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The Current Situation for Mediation and Other Forms of ADR in Spain with Special Reference to the Consequences of the Covid-19 Health Crisis

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I. INTRODUCTION

In this chapter we examine the current situation regarding the forms of Alternative Dispute Resolution (ADR) available in Spain together with family mediation and the introduction of the figure of the Parental Coordinator. Family mediation is more highly developed in some Autonomous communities, for example the País Vasco, Cataluña and Valencia, than in others, such as Aragón, where family mediation is only possible within the context of the judicial process. The Parental Coordinator is currently a controversial figure. In some Autonomous communities the role is being introduced with relative success (eg Cataluña, Navarra, Madrid), while in other communities it is not accepted (País Vasco) or pilot experiments have come to a standstill (Aragón). The aforementioned initiatives were completed, with the recent draft law (2021) aimed at the effective implementation of ADR, which goes beyond mediation.

In cases of separation and divorce for couples with children who are minors, mediation is available, but any agreements reached must be approved by a judge who has the responsibility for protecting the best interests of the child. However, cases of separation and divorce involving domestic or gender violence must be referred to the special Gender Violence Court, which has both civil and penal

* This chapter was written within the framework of the Project RTI2018-095843-B-I00 (ACRONYM): Analysis, evaluation and visualization for legislative argumentation: towards an applied theory of parliamentary justification of laws (AEVAL).

This chapter forms part of the DER 2017-82129-P and the 2017 SGR 151.

competencies. Mediation in such cases is prohibited. This prohibition also applies to cases of gender or domestic violence where the couple have children. This chapter outlines the various legal reforms relating to the protection of children in the context of domestic or gender violence implemented since 2015.

We will also discuss in general terms the changes in the family justice system which have taken place in Spain as a result of the Covid-19 health crisis. We close by offering some reflections with the purpose of inviting further discussion.

II. FAMILY MEDIATION AND THE PARENTING COORDINATOR IN SPAIN

A. Statewide Mediation Initiatives

Spain is a good example of the 'European Mediation Paradox'. Everyone is convinced of the advantages of the mediation methodology, but few conflicts are solved. Compared to the situation in other European countries, mediation in Spain is not used very often. The 2019 Report of the General Council for the Judiciary[1] concluded that the difficulties faced by mediation are related to the following factors: the lack of effort by the public administration in implementing ADR; the lack of uniformity in implementing mediation services in the different Autonomous Regions; the lack of consistent criteria for recruiting professional mediators and the need for better training; and the lack of incentives for the use of mediation by the courts, professionals and the public. This was the reason for a Draft Bill to promote mediation (approved by the Council of Ministers on 10 January 2019) (García Sánchez, 2019: 287–98; Saavedra 2019), which was analysed in strenuous detail at that stage, before possible approval. It proposed in certain areas a mitigated form of mandatory mediation.

The arrival of the Covid-19 pandemic has changed the coordinates. It supposed a paradigm shift. For instance, and even if experts disagree, the Bill to promote mediation has been forgotten. On 8 June 2020 a Green Paper on *Procedural, Technological Measures and the Implementation of Dispute Resolution Measures*[2] appeared. This was a consultation document inviting citizens, organisations and associations potentially affected by ADR to comment on the subject. The goal was to promote mediation and other forms of ADR because of the increase in claims resulting from the Covid-19 crisis. It is about establishing and promoting mediation and other ADR processes without excessive bureaucracy. Part of the aim was to reduce the burden on the courts, in addition to promoting solutions through dialogue.

[1] See www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Informes/Informe-al-Anteproyecto-de-ley-de-impulso-a-la-mediacion.

[2] See: ficheros.mjusticia.gob.es/Consulta_publica_APL_MEDIDAS_PROCESALES_solucion_diferencias.pdf.

