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Mediation as an Alternative Dispute Resolution Method: a comparative analysis between Ecuador and Argentina Conflicts: comparative analysis between Ecuador and Argentina

La mediación como método alternativo de solución de Conflictos: análisis comparativo entre Ecuador – Argentina

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ABSTRACT

Within the regulatory frameworks of Ecuador and Argentina, which have been analysed and compared, mediation is presented as an alternative dispute resolution mechanism in which an impartial third party, the mediator, facilitates negotiation between the parties involved in order to reach a consensual agreement. This study focuses on analysing various aspects of mediation in both countries, including the similarities and differences between their legal frameworks, the legal effects of the mediation act, the procedures for accessing mediation, the mediation methods applied, the requirements for the

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mediator's position and the resources available for mediation. In the comparative analysis, the regulatory frameworks of both territories are examined in detail. This research adopts a deductive approach methodology, which implies a detailed analysis of the relevant legislation for the study.

RESUMEN

Dentro de los marcos normativos de Ecuador y Argentina, que han sido objeto de análisis y comparación, la mediación se presenta como un mecanismo alternativo de resolución de conflictos en el que un tercero imparcial, el mediador, facilita la negociación entre las partes involucradas para alcanzar un acuerdo consensuado. Este estudio se enfoca en analizar diversos aspectos de la mediación en ambos países, incluyendo las similitudes y diferencias entre sus marcos legales, los efectos jurídicos del acta de mediación, los procedimientos de acceso a la mediación, los métodos de mediación aplicados, los requisitos para el ejercicio del cargo de mediador y los recursos disponibles para la mediación. En el análisis comparativo, se examinan minuciosamente los marcos regulatorios de ambos territorios. La presente investigación adopta una metodología con enfoque deductivo, lo cual implica un análisis detallado de las legislaciones relevantes para el estudio.

Keywords / Palabras clave

Alternative dispute resolution, mediation, out-of-court proceedings, decongestion

Métodos alternativos de conflictos, resolución, mediación, procesos, extrajudiciales, descongestionar

Introduction

The purpose of this research is to compare and learn about mediation as an alternative method of conflict resolution between individuals and legal entities. It has gained wide recognition and popularity around the world as an effective tool to address disputes more quickly, economically and satisfactorily for the parties involved.

It should be noted that mediation is not a contemporary practice, but has its roots in ancient times. History documents numerous examples where the presentation of a conflict between two parties to a neutral third party, thanks to his or her knowledge and skill, facilitated the

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resolution of disputes. In the context of modern judicial systems, mediation represents a complementary approach to conflict resolution, offering a viable alternative for reaching mutually acceptable agreements, without the need to resort to formal court proceedings.

This methodology not only reduces the burden on the courts, but also promotes cooperation and understanding between the parties involved. Mediation, therefore, constitutes an essential component in the administration of justice, providing an efficient and cost-effective means of dispute resolution, which is fundamental to the maintenance of harmonious relations and the strengthening of the social fabric.

Mediation is a legal procedure for the extrajudicial resolution of conflicts between people, characterised by the intervention of a third party, neutral and impartial with respect to the parties in dispute, who agree to assist them in the search for a satisfactory solution for both, within the limits set by law. (Muñoz, 2017, p.21).

This comparative analysis will focus on two Latin American countries: Ecuador and Argentina. Both countries share historical and cultural similarities, but present significant differences in terms of their legal frameworks and judicial systems. It will examine how mediation has been incorporated into the legislation and legal practice of each country, exploring commonalities and divergences in its implementation and effectiveness within the justice system.

The parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, resort to regional agencies or arrangements or other peaceful means of their own choice (Charter of the United Nations, 1945).

In Ecuador, mediation has been recognised as an alternative dispute resolution method through the Organic Law on Mediation and Conciliation, enacted in 2014. This legal framework establishes the principles and procedures for mediation, encouraging its use in a variety of legal and social areas. We will analyse how the practice of mediation has developed in Ecuador, examining its acceptance and effectiveness in Ecuadorian society.

On the other hand, in Argentina, mediation has also gained ground as a means of resolving out-of-court disputes and decongesting the

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courts, as stated in Law U-3174, Mediation and Conciliation. However, its implementation has been influenced by a number of factors, including the diversity of provincial approaches and interaction with the formal court system. It will explore how the mediation system in Argentina has been structured, considering the challenges and opportunities it faces in its practical application. (LEY U-3174. Mediation and conciliation, 2010, p 01).

