interviewees believed that mediation should be introduced earlier. The interviewees unanimously identified school as the place where a culture shift should start, emphasising that an early start is the only way to internalise "mediation culture" and make it the default mechanism for resolving disputes.

> *"That's why it's important to teach these skills at school. Otherwise you've missed the boat. If you teach these skills at school, mediation skills, people will be more open to mediation" (E1).*

> *"Children should grow up learning to say what they need. Learning to politely say what they need and what they don't want, what's fine and what's not. We don't teach them to do that because we teach them to avoid conflicts or to hit out before saying anything" (E4).*

Mediation should be integrated into schools and colleges as essential training and a service to manage the disputes that can arise in those communities. A significant commitment needs to be made to introducing mediation in educational institutions from childhood. But there is also a need for university students, regardless of what they are studying, to have access to training in collaborative dispute management strategies and tools.

> *"It's amazing: in Finland we have mediation in primary schools, but not at university" (P21 in FG3).*

"I think that we should offer mediation training for all university students" (P22 in FG3).

3.2. Managing expectations and better referrals

Mediation has been seen as a panacea, the solution to all our problems, for years. However, the participants in this study explained that so much has been and is expected of mediation that these expectations are hard to satisfy.

"I've seen mediation being sold as a panacea in lots of training and a certain naivety in treating mediation as a solution to almost everything. I think there's a need to come back down to earth a bit" (P6 in FG1).

"Weaknesses? (laughter) It could become a victim of its own success, meaning there are unrealistic expectations of mediation, you know? So many people might want to use it for things it's not suited to and the urban myth will be that it's useless" (E13).

Despite the efforts made in recent years, there is still widespread confusion among citizens and perhaps, even more concerningly, among professionals. Trust is based on knowledge and information regarding mediation, since without knowledge nobody will venture to try something new (E16). On many occasions, someone may not know what they want, but the professional should be able to offer them another route to resolve the dispute that is not always made available. Most participants considered that there was no effective dialogue between mediation professionals and the professionals managing family conflicts. While one group defended mediation at all costs, another believed that they were not sufficiently well-known or valued (E9, E2, E13, E17, E7).

"As professionals working in this area, we are very biased too. In general, I think we're used very little. First, people don't know about us enough, and second, even when they do, they don't value us very highly" (E10).

The interviewees particularly emphasised the need to manage the expectations of users, mediators and other professionals and to improve the referrals of cases to mediation services, since as stated, mediation is not suitable for all users, for all conflicts or for all moments.

"Some people think that this is Lourdes and just going to mediation is enough. Going to mediation is not for everyone. And that's what's being sold – 'everyone can resolve their disputes' – but no, no they can't. Some people have to go to court, and there are decisions that, even if there's no conflict per se, the positions are so opposed that it has to be resolved by a judge" (E13).

"One of the main problems I see is thinking that one type of intervention fits all or replaces the previous one. And it's not like that. Some interventions are very useful for a certain kind of dispute, in a particular context, with a particular type of family, and others are useful in other situations. I think it's good to be aware of that. Some kinds of family conflict require a far more active form of intervention from the courts, which are very conservative in terms of taking measures that might be considered radical, at least in Spain" (E10).

Mediation was emphasised as being of little use in situations involving intense or highly litigated conflicts. This makes it essential to improve court referral mechanisms, with a good preliminary selection of cases where mediation is appropriate, particularly in programmes such as court mediation (E9, E12).

"What they say in the courts is that it hasn't worked for their cases, don't they? That's what they think. But what the mediators say is that the judges don't refer well, they refer families at stages of the process when there's no longer any solution, it's already highly chronic, referrals don't tend to be preventive, it might be better to seek an agreement when they first arrive, as a preventive measure, rather than doing it in the corridor and with the lawyers" (E11).

It is also important to take pressure off those practising mediation and to incentivise good case management. A shortage of cases and the simple desire to work means that interventions frequently involve

situations that do not have a good prognosis or which are not suitable for mediation, which can make it even more frustrating and dispiriting if the expected results of the mediation are not achieved (P2 in FG1, E11).

> *"I'm with you, I've experienced that constraint that, well, this is mediation, we're going to sit down and talk, and this is going to be a success come what may. And now the lesson is to have that view that "we're going to meet here, this isn't going to be a mediation", and let's see what professional can help you, but not the mediation" (P6 in FG1).*

3.3. The judiciary and the legal profession: key allies in reducing the role of the courts

Mediation offers a way of negotiating conflict without taking into account the law alone, insofar as it permits the consideration of aspects not contemplated or addressed in the courts. This is particularly significant as it has become clear that the courts are not sufficient to handle certain disputes, particularly in the family context. Specifically, the study participants stated that family conflicts demand a holistic and interdisciplinary response (E1, E9).