The latest step is constituted in the Draft Law on Procedural Efficiency Measures of the Public Justice Service (APLMEP 2021).[3] Article 1 fixes the concept of ADR in Spain (known in Spain as *MASC*, the acronym of Adequate Means of Dispute Resolution). In general, the aim – after the pandemic episode is over – is to transform justice into becoming based on three pillars. The first pillar addresses the implementation of ADR. Chapter III of the APLMEP considers 'The different modalities of negotiation prior to judicial process', and lists the following: mediation, which will be governed by law 5/2012; private conciliation (arts 12 and 13); the confidential binding offer (art 14) and the opinion of an independent expert (art 15). It is a generic presentation, focused on the notion of *negotiation*, which incorporates commercial disputes as well as contract, property or family conflicts. The APLMEP does not make any mention of two relevant forms of family ADR: parenting coordination and collaborative law. In order to promote the use of these forms of ADR, the draft law establishes that the parties that go to court have to present a document proving that they have previously tried to resolve the conflict using ADR. This document is a procedural requirement in order to make the claim. The agreement derived from the use of ADR closes the conflict (ie the parties cannot later go to the courts). To be considered as an executive title, the agreement must be elevated to a public deed or be judicially approved.

Meanwhile, as we wait for the evolution of the APLMEP, mediation in Spain is voluntary (art 6.1 of the Civil and Commercial Mediation Act – Law 5/2012[4]). Law 5/2012 allows the parties to apply for mediation and consequently to suspend civil proceedings, but there must be mutual agreement to do so. However, the parties are free to decide whether to proceed with mediation at any stage. But, during the pandemic period, and thinking of the future, many voices are demanding it should become mandatory (Magro Servet, 2020).

B. The Initiatives of the Autonomous Communities

At the same time, the Autonomous Communities are paying special attention to mediation in relation to family conflicts. These Communities are now considering the task of consolidating mediation with the approval and development of specific regulations and by developing public policies.[5] The will to extend mediation beyond private law has been made clear in two regional laws: the Cantabria law (2011), and more recently, the Valencian Community mediation

[3] www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/APL%20Eficiencia%20Procesal.pdf.

[4] See www.boe.es/buscar/pdf/2012/BOE-A-2012-9112-consolidado.pdf. A complete analysis of the law can be found in García Villaluenga, Rogel Vide and, Fernández Canales (2012); Castillejo Manzanares, Alonso Salgado and Rodríguez Alvarez (2013).

[5] A useful overview, despite the existence of later laws, is provided in Duplà (2012).

law (2018). There is a belief that bringing mediation to other conflicts in private law, and even public law, will benefit the use of mediation in family conflicts; it will be a closer option, with more taken into account. Both Laws constitute a model that other autonomous communities are now keeping in mind.

We want to highlight the Law 9/2020 of July 31, modifying Book II of the Civil Code of Catalonia and Law 15/2009 on Mediation in the field of private law (Lauroba, 2020a; Ortuño, 2020: 1–6). This law is apparently a minimal reform, but it could provide a real boost for mediation and ADR in Catalonia. In the Preamble of the Law (§ 4), it is recognised that:

> Knowledge of mediation remains scarce and information does not reach potential parties or stakeholders, legal professionals, which negatively affects the effectiveness of mediation services. Not even information available on the websites, nor the information brochures, nor the informative events, nor the visits to jurisdictional bodies have proven to be sufficient practices to motivate the parties, the legal professionals and jurisdictional personnel to use mediation.

First, the law introduces the mandatory nature of the pre-mediation briefing in two cases: either as previously agreed by the parties or pursuant to a court order. In point of fact, the Basque legislator had already introduced the mandatory informative session in family conflicts in the Family Relations Act in cases of separation or divorce (Ley 7/2015).[6] What is really new in the Catalan law is that the mandatory briefing transcends the merely informative component on the advantages and format of mediation. It includes an exploratory element, focused on evaluating its suitability for the dispute at hand (before the process as such). In brief, the defining element here is the concatenation between the strictly informative session and the properly exploratory session, once the parties have learned how the process works. To emphasise the importance of the sequence, the second part can take place immediately after the first. As the Preamble (§ 8) develops:

