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Effectiveness of the dissolution and liquidation of the marital partnership through extrajudicial acts

Efectividad de la disolución y liquidación de la sociedad conyugal a través de actos extrajudiciales

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ABSTRACT

This research focuses on the powers granted by the Ecuadorian organic and ordinary laws on the issue of dissolution and liquidation of the marital partnership, as a topic of fundamental importance within the Ecuadorian society due to its high demand of cases and the procedural congestion that this entails within the judicial process, which is why it takes great relevance to the issue of negotiable matters such as the analyzed topic. Due to the fact that within the Ecuadorian justice system since the enactment of the Constitution of 2008, alternative means of conflict resolution are recognized, giving way to the known Alternative Dispute Resolution Mechanisms where the mediation, arbitration and notarial means stand out. For this research,

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the analytical-deductive method will be used, since a compendium of the current Ecuadorian regulations will be made, and it will be analyzed from a procedural perspective, addressing both the advantages and disadvantages for citizens who opt for each of the alternative dispute resolution mechanisms.

RESUMEN

La presente investigación se centra en las facultades que les concede las leyes orgánicas y ordinarias ecuatorianas en el tema de la disolución y liquidación de la sociedad conyugal, como un tema de fundamental importancia dentro de la sociedad ecuatoriana debido a su alta demanda de casos y la congestión procesal que esta conlleva dentro de la vía judicial, es por ello que toma gran relevancia el tema de materias transigibles como lo es el tema analizado. Debido a que dentro del sistema de justicia ecuatoriano desde la promulgación del a Constitución del 2008, se reconoce los medios alternativos de solución de conflicto dando paso a los conocidos Mecanismos alternativos de solución de conflictos de donde resaltan las vías de mediación y arbitraje y la vía notarial. Para la presente investigación se utilizará el método analítico-deductivo, pues se realizará un compendio de la normativa ecuatoriana vigente, y se analizará desde una perspectiva procedimental, abordando tanto las ventajas y desventajas que conlleva para los ciudadanos que optan por cada uno de los mecanismos alternativos de solución de conflictos.

Keywords / Keywords

alternative, dissolution, powers, procedural, compromiseable

alternativos, disolución, facultades, procesal, transigibles

Introduction

Notaries have existed since the very recognition of the law and especially of the law, the issue of mediation centers is more recent, since its institution was created only in 1997 as arbitration and mediation law (LAM), however, it is not until the enactment of the current Constitution where it begins to take legal relevance, since the promulgation of the Constitution of 2008, which within its regulations, specifically Article 190, recognizes the alternative means of conflict resolution "Art. 190.- Arbitration, mediation and other alternative dispute resolution procedures are recognized. These procedures shall be applied subject to the law, in matters in which by

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their nature can be compromised" (Asamblea Constituyente De Montecristi, 2008, p. 69).

Currently, these methods of conflict resolution have become more viable alternatives to the judicial system in Ecuador, taking into account the correlation that has had with the thinking of the citizenship the fact of sowing a culture of dialogue or peace rather than the use of a judicial route where it is based on the confrontation of the parties; Due to the fact that in order to proceed by these means it is of utmost importance the voluntariness of the parties to submit to these means, however, despite this there is still a great deficit in terms of knowledge of the powers that can be resolved by notarial means as well as mediation and arbitration.

Alternative Dispute Resolution Mechanisms (ADR), are internationally recognized as fast and beneficial mechanisms that put an end to social conflicts, decongesting the judicial route; in this sense, according to Márquez, G (2018)(2018), mentions that "alternative means of conflict resolution are procedures different from jurisdictional ones that aim to resolve conflicts arising between parties with a problem of interests", a similar postulate is established by González de Cosío (2004), since for said author, "ADR are processes that can be used for the solution of differences in an amicable, flexible way and without the need to resort to purely adversarial methods".

ADR is defined as "Processes that can be used for the settlement of disputes in an amicable and flexible manner and without the need to resort to purely adversarial methods" (González de Cosío, 2004), which implies that the legal system of a State will define those matters that could be suitable to be subject to this regime and with it, the organs of the Judicial Function with powers to do so or auxiliary organs of the same judicial function to whom such powers should be attributed, The organs of the Judicial Function with the attributions to do so or auxiliary organs of the same judicial function to whom such competencies should be attributed, which according to our Organic Code of the Judicial Function clearly refers to the notarial process as an auxiliary organ, by which it is intended to resolve social conflicts in a more peaceful and rapid manner.