Through this comparative analysis, the aim is to identify the intrinsic divergences of each legislation and the best practices in mediation in Ecuador and Argentina. Furthermore, it will reflect on the impact of mediation on the legal culture and conflict resolution in each national context, highlighting possible areas for improvement and opportunities for collaboration between the two countries in the field of alternative dispute resolution.

The research is underpinned by a deductive and quantitative methodology, allowing for a detailed and systematic analysis of relevant legislation and the collection of empirical data to assess the effectiveness and practical application of mediation in both contexts.

Throughout history, mediation has been expressed as an alternative in the resolution of a conflict in which a third party is made aware of the conflict or the root of the discussion between the parties in order to expose different methods in the search for a solution. Mediation is an extrajudicial process in which a problem is sought to be solved through the advice of the mediator, who is in charge of leading the parties to find a viable solution to the point of controversy.

Mediation is a conflict resolution process in which the two opposing parties 'voluntarily' turn to an 'impartial' third party, the mediator, to reach a satisfactory agreement. It is an extrajudicial process or different from the legal or conventional channels of dispute resolution, it is creative, because it moves towards the search for solutions that meet the needs of the parties, and it implies not restricting oneself to what the law says. Moreover, the solution is not imposed by third parties, as in the case of judges or arbitrators, but is created by the parties (Rozenblum, 1998, p. 7).

Mediation is a negotiation that is present in all our relationships, whether they are social, commercial or other issues that we deal with on a daily basis. In other words, in our everyday behaviour, work, commerce, feelings, there is dialogue and mediation, both in small and major matters, since the parties negotiate in relation to their objective,

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what they seek to achieve or obtain, and what they personally desire about the subject or object under discussion.

Materials and Methods

Mediation in Ecuadorian law has developed throughout its history in Ecuador, a process of development that reflects the evolution of this alternative dispute resolution mechanism within the country's legal and social framework. The following is a compilation of the different milestones and main historical points in the development of mediation in Ecuador.

The jurist Schiffrin, A. (1996), states that 'Mediation is a voluntary, confidential, formally flexible, time-limited process, which is developed with the active participation of the parties. It consists of a series of known stages accepted by the parties beforehand' (p. 08).

Certain rights could be violated, especially because mediation does not require the assistance of lawyers for the parties; it is a procedure that requires the exercise of a culture of peace, which according to the definition of the United Nations, consists of 'A set of values, attitudes and behaviours that reject violence and prevent conflicts by seeking to address their causes and provide solutions through education, dialogue, cooperation and negotiation between individuals, groups and nations' (United Nations, 1999).

Mediation stands out as a cooperative negotiation process between the parties involved, offering a number of features and benefits that make it an attractive option for conflict resolution. One of the main advantages of mediation is its time efficiency. Unlike court proceedings, which can be lengthy and costly. Mediation allows the parties to reach a solution more quickly and cost-effectively. This speed of process is particularly beneficial in situations where the ongoing relationship between the parties is important, such as in family or commercial disputes.

Furthermore, according to Bustos M. (2018) mediation is a non-adversarial way of resolving disputes, which means that it focuses on collaboration and mutual understanding. Unlike a trial, where the parties face each other in an adversarial setting, mediation seeks to get the parties to work together to find a solution that is acceptable to both. This reduces hostility and improves the chances of maintaining or even strengthening long-term relationships.

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The processes in which mediation takes place.

Nevertheless, mediation is an effective and humane method of conflict resolution. Its focus on cooperative negotiation, time efficiency, and absence of an adversarial approach make it a valuable tool for resolving a wide variety of disputes, from family and workplace to commercial and community conflicts.

Schiffrin, A. (1996), states that 'As long as the fundamental principles of voluntariness and confidentiality are respected in mediation, procedural rules can be freely applied. There is a minimum 'pattern' that should not be left out, stages that increase the chances of agreement, but the organisation of time, place and issues to be dealt with, somehow manages to design a process tailored to the needs of the parties and the type of conflict' (p. 129).