> *"More and more judges are aware of this, that there are cases that spend an age in the courts without a satisfactory solution – that is, without the family ceasing to come to court – or, and I find this very interesting, that the issues raised are not on the court's radar. The courts consider that there's no legal solution there, and rather that the type of solution is found in alternative dispute resolution systems or other kinds of specialist guidance" (E10).*

Participants emphasised the need to act preventively and provide a space for dialogue before starting court proceedings (E3, E4). Cases coming from the courts involve more complicated interventions and prognoses, since "going to court" affects the dynamic of the conflict (E9, E11).

> *"The people coming here fresh, having had no contact with the courts or anything, the proceedings bear no relation to the case of someone who's been in the courts. It's harder to win someone over if they've already had contact with the courts. It's easier to change a dynamic with someone fresh from their living room than with someone who says ... "you told me, because your lawyer wrote this". That's a lot harder, because you've got to undo everything then" (E13).*

To date, mediation has been introduced in the countries of those participating thanks to voluntary efforts from particular professionals or judges who have been convinced of its benefits and committed to it on an individual basis. However, the participants considered it vital for this support to be provided at an institutional level and not merely by individuals, and above all for the support to be effective (P8 in FG1, E10, E7, E17).

All of the interviewees identified the legal profession as one of the key problems, but also as one of the areas where improvements were required. Interviewees noted the sense of superiority of some lawyers, particularly when mediation took place in a judicial context. This directly affects the legitimacy accorded to mediators with other professional backgrounds.

> *"I get the feeling of passing a test. Yes. It's like, "fine, you're a mediator", but they'll throw the typical legal principle at you, like "pacta sunt servanda", like "let's see if you can handle this", let's see if I rate you or not. Yes, absolutely. That's happened to me several times" (E13).*

Moreover, legal professionals still see mediators as competitors who will take fees from them.

> *"There's another issue here related to resistance from lawyers: fees. Lawyers feel like they'll lose fees to mediation because mediation is quicker, because there are clients who want to go to mediation without lawyers present, so they'll lose fees. I think there's also a need to make them understand that the more satisfied clients feel, the more they'll use their services. There's a need to explain all that, to change the culture, the litigation culture, and changing culture is not easy. That's why mediation in school is so important, so future generations develop with a different culture" (E17).*

All of the interviewees believed that the situation would substantially improve with better support from this group, which necessarily involves lawyers receiving better training, having more awareness and giving more legitimacy to mediation.

> *"One of our basic aims was to win the trust of lawyers. That's the key. I put myself in a lawyer's position; I mean, if I'm engaged to defend a person's interests I'm not going to hand them over to just anyone (...) And in fact, the cases that worked best were those where we had some contact with the lawyers, and the lawyers helped the client to go ahead" (E9).*

Whether they are unaware of it or they do not understand it well, lawyers generally mistrust mediation.

> *"We need serious training in bar associations to explain what mediation is, what issues or matters can be handled in mediation, but also the importance of the work that lawyers do before, during and after a mediation procedure. But they have to feel the importance of their role there and feel that it's not really a competing profession, it's a pathway that can bring them clients" (E17).*

Many interviewees were not familiar with the concept or philosophy of collaborative law, which is supported by a group within the profession that is committed to resolving conflict through dialogue. Only five were aware of this new approach to professional practice (E10, E11, E13, E14, E17), but they all agreed on the importance of this group changing the traditional strategy of handling conflicts. It was also pointed out that the function of legal practice must be decoupled from that of mediation: one is either a lawyer or a mediator, but it is impossible to do both things at once. The framework within which lawyers approach a dispute is completely different from that of mediation, since the lawyer's professional code of conduct requires them to represent their clients, which hinders the capacity for neutral and impartial negotiation. The functions must be distinguished.

> *"Lawyers who say they do mediation are another of my great concerns, for example (...). I say no, no they don't. Just like a mediator who's a lawyer doesn't make an argument, when I put on robes I can't do mediation" (E17).*

3.4. Compulsory mediation: a necessary evil

All interviewees were in favour of establishing a compulsory mediation information session as the best way of exposing citizens to this form of ADR and encouraging its use. Some interviewees stated that this option caused a dilemma for them, although they saw it as a "necessary evil" in order to create a mediation culture (E2, E11, E12, E13, E15).