Among the auxiliary bodies we have the notary's offices, which by Law No 2006-62, published in the Official Gazette No 406 of November 28, 2006, which grants the power to process divorces by mutual consent as long as there are no minor children and specifically in Article 23 of

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the Notarial Law, it empowers to proceed with the dissolution and liquidation of assets of the marital partnership, through a notarial process, as long as there is a clear and previous agreement of the intervening parties in relation to what each one is going to receive, regardless of whether one of the parties receives more than the other and vice versa, given that in this process a quantified inventory is not required.

Therefore, it is important to understand that in this way depends a lot on the voluntariness of the parties, that is why we speak of competences in issues or matters that can be compromised, taking into account that the culture of dialogue is a means of conflict resolution from the very beginning of a society, despite this, the emergence of mediation and arbitration centers are relatively new and therefore unknown by much of the citizenship, despite being a way that offers results in a shorter time, In spite of this, citizens generally do not opt for this route for the dissolution and liquidation of assets of the marital partnership due to two important factors, the first one is the lack of knowledge of the faculties and attributions that the mediation centers have, the second factor is the insufficient number of mediation centers and the lack of publicity, marketing or promotion that these centers have.

According to the specialists of the Mediation Center of Santiago de Chile, in mediation applied to relational conflicts of different nature, three basic stages of the process are distinguished: a) Present state of the conflict situation: The parties come to request mediation where at least one of these perceives the conflict, accepting a collaborative modality and considering that the other party can also assume it; b) Period in which the conflict is worked: It is the stage in which the communicational interrelation is worked, it must be a space of conversation and dialogue; c) State in which the desired, the undesired and the emergent are considered: This stage is based on the objectives of the participants in the mediation, understanding them as producing effective communication, responding to the needs of the parties, recognition of the parties, recovery of total or partial harmony and respect for the human rights of all those involved. (Alliende Luco, 2011, p. 37-38).

The conflict generated by the constitutional norm in the Ecuadorian case, in relation to the competence that both the mediation centers and the notary offices have in the specific subject of the dissolution of the conjugal partnership and distribution of the marital property, which is

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established both in the Arbitration and Mediation Law and in the notary law that allows this subject to be carried out through these two ways, and being the most used at the moment the notary way, generates certain uncertainty at the moment that the liquidation of the conjugal partnership is carried out through mediation, generally due to the lack of knowledge that is evidenced by the members of many municipalities regarding the faculties and faculties of the notary, Generally, this generates some uncertainty at the moment of proceeding to the liquidation of the marital partnership through the mediation process due to the lack of knowledge that is evidenced by the members of many municipalities regarding the faculties and competences that this process has, generating conflict at the moment of being legalized later at the request of the governmental entities that demand its notarization prior to the liquidation of municipal taxes, which causes a clash of entities or of ways.

Art. 23.- To proceed with the liquidation of the property partnership or the conjugal partnership, for this purpose, without prejudice to the jurisdictional power of the civil judges, the spouses or former spouses, or the cohabitants linked under the regime of the common-law union, as the case may be, may agree by public deed, once the conjugal partnership or the property partnership that has been formed as a consequence of the common-law union has been dissolved, the liquidation of the property partnership. This agreement will be registered in the corresponding Property Registry when the liquidation includes real estate, and in the Mercantile Registry when there are assets subject to this Registry" (Notarial Law, 2023, p. 4).

The fact that the issue of dissolution and liquidation of the marital partnership is tacitly typified in the notarial law, undermines the importance and autonomy of mediation as an alternative method to the judicial process that has been recognized by the same Constitution and that grants the citizens a faster and more effective option to solve issues such as those mentioned in the previous paragraph, but that would lose its essence when adding more requirements to it, such as those demanded by the other municipal entities, either at the moment prior to the liquidation of municipal taxes or at the moment of registration in the Property Registry of each municipality.