Table 1. *Subjects in which mediation is an alternative in conflict resolution in Ecuadorian and Argentinean legislation.*

MATERIA	ECUADOR	ARGENTINA
FAMILIA, MUJER NIÑEZ Y ADOLESCENCIA	▪ **Divorcios y separaciones.** ▪ **Custodia y régimen de visitas de hijos.** ▪ **Pensión alimenticia.** ▪ **Régimen de comunicación y relaciones familiares.** ▪ **Sucesiones y particiones de bienes.**	▪ **Divorcios y separaciones. Custodia y régimen de visitas de hijos.** ▪ **Pensión alimenticia.** ▪ **Régimen de comunicación y relaciones familiares.** ▪ **Sucesiones y cuestiones hereditarias.**

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LABORAL	▪ Conflictos entre empleados y empleadores. ▪ Despidos y terminación de contratos laborales. ▪ Condiciones de trabajo y salarios. ▪ Acoso laboral y discriminación. Negociaciones colectivas y conflictos sindicales.	▪ de ▪ Despidos y terminación y y contratos laborales. ▪ Condiciones de trabajo. ▪ Acoso laboral discriminación. Conflictos sindicales negociación colectiva.
INQUILINATO	▪ Incumplimiento de pagos Desgaste y mantenimiento de la propiedad ▪ Duración del contrato y renovaciones Desalojos ▪	Pago de Alquileres la Condiciones de Propiedad Depósitos de Garantía Cláusulas Contractuales Desalojo
CIVIL	▪ Conflictos contractuales. ▪ Disputas de propiedad y posesión. ▪ Cuestiones de arrendamiento (inquilinos y propietarios). ▪ Problemas entre socios comerciales. Disputas por deudas y obligaciones financieras.	▪ ▪ Conflictos contractuales. ▪ Disputas de propiedad y posesión. ▪ Cuestiones de arrendamiento (inquilinos y propietarios). ▪ Conflictos entre socios comerciales. Problemas de deudas y obligaciones financieras.
PENAL	▪ Delitos menores y faltas, donde sea aplicable una solución alternativa al juicio. ▪ Mediación penal juvenil, promoviendo la reparación del daño y la reintegración social. Acuerdos de reparación y conciliación en ciertos casos.	▪ ▪ Delitos menores y faltas (dependiendo de la gravedad y la naturaleza del delito). ▪ Mediación penal juvenil. Reparación del daño y acuerdos de conciliación.

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COMUNITARIO	▪ Problemas entre vecinos. ▪ Disputas en comunidades de propietarios. ▪ Conflictos relacionados con el uso de espacios comunes y recursos comunitarios.	▪ Disputas entre vecinos. ▪ Problemas en consorcios de propietarios. Cuestiones relacionadas con el uso de espacios comunes.
ESCOLAR	▪ Conflictos entre estudiantes. Problemas entre estudiantes y profesores. ▪ Disputas entre padres y administración escolar.	▪ Conflictos entre estudiantes. Problemas entre estudiantes y profesores. Disputas entre padres y administración escolar.
AMBIENTAL	▪ Conflictos relacionados con el uso de recursos naturales. ▪ Disputas entre comunidades y empresas sobre el impacto ambiental. Cuestiones de regulación ambiental y cumplimiento.	▪ Conflictos por el uso de recursos naturales. ▪ Disputas entre comunidades y empresas por el impacto ambiental. Cuestiones de regulación y cumplimiento ambiental.
DE CONSUMO	▪ Disputas entre consumidores y proveedores de bienes y servicios. ▪ Reclamos por incumplimientos contractuales y garantías. Conflictos por publicidad engañosa y prácticas comerciales desleales.	▪ Conflictos entre consumidores y proveedores de bienes y servicios. Reclamos por incumplimientos contractuales y garantías.

Source: Bush and Folger (1994, p. 32) - Taylor (1997, p. 15 - 35) - Curuchelar G. (2005, p. 111) - Moore (1995, p. 56).

This table shows the reason for the use of mediation and the importance of knowing and knowing about the procedures suitable for the applicability of the mediation process in different comparative legislations. Based on the standards analysed, it is intended to express the benefit and the extent of the intervention of the processes that by

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means of mediation a prompt solution to the conflict presented is developed.

The social perception of conflict and the objective of resolving it have been at the basis of the conceptualisation of modern mediation. Conflict is experienced as the manifestation of a problem that needs to be satisfied, since the problem exists due to a real or apparent incompatibility of needs and interests that makes the satisfaction of needs appear impossible for one or more of the parties involved and, therefore, the resolution of the conflict involves finding solutions that satisfy the needs of all those involved (Ripol-Millet, 1997, p.127).

Another crucial characteristic of mediation is that a decision is not imposed on the parties. The mediator acts as a neutral facilitator who helps the parties to communicate and explore possible solutions, but does not have the authority to dictate an outcome. This means that the parties retain control over the process and the final solution, which can increase satisfaction with the outcome and the likelihood of voluntary compliance.