> In this previous session, the parties are informed of the characteristics and benefits of mediation, so that they can analyse freely and in an informed way and decide if they want to start the mediation process. Likewise, the possibility that the preliminary session can continue with an exploration of the conflict, if so agreed by the parties, after being heard, an option that can save time and paperwork and bring people even closer to mediation. In particular, the initiative also aims to protect children affected by conflict, their best interests and their right to maintain personal relationships with their parents and with other family members. It becomes, therefore, a manifestation of Article 3 of the Convention on the Rights of the Child, adopted by the United Nations in 1989, which obliges States to adopt all appropriate legislative and administrative measures to ensure to children the protection and care necessary for their well-being, taking into account the rights and parental responsibilities.

[6] Ley 7/2015, de 30 de junio, de relaciones familiares en supuestos de separación o ruptura de los progenitores (BOE núm 176, 24 July 2015).

Therefore, for the legislator, this measure has the best protection of minors as a priority objective.

Second, the reform attributes a greater role to lawyers in order to involve them in the mediation process. The Catalonian legislator knows that it is necessary to overcome the reluctance of legal professionals, who still feel that they are looked down upon by the parties choosing mediation.

The Law 9/2020 prescribes – in its article on mediation principles of impartiality and neutrality – that mediators must integrate the gender perspective in their actions (an aspect to be integrated in mediation training too, as a guarantee to overcome mistrust). Moreover, the Law introduces for the first time a mention of other forms of ADR, in a general way. In article 233-2 Civil code of Catalonia, about the pacts that married couples agree when they divorce (the regulatory agreement, 'convenio regulador') ~~between married couples regarding the effects of divorce,~~ the legislator adds a new paragraph: '7. The regulatory agreement may include submission to mediation and other alternative dispute resolution mechanisms'. This expression seeks to open the door to collaborative law, which is a welcome commitment of the Catalonian Generalitat, although the number of lawyers who already have a 'homologated' training in this form of ADR is limited for the moment. To assist this effort in this direction, the law changes the name of the Private Law Mediation Center. It has been renamed as the Mediation Center for Catalonia, with the aim of extending its scope beyond private law disputes and even, as the law indicates, to integrate other forms of ADR. Consequently, Law 9/2020 imposes on the government the duty to send a bill to the Parliament within a year for 'the prevention, management and resolution of conflicts' (in sum, going beyond mediation).

C. The Controversial Figure of the Parenting Coordinator

Although mediation continues to be the ADR par excellence for family conflicts, other forms are emerging strongly as parenting coordination. But parenting coordination is a very controversial idea. There are problems linked both to its conceptualisation and to the opposition that its use provokes in some sectors, notably from feminists. For a sector of feminist lawyers, the process is thought to actually benefit the father's relationship with their children (consolidating the father's parental power), to the detriment of the mother. At the same time, some experts think that parenting coordination should be relocated to social services and others see it as a juridical process, ie an institutional way to assist judges.

In Catalonia, parenting coordination is much more accepted; its role being to assist the courts (Lauroba, 2018: 2–69): in fact, it was introduced by the courts[7] without any explicit legislative support. This is a common factor for

[7] It was contested, but the Superior Court of Justice of Catalonia (26 February 2015) determined its validity and its utility to benefit minors, with the help of comparative law.

initiatives in Spanish territory: the lack of any legal norm that regulates the figure. In Aragon, attempts have been made since 2019-to implement the office of parenting coordinator, but the experts do not agree about its potential role. The Spanish government is aware of these initiatives and in 2018 the Minister presented in the Justice Commission – a place for convergence between the state administration and the Autonomous Communities – a proposal to implement parenting coordination as a resource to support families who have suffered difficult separation processes and for the sake of the protection of minors. For the moment there is no general approach, but other territories, such as Navarra, are now implementing the process in the courts.[8]

Despite these suspicions, we think that the parenting coordinator is becoming gradually incorporated into family practice. Today it generates greater interest among specialists. This is shown by the document supported by GEMME and CUEMYC (University Conference for the Study of Mediation and Conflict): *Base Document for the Development of Parenting Coordination* (September 2019[9]). In fact, the figure of the parental coordinator is nowadays becoming the subject of detailed studies in numerous training courses on mediation, despite the notable differences between these forms of ADR. And we also want to emphasise that as parenting coordination is not yet classified as a specific profession, each coordinator practitioner is subject to the deontological code linked to their degree / profession. We can affirm that parenting coordination will be one of the axes of debate in relation to finding the best way to manage family conflicts in the future.

