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# Analysis of alternative means of conflict resolution in traffic matters in Ecuador

Análisis de los medios alternativos de solución de conflictos en materia de tránsito en el Ecuador

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**Abstract:** The alternative means of conflict resolution in traffic matters, establishes an integrated inquiry, which shows the care in these alternative methods that allow to amend them by legal means. Nowadays, in some processes the causes are expanded or delayed, stimulating the interruption and collapse in certain cases of the administration of justice, it is also estimated that corruption processes coexist with the sponsorship of some justice operators in many of the Judicial Units.

**Keywords:** alternative means, conflict, effectiveness, solution..

**Resumen:** Los medios alternativos de solución de conflictos en materia de tránsito, establecen una indagación integra, en la cual se muestra el esmero en estos métodos alternativos que permiten enmendarlos por la vía legal. Hoy en día, en algunos procesos se expanden o retardan las causas estimulando a que se interrumpan y colapse en ciertos casos la administración de justicia, se estima también que coexisten procesos de corrupción a patrocinios de algunos operadores de justicia en muchas de las Unidades Judiciales.

**Palabras clave:** medios alternativos, conflicto, eficacia, solución..

## Introduction

In our country, the use and application of alternative procedures in traffic matters has become a vital necessity, due to the fact that Criminal Law, through time, has shown that it is neither efficient nor effective on its own, since in most cases mistakes are made in its application or execution. Generally, the greatest inconvenience in traffic matters is that being an accident an event classified as a crime of negligence, that is to say that there is no malice or intention to cause damage and it is the result of negligence, lack of skill, imprudence or disregard of the law, regulations or orders of the authority.

Upon reaching a trial where there is the first instance, challenges such as appeals for annulment and appeal and even the appeal for cassation, so that a criminal traffic process can last several years, reaching that the procedural parties (especially the affected) are in constant conflict and consider that there is no justice, instead of trying to reach an agreement or seek much faster solutions. (Macassi, 2016, p.138)

In a large number of cases the application of alternative procedures is not given in what refers to transit, intentionally has generated a congestion of cases in some Criminal Judicial Units of Ecuador, reason for which, there are a variety of disagreements and many discomforts in our society that in itself is desirous of an effective and fair justice.

In the study Macassi(2016) in comparison with the Constitution of the Republic of Ecuador in its Art. 190 states: "Arbitration, mediation and other alternative procedures for conflict resolution are recognized. These procedures shall be applied subject to the law, in matters in which by their nature it is possible to compromise", so they are considered as alternative mechanisms for conflict resolution; that is, they are also independent and different from the jurisdictional system.

Another direct generator of the established problem is the ineffectiveness of restorative justice, which has not been able to achieve its most transcendental objective, in the knowledge that it is not unaware that a crime directly affects society, but testifies that this public dimension should not be the only site of exodus to solve, so what should be done?

Crimes and misdemeanors in traffic matters, more than a violation of the legal norm of human conduct, is a violation or attack of one person against another. It does not concern so much the right abstractly violated, but rather the determined fact that a person is injured by the actions or omissions of another, and that is the damage that must be fully repaired. That is why Restorative Justice does not deal with the crime alone, but with the peace that has been broken. It is a way to build a sense of collectivity through the creation of non-violent relationships in society, ultimately involving restitution for victims, offenders and society.

For Nava & Breceda,(2015) in this context, the disposition of Criminal Law and Criminal Procedure towards a multiplicity of responses to the criminal legal conflict is absolute, since it will consent to the fact of resolving it through punitive and retributive ways, or also through alternative means, which are part of the relief components of the current criminal system, making it viable that most cases are resolved by much more informal ways where there is no need to incur the costs of resources and time involved in bringing a fact to trial.

According to Zavala (2017) the alternative means of conflict resolution have been considered free and voluntary agreements that are established between the parties committed within a legal cause, this is how the Constitution of the Republic of Ecuador within its article 190, declares that the use of these alternative means of conflict resolution, taking into consideration that if it is established in the Magna Carta is an obligation to fulfill and apply it in an equitable and fair manner, is the maximum purpose for this right, because it is worth remembering that the Constitution supports norms, principles, obligations and fundamental and priority rights for the good development of the Country. Thus, the State is the guarantor of the greatest and most fundamental rights, duties and obligations that make it possible to respect and venerate the rights protected in the Magna Carta.