Mediation in non-criminal matters is a powerful tool that offers an efficient, cost-effective and collaborative alternative to court litigation. By focusing on dialogue and cooperation, it enables parties to reach satisfactory solutions that preserve relationships and promote social peace. Its application in diverse areas, from family conflicts to commercial and community disputes, underlines its versatility and effectiveness as a method of conflict resolution (Mayorga, 2019).

In mediation, there are no clear winners or losers, which avoids the feeling of defeat and allows all parties to feel that they have gained something valuable from the process. This characteristic is fundamental to resolving conflicts in a peaceful and sustainable manner, as it promotes cooperation and compromise rather than competition and resentment.

Results

Mediation as an alternative dispute resolution process is agile, confidential, economical and autonomous for decision-making within the dialogue stage.

The requirements for the position of mediator are centred on the fact that the mediator is the fundamental axis within the proceedings. He or she is the neutral and impartial figure who conducts the procedure

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through communication and dialogue between the parties involved in the conflict and thus, with the help and support of the mediator, seeks to bring the parties to a common understanding and agreement.

In order to hold the position of mediator in Ecuador, certain requirements established by the Law of Arbitration and Mediation and the regulations in force must be met. The main requirements are:

Table 2. *shows the requirements and the different sections necessary to apply and be considered suitable for the position of mediator in the two legislations*

ECUADOR	**ARGENTINA**
Según la Función Judicial, (2024) los requisitos necesarios para acceder al proceso de mediador se expresan en los siguientes.	Según la Ley N ° IV-0700 (2009, p. 1) los requisitos necesarios dentro de las diferentes municipalidades o ciudades del territorio.
Además, es esencial que los mediadores mantengan una conducta ética y profesional acorde con los principios de imparcialidad, confidencialidad y equidad, fundamentales en la mediación.	En Argentina, los requisitos para ejercer el cargo de mediador varían según la normativa de cada provincia y la jurisdicción nacional. Sin embargo, algunos requisitos comunes para ser mediador en el ámbito nacional y en varias
	provincias incluyen:
Ser ecuatoriano o extranjero con residencia legal en el país.	Ser mayor de edad: Tener al menos 18 años.

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Poseer título de tercer nivel en áreas relacionadas con el derecho, la psicología, el trabajo social, la administración de empresas, o cualquier otra disciplina afín.	Título Universitario: Poseer un título universitario de Abogado, a ver desarrollado la profesión y contar con un mínimo de 3 años de antigüedad en la matricula o credencial.
Haber completado un curso de formación en mediación impartido por una institución reconocida y autorizada por el Consejo de la Judicatura.	Curso de Formación en Mediación: Completar un curso de formación en mediación, reconocido y acreditado por la autoridad competente ya sean zonales o nacionales en relación con el grado de desarrollo, los cuales deben cumplir con los estándares establecidos por la normativa local. Constancia de Curso de Reválida organizado por el Superior Tribunal de Justicia de la Provincia Constancia de situación impositiva
No tener antecedentes penales.	Inscripción en el Registro de Mediadores: El funcionario debe estar inscripto en el Registro de Mediadores del Ministerio de Justicia y Derechos Humanos de la Nación o
Contar con un certificado de al menos 80 horas de capacitación teórica en mediación y **40 horas de prácticas en centros especializados en procesos de mediación.**	en el registro correspondiente de la jurisdicción provincial en que se expresa que cuenta con los requisitos antes mencionados para su desempeño en funciones. Certificado de Residencia de mínimo cinco años en la Provincia.

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Estar en pleno ejercicio de los derechos de ciudadanía.	Cumplir con los requisitos de capacitación continua:
Contar con mínimo cuatro años de experiencia laboral afines al cargo.	Participar en actividades de actualización y capacitación continua en mediación para mantener la inscripción en el registro ya sean de carácter particular o público.
Estar debidamente inscrito y autorizado por el Consejo de la Judicatura, que lleva el Registro de Mediadores.	Antecedentes Penales: No debe tener antecedentes penales que impidan el ejercicio de la función de mediador.

The mediator within both legislations seeks to establish a safe environment and atmosphere for the development of the dialogue, thus respecting the different aspects of conduct and respect for the members of the process developed.

Source: Ley N ° IV-0700 (2009, p. 1) - Ley Orgánica De La Función Judicial, (2024) - Ley de Arbitraje y Mediación, (2006)

This table shows the requirements for access to the admission process to the position of mediator according to the analysed legislations. It shows the importance of the knowledge and needs to be recognised as a professional in this field. It is pointed out that through this knowledge, Ecuadorian legislation is not as broad as that of Argentina.