III. GENDER VIOLENCE CASES, AND CASES OF CHILDREN INVOLVED IN DOMESTIC AND GENDER VIOLENCE

In cases where divorcing or separating couples have children who are minors or otherwise dependent on the parents, mediation is possible. However, any agreement must be ratified by the court. This is because the best interest of the child must be ratified by a judge.

But it is important to emphasise that there are some cases which have to go to court and for which mediation is forbidden. These include cases of gender violence and cases of children involved in domestic violence or any form of abuse.

[8] We thank Magaly Marrogán, Coordinator of the Service of Parenting Coordination of the Department of Justice of Navarra, the useful information she gave us.

[9] *Documento Base Para el Desarrollo de la Coordinación de Parentalidad*. See cuemyc.org/wp-content/uploads/2020/03/DOCUMENTO-BASE-CP.pdf. See, too, the Good Practice Guidelines for the Parenting Coordinators (2020) from the College of Psychologists of Catalonia (psiaracopc.cat/wp-content/uploads/2021/02/2020_ACTUALIZACION_DIRECTRICES_DEL_COPC_PARA_LA_COORDINACION_DE_PARENTALIDAD_30.11.2020.pdf). As a recent useful bibliography, see Vilella (2021).

More specifically, in cases of gender violence, separating and divorcing couples have to go to the special court of Gender Violence against Women. There is no possibility of mediation because mediation is legally prohibited in cases of gender violence by Spanish Organic Law 1/2004 for Integrated Protection Measures against Gender Violence (art 44.5) and by the State Pact against Gender Violence of 2017 (Proposal 116).

A research study has been carried out in the Autonomous Region of Aragon on the difficulties of family mediation in cases of gender violence, domestic violence or child abuse from the perspective of the professionals concerned.[10] This research was done by a professional association of social workers from December 2018 to October 2019. The professionals interviewed in the research believe that family mediation should be excluded in cases when the court has ruled that gender violence has taken place. They are uncertain whether mediation can be in used in cases without a court ruling – possibly because the case has not yet reached the courts. This is currently a controversial issue in Spain.

In cases of serious child abuse, the professionals believe that family mediation is not appropriate because the child is in a vulnerable situation.

More specifically, advances have been made in Spain both with respect to protection for child victims in the context of gender and domestic violence. Specifically, Law 4/2015 includes some specific provisions affecting victims of gender violence. But above all, it was the passing of the Organic Law 8/2015, of 22 July, and the Law 26/2015, of 28 July, *modifying the system for the protection of infancy and adolescence*, which represented a substantial advance in the matter dealt with here.

The most significant modification made by the Organic Law 8/2015, of 22 July, is to consider children and minors under the care and custody of abused women to be victims of gender violence and not just mere witnesses,[11] as they were considered before. Therefore, the civil or criminal judge will be able to adopt judicial measures that involve prohibiting the aggressor from approaching and communicating with the child. In this sense, children come to be considered as *direct victims* of gender violence against them and not mere indirect victims or witnesses of the violence suffered by their mothers.

The child is considered to be a direct victim of gender violence from the moment that the child is present in the place where the aggression against the mother takes place, irrespective of whether the child only witnesses the aggression or whether the child intervenes (ie between the mother and the aggressor). Therefore, even though the aggressor acts against the mother and not the child, in such cases minors deserve special protection by the law.

