

PRESENTATION, meeting ENCJ, 11-28-2016

Let me start by saying that it is a great honor for me to be here today sharing with all of you this gathering and speaking to this extraordinary group of experts and authorities from the European Network of Councils for the Judiciary (ENCJ).

1. The length of proceedings has always been a main concern to all of us but, at least in Spain, the matter has received renewed attention in the recent past.

Why? Maybe because statistics show that the litigants tend to take their disputes to Court from the very first stages of confrontation. This leads to an increase in the pending lawsuits, lengthening the time of effective judicial response.

On the other hand, the demands by users of the Justice systems to obtain minimum standards of quality, efficiency and effective management in the public service of Justice are becoming greater and greater. Furthermore, all of it together runs parallel with the current scenario of economic and financial crisis which imposes a serious slash of public spending.

So, for public authorities, it is very important to face these realities and to find solutions to optimize the response time and comply with the legitimate expectations from the citizens, trying, at the same time, not to increase too much the Justice's budget.

With these premises, Alternative Dispute Resolution (ADR), and specially mediation, may contribute to speed up proceedings in the judicial systems while at the same time take care of other essential issue, such as maintaining its quality, and, in any case, almost without increasing the public spending.

2. In Spain, we know that it is a **priority of our government** to develop ADR. Recently, the Spanish Minister of Justice, when taking office, stated that the slowness of Justice is one of the more serious problems of our Justice system, adding that in order to fight against it there are not magic solutions, but logical solutions.

One of these logical solutions is, in the opinion of the Minister of Justice, the intensive use of mediation and to introduce it in the general legal culture of our country.

3. From the point of view of the Spanish Council for the Judiciary, Spain faces some **problems with the implementation of ADR:**

3.1. First of all cultural limitations concerning ADR.

As the Minister of Justice acknowledged, Spain has no culture of amicable dispute settlement. The public service of Justice has been traditionally considered by Spanish citizens as the main tool against abuses and almost the only solution to solve their disputes.

So, although alternative solutions such as conciliation and mediation are known by Judges and Lawyers, and they are moderately used in Courts, for the majority of citizens, ADR is not even identified as a possibility.

3.2. Furthermore, Spain has a remarkable lack of public policies concerning ADR. The outcome is that in spite of the existence of regulations incorporating ADR options, they are not efficient enough.

In 2001 the regional parliament in Catalonia enacted the Familiar Mediation Act. Since then, continuing this path, more and more laws have been adopted in other Spanish regions.

European Recommendations and Directives have had a very important influence in this phenomenon too. However, some of them have not been adopted in our Legal System yet.

Let me go through an overview of the level of implementation in Spain of the main Directives related to ADR:

(a) Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

This Directive has not been transposed yet. The transposition deadline was 07-09-2015; however, during 2015 the legislature's activity was interrupted and the process was not completed. Congress finished its activity at the end of the year. There was a draft project named "Anteproyecto de Ley de Resolución Alternativa de Conflictos de Consumo" elaborated in 2015 by the Ministry of Health that was not approved. From the Justice institutions' point of view the draft lacked quality and needed more coordination with the ADR system.

Only some minor changes in preexistent consumers' regulation were made for the inclusion of article 10.1 from this Directive by the "Act 3/2014, of March 27", and "Correction of mistakes of Act 3/2014, of March 27".

I have to add that consumer mediation matters are not developed yet in Spain. The main problem at the moment is the lack of obligation of the companies to participate in the arbitration process.

(b) Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

Legislation concerning Consumer Mediation and On Line Dispute Resolution (ODR) has not been yet implemented. Though the regulation about certain aspects of mediation in civil and commercial matters considers this possibility, and it recommends its use for

claims not exceeding the amount of 600 euros, Spanish civil Courts lack resources for its implementation.

The Spanish Justice System is beginning to incorporate an electronic procedural system but, in my opinion, currently court-connected ODR is probably an unrealistic target.

(c) Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Mediation Directive).