The mediator, as an entity, plays a crucial role in conflict resolution, acting as a neutral facilitator between the parties in dispute. His or her main function is to help those involved to communicate effectively, identify their interests and find mutually acceptable solutions.

Moreover, the mediator helps the parties to assume the reciprocity of their actions vis-à-vis each other, pointing out their equal involvement, and thus responsibility, in the conflict. It is not a matter of identifying the share of responsibility and showing it to the others, but of assuming that all those involved in a conflict are an acting part of it and, therefore, a responsible part (Peña, 2013, p. 46).

The procedure for accessing a mediation process in Ecuador.

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In 1997, mediation in Ecuador began to take shape with the enactment of the Law on Arbitration and Mediation (Law 2006) established in the country due to the heavy procedural burden on the justice system. This law established the legal basis for the implementation of mediation as an alternative method in the resolution of disputes between parties, thus marking the formal beginning of mediation in the country. (Law on Arbitration and Mediation, 2006).

In the 2000s, the first state-authorised mediation centres were created in Ecuador, in which the activities presented by individuals were developed, and these centres began to operate under the supervision of the Judiciary Council and the Ministry of Justice. These centres were charged with offering mediation services in various areas, including civil, commercial, labour and family disputes in accordance with different social needs.

In 2003, the creation of the Mediation Centre of the Attorney General's Office strengthened the institutionalisation of the different mediation processes in the public sector, promoting peaceful conflict resolution in the governmental sphere.

Throughout 2005, the incorporation of mediation in academic training and professionalisation programmes for mediators was a crucial step towards the applicability of these professionals in the development of procedures. Different universities in Ecuador and private organisations began to offer courses and training programmes in mediation, contributing to the training of qualified professionals in this field in order to improve access to the service.

Once the new Constitution of Ecuador was adopted in 2008, it recognised mediation as a right and a constitutional guarantee, promoting its use as an efficient and accessible mechanism for conflict resolution, as well as seeking to optimise and reduce the procedural burden on the administration of justice. (Constitución de la Republica del Ecuador, 2008, pp. 97-98).

Knowledge underlines the country's commitment to the promotion of alternative dispute resolution methods, highlighting mediation as an efficient and accessible mechanism. Mediation not only facilitates the quick and less costly resolution of disputes, but also contributes significantly to the optimisation and decongestion of the procedural burden in the administration of justice.

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The Organic Law of the Judiciary (repealed) and the Organic Code of the Judiciary in Article 142 of the Judicial Function, which included several provisions specific to the mediation process, thus reinforcing its use in the judicial system and promoting the culture of mediation through the execution of the mediation act within the country, have been institutionalised and strengthened over the years since 2011. (Organic Law of the Judiciary, 1974).

Since 2011, with the enactment of the Organic Law of the Judiciary and subsequently with the Organic Code of the Judiciary, specific provisions for the mediation process were included. The Code reinforced its use in the judicial system, promoting the culture of mediation and the execution of the mediation act within the country. This legal framework laid the foundations for the institutionalisation of mediation as a key tool in conflict resolution.

The reform of the General Organic Code of Proceedings (COGEP) in 2015 further strengthened mediation within the procedural system by making it mandatory in certain proceedings, and the mediation act became part of one of the enforcement titles set out in Article 33 (General Organic Code of Proceedings, 2015, art. 363 p. 168-169).

In 2015, with the reform of the General Organic Code of Proceedings, mediation was further strengthened. It was made compulsory in certain proceedings, and the mediation act was recognised as a title of execution, according to article 363 of the COGEP. This reform not only consolidated mediation within the Ecuadorian procedural system, but also facilitated its implementation in the territory.

In 2017, the creation of research groups such as associations of mediators and experts in alternative dispute resolution methods in Ecuador. Through the state, collaboration and the exchange of experiences between mediators at the national level was promoted, fostering the development of best practices and continuous professionalisation in the field of mediation through dialogue and discussion between experts in the field (Centre on Law and Society, 2013, p.3).

The creation of research groups and mediators' associations, supported by the state, fostered collaboration and exchange of experiences among mediators at the national level. This fostered the development of best practices and continued professionalisation in the field of mediation. Initiatives such as dialogues and discussions

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between experts contributed significantly to the improvement of these methods.