For these reasons, the Organic Law 4/2004 (modified by the Organic Law 8/2015) for Integrated Protection Measures against Gender Violence now

[10] See Mesa Raya (2020).
[11] See Picontó-Novales (2018: 441–58).

not only has the direct protection of women who are victims as its objective, but instead extends its special protection to children under the guardianship, care or custody of the victims. This makes it possible to adopt protection measures for any child, regardless of whether that child is the aggressor's child.

The Organic Law 8/2015 also acknowledges the possibility of requesting precautionary measures to protect child victims of gender violence. It acknowledges the possibility of suspending parental responsibility or custody of children of a parent, custodian or guardian if they are accused in proceedings for domestic violence. Moreover, the fact that the measure refers to them being accused means that it can be adopted simply as a precautionary measure before there is a conviction for an act of gender violence, without prejudice to the penalties that could finally apply or the decisions that are finally taken in the civil proceedings that regulate parental responsibility or care and custody of the child.

However, these measures to protect child victims of gender violence have not had sufficient impact in practical terms, especially in judicial practice.[12]

In this sense, the State Pact against Gender Violence proposes that shared custody should not be granted in cases of gender violence or if a protection order is in place (proposal 144). In addition, visiting arrangements should be suspended in all cases where a minor has witnessed, suffered or had to live with acts of gender violence (proposal 145).

In its 2019 Report, the State Attorney General's Office[13] highlighted the lack of protection suffered by these children and the need to apply civil protection measures and to supervise them. In this sense, Reyes Cano and Martín Nájera[14] consider that the measures on the suspension of parental authority, shared custody or contacts with the children on the part of the aggressor have been limited because the law allows the judge to decide whether to apply them or not.

More recently, Organic Law 8/2021 of 4 June (also known as 'the Rhodes Law') has very recently been passed by the Spanish Parliament and published in the official gazette (BOE 5 July 2021). This law guarantees the fundamental rights of children and adolescents, whether physical, psychological or moral, against any form of violence. Part of this law was expected to come into effect at the end of 2021 and the remainder next year.

The Organic Law 8/2021 pays special attention to protecting the best interests of children in situations of family breakdown and in cases where children live in family environments marked by gender violence. More specifically, the judge can agree to the precautionary suspension of the exercise of parental responsibility and/or the exercise of guardianship, custody or the visitation and communication regime in order to remove children from danger or avoid harm to their family environment. It also establishes as mandatory the imposition

[12] See Gómez Fernández (2018).
[13] See Fiscalía General del Estado (2019).
[14] See Reyes Cano (2019: 19); Martín Nájera (2020).

of the penalty of deprivation of parental responsibility on those convicted of homicide or murder in the cases in which the perpetrator and the victim had children in common and also in cases where the victim was a son or daughter of the perpetrator.

IV. CHANGES IN THE SPANISH FAMILY JUSTICE SYSTEM RESULTING FROM THE COVID-19 CRISIS

As previously mentioned, the Covid-19 pandemic has been a factor in determining the promotion of ADR. The APLMEP is the best test of the new landscape. It has also been a determining factor in the generalisation of Online Dispute Resolution (ODR). We are confident that online resources will remain. Although we will not discuss the ODR ecosystem (especially online mediation) further here, but we should note that the experts are discussing the best way to use this, and how to provide adequate skills and training for online professionals.[15]

In addition, during the pandemic, public administrations and bar associations have used videos and advertisements in the media to gain publicity regarding the usefulness of ADR. In a remarkable case, Catalonia promoted a free mediation programme during the state of alarm, with the name 'Dialogue and Agreement to deal with COVID-19' (Mediation and Covid-19). It was adopted by the Resolution Jus/848/2020 1 April.[16] This Resolution established the continuation of the procedures developed by the Center for Mediation of Private Law of Catalonia and the initiation of the aforementioned programme of free mediation. When regulating some aspects of the programme, it was emphasised that consultations related to childhood, people with disabilities and other vulnerable groups would be prioritised.

Even though it had already been under discussion, the Covid-19 crisis may have provided a great opportunity for the development of ADR, both from the sociological–political and from the legal perspective (the increase of litigation) (Belloso Martín, 2020: 191–206). But, today, the first step is the real development of the aforementioned APLMEP, which will change the coordinates for conflict resolution. Until its approval, the rest is speculation.