> *"My ultra-basic reasoning is that if more than 70% normally accept, in the cases I know ... depending on the mediation team too, and so on, but in the end most of them accept ... if there were many, many more, that 70% would mean a huge number of people have tried to reach agreements before going to court" (E10).*

On many occasions, the problem is the difficulty of reconciling the principle of voluntary action with the obligation to attend mediation. The principle of voluntary action is one of the essential features of mediation, comprising a guarantee that citizens are free to decide whether they want to use mediation to resolve their disputes and to decide when they want to abandon it. Some participants felt that making mediation compulsory could contradict this concept of freedom of action.

> *"Mediation should always be freely chosen by the parties. This is a fundamental ethical principle from my perspective. If you take it away, you're removing the essence of mediation, because you're forcing people to do things that they don't really want to do and you're forcing their decisions, and mediation is free above anything else, you want to have freedom to decide, and if you don't want to choose it, you stop, or simply don't do it" (E8).*

In other cases, the dilemma is whether this kind of compulsory session might have the opposite effect to what is intended, increasing mistrust and causing misgivings or feelings of being "threatened or manipulated" to engage in the process (E8).

> *"They sometimes feel like it's not very voluntary, or they feel a little coerced into doing it, not by us, but by the referring agency. We always say that it depends on them, we don't want to force them to do it" (E3).*

However, the great fear for the majority is that mediation could end up becoming merely one more procedural step: a bureaucratic feature, completely undermining the potential of mediation to offer a transformative and empowering space (E3, E15).

> *"When it has been integrated into the family law process through mediation information and assessment meetings, it often turns into an exercise in box-ticking. It's just an obstacle to get past" (E7).*

> *"Parents saw it as an obligation and not an opportunity, so they were forced to come to mediation without the slightest intention of cooperating, and so the mediation couldn't have a successful outcome. They ended up abandoning it because the intention to cooperate wasn't there" (E17).*

Several ideas were mentioned to combat this reluctance. First was the suggestion that the compulsory aspect should not refer to the process in and of itself, which should remain voluntary, but merely to the need to attend the initial mediation information session (E2, E10, E17, E16). Obliging someone to attend an information session does not stop the process from being voluntary, since they remain free to continue or abandon the mediation, but it does help to overcome fear or reticence by informing participants about what mediation is and what it is for. Second, participants emphasised a need for professionals to be good, well-trained and experienced mediators, so as to be able to "hook" those arriving from highly court-centric spaces (E4, E13, E14).

> *"The parties may feel that they're being forced, in which case the mediator has to work to create sufficient trust in the system. Mediators have to provide a really strong, genuine package to manage to build that trust" (E17).*

4. DISCUSSION

The findings of this research generally coincide with previously published studies. Its main contribution was the international and interdisciplinary perspective offered by professionals and trainers from different countries, showing that certain mediation-related issues are having a similar impact from country to country despite cultural, legislative and political differences.

4.1. Justice and social transformation: change starts at school

All participants referred to the need to promote a change in how society handles disputes. For mediation and other forms of ADR to prosper, we need citizens to embrace collaborative rather than adversarial approaches to managing conflict, to take responsibility for seeking solutions and to commit to the agreements that are reached. As stated, this change must start at school, because this form of dispute management will only be fully integrated if it is applied in a natural manner from childhood (Sánchez-García Arista, 2013).

For the new paradigms of deliberative, therapeutic and restorative justice to become a reality, citizens need access to tools that enable them to participate in and hence take responsibility for conflict management, thereby strengthening resilience and trust in the system (Pérez Vallejo & Sainz-Cantero Caparrós, 2018; Ortuño-Muñoz, 2014; Romero Navarro 2014). Despite the legislative push to introduce and encourage the use of ADR systems and particularly mediation, the fact is that mediation is not in demand, as explained by the participants in this study. In view of this situation, the expert interviewees are asking for efforts to be made

when educating citizens to overturn stereotypes and remove stigmas when conflicts arise, particularly in the family context. For this purpose, the interviewees considered it essential to encourage training in collaborative dispute management techniques and strategies from very early ages through primary and secondary school, but also in the context of university education: courses at this level should specifically address alternative systems for resolving conflicts. The experts consulted were in favour of the introduction of compulsory subjects on collaborative dispute management and mediation as part of law and social work degrees, and this position is backed by the literature (Dorado-Barbé, Hernández-Martón, Lorente-Moreno and García-Longoria-Serrano, 2015).

The participants also argued that mediation is not merely a dispute resolution process: it is an institution with sufficient entity to occupy the full attention of professionals who intervene in conflicts in the future. This type of training will need to be comprehensive and interdisciplinary, with specialists in civil, procedural and criminal law as well as social workers, psychologists and criminologists who help students to achieve a more transversal view of the conflict, as demanded by the literature and experts in the field (Lauroba-Lacasa, 2018).