Mediation in Ecuador continues to evolve with initiatives to expand its reach in specific communities and sectors where access to justice through faster and more timely channels facilitates problem solving, such as community and school mediation. In addition, technological improvements are being implemented to facilitate access to mediation and improve its procedural efficiency.

Mediation in Ecuador has come a long way since its inception in the 1990s to become an integral part of the country's justice system. Laws and reforms have created a robust framework for its implementation, and mediation continues to grow in acceptance and application in a variety of settings, reflecting a continued commitment to peaceful and efficient conflict resolution.

Mediation seeks to bring both parties to the middle ground in resolving a dispute. In order for mediation to take place, the parties or those involved must be motivated and voluntarily agree to the process, in which the parties must agree that they must both yield and accept each other's views. Problems, disputes, controversies and controversies that arise in everyday life can be conflicts between neighbours, family members, debtor and creditor, landlord and tenant and other civil relationships within society.

Mediation as an effect regarding the change of modalities on the presence and transformation aspects that are reflected in the mediation stage as well as the dispute resolution.

The advantages of accessing a mediation process are that the conflicts or controversies exposed within the process are resolved directly by those involved through the advice, assistance and participation of a mediator, who has prior knowledge of the issues to be addressed.

Those involved voluntarily agree to build the pillars of the agreement necessary to overcome the differences between the parties. The agreement reached by the parties will be developed in a record, which has the effect of res judicata, an enforceable sentence, and therefore compliance with it is obligatory.

The procedure to access a mediation process in Argentina

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In Argentina, mediation is a valuable tool to solve these conflicts in a peaceful and efficient way. The Mediation and Conciliation Law (Law 24.573) establishes and sets out the framework for mediation within the judicial and extrajudicial sphere. Through mediation, the parties involved can work with a neutral mediator to discuss their differences and reach an agreement that is acceptable to both.

The history of mediation in Argentina is a process of evolution and development that has led the country to establish a solid regulatory framework and to actively promote alternative dispute resolution in its legislation and regulatory body. Thus, a summary of the main milestones in the history of mediation in Argentina from its beginnings to the present day will be presented.

In its beginnings and first experiences in the 1980s, mediation began to be explored as a tool for conflict resolution, influenced by the experiences of other neighbouring and international countries, mainly the United States and Europe. The first trainings and seminars on alternative dispute resolution methods were held and the corresponding law was created.

In the initial development, Law 24.573 was passed in 1995, known as the Law on Mediation and Conciliation, which established the regulatory framework for the implementation of mediation as an alternative method of conflict resolution in the judicial sphere. This law marked an important milestone by instituting and making mediation mandatory as an imperative step prior to litigation in certain civil and commercial cases (Law 25.573, 1995).

The norm created the implementation of mediation as an alternative method of dispute resolution in Argentina, this normative framework was a significant milestone, as it made mediation mandatory as a prior and imperative step to litigation in certain civil and commercial cases. By institutionalising mediation, the law sought to promote the peaceful and efficient resolution of disputes, reduce the burden on the courts and foster a culture of dialogue and consensus in the Argentinean judicial sphere for the benefit of the population.

Within the legislation, Law 24.573 was regulated in 1996 through Decree 91/98, which detailed the procedures and requirements for mediation within the Argentine legislation, establishing the basis for the training and accreditation of mediators in the different nationally authorised centres (Gobierno de la Ciudad Autónoma de Buenos Aires, Decreto 91/98, 1998, p. 11).

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In 2001, Law 26.589, also known as the Law of Mediation and Compulsory Prior Conciliation of Access to Justice, in article 2, determines that the obligatory nature of mediation was reinforced in certain cases and extended its application to other areas of law, including labour and family matters, improving it (Law 24.573, of Mediation and Conciliation 1995, art. 02, p. 1).

Within the course of 2002 the economic crisis in Argentina highlighted the need for alternative dispute resolution methods due to the lack of resources to continue in the ordinary justice system. This further boosted the use of mediation as an efficient and accessible tool for all individuals in most processes and disputes.

The development of Institutionalisation and Professionalisation was created through the National Registry of Mediators in the development of the

National Register of Mediators in 2004, administered by the Ministry of Justice, which regulates the activity of mediators and centres, ensuring their continuous training and compliance with professional standards in the applicability of justice in relation to what is set out in its second article on the approval and operation of the regulation and national register (Regulation of Mediators Register, Law 26589, 2010, art 02, p.1).

The reform of the Civil and Commercial Code of the Nation in 2010 incorporated mediation as a recognised method of conflict resolution, reinforcing its importance in the Argentine judicial system, thus providing a quick and efficient solution for Argentines.