That said, the government has adopted for the first time measures to manage the situation and to prevent the collapse of the courts in the Royal Decree-Law 16/2020, of April 28, on procedural and organisational measures to deal with COVID-19 in the field of the Administration of Justice.[17] Unfortunately, the text did not take ADR into account. As Belloso Martín points out, 'it would have

[15] See Terrats Ruiz and Armadans Tremolosa (2021: 115–28). See also Cerdeira Bravo de Mansilla (2021: 257).

[16] Diari Oficial de la Generalitat de Catalunya n 8114, 17 Abril 2020.

[17] Real Decreto-ley 16/2020, de 28 de abril, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia (BOE n 119, 29 April 2020).

been convenient, at least, to implant one information session on mediation in civil and commercial procedures' (Belloso Martín, 2020: 200).

From the legal perspective in family courts, the RD-L 16/2020 introduced a summary trial for family conflicts (Arts 3–5). Here, we present the objectives of this specific procedure (Art 3) and some aspects of the procedure as such, oriented towards the speed that was advocated.[18]

> **Article 3. Scope of the special and summary procedure in family matters.**
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> During the state of alarm and up to three months after its end, the following demands will be decided through the special and summary procedure regulated in articles 3 to 5 of this royal decree-law:
>
> a) Those that deal with claims relating to the restoration of balance in the visitation or joint custody regime when one of the parents has not been able to attend the established regime in its strict terms and, where appropriate, joint custody is in force, as a result of the Measures adopted by the Government and other health authorities in order to prevent the spread of COVID-19.
> b) Those whose purpose is to request the review of the definitive measures on marriage charges, economic alimony between spouses and maintenance recognized for the children, adopted on application the provisions of article 774 of Law 1/2000, of 7 January, of Civil Procedure, when the review is based on a substantial change in the economic circumstances of spouses and parents as a result of the health crisis produced by COVID-19.
> c) Those who seek the establishment or review of the obligation to provide maintenance, when the claims are based on the substantial change of the economic circumstances of the relative obliged to pay as a consequence of the health crisis produced by COVID-19.
>
> Therefore, we identify three specific matters: 1. Reestablishment of balance in the visitation rights or joint custody regime when one of the parents has not been able to comply with what is agreed in the parents' agreement or it has been established in the sentence; 2. Review of definitive measures on economic issues (family expenses, alimony and compensatory pensions); 3. Establishment or review of the maintenance obligation.

The notion of a *special and summary procedure* – the description employed in the Royal Decree-Law – is aimed at speeding up the process and making it more agile. The procedure begins by means of a demand, which describes the facts and grounds on which the claim is based, as well as the documentation to prove them. If the claim is related to the modification of measures for economic reasons, the demand must be accompanied by a certificate showing the monthly amount received as a benefit or subsidy (that justifies the claim). Once issued for processing, the parties, and the Public Prosecutor if necessary (the law does

[18] This is not the place to analyse in full the impact of Covid-19 on family law fields in our country (for instance, alimony, custody exercise or parental responsibilities). See as a useful bibliography, Departamento Jurídico de Sepín Familia y Sucesiones (2020); Lepín Molina and Ravetllat Ballesté (2021).

not explain anything more), will have a hearing within the 10 working days following the admission of the claim, in which the defendant will be interviewed orally. In addition, when the procedure is about custody, the children can be heard in a reserved manner if the court deems it appropriate (and in any case, if they are more than 12 years old).

The parties attend the hearing with the evidence they have and such evidence must be taken, as well as those that may be agreed ex officio, as an act of the hearing. If this was not possible, the evidence has to be provided within the time indicated by the Judge, which may not exceed 15 days. Once the hearing has been carried out, and the conclusions of the parties have been formulated orally, the Judge issues a resolution orally or written in the next three working days. In the event of being made orally, the resolution must be documented with a succinct justification. The parties can appeal against the resolution unless it was issued orally and all parties were present at the act and expressed their wish not to appeal.