Culture shifts are slow. They require decades of training, raising of awareness and new social, family and community paradigms (Pilia, 2019). These changes are happening, but they must be underpinned by compulsory programmes to educate citizens in schools, colleges and universities.

In addition to the educational and judicial spheres, the community sphere emerges as a strategic setting for promoting collaborative culture and the effective implementation of mediation. Neighbourhood associations, grassroots organisations and community leaders play a key role in transforming how conflicts are addressed at the local level. These actors are often the first point of contact in everyday disputes and have the potential to act as bridges between citizens and formal mechanisms. Participants highlighted, albeit less explicitly, the importance of fostering training and mediation practices that are anchored in the territory, thereby ensuring that citizens experience conflict resolution not only as an institutional or academic issue, but as a shared, community-based process. Incorporating these initiatives into local development policies and community empowerment programmes could help establish multi-level cultural change, rooted both in institutions and in everyday lived experience

4.2. Agreeing before litigating: the importance of compulsory mediation

The participants in this study recognise the legislative efforts made to promote ADR systems. However, their view was that in certain areas it should be compulsory not merely to negotiate but to attend a mediation process. Participants argued that this negotiation should necessarily be conducted through mediation in family conflicts (General Council of the Spanish Judiciary, 2017; General Council of Spanish Social Work, 2014). The interviewees were unanimously in favour of mediation becoming a pre-trial requirement; in other words, they agreed on the need to prove that mediation has been attempted before being able to file a claim seeking separation or custodial measures, despite the difficulties or dilemmas that this might cause (Isaac, 2011). This form of mediation would involve "mitigated voluntariness" (García Villaluenga & Váquez de Castro, 2015), since it would only be compulsory to attend the initial, exploratory session (the pre-mediation), as is already the case in certain areas in the United Kingdom (Herrera de las Heras, 2017).

Regulatory changes are already taking place across all countries in this regard. Notable examples in Spain, for example, include the Basque Country's Law on family relations in cases of parental separation or split of 30 June 2015 (art. 6.2) and the Law amending the Second Book of the Catalan Civil Code of 4 August 2020. What is more, the Guide of the General Council of the Spanish Judiciary on Court Mediation (General Council of the Spanish Judiciary, 2016) warns that failure to attend a meeting of this kind could be interpreted as conduct contrary to procedural good faith, given that it involves rejecting an opportunity offered by the courts from the perspective of achieving the best solution without having grounds to do so. In Portugal, as clarified by our interviewees, the government is already considering a proposal submitted by

mediation professionals along these lines. Meanwhile, study participants from the United Kingdom confirmed that in their jurisdiction mediation is already compulsory in certain areas, including family matters (Children and Families Act 2014, Section 10), and even in other areas there are consequences for failure to use mediation before turning to the courts.

What the legislation should undoubtedly take into account, as the study participants explained, is that the law is not enough to provide a response to conflicts: other measures are also essential. First, compulsory mediation should be accompanied by a pre-selection of cases that could be suitable for mediation, since it has been demonstrated that mediation is not a panacea. Second, there is a need for judges and legal practitioners to be properly trained so that they can apply the best possible judgment in choosing the cases that should be referred, particularly where they involve high levels of conflict or have been in the courts for a long period. Finally, mediators must have specific training if they are to handle cases that have already reached the courts. These situations will require special effort to offer a non-adversarial setting in which disputes can be resolved.

4.3. Negotiation is not mediation: the legal profession as an ally for cultural transformation

The main contributions to this study by the experts consulted include the statement that "negotiation is not mediation", and the observation that there is significant confusion among certain professionals acting as mediators, particularly lawyers. This confusion even extends to the regulation of the area, such as the Spanish Organic Law 1/2025, of January 2, on measures for the efficiency of the Public Justice Service, which asserts that "alternative dispute resolution methods increase the protagonism of the legal professions, particularly through the negotiating role of lawyers, which is guaranteed in all cases, but also through court representatives, mediators, social graduates, notaries public and land registrars, among other professionals" (Preamble. IV).

The participants in this study, however, felt that the excess levels of protagonism granted to lawyers under the proposed legislation would harm their relationship with other professionals who act as mediators in certain areas. The professionals consulted believed that lawyers with training in mediation would continue practising as lawyers in the majority of cases, clearly contradicting mediation's code of ethics. Legal practitioners have a legal and professional obligation to be the "ship's captain", plotting the course, navigating through turbulent waters and ultimately guiding their clients to the safety of land (McKinney, Delaney & Nessman, 2014). A lawyer's functions include negotiation, but not mediation. If a professional acts as a lawyer, they cannot act as a mediator, insisted the participants in this study, at the same time as describing high levels of confusion in professional practice.