Honoring all of the above, we cannot leave aside the constitutional preeminence that has been granted in recent times to the alternative means of conflict resolution, clearly understanding mediation, conciliation and arbitration applicable in all matters where they can be considered as a fundamental part and means to not give more time to a

judicial process, progressing in a distinguished way to a convulsed society and especially to the deficient legal system that our country currently has.

The conciliation in traffic matters is considered since the pronouncement in the Organic Integral Penal Code, due to the fact that previously it was believed as a reparatory agreement, by this virtue it is shown that the conciliation in traffic matters begins with the existence of the infraction or contravention as indicated by Prado (2015) where there is a hypothetical transgressor or offender and the alleged victim, after the parties already mentioned act a number of unquestionable characteristics among which stand out the most: the will of the parties, the good faith of the parties, their total honesty, equity and approval to reach or obtain a good conciliation.

It is worth noting that the purpose of this article is to provide information on alternative means of conflict resolution to avoid long and costly judicial proceedings, which in some cases do not allow the proper defense of a right. The alternative means of conflict resolution are important in our country because they allow the parties to voluntarily make decisions that allow them to correct any litigation that may occur later on. It should be taken into consideration the contributions of Echaide(2017) that currently we can find and be part of the alternative means of conflict resolution in all areas, as long as it is not about a right that can be violated or is unwaivable, both parties must lose and win something, so that these alternative means can be executed and bear fruit without any inconvenience.

It should be noted that the resolution obtained through these alternative means cannot be appealed and this record is considered as a sentence where it is established as *res judicata*.

## Materials and methods

The main methodological basis used in this research work is based on the use of several methodologies, such as: Descriptive Method, Inductive and Deductive Method, Analytical Method, Synthetic Method, Historical Method, these methods have helped to strengthen the analysis and the bibliographic review; likewise, use has been made of techniques among which we can highlight the file, bibliographic review and database. Using these techniques, the theoretical bases of the research were obtained as a result. Likewise, taking into consideration that a research will be developed through the bibliographic review and scientific databases, a population will not be needed for its development.

In this research process, the criteria of Hernández - Sampieri (2014) will be used. This scholar divides the currents of thought throughout the history of science into two main approaches: Qualitative and Quantitative; and, it will be developed in relation to the Qualitative Approach and the Theoretical Foundation will be used as the type of research and with respect to its scope it will be Descriptive.

## Results

In the search to solve controversies between human beings, a great number of conflict resolution systems have been determined throughout history, making the judicial system the most accepted and used at present, since it is considered to be the most democratic and fair to the extent of its possibilities.

There are three main moments in the historical evolution of the resolution of conflicts, a first initial moment in which we find in cultures the figure of a third party with recognized authority to resolve conflicts between individuals, a second moment in which there were different forums to which to turn to for justice, and a third moment in which the institutionalized judiciary appears. Salinas(2017) long before the existence and appearance of institutionalized judicial power recalling that it is typical of modernity, different forums were known to which citizens could go to try to get justice. This great plurality of forums established varied jurisdictions that were administered by the principle of subsidiarity, and that always ruled with different solutions according to the cases, the places, the judges.

Prior to this plurality of jurisdictions, the human groups of the time, resorted to a figure of authority that was vested with power and recognized to solve the different conflicts that could arise between individuals. This mediator replaced the figure of the judge that we know today, retained in his favor the recognition of his power by the individuals who submitted to his opinion and therefore it was made clear to the parties that they were committed from the beginning of the process to respect, comply and abide by the solution granted by this mediator.

In order to define alternative means of conflict resolution, it is necessary to discover the meaning of means, alternative, conflict, solution and effectiveness, with the purpose of establishing a fundamental idea:

After analyzing the different definitions above, we can state that alternative means of conflict resolution are nothing more than a group of different resources that people can choose or use in the search for an answer or solution to a problem or conflict in a more agile, simple, safe and above all without having to go to a Judicial Unit to obtain justice.

