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Community mediation: a tool for citizen participation in public policy

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1 Introduction

Mediation is in fashion, as shown by recently enacted regulation, the proliferation of mediation training courses and the attention paid to the discipline across varied and numerous professional contexts. Moreover, mediation has been introduced as a subject in undergraduate and master's degrees in areas such as social work, law and psychology. Mediation is appropriate in certain cases, but we do a disservice to the concept if we fail to recognize its drawbacks as well as its advantages; if we fail to distinguish the fields in which mediation can have a positive impact from those to which it is ill-suited. We need to defend the discipline by defining its limits, even if by doing so we may reduce the potential scope and outcomes of mediation.

The first limit is the nature of mediation itself. It is a form of ADR that differs from other conflict resolution mechanisms. There is significant confusion in this respect in that mediators are sometimes referred to as conciliators – indeed, on occasion both words will be used at the same time. In practical terms, certain areas even admit the possibility of a "mediator" providing the parties with a non-binding opinion, at which point the mediation process is completed with the parties either accepting or rejecting the opinion. This represents a clear example of the confusion between mediation and out-of-court conciliation; such confusion also extends to figures such as arbitrators, amiable compositeurs and ombudsmen.

The second limit arises out of the mediator's activities and the areas in which they are carried out. The mediator is the key to a successful mediation process. The EU Directive of 2008, which focuses on the principles governing mediators' activities and on guaranteeing the quality of the mediation service provided, recognizes the importance of this role. The scope of mediation is also defined by the concept of civil and commercial mediation as established in the aforementioned Directive: not all conflicts are susceptible to mediation.

The third and final limit concerns the particular features of community mediation. This sphere remains somewhat ill-defined and is often subject to confusion with the practice of social work. We may argue that community mediation goes beyond mere conflict management because it is a perfect tool for achieving a changed understanding of public social services. Social work professionals offer such "mediation" as one service among numerous others, without necessarily having the specific mediation training required by law. In this sense, mediation is being used as a tool rather than practiced as a profession.

2 Mediation as an alternative dispute resolution mechanism: legal status

The European Union has made considerable efforts to encourage the use of ADRs for many kinds of conflicts, including issuing guidelines to offer citizens security when using ADRs for domestic and cross-border conflicts[1]. ADR covers a set of techniques aimed at reaching a

satisfactory agreement for the parties involved in a dispute avoiding judicial processes. It operates through flexible processes and active participation of parties/subjects.

According to guidelines and directives issued by the European Commission and Parliament[2], a valid ADR mechanism requires three things (Blanco Carrasco, 2005 and 2009). First, a third party (the mediator, conciliator or negotiator, depending on the context) must intervene. The second requirement is the active intervention of that third party, either working with the parties to reach agreement or offering them non-binding proposals to resolve the conflict. Finally, participation must be voluntary, since none of the parties in conflict may be obliged to submit to anybody who is not legally competent in the matter at hand.

The concept of ADR includes an enormous range of systems. We shall restrict our attention to three of them: arbitration, conciliation and mediation.

Arbitration is undoubtedly the foremost ADR mechanism. It exists across numerous legal systems from Europe to Latin America. This has made it necessary to develop international mechanisms establishing common requirements for the proper exercise of arbitration, such as the UNCITRAL Model Law on International Commercial Arbitration (1985). Arbitration may be defined as "a process by which parties agree to the binding resolution of their disputes by adjudicators, known as arbitrators, who are selected by the parties, either directly or indirectly via a mechanism chosen by the parties" (McIlwrath & Savage, 2010, p. 5).

Every EU Member State specifically regulates arbitration. All these regulations contain various common features, as outlined below.

Arbitration is always commenced by agreement between the disputing parties (which distinguishes it from court litigation). Submission to arbitration requires a declaration of will from the parties (arbitration agreement) that their conflict be subject to that system, which may be executed either before or after the occurrence of a conflict.

Furthermore, submission to the arbitral system excludes the possibility of resolving the conflict through litigation at a later time, as it entitles parties to claim a procedural exception preventing the judicial body from considering the matter due to lack of competence.

Finally, the role of the arbitrator is to resolve the conflict in question through an award with effects similar to a judgment. First, the award has the force of *res judicata*, such that the arbitrator's decision binds judges, and second, the award is legally enforceable.

As regards other forms of ADR, it is not always easy to draw clear distinctions as terminology is often used in different ways depending on the regulation and State in question. Conciliation and mediation often overlap, as seen in the UNCITRAL Model Law on International Commercial Conciliation (2002). This regulation deliberately defines conciliation in very broad terms, as explained in its accompanying Guide to Enactment and Use (also 2002), recognizing that "in practice, proceedings in which the parties are assisted by a third person to settle a dispute are referred to by expressions such as conciliation, mediation, neutral evaluation, mini-trial or similar terms"[3] and that the Model Law uses the term conciliation to encompass all of them. It goes on to state that "[i]n any event, all these processes share the common characteristic that the role of the third person is limited to assisting the parties to settle the dispute and does not include the power to impose a binding decision".

This confusion has been noted by various authors, who have argued that the term 'conciliation' is sometimes used interchangeably with mediation. Usually, 'mediation' is used to describe a process in which a neutral third party is expected to be elicitative and non-evaluative, refraining from making any proposals, and where the outcome should be based on subjective interests. Meanwhile, 'conciliation' is used to describe a more directive and evaluative process in which the third party can offer a non-binding solution and suggest a possible agreement (McIlwrath & Savage, 2010, p. 174).

The 2008 European Directive on certain aspects of mediation in civil and commercial matters aims to clearly define and distinguish mediation. It was enacted as the culmination of a legislative process that had been ongoing for various years. Previously, Recommendations had been issued to encourage – though not oblige – national governments and Parliaments to recognize and introduce mediation in various areas, such as family[4] and consumer[5] mediation in 1998 and criminal mediation in 1999[6]. Subsequently to the issuance of these Recommendations, a 2002 Green Paper on alternative dispute resolution in civil and commercial law, which asked all Member States to evaluate the need to regulate ADRs on a European level and determine the form that such regulation should take, indicated the seriousness with which ADRs were being taken[7].

The responses received from the different States resulted in the aforementioned Directive 2008/52/EU of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters[8], which established a time limit – 21 May 2011 – by which European Union Member States had to incorporate mediation on civil and commercial matters into their legal system in compliance with its provisions[9].

Article 3 of the Directive defines mediation as "a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State"[10]. This definition was deliberately broadly drafted in order that it may be adapted to the specific reality of each country, but its lack of precision had