We must emphasise the time limit linked to these matters: during the state of alarm and the following three months. The initiative was taken to avoid the feared collapse of the courts. We must also add that we lack further information about how this procedure has worked, but family lawyers were sceptical and legal commentators were also mistrustful of the effectiveness.

V. CONCLUSIONS

Finally, we offer some conclusions about the progress of ADR in Spain and likely developments in the future.

It is important to note that there are substantial differences in family mediation between the Autonomous Communities. Family mediation is much more developed in some communities, such as Catalonia, The Basque Country, Valencia, Murcia, Navarra and Madrid. In the case of Aragon, following a decision of regional policy makers (the Justice and Interior Department of the Aragon Government), family mediation is only possible within the context of the judicial process, although the law allows extra-judicial mediation. There are many voices (experts, social workers, psychologists and other agents in this field) who are critical of this policy decision and who wish to see a broadening of the preventive nature of mediation (Mesa Raya, 2020).

The Autonomous Communities with more advanced mediation processes include both intra-judicial and extra-judicial forms; moreover, they are extending mediation to other areas such as conflicts in communities, associations, property disputes and insurance.

There are also differences between the Autonomous Communities in the area of parental coordination. Some communities have welcomed the figure of the Parental Coordinator (Catalonia, Navarra, Valencia, Murcia), while others have rejected it (The Basque Country).

We are, now, at a relative impasse, despite the complexity of the situation in family conflicts and the level of overwork in the courts. We have to wait and see how the APLMEP, the draft bill for the transformation of justice, will evolve. It does seem uncontroversial that different ADRs will have a prominent role. Some experts and practitioners worry that mediation is not given the importance it deserves in the APLMEP. We would like to think that the existence of the law 5/2012, a specific regulation, will be a sufficient guarantee for the legislator.

In the field of family conflicts, we discovered other emerging forms of ADR, such as parenting coordination and collaborative law, which we must also take into consideration. In fact, collaborative law may have an important place in future because lawyers seem not to dislike it (Lauroba, 2020b: 43–60). But there are opposing sensitivities in dealing with forms of ADR, even mediation. Among the legal practitioners we discover enthusiastic mediation (and other ADR) groups along with distrustful sectors. A large number of lawyers fear that their clients would be less protected with ADR, because they, as experts in family law, are undervalued or even forgotten. That is why we appreciate the effort to implicate lawyers in the mediation procedures in the Catalonian law 9/2020, and this also seems to be a goal of the APLMEP. Moreover, in Spain, Judges also disagree on ADR. The European Association of Judges for Mediation (GEMME) supports numerous initiatives to promote mediation,[19] but we find a number of sceptical judges, too.

A very controversial issue in Spain is the advisability of mediation in some cases of gender violence.[20] From an international perspective, mediation is prohibited by the Convention of the Council of Europe on preventing and combating violence against women and domestic violence (Art 48), which was ratified by Spain in 2014. Also, mediation is absolutely prohibited by Spanish Law (2004) and in the State Pact against Gender Violence (2017) in these cases.

Despite this legal prohibition there is some criticism by some professionals, experts and researchers who consider that the prohibition should not necessarily be applied in certain cases of gender violence, where there may be some advantages for the victims, and which might be able to provide more effective prevention against this form of violence. But those who defend the possibility of mediation in such cases emphasise the necessity of taking several precautions. This continues to be the subject of debate.[21] For example, which cases should be subject to mediation? What professional qualifications would a mediator need to mediate in these cases?

It should be remembered that a very great amount of work and effort has been made in Spain to give visibility to the serious social problem of violence against women and to include it within the penal sphere. For this and other

[19] See mediacionesjusticia.com.
[20] See Picontó-Novales (2019: 251–62).
[21] This controversy also exists within feminist groups: see González Ferrer (2020: 225–55).

reasons, considerable care should be taken over the possible introduction of mediation in this area, which continues to be the subject of considerable debate.

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