- Types of Alternative Dispute Resolution

- It is worth noting that these mechanisms are organized into two groups:

- The first group is made up of the self-compositive, in this group people decide which one to use in the solution of their conflict or problem; these are negotiation, mediation and conciliation.

The second group is formed by the heterocompositive ones, here we find mechanisms that allow a third person to decide how the conflict between both parties will be solved, in this group we can find arbitration.

The legal basis for these is stipulated in Article 190 of our Magna Carta, which states "Arbitration, mediation and other alternative dispute resolution procedures are recognized. These procedures shall be applied

subject to the law, in matters in which by their nature they can be compromised" (National Assembly, 2008). (National Assembly, 2008).

Clearly, this article indicates that these mechanisms can be applied in any type of matter: criminal, civil, commercial and, of course, traffic.

Origin and evolution of the history of mediation. In order to refer to the historical origin of mediation, one should go back to the very origin of man, since it is as old as conflict. Mediation is connatural to human beings and to the groups in which they form part of society. Its origins date back to community life. Pre-Socratic ideological fragments are known, such as those of Heraclitus and Aristotle.

If the assertion that every conflict has a positive side, which can be found in the expression: Every cloud has a silver lining, perhaps war conflicts, which are negative and violent actions in their fullest expression, have left a theoretical legacy that has been growing decade after decade.

Referring specifically to the period after the Second World War, this period marked an impulse in the study of anthropological, social, economic and political phenomena left as a sequel to the war, and different theories that talk about Third Party Intervention Charria(2016) were released. It seeks to analyze in detail the Third Party Intervention, which had no participation in the various conflicts only found:

The Mediator: he does not decide on the conflict, the parties keep for themselves the autonomy of their solution in the conflict.

Arbitrator / Judge: in this case they are third parties who have the power to decide on the conflict of the parties (heteronomy of the solution).

It can be stated that the heteronomy of conflict resolution is based on blaming, imposition, assignment of responsibilities and punishment, which is a way of guaranteeing that conflicts do not remain unfinished or even worse, unresolved, and that the purposes of individuals, groups or entities that are a fundamental part of the community can be developed in a social order and in search of the common good.

The State is the one who must guarantee the compliance and subsistence of this specific way of solving conflicts between individuals, making a correct use of the legal system and becoming directly responsible for its enforcement. The court ruling is not a peaceful way to resolve disputes, sometimes it is simply the trigger for further stages of duration of a conflict.

It is assumed that, due to the reduction of cases in the judicial units, in terms of the volume of files that enter the system in a timely manner, the magistrates will be able to give more time to those cases in which mediation cannot be used, this particular enables the detailed study of the case in question and will provide the judicial sentences with the legal excellence it needs to fulfill its existence and mission in a fair manner, in other words, to fulfill its *raison d'être*.

At present, society is making it possible to replace the word "alternative" with the phrase "adequate solution" of conflicts, taking into account that here litigation could be configured as one of these forms, as long as this service of justice is able to meet and demonstrate the basic



requirements such as: economy, simplicity, speed and quality, benefits that can be attributed to all those who are entitled to justice in society.

The word conflict comes from the Latin word "conflicts", which is derived from the verb "confluyere", which means to fight, fight, fight, etc. So we can state that there is a conflict between several people who have individual interests and give way to the emergence of disputes or disagreements, manifesting a conflict. (Macassi, 2016)

In our country Ecuador Mediation, hypothetically it is thought or considered as an agile service, since in any conflict to solve it by judicial means would take a long time, time that in some cases none of the implied parts do not possess, nowadays making use of the mediation simply would be enough a single session to conclude completely the conflict, leaving a whole satisfaction for the parts, because in the mediation always everybody wins.

Article 43 of the Judiciary Council's Mediation and Arbitration Law states the following:

Article 43 - Mediation is a dispute settlement procedure whereby the parties, assisted by a neutral third party called a mediator, seek a voluntary agreement, which deals with a matter subject to compromise, of an extrajudicial and definitive nature, and which puts an end to the conflict.

If we sit down to analyze the many benefits that this modern mediation system offers us and that is currently being applied, we can realize that it is a viable economic solution, because its dynamics allows it, significantly saving money, time, energy, for each of the parties or the people who use it, and above all it avoids the emotional burden, that is, it helps to prevent and resolve many conflicts in the shortest possible time and generating the lowest costs, through respect for the requirements of the parties and with the search for satisfaction of their interests. Of course, all this implies that both parties have the willingness to help each other and satisfy what is required.