Nonetheless, the study participants emphasised the importance of lawyers (acting in that capacity and not as mediators) embracing a more collaborative way of defending their clients. This transformation is starting to happen, with the concept of a collaborative lawyer acting as a catalyst (Soleto-Muñoz, 2017), but it remains at a very early stage for many of the nationalities consulted in this study, as shown by the fact that many participants were unfamiliar with the philosophy of collaborative legal practice. Collaborative law is defined as legal practice that favours cooperation to reach an agreement or resolve a conflict (Soleto-Muñoz, 2012). This commitment means being unable to defend clients in subsequent court proceedings (disqualification) if an agreement is not secured. The parties will of course be able to turn to the courts to settle their conflicts, but they will have to do so with other lawyers. Lawyers continue to practise as lawyers, but with a specific and unwavering commitment to reach agreements. Collaborative law is intended to strengthen the decision-making capacity of the parties and allow them to directly interact, rather than the lawyers serving as the basic communication channel. Collaborative lawyers also require basic training in mediation (García-Villaluenga & Vázquez de Castro, 2014), not because they are going to act as mediators, but because it is understood that mediation offers the tools for a collaborative, non-competitive approach to conflict. The aim is to acquire tools that enable families to engage in constructive communication. Mediation acts as the philosophy or conceptual

framework for this approach, and any professional wishing to become the third party that helps parties to resolve their disputes needs training in mediation (Lauroba-Lacasa, 2018).

5. CONCLUSION

This study offers valuable insights into the state of mediation from the perspectives of professionals and experts across eight European countries. This comparative perspective enriches the analysis and suggests that certain issues transcend national and cultural boundaries, pointing to universal aspects in the professional experience of mediation. Notably, despite the participants coming from diverse cultural and legal backgrounds in Europe, the remarkable homogeneity in their responses highlights common challenges and shared perceptions about mediation's role and development in different contexts. This

Participants underscored the critical need for specific training for both citizens and professionals, particularly to clearly distinguish mediation from other forms of intervention. Lawyers and judges must actively support mediation by not only receiving adequate training but also by integrating ADR into their professional practice. This includes appropriately encouraging clients to engage in mediation while maintaining a clear ethical distinction between mediation and their own negotiation roles. Proper judicial referral and endorsement of mediation are essential to provide confidence to all parties involved. Moreover, the participants advocated for the introduction of mandatory mediation processes in certain areas, especially in family law. The concept of "mitigated voluntariness", compulsory attendance to an initial exploratory session, was highlighted as a balanced approach, already implemented in some jurisdictions such as the UK. This pre-trial requirement could enhance the uptake and legitimacy of mediation while respecting parties' autonomy.

While the professional voices provide key insights into institutional logics and operational challenges, the study's limitations include the absence of direct users' perspectives. This gap points to an essential avenue for future research, as the inclusion of users' experiences would enrich the understanding of mediation's effectiveness and reception, enabling a more comprehensive and participatory evaluation of conflict resolution mechanisms. This research could be extended beyond Europe to include other continents, especially Latin America, where family, community, and collaborative mediation practices are well-established and supported by extensive case studies. Incorporating comparative studies in these regions would deepen the theoretical framework and offer a richer understanding of diverse mediation cultures and implementations.

In conclusion, this study highlights the ongoing need to improve mediation as a key tool for peaceful conflict resolution. The findings emphasize the importance of education, judicial support, and community involvement in fostering a collaborative culture. Future lines of research should focus on including broader stakeholder voices and expanding comparative analyses to fully harness mediation's transformative potential.

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Información adicional

Cómo citar / citation: Blanco-Carrasco, M. (2025). Justice and mediation: proposals from european practitioners and trainers for a culture shift. *Estudios de la Paz y el Conflicto, Revista Latinoamericana, Volumen 7*, Número 13, 1-17. https://doi.org/10.5377/rlpc.v7i13.21078

Información adicional

redalyc-journal-id: 7621

Marta Blanco Carrasco

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Revista Latinoamericana Estudios de la Paz y el Conflicto
vol. 7, núm. 13, p. 1 - 17, 2026
Universidad Nacional Autónoma de Honduras, Honduras
revistapaz@unah.edu.hn

ISSN-E: 2707-8922
ISSN-L: 2707-8914

DOI: https://doi.org/10.5377/rlpc.v7i13.21078