This Directive was transposed by Act 5/2012, known as "Act on mediation in civil and commercial matters", developed by "Royal Decree 980/2013, of December 13", and Order of the Ministry of Justice 746/2014, of May 7.

The 5/2012 mediation Act was enacted only after the beginning of a sanctioning procedure at EU level. The Act includes cross-border mediation as well national and familiar mediation.

There is not public awareness about the efficacy of civil mediation not connected to the Courts and such option has not been evaluated, but there is a general perception that mediation is rarely used.

Court connected mediation services are a reality only in very specific territories and the perception of the use of court-connected family and civil mediation is that it is a procedure rarely used compared to litigation.

(d) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

The 2012 Victims Directive produced the legal inclusion in our criminal system of restorative justice principles, by "Act 4/2015, of April 27, on the statute of the victim of crime" developed by a "Royal Decree 1109/2015", governs the offices of assistance for victims of crimes. Probably, it will take time and an important financial effort for these offices of assistance of victims of crimes to be extended and in force in the whole Country.

3.3. There is also a certain lack of ADR policies.

In my opinion, there has not been a real interest in the Spanish administration or in the society as a whole to incorporate ADR initiatives in our legal system.

It has been the need to transpose EU Directives which made the Spanish legislator produce the 5/2012 mediation Act. However, the legal development was not accompanied by an economical investment to facilitate its success with an educational or publicity planning.

Taking into consideration the lack of ADR culture in Spain, the implementation of such new dispute-resolution options is heavily reduced if it is not accompany by public promotion activities. Only some Spanish regions such as Catalonia, the Basque Country and Navarre, have incorporated publicity campaigns to develop and attempt to succeed in implementing court-connected mediation systems.

4. The Spanish General Council for the Judiciary is not competent to create its own mediation or ADR services. Only the Ministry of Justice and the Regional Governments have the material and human resources to implement such services as they are in charge of the Administration of Justice (excluding Judges).

The role of the CGPJ concerning ADR is to promote adequate ADR procedures, to support the creation of court connected ADR (only

mediation until now) and to promote and control the activity and quality of court connected ADR services.

Spanish Civil and Procedural law gives the judges the possibility to refer certain cases to mediation. It was at the initiative of some judges, convinced that mediation could provide citizens with a better solution, that this option started to be used and that mediation was introduced in some procedures. Although there is no specific law to develop the Council's activity in this area, the Council has supported the elaboration of referral protocols to mediation in every jurisdiction.

In this line, the Spanish Council for the Judiciary has been working since a long time ago for the implementation of mediation in our judicial system, in the daily work of our Judges and of our Courts all over Spain.

To get it, we –the Spanish Council for the Judiciary- have focused on the development of mediation, as a form of ADR, through three lines of action:

- First of all, consolidating the intra-mediation as a conflict resolution system complementary of the jurisdictional system.

The Council for the Judiciary has promoted the signing of agreements with the Ministry of Justice, the Prosecution, and the Regional Governments in order to work together in the implementation of quality mediation services.

- Secondly, informing judges and other actors of the judicial system about the intra-mediation work carried out by the Council for the Judiciary.

In this sense, we are improving the data managed and the quality of the exchange of information between the Council and the other actors participating in the named agreements. Besides, we are promoting a

greater implication of Courts through its local governing bodies, specially the Presidents of Higher Courts.

- And the third and last line of action is improving the quality of intra-mediation implemented by Courts, by increasing the quality and quantity of training courses for judges about ADR.

The above actions show that our commitment to the development of mediation and ADR in general, is firm and determined although our means and competences are limited.

5. To conclude, the right implementation of ADR implies a deep cultural change arising from the dialogue, the negotiation, the conciliation, that involves the judicial system and the society as a whole.

We know that the road is long but the path is already designed and I am sure that shorter than expected we will be able to see the results of our efforts, speeding up the time frame of legal proceedings while increasing the quality of our Judicial System thanks to ADR.

Thank you very much for your attention.

Madrid, November 2016