Mediation in our country is a voluntary and confidential procedure, where the parties make the decisions about their conflict based on their interests, of course, when we say voluntary, we mean that the parties attend freely; In the event that any of them refuses to attend, mediation can no longer take place, the parties are not obliged to perpetuate the mediation procedure, since this same system allows them to abandon it when they deem it necessary. It is possible in our legislation to request mediation at any time or stage of a judicial process, taking into account that it must be before the judge issues a ruling through a sentence.

This alternative means of conflict resolution can only be applied in negotiable matters, that is to say, only in matters where the law itself admits or empowers the parties to negotiate and seek a solution through alternative means.

However, when the parties voluntarily reach an agreement and sign the mediation act, it will automatically have the required legal effect (enforceable judgment), and since it is confidential, it opens the parties to negotiate freely and fruitfully.

### Users of Mediation Centers

The Judiciary Council (2006) in the Mediation and Arbitration Law states in its article 44, the following:

Article 44 - Mediation may be requested from mediation centers or duly authorized independent mediators.

Natural or juridical persons, public or private, legally capable of reaching a settlement may submit to the mediation procedure established by this Law, without any restriction whatsoever.

The State or public sector institutions may submit to mediation through the representative authorized to contract on behalf of the respective institution. The power of the representative may be delegated by means of a power of attorney. (p.21)

Taking into consideration the above mentioned in Article 44 of the Arbitration and Mediation Law, we can understand that, in order to make use of the mediation service, all citizens who are interested in finding quick solutions to their problems, making use of dialogue and the construction of fair and equitable agreements, with the help and guidance of a professional who will act not as a judge, but as a mediator, are entitled to make use of the mediation service.

We must consider that based on the legal provisions in force and due to the complexity and legal effects that are presented, there are some matters that cannot be resolved under the use of the mediation system, in the following cases: when dealing with Human Rights or fundamental rights, in constitutional matters, in tax matters or in nullity actions. At the same time, it is also determined that in cases of domestic violence, due to its nature, mediation cannot be applied under any circumstances.

In the criminal area, the pertinent legal norms such as the integral organic criminal code COIP will regulate its application and procedure.

The National Assembly (2008), in the Constitution of the Republic, in its article 190 in the second paragraph determines that: In cases of public contracting, arbitration in law may proceed, prior favorable pronouncement of the State Attorney General's Office, in accordance with the conditions established by law, highlighting the provision of arbitration but not mediation. (p.64)

In countries such as Mexico "there is a large number of journals of Social and Humanistic Sciences that highlight the different special procedures that exist in the oral criminal process". (Nava & Breceda, 2015, p.198)

These special procedures in our country are found in the Código Orgánico Integral Penal COIP, the same that are located from article 635 to 651; set of articles in which explicitly deals with the manner of application of each of these procedures, for which we transcribe verbatim and the most relevant of the three procedures used in traffic matters and that will provide a greater contribution to this research project:

Ecuador(2008), in the Organic Integral Penal Code, states in its article 635, the following:

Article 635.- Abbreviated procedure: The abbreviated procedure shall be conducted in accordance with the following rules:



Offenses punishable with a maximum penalty of imprisonment of up to ten years are subject to abbreviated proceedings.

The prosecutor's proposal may be presented from the indictment hearing to the evaluation and preparatory trial hearing.

The person being prosecuted must expressly consent both to the application of this procedure and to the admission of the act attributed to him/her.

The public or private defense counsel shall certify that the defendant has freely given his or her consent, without violating his or her constitutional rights.

The existence of several defendants does not prevent the application of the rules of the abbreviated procedure.

In no case may the penalty to be applied be higher or more severe than the one suggested by the prosecutor. (p.392)

Article 640 of the Organic Integral Penal Code states the following:

C.O.I.P. Article 640.- Direct proceedings: Direct proceedings shall be conducted in accordance with the corresponding provisions of this Code and the following rules:

This procedure concentrates all the stages of the process in a single hearing, which will be governed by the general rules set forth in this Code.