It is the reform of the Civil and Commercial Code in 2015 further consolidated mediation as an essential tool, establishing its application in a wide range of conflicts and promoting the culture of mediation in Argentine society as a pillar of social coexistence set out in Article 2542 in which reference is made to the application of the mediation process as an alternative in the resolution of conflicts in the Argentine territory (Civil and Commercial Code, 2015, art. 2542, p.930).

Therefore, at present, the development of mediation activities in Argentina continues to evolve with education and training programmes for mediators and professionals involved in this line of research, and the promotion of community and school mediation in the territory as a basis of progress for the future. Digitalisation and the

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use of technology are also playing an important role in the accessibility and efficiency of mediation processes.

As far as mediation in Argentina is concerned, it has come a long way from its beginnings to become an integral part of the country's justice system. Laws and reforms have created a robust framework for its implementation, and mediation continues to grow in acceptance and application in a variety of settings, reflecting a continued commitment to peaceful and efficient conflict resolution.

The effects on mediation proceedings in Ecuador vs Argentina.

The minutes of the mediation process within both legislations have binding principles and effects of a legal nature in relation to the enforceability to ensure the applicability of this in the different processes of approval and compliance with the rules, law, treaties or agreements that were developed within a mediation process.

The mediation record is a written document that is drawn up by the mediator once the mediation has ended with total or partial agreements. It must be signed by the parties and the mediator of an Authorised Centre of the Judicial Function, and from that moment on, it has the same legal value as a sentence. (Agnelli, A. 2020, p.107).

The procedure or measurement process concludes or ends with the signature of the parties or parties involved in a record in which the total or partial agreement set out and established during the dialogue, negotiating in detail the facts and the relationship that gave rise to the problem to the initial conflict. Each of the phases or stages necessary to remedy any problems between the parties must be developed and thus give knowledge of the present obligations that each of them and the mediator will have when signing.

The agreement within the signed minutes has the value and has the effect or value of an enforceable sentence or res judicata by the competent entity, so what is agreed and expressed in the mediation minutes is law for the parties, so its compliance is mandatory, otherwise the law determines the penalties and violations in relation to the case.

According to Agnelli (2019), the minutes of mediation are written by the mediator once the mediation has ended with total or partial agreements. It sets out the terms of such agreements, must be signed by the parties and the mediator of an Authorised Centre of the Judicial

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Function and, from that moment on, has the same legal value as a judgment. (p. 107)

Table 3. *The effects of the mediation act in the compared legislations are presented in order to show their similarity within the legal titles resulting from the mediation process.*

ECUADOR	ARGENTINA
La Ley de Arbitraje y Mediación (2020) expone sobre las características propias de esta legislación es así como se presentan los efectos de las actas de mediación.	La Ley 26.589. Mediación y Conciliación (2010) expone que en el territorio argentino al igual que en su legislación
Carácter Vinculante El carácter vinculante de un acuerdo de mediación entre las partes desarrollantes tendrá la misma fuerza que una decisión ejecutiva.	
Fuerza ejecutiva La decisiones y acuerdos tomados en el acta de mediación cuentan con el respaldo judicial por lo que si no se cumple lo acordado se solicitara a la entidad competente que interceda en dicho caso.	

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Confidencialidad Todo proceso es de carácter confidencial pueste que las partes o involucrados dentro del proceso deben mantener la reserva necesaria para evitar ventilaciones de información delicada para el proceso.
Homologación La homologación por parte de la entidad competente es necesaria para contar con el respaldo judicial y estatal como entidades competentes.
Efectos Preventivos La aplicabilidad de estos recursos ayuda a la justicia y a los procesos ordinarios a descongestionar el sistema de justicia al resolver diferentes problemas y conflictos por la mediación como método alternativo en la solución de conflictos.
Impacto La amplia utilidad sobre la aplicabilidad de las actas del proceso de mediación en diferentes materias del sistema judicial. Dentro de ambas legislaciones se desarrollan en materias como:
▪ Familiar: Custodia, régimen de visitas, alimentos, división de bienes. ▪ Laboral: Disputas entre empleados y empleadores. ▪ Comercial: Conflictos contractuales, disputas entre socios. ▪ Comunitario: Problemas vecinales, disputas de propiedad.