In order to fulfill the objective of this work, it is necessary to understand the different competences that notary's offices and mediation and arbitration centers have to resolve matters in accordance with the Organic Code of the Judicial Function as an

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auxiliary organ of the Justice System, so that, in this way, it can be understood if the extrajudicial acts comply or not with the principle of effectiveness, and more specifically in cases such as marital dissolutions and liquidations. For this purpose, the competence of both mediation centers and notary's offices in Ecuador at the time of the dissolution and liquidation of the marital partnership will be analyzed through a doctrinal, normative and practical approach, pointing to principles such as normative hierarchy, constitutional primacy, efficiency, celerity and effective judicial protection, as fundamental pillars that guarantee the rights of the users.

Materials and Methods

When we refer to the legal environment and its development within Ecuador, we can realize that one of the biggest defects is the interpretation given to the written law, although before the law and the Constitution the rule must be interpreted literally, however currently has gained more power the harmonic interpretation or also known as the sound criticism of the judge, despite the fact that the same being under a punitive inquisitorial system is prohibited by law, which is causing an increasing degree of citizen discontent with judicial acts, This is where ADR, alternative dispute resolution mechanisms, appear, which were created with the purpose of decongesting the judicial system to provide solutions to citizens in a faster and easier way, especially taking into account the great congestion that currently exists in the judicial system, preventing issues that are clearly judicial from being dealt with better and more efficiently through this channel.

"Access to justice is undoubtedly a human right that guarantees any person the means through which they can find a way to provide a solution to their daily difficulties in case they have a conflict." (Bautista Castillo, 2018)

Taking into account that the existence of alternative dispute resolution is not new, on the contrary, it appears within the history of the beginning of civilized society, an act by which our civil code recognizes the importance of conciliation since its entry into force, Thus, in 1963 the first commercial arbitration law was created, which attributed competences to solve conflicts between merchants to the chambers of commerce, but it was not until 1997 that due to the need to decongest the judicial channel and the pressures of international organizations, the law of arbitration and mediation known as LAM came into force, a regulation that included comparative and doctrinal law.

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While the entry of ADR, within the Ecuadorian legislation in order to allow greater agility in the justice system, was feasible due to the great shortcomings or evils of the judicial function such as the delay in judicial proceedings, lack of technology itself, lack of training of justice personnel and corruption by justice officials; This has allowed the use of these alternative mechanisms to be accepted by the society that was looking for a quick and effective solution to such problems within the justice systems, which is why with the passage of time is showing increasing use of these alternative ways to solve social conflicts.

Marital Partnership and its dissolution

In order to better understand the problems involved in the dissolution and liquidation of the marital partnership, we must begin by determining the concept of marital partnership, which is the set of real and personal property, assets and liabilities obtained between two people who married before the law of Ecuador by civil law, This gives rise to a solemn contract as determined by the Civil Code in force in Ecuador, but as every rule has its exception, the marital contracts are the exception, since they are used to separate certain movable or immovable property that will belong to one of the spouses, thus avoiding that such property becomes part of the assets of the marital partnership.

According to the provisions of Article 139 of the Civil Code in force, marriage gives rise to marital property partnership "Art. 139.- (Reformed by Art. 19 of Law s/n, R.O. 526-2S, 19-VI-2015). - By the fact of marriage celebrated in accordance with Ecuadorian laws, property partnership is contracted between the spouses." (Civil Code, Codification No. 2005010)..

It should be emphasized that the dissolution begins to be enforceable without being necessary the termination of the marital bond, since although it is necessary the legal union of two persons of legal age and that do not have impediment to be able to marry and to give step for the creation of a conjugal society, it is not necessary the termination of this bond to be able to proceed with the dissolution of the conjugal society, in accordance with what is established in article 189 of the Civil Code, (National Congress Commission of Legislation and Codification, 2005, 2005), given that within the same aforementioned regulation it clearly stipulates which are the causes for which the conjugal partnership can be dissolved and they are the following:

For termination of marriage

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By judgment granting the definitive possession of the assets of the missing party

By court sentence, at the request of either of the spouses

For the declaration of nullity of the marriage.

The conjugal partnership can be terminated by direct or simply consequential means. Direct causes are those juridical acts that aim precisely at its extinction, without affecting the marriage that subsists as an institution. On the other hand, dissolution is consequential when it occurs as a natural derivation of the termination of the marriage without which it cannot survive (Parraguez, 1986).

Although it may seem strange, today it has become a very common procedure among the citizens, due in a great number of cases to the over indebtedness of one or both spouses, this is directly due to the general financial state of the country where it is evident that with the passage of time it is becoming more difficult to get a stable source of work or that allows them to have a solid economic status, As a result, since it is not necessary to terminate the marriage bond, the citizens opt to carry out this procedure in order to protect their investments and acquisitions or to be able to acquire new credits before the financial institutions of the country.

According to Ramos (2021) we have "Active over-indebtedness, caused by an event on the part of the consumer, which may be conscious or unconscious, and passive over-indebtedness, which arises from circumstances beyond his control, as in the case of sudden unemployment".

The dissolution comes to be the inventory of assets both movable and immovable belonging to the spouses obtained within the marriage, in the same way it proceeds to inventory the assets and liabilities to be able to adjudicate the part of the assets that corresponds to each one of the spouses or former spouses, since as already specified in previous lines, it must be taken into account that it is not a requirement the act of divorce to be able to carry out the separation or partition of assets, through a process known as liquidation of the conjugal partnership, hence the correlation between both processes is born, due to the fact that to proceed to the liquidation it is necessary as a previous requirement to carry out a dissolution that consists in inventorying both assets and goods, acquired within the time that the conjugal partnership has lasted.

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Results

The liquidation is the legal institution to proceed to carry out the division and adjudication of the assets to each of the former spouses so that later they can appear as sole owners of each asset respectively, however, this institution is the one that currently can be carried out both by judicial means and by alternative means of conflict resolution, within which the issue of the voluntariness with which the parties wish to carry out the liquidation is fundamental to activate these alternative means, giving way previously to the procedure established by Simon (2018), which consists of five steps:

a. inventory and appraisal of assets
b. withdrawal of assets and payment of rewards owed by the marital partnership to the spouses
c. imaginary accumulation of rewards owed by spouses to the marital partnership
d. deduction of liabilities
e. determination of partible mass or liquid acquis (Simon, 2018).

This procedure allows to determine if there are profits and the percentage that belongs to each of the parties or to their heirs if required, allowing the parties to accept or repudiate their profits partially or in their totality. This in consideration of the will of the intervening party and at its best convenience, given that in certain cases the debts become greater than the profits, allowing in this way to reject such legacy and giving way to the State, also mentioned as the fifth best nephew or privileged nephew, to take possession of all that is recorded within the inventory made.

The legal provisions, contemplated in the Constitution of the Republic, Civil Code, Code of Civil Procedure and the Notarial Law, raise several possibilities on "The Dissolution of the Conjugal Society", the benefits and rewards that each spouse has, the possibilities of responding only for the personal debts of each spouse, clear procedures in order not to harm any of the parties, producing a true economic balance between the spouses..." (González Jiménez, 2012). (González Jiménez, 2012)

When speaking about the dissolution of the conjugal partnership and its liquidation, it must be taken into account that the options depend directly on the will of the parties to carry out the established procedure, because if it is a dissolution by the will of only one of the interested parties, it does not comply with the provisions of article 43

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of the law of mediation and arbitration, in such cases it is necessary to proceed by legal means where it is a judge who acts as an independent and impartial third party in charge of deciding and will force the parties to accept the agreement that has been reached during the development of an ordinary hearing, or to comply with its sentence.

Article 43 - Mediation is a dispute resolution procedure whereby the parties, assisted by a neutral third party called a mediator, seek a voluntary agreement, which deals with a subject matter that is negotiable, extrajudicial and definitive, that puts an end to the conflict (Mediation and Arbitration Law, 2006, p. 9).

However, the alternative ways are activated when the parties have the will to reach an agreement without the intervention of a judge, taking into account that it is a faster, more agile and economical way, currently the mediation way is preferred for being in a certain way more within the reach of the citizenship and resolving conflicts without the need to impose the will on the parties, allowing to solve their conflicts in a calmer, more agile and timely manner and with the intervention of the mediator as the only external third party, thus avoiding possible opportunities for corruption by any of the intervening parties.

The ADR are optional processes to those of the ordinary jurisdiction, because what it seeks is to resolve the differences between the parties allegedly affected, where to a greater extent are processes of civil origin, where if not acted in a timely manner may eventually initiate a case through the courts, Although there are faster and less costly processes through a third party known as mediator, who has the obligation to maintain the confidentiality of the parties involved, being the most used alternative means the notary and the mediation and arbitration, for this reason there are laws that regulate both the notarial and mediation procedures.

Urrutia & Jaramillo (2021) state that:

> Social action, human dynamics and free will result in any form of conflict, which at times can be resolved by mutual agreement between the parties; and at other times the parties must turn to a third party, either before a judge or a mediator, in order to resolve their disputes and reach satisfactory agreements. (pp. 577-592).

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Among the variety of alternative dispute resolution mechanisms (ADR) that exist in Ecuador, arbitration and mediation, and especially the notarial process, are perhaps the most important or, at least, the most practiced and used by the parties to reach a solution outside the ordinary justice system. We will start by focusing on mediation and arbitration, so much so that there is a specialized law with the aim of expanding the regulation of both ADR in the legal system, the LAM. Both arbitration and mediation arise when the parties, on the basis of the principles of free will and contractual freedom, agree that their disputes be resolved by such mechanisms.

When talking about alternative dispute resolution mechanisms we will focus on two of them, the first one being the notarial route, then we will focus on mediation and arbitration and we will analyze both the structure and the procedure to be followed to carry out the dissolution and liquidation of the company through each of these alternative mechanisms and we will highlight the differences in carrying out such procedure in each of the alternative routes to be treated, We will highlight the differences between the notarial and the mediation and arbitration procedures, since these two alternatives to the judicial procedure are the most used by Ecuadorian citizens.

The notarial route is recognized as an auxiliary mechanism within the Organic Code of the Judicial Function, where following the constitutional hierarchical rules determined in article 425, we proceed with the notarial law in which in its article 18, tacitly determines the attributions that can be developed through a notary, which in correlation with article 23 of the same law empowers to proceed with the dissolution and liquidation of the conjugal partnership, since this is a subject that can be negotiated before the law and having in mind the dispositive principle and the voluntary nature of the parties, this way of proceeding can be activated.

We will start with the definition of the notary, who is the one in charge of attesting the facts, documents or statements that are presented before the notary in charge, thus granting a presumption of truth, it is a public service that provides an alternative way to solve problems in a faster, more agile, timely manner different from the traditional ordinary legal route, where one of the main changes is that the parties do not need the presence of a lawyer to represent them since the dissolution is carried out directly before a notary public only through a dissolution act, an act that has been welcomed by the citizens who consider the current saturation in the justice system.

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Its use is as old as the problems arising between human beings and the search for settlement, only that in those remote times it was the chief of the tribe or clan who, accompanied by the most representative men of the people, resolved the difficulties and problems arising between their fellow citizens. (Andrade, 2015, p 32).

The notarial route assumes specific powers of great importance within society, performed based on principles of legal certainty, speed, deconcentration, good faith and procedural loyalty, fundamental principles that must be present in every legal act, providing a public document with authenticity, giving value and legal certainty to the document both in matters of substance and form, preventing possible subsequent conflicts and opting for the peaceful resolution of conflicts through a notary that generates legal certainty in the citizens who come before him. Being the process through which the notary evidences the facts or acts that have taken place in his presence, which must be subject to the solemnities required by the notarial law, and which will have legal effects.

We must be aware and be very clear that in the country, as it relates to legal standards there is a strong preference for using ambiguous models of justice, lacking in speed and judicial efficiency, which in current times are no longer support and on the contrary lead to a stagnation and setback in the process of improving the Judicial System, Therefore, it is necessary a legal reform recommending the application of new ways of administering justice by the Auxiliary Bodies that have been created to decongest the Civil Courts, as new laws that allow the principles framed by the Constitution as another way of applying justice more objective, precise, dynamic, and fast, which is in accordance with a more objective, precise, and dynamic way of applying justice; fast, that is in accordance with a dialectic society as the one in which we live. (Cachago, 2009).

Vásquez & Jaramillo state that:

> There are more than thirty exclusive attributions for notaries, all of them related to the functionality of public faith as a way to give timely, fast and efficient validity to the agreements of wills in society, thereby relieving the ordinary judicial instances that otherwise would also have to attend to that kind of issues that are not considered as urgent, but still necessary (2023).

In order for the public instrument to enjoy legal effectiveness, it must have correlation between the acts witnessed by the notary with the

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constant narration within the instrument, thus the dissolution process that concerns us, must be carried out based on the principle of voluntariness of the parties, where each one has decided the movable or immovable property or economic value that the interested parties wish to receive and said property must be physically verified by the notary responsible for carrying out or authorizing said dissolution, and in turn accompany said process with certain documents known as enabling documents such as certificates of municipal property, encumbrances, certificates of not owning vehicles, etc. Once these solemnities have been complied with, the notarial instrument itself is drawn up, which will later have to be filed with the different corresponding public institutions, depending on each particular case, in order to obtain the desired legal effects.

Although it is really impossible to include all the characteristics that make up the mediation and arbitration system in Ecuador, due to its wide field of action as it is a type of process that goes beyond the simple solution of a conflict, since it is a tool through which natural or legal persons are given the possibility to solve their conflicts by their own will, controlling all its stages until reaching a result. Hence its etymological definition which comes from the Latin mediatio, "action or effect of mediating" and from the word mediare which means "to interpose oneself between two or more who quarrel or dispute, trying to reconcile them and unite them in friendship".

Mediation can be defined as the process by which participants, with the assistance of a natural person or persons, systematically isolate the issues in dispute in order to find options, consider alternatives and reach a mutual agreement that meets their needs. (Jay Folderg and Alison Taylor, 1997)..

Considering that mediation consists of a non-adversarial procedure, in which although there is an accredited mediator who directs the conversation and the dialogue, it is the parties who must try to reach an agreement, in which both parties feel benefited, that is why in mediation there are no winners or losers. From this concept arises one of the main characteristics of mediation such as the principle of voluntariness, given that in the absence of the will of only one of the parties, this may abandon the act of mediation without signing any agreement, another of its characteristics is the informality with which these procedures are carried out, since what it seeks is the comfort of the parties, and that in this way arises or gives way to the creativity of

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the parties when proposing possible solutions, prioritizing the effectiveness and procedural speed.

In the words of Rodriguez & Jaramillo (2023) state that:

> Mediation arises as a need to provide a timely response to the problems of the administration of justice and its purpose is the solution of controversies, mentioning that when the procedural parties go to a mediation center and it is carried out successfully, the mediation has the effects of an enforceable judgment, declaring the will of the intervening parties in the process producing legal effects immediately being a viable response as a satisfactory solution being indispensable the role of the mediator who has the purpose of facilitating communication between the parties to reach an agreement acting impartially and objectively applying the principle of confidentiality, impartiality, neutrality, impartiality and flexibility. (pp. 6-21)

Within the powers of mediation we find both in civil, transit, commercial, criminal and family matters, however in this article we will focus on family matters, since mediation processes can be of three types: extraprocedural, preprocedural and intraprocedural; extraprocedural, when the mediation process is chosen before initiating the judicial process, preprocedural, it is a process that for a series of different possibilities requires that it be initiated by mediation to later pass to the knowledge of a judge, as may be the case of the suspension of a SUPA code for extinction of obligation and finally the mediation can be intraprocedural, when within a judicial process the judge, through a substantiation order, orders that the mediation process be exhausted before proceeding with the judicial process, considering this phase as a preliminary hearing or conciliation hearing, an act that generally occurs when a process of partition of assets is initiated within the judicial process.

Regarding the dissolution and liquidation of the marital partnership, it is a pre-procedural procedure, since it is used when the parties recognize by their own will the existence of both movable and immovable property, as well as assets and liabilities, where the mediation center intervenes for the creation of the respective minutes, thus avoiding the inventory process required by the courts, saving resources and time, giving the possibility of going directly to the distribution trial before the competent judge. In this way, the mediation process saves approximately one year of time and a

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significant procedural economy, since it avoids an extremely long process that consists of the intervention of experts accredited by the Judiciary Council, for the elaboration of a global inventory of goods and assets, which is usually very costly and takes a great amount of time.

Article 341.- Inventory. Any person having or presuming to have a right over the property to be inventoried shall request the judge to draw up an inventory. For this purpose, the judge shall designate the expert to proceed to its formation and appraisal in the presence of the interested parties. (COGEP, 2018)

It should be emphasized that within the alternative dispute resolution mechanisms, such mechanisms have the feasibility of working or developing independently or jointly, especially if we refer specifically to the notary and mediation, of which there are a number of possible examples of affinity between the aforementioned ways, However, as this article focuses on the family matters, specifically on the dissolution and liquidation of the marital partnership, we will refer to three specific cases where the notary has the power to act within a mediation process or vice versa.

- When the notary acts as mediator in order to prevent or resolve the parties' conflicts.
- Through the intervention of the notary or mediator to enforce compliance or execution of agreements reached through mediation and arbitration.
- When both the notary and the mediator work together with the parties to resolve the conflict that has arisen.
- Vásquez & Jaramillo (2023) state that:
- The discussion of the problem of the notary's powers in telematic notarial acts inevitably passes through the analysis of legal certainty as the main obstacle to the relevance of the use of technologies. This lies in the supposed need for presence as a basic condition to verify the existence of the person and, above all, of the right to be recognized and the voluntary nature of the acts to which it is intended to give public faith. The problem with this belief is that, as De Vicenzi (2022) explains, it does not recognize that presentiality and virtuality are no longer binary options, but that both can complement each other and be functional, this one over the other or even in an inclusive manner between them. (p. 6).

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This type of mechanisms, although they depend mainly on the voluntariness of the parties, understanding that they can refuse to use these means at any time of the process before reaching the realization of a record of constancy, these processes do not lack confidentiality or any formalism of those offered by judicial means, this means that the agreement reached by the parties is binding and mandatory for the parties, The role played by the notary or an accredited mediator is that of a neutral third party who will help the parties to discern the subject matter of the dispute and identify the possible solutions or agreements that can be reached in order to avoid going to court, as mentioned below by Blanco, 2009, when referring to the characteristics of these two alternative ways "to be more flexible when conducting a dispute, this being carried out in several stages that vary according to the schools of mediation, which ascribe to different theoretical foundations and create their own models" (p. 170). (p. 170) This will depend very much on the will of the individuals, the degree of preparation, the socioeconomic level and a series of other elements that must be taken into account at the moment of conducting such a conflict.

While many authors agree that all notaries exercise the functions of mediator, however, Aguilar Basurto (2015) argues that "a significant evolution of the notarial function since it prevents conflicts from reaching judicial instances" (p. 238). Prioritizing the extra preparation that a notary who exercises the functions of mediator must have, especially to offer credibility and tranquility to the parties through the power of conviction with which he has and thus put an end to the conflicts arising through an agreement that is convenient or satisfactory for the two or more parties, thus avoiding the unnecessary activation of the judicial process.

In this case, the notary gives legal form to the will of the parties, while the mediator proceeds to listen to know the situation and guide the parties to solve the conflict, expressing in a record all the arrangements that the parties reached. In this way, listening with patience, sapience, conscience and humility, in an impartial way, is a quality that defines them. (Figueroa, 2015, p. 137).

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Conclusions

Belonging to a Constitutional State of rights that seeks to approach justice through the guarantee of respect for fundamental rights and respect for the legal standards established in the current Constitution, which govern the coexistence of society, we find the issue of the dissolution and liquidation of the marital partnership as a procedural element that has been favored with the enactment of new regulatory bodies empowering it to be carried out through alternative means of conflict resolution which, being faster and more accessible, are leaving aside the traditional legal route.

Since the enactment of the Constitution of 2008, in which there was a breakthrough in the protection of rights, there has also been a breakthrough in terms of finding solutions to the saturated justice system we had, since processes, regardless of the matter they were, could stagnate for years, This is the reason for the emergence of alternative dispute resolution mechanisms known as Alternative Dispute Resolution Mechanisms (ADR), which include mediation, arbitration and the notarial process, among others. (2005).

The enactment of the current Constitution grants both the notarial and mediation channels a series of new powers, specifically within the family sphere, given that matters such as divorce, alimony, custody, visitation, dissolution of marital partnership, among many others, can now be processed, which has allowed a very large respite to the current justice system.

Despite the fact that the supreme law recognizes the validity of alternative means of conflict resolution, the internal regulations have a series of procedural gaps, especially in the dissolution and liquidation of assets belonging to the marital partnership, specifically at the time of validating the acts within the municipality; documents that in the revenue department and in the cadastre department of the municipality prior to liquidation request a series of additional enabling documents, which are not requested at the time of liquidating the assets that were awarded through the judicial process.

It is necessary to work together with the media at the national level in order to better inform citizens about the advantages and disadvantages of resolving social conflicts through these alternative mechanisms, which would allow a greater use of these means and promote the culture of peace in our daily social development.

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