It will proceed in crimes classified as flagrant punishable with a maximum penalty of deprivation of liberty of up to five years and crimes against property whose amount does not exceed thirty basic unified salaries of the worker in general, classified as flagrant.

Offenses against the efficient public administration or affecting the interests of the State, crimes against the inviolability of life, integrity and personal liberty resulting in death, crimes against sexual and reproductive integrity and crimes of violence against women or members of the family nucleus will be excluded from this procedure.

The judge of criminal guarantees shall be competent to substantiate and resolve this procedure.

Once the flagrancy has been qualified, the judge will set a date and time for the direct trial hearing within a maximum period of ten days, at which time he or she will issue a sentence.

Up to three days before the hearing, the parties shall make the announcement of evidence in writing.

If it is deemed necessary, either ex officio or at the request of a party, the judge may suspend the course of the hearing only once, indicating the day and time for its continuation, which may not exceed fifteen days from the date of its commencement.

If the accused person does not attend the hearing, the judge may order his or her detention for the sole purpose of having him or her appear exclusively at the hearing. If the detention cannot be executed, it shall proceed in accordance with the rules of this Code.

The sentence pronounced at this hearing in accordance with the rules of this Code is one of conviction or ratification of innocence and may be appealed to the Provincial Court. (p.395)

The National Assembly (2014), in the Organic Integral Penal Code, states in its article 641, the following:

C.O.I.P. Art.641.- Expedited procedure: Criminal and traffic offenses shall be subject to expedited procedure. The procedure shall be carried out in a single hearing before the competent judge, which shall be governed by the general rules set forth in this Code. At the hearing, the victim and the accused, if applicable, may reach a conciliation, except in the case of violence against women or members of the family. The agreement shall be brought to the attention of the judge so that he or she may terminate the proceedings. (p.396)

#### Principles

The following principles are enshrined in the Ecuadorian legal regulations within the Procedural System as established in the Constitution of the Republic of 2008, in its Article 169, which is in direct agreement with Article 18 of the Organic Code of the Judicial Function where it deals with the System - Means of Administration of Justice. Making it clear that the following principles and others are a fundamental part of the procedural system and especially in the application of alternative means of conflict resolution. (National Assembly, 2009)

**Table1.** *Principles of application for alternative media*

| PRINCIPLES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Celeridad                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Procedural Effectiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>The National Assembly (2009), in the Organic Code of the Judiciary, states in Article 20, the following: Promptness requires public administrations to always comply with their objectives and purposes that satisfy public interests, using numerous mechanisms, as expeditiously, quickly and accurately as possible to eradicate undue delays. (p.15)</p> <p>Let us take into account that this principle has a great influence on a quick administration of criminal justice to solve the positive conflict between the rights of the offended and the prosecuted, but above all to provide the correct collection of evidence to prevent the rights of individuals from being affected and that this evidence does not disappear, get lost or even worse, get contaminated.</p> | <p>It is a legal requirement that the duration of the processing of a proceeding should not be detrimental to the parties and especially to the winner, so that the effects caused by the judgment should be automatically retroactive to the time when the controversy began. This principle is closely related to the concentration of the procedural actions and, above all, to the speed of the process. The process as such must be concluded in the shortest possible time so that it does not cause any type of psychological disorder for the parties. However, we must be very stealthy and be very careful and not confuse or misinterpret the principle of procedural economy by comparing it with an excessive administration of justice, which would result in a totally inefficient process (Buitrago, 2017).</p> |

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Transit is the action of moving (going from one place to another on public roads or places). The concept is often used to refer to the movement of vehicles and people passing through a street, road or other type of road (Definición.de, 2008).

When we talk about traffic infractions, we refer to the non-compliance with the traffic regulations, which entails a sanction.

When traffic offenses are more serious, the sanction may be of a criminal nature, that is to say, they may even entail imprisonment. In the appreciation of the meaning of a traffic infraction, absolutely all possible vehicles are included, whether they are motor vehicles, animal traction vehicles, bicycles or even the infractions produced by mere pedestrians could be added. Traffic offenses can always be of different nature, that is to say, the most serious is always the one that puts in maximum danger the life of the offender or third parties.