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Source: Ley de Arbitraje y Mediación (2020) - Ley Orgánica De La Función Judicial, (2024) - Ley 26.589. Mediation and Conciliation (2010)

The table above shows that the comparative laws such as the Law on Arbitration and Mediation (2020) and Law 26.589 on Mediation and Conciliation (2010) establish a solid framework for mediation. Emphasis is placed on characteristics such as binding character, enforceability, confidentiality, homologation, and the preventive effects of the use of this resource in the governing territory. These aspects ensure that mediation is an effective and reliable method of conflict resolution, benefiting the parties involved and contributing to a more efficient and accessible judicial system for the resolution of disputes or problems.

This article has made an exhaustive comparison of the mediation process in Ecuador and Argentina, showing the evolution and consolidation of this mechanism as an integral part of the justice system in both jurisdictions. Mediation has come a long way since its beginnings, reflecting a sustained commitment to the peaceful and efficient resolution of conflicts, and presenting itself as a viable and safe alternative to traditional judicial litigation. This progress has enabled mediation to position itself as an essential tool for citizens, providing a means of dispute resolution that is both quick and cost-effective.

In addition to its ability to decongest established court systems, mediation in both territories fosters cooperation and mutual understanding between the parties involved. This approach promotes harmonious relations within society, which is essential for social cohesion and community development. Consequently, mediation not only optimises the efficiency of the judicial system, but also strengthens the social fabric by promoting a culture of dialogue and collaboration. Through a comparative analysis and a focus on deductive methodology, best practices and areas for potential improvement have been identified, highlighting the importance of mediation in building a more accessible and equitable justice system.

This article presents an exhaustive comparative analysis of the laws of Argentina and Ecuador on mediation, with the aim of identifying and evaluating the similarities and significant differences in the processes and critical aspects that affect the comprehensive development of mediation as an alternative dispute resolution method. This study

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reveals contrasting results, evidencing relationships and capacities inherent to these procedures, highlighting their respective advantages and limitations for the benefit of citizens.

In terms of similarities, both countries recognise mediation as a voluntary and confidential process, in which a neutral third party, the mediator, facilitates communication between the conflicting parties to help them reach a mutually satisfactory agreement. In both Argentina and Ecuador, mediation is valued for its ability to offer a quicker and less costly solution compared to traditional judicial procedures, contributing to the decongestion of judicial systems.

The comparison between the mediation laws of Argentina and Ecuador reveals both convergences in the principles and objectives of mediation and divergences in its practical and structural implementation. These findings provide a solid basis for reflecting on possible improvements and bilateral collaborations that can strengthen mediation as an effective conflict resolution mechanism in both national contexts, thus promoting welfare and social justice for their respective territories.

Conclussion

Based on the above, it is demonstrated that mediation as an alternative dispute resolution method is a viable option for resolving disputes between the parties involved. By opting for this method, the parties agree to partially cede their positions in order to reach an agreement that they both accept and sign, committing to comply with the stipulations of the mediation act.

Mediation is used in various processes in Ecuadorian and Argentinean legislation, seeking to resolve conflicts quickly and economically. As it is an extrajudicial process, costs and time are significantly reduced compared to ordinary judicial proceedings. Mediation, both in criminal and civil matters, demonstrates an optimal and satisfactory applicability due to its high effectiveness.

It is important to note that, in Ecuador and Argentina, mediators must meet specific requirements that guarantee their competence and professionalism. These requirements generally include academic education, specialised training in mediation and, in some cases, previous experience in conflict resolution. In addition, certification by regulatory bodies ensures that mediators possess the necessary skills and knowledge to perform their role effectively.

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The mediator plays a neutral and facilitative role, guiding the parties towards a mutually beneficial agreement without imposing solutions. His or her participation is crucial at various stages of the mediation process, guiding and intervening in search of a partial solution to the conflict.

Access to the mediation process in Ecuador is designed to be an accessible and efficient method of resolving conflicts as an alternative to the traditional judicial system. This procedure follows a series of clear and structured steps that guarantee voluntary participation and respect for the rights of the parties involved.

In addition, the analysis addresses the requirements and competences needed to practice as a mediator in both countries. In Argentina, specific training and registration in an official register of mediators is required, which guarantees a high level of professionalism and competence. In Ecuador, although training and certification are also required, the criteria may vary more widely, which could impact the quality and consistency of the mediation service offered.

In Argentina, access to the mediation process has been established as an efficient and accessible means of dispute resolution, notable for its focus on de-judicialisation and its emphasis on voluntary agreement between the parties.

Both countries have developed mediation systems that facilitate the participation of any individual or entity seeking to resolve a conflict, thus promoting a culture of peaceful and collaborative resolution in their respective societies.

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