Among the most well known are reckless and imprudent driving, driving under the influence of alcohol or narcotic substances, speeding, etc. However, any type of transgression of the regulations can also be considered a traffic infraction, regardless of the fact that the result of this non-compliance is simply the inconvenience to other people, and it can also occur when there is a hindrance to the traffic of vehicles or people concentrated in a crowd, or it could even be said that the simple fact of non-compliance with formal obligations, would be considered an infraction. Therefore, it would be considered a traffic infraction, for example, the failure to comply with the established parking regulations or the non-observance of the need to carry the vehicle's documentation.

It is normal and very praiseworthy that when the sanction is considered serious enough to be punished by the criminal order, the administrative order automatically inhibits itself in favor of the more serious penalty. Thus, this action avoids sanctioning twice the same disobedience.

The National Assembly (2014), in the Organic Integral Criminal Code, states in its article 371, the following: "Traffic offenses: traffic offenses are the actions or culpable omissions produced in the field of transport and road safety". (p.213)

In Chapter VIII of the Organic Integral Penal Code COIP, in the second section of Chapter VIII, we find the traffic offenses beginning in article 376 and ending in article 382; likewise in the third section of this same chapter we can find the traffic contraventions beginning in article 383 and ending in article 392.

Nowadays, the application of Alternative Dispute Resolution in traffic matters depends on the will of the plaintiffs, since it shows a contractual autonomy that is not tarnished by traditional legal procedures that hinder the quick and efficient solution of a dispute.

Conflicts and controversies are part of daily life, since they are a fundamental part of the development of social relations and will always be present; in the past, at the beginning of mankind, conflicts were solved with the use of brute force; as man and society have evolved, they learned to use the healthy criticism of an impartial third party, in most cases the chief of the tribe, the priests or even the eldest, this has been the natural way to solve disputes.

There is clear evidence of the use of some form of alternative means of conflict resolution since ancient times.

Our country had to wait until 1997, when Ecuador decided to adopt the Arbitration and Mediation Law, where arbitration and mediation were legally established for the first time, declaring that "the arbitration

system is an alternative dispute resolution mechanism to which the various claimants could submit themselves as long as it is mutually agreed, the altercations susceptible to some type of transaction, current or future should be ventilated by the administered arbitration courts or by independent arbitrators that are established to try to resolve such disputes.

Likewise, mediation was defined as part of a procedure to try to find a solution to a conflict, and what better in matters of traffic or any other kind; In this process the parties will be assisted by a neutral third party called mediator, who seeks to try to reach a voluntary agreement, that is to say that both parties give their approval, but above all that it is admitted in some negotiable matter, taking into consideration that it is a process of extra judicial character and that it is consecrated in a definitive way, that is to say that it allows to put an end to some type of conflict and that it can be elevated to a kind of extra-procedural sentence.

These alternative procedures acquired their legal character when they were stipulated in the Constitution of the Republic of 1998 and were subsequently ratified by the current Magna Carta of 2008.

Alternative Dispute Resolution Mechanisms (ADR) have the main characteristic of allowing the parties involved in any type of conflict to reach a solution to such disputes suitable for the application of transactions through arbitration and/or mediation, means that are currently outside the ordinary justice system and that are taken into consideration when there is already an agreement through any of these mechanisms, as well as providing a variety of advantages, such as: privacy, agility, security, efficiency, reliability, independence, impartiality, among others.

Mediation is accredited as conciliation in various parts of the world, this procedure is flexible, it can be applied extrajudicially and privately, where the autonomy of the will is denoted, declared from the designation of the method to be used that even provides the provision of binding character with the jurisdictional system likewise, with the agreement reached in the resolution of the conflict, the objective of reaching a marketed solution is set based on the help of a neutral facilitator, This is protected by interpersonal and not legal justice, always guided by protocols of action or codes of conduct, of course with a minimum required of formalities that provided the respective support to the procedural essence of this procedure, and having as only restriction and limit, the non-contravention of the different legal figures typified in the law corresponding to the place in which this due process is carried out or in some cases, it can also be given that they choose some regulation within the mediation agreement.

In this procedure there is a particular characteristic that in addition to recognizing that the parties are the ones who ultimately manage its content, its character is autonomous and spontaneous, which helps it not to be mandatory; rather, it allows that even if the parties have agreed to submit the conflict to some type of alternative dispute resolution method, they are not obliged or feel bound to continue the procedure after the

first meeting, the continuity of this special procedure will depend on the parties in dispute to continue accepting it as a means for the completion of their controversy; at the same time, the mediator cannot and should not impose or force to take a decision outside the will of the parties, with the purpose of reaching a disproportionate solution, but rather it should be the opposite, i.e. the parties should voluntarily accept the entire procedure, including the possibility of consenting to or challenging the mediator's decisions in the respective mediation minutes, bearing in mind that the parties are in control of the mediation at all times.

It is necessary to add that the alternative methods of conflict resolution is a stage where the litigants can freely and voluntarily manifest their true desires to reach an agreement beneficial to both litigants, always based on the consideration of respect for mutual benefit. This method is appropriate when the subsistence in the relationships is totally guaranteed, as in the case of friendship or work relationships, with family members or even neighbors.

Immediately, we ask ourselves how the mediator in his role of facilitator can provide the necessary assistance to the parties so that they can make their timely decision; for that, two main ways or ways are established that are nowadays used all over the world. The first way belongs to the so-called "mediation-facilitation" model, here, in this case, the mediator always provides and encourages communication between the disputing parties making them understand the perspective, approach and interests of the other party in the dispute. In the second case we can find that it concerns the "mediation-evaluation" model, here the mediator will always make an evaluation, which will not be binding on the dispute, rather the parties will be free at all times to accept or reject the alleged solution.

Another important characteristic of the alternative means of conflict resolution is that its confidentiality is maintained, which will allow the parties to encourage frankness and openness to dialogue and solution within the procedure, granting a special guarantee to the parties where the statements, proposals or offers of solution do not generate any type of consequence beyond those established within the procedure.

These alternative methods are having a great acceptance in a great number of conflicts solved out of court at national and international level, since among its benefits are:

- Significantly reduce the costs related to an ordinary process for the resolution of a dispute, especially in transit matters.
- It guarantees the parties full control of the dispute resolution procedure.
- It provides a fast, efficient, safe and even binding solution.
- Allows for confidentiality throughout the dispute process.
- It allows for the preservation of interpersonal relations between the parties during the dispute process.

In this broad sense, it should be added the saving of time and above all of energy, the same that should be invested by the actors of the litigation in each of the judicial procedures that may be presented in the ordinary justice system. Furthermore, it should be noted as a judicial merit



and above all as a characteristic of the application of these alternative methods the fact that in these processes no one loses, but on the contrary, everyone here wins, the real result is not only defined in the interest of the parties, but in the effective benefits they represent to society in general, considering the social welfare as a maximum objective of the State. Using the different alternative means of conflict resolution in traffic matters, the parties will achieve a mutual end to their conflict, but it will also strengthen the personal relationships between the participants.

The alternative procedures for the solution of conflicts, entail a great number of advantages and varied possibilities to solve in a satisfactory way a conflict or controversy in relation to traffic matters. Among the advantages that stand out we find the speed, confidentiality, specialization, economy of material and human resources, there will be a lower degree of conflicts between the acting parties, there is a great flexibility, it will be possible to corroborate a greater collaboration of the parties during the whole process, we also find the proximity between the parties and the mediator. These methods are a totally suitable, undeniable and vertiginous alternative for the obtaining of a conclusive processing in the litigious matters, but above all here they will be developed in a calm and positive way.

In addition, it should be clear that these alternative processes provide the same guarantees as a legal process, before the ordinary justice, with the only distinction that it is much faster, therefore, also the final decision obtained here by each of the parties is final and has the same effectiveness as any final court decision, and above all it should be very clear that the decision granted here is not subject to any appeal.

The topic was approached to establish that the Alternative Means of Conflict Resolution are very necessary in the Judicial Units of Ecuador, due to these means, they allow to carry out an Ordinary trial but rather to obtain directly an agreement between the parties without presenting so many inconveniences and procedural delays, we take into account that these alternative means of conflict resolution are enshrined in the Constitution of the Republic, in the Organic Integral Penal Code and above all in the Law of Arbitration and Medication.

From the analysis of the final results of the investigation, it is necessary to promote these positive alternatives for the social and collective conglomerate, seeing it as a support to the primary jurisdictional mechanisms, in order to reduce the number of litigations and processes faced by the institutions in charge of administering justice and the need for an administration of justice that provides security and legal certainty, It is this need for an administration of justice that provides security and legal certainty, which is the one that allows to truly reveal the insufficiency of justice in our country, since what is currently required are firmer and more solvent social structures that participate in the construction of a culture of peace, full of harmony, decision and self-will, but above all, full of agility and quality at the time of the impartial administration of justice.



## Conclusions

This article allows us to conclude that alternative means of conflict resolution have been a fundamental part of the development and evolution of society throughout the different eras. The alternative methods for the resolution of conflicts and controversies in traffic matters are accredited by the Magna Carta of the Republic; and that currently there is a whole legislative system that regulates the procedures and execution of these procedures.

The alternative means of conflict resolution is a procedure, method, etc., currently used, which is efficient, effective, flexible, extrajudicial and private where the autonomy of the will of the parties is highlighted, where the actors express their desire for the solution of the dispute since they decide the method to be used until the provision of the binding nature with the jurisdictional system, this becomes the primary objective to achieve a negotiated process with the support and contribution of a neutral facilitator.

The acts obtained in these alternative methods have the effect of an enforceable judgment and *res judicata*. The difference in the development of the procedures, in each of these methods, instead of being defined as forms alien to the solution of a conflict, on the contrary, they become one of the greatest strengths that are supported in the necessary transformation of some more specialized services; these can transit in a united way, they complement each other very much in terms of their objectives that are tried to reach through this process. Here it is possible to observe and stimulate the commitment of good faith, of voluntary character and that is born of the will of both parts to proceed to be welcomed to some of the alternative mechanisms, and in case of not being able to reach a satisfactory and pleasant agreement it is proceeded to an arbitration process or even it could be reached to the ordinary justice.

In order to achieve full knowledge and practice of these alternative methods, Specialized Mediation and Arbitration Centers should be created in all cantons of the country, in order to ensure and provide easier access to justice through other forms that help to find the solution to conflicts and disputes that may arise, which cause a significant difference with traditional judicial processes and thus increase and strengthen a culture of dialogue, understanding and common welfare, thus favoring the necessary change and evolution of the Ecuadorian ordinary justice system.

The presence of an impartial third party or also known as mediator generates relevance and importance to the method or procedure to be applied in the solution of conflicts derived from traffic disputes. Traditionally, the mediator's task is to bring the parties together so that they are the ones who find the correct formula that allows a settlement that benefits them in an equitable manner. However, many times this type of "rapprochement" can be oriented in different ways, depending on the main objective of the mediation.

The mediator will try at all costs to promote a pleasant exchange of information, providing the necessary assistance required by each party to understand or understand the approach of his counterpart in the conflict, this will be developed giving way to the stimulation of the creativity of the parties to bring out of their will proposals to achieve an agreement that benefits the actors.

As a general conclusion, it is concluded that the alternative means of conflict resolution respond to the constitutional principles of minimum penal intervention and opportunity, precisely destined to the most serious cases that need a real judicial interference. It is presented as a first alternative to the exercise of the criminal action without constituting at any time a replacement or even worse leading to the exclusion of the judicial system that truly becomes the last ratio, conclusively managing an efficient, agile, truthful and rational use of the resources of the State since the long-desired procedural agility is achieved in the criminal and contraventional judicial units generating a decongestion of the ordinary justice system.

Mediation and transaction in traffic matters is a legal and modern practice that can be carried out with total normality in Ecuador, here the parties are able to agree on a pecuniary reparation of the crime or contravention (as long as the law allows it) committing not to file any future criminal action. Thus, since the transaction is feasible in terms of civil reparation in traffic crimes or contraventions, mediation is fully possible, at least to achieve the financial compensation for the damages caused by the commission of the conflict (crime or contravention).

Mediation has a place throughout a problem derived from a traffic conflict since it prevents an eventual litigation and has an extrajudicial character, therefore, it is possible to place it in the preprocedural stage of preliminary inquiry during the process and even after the execution of the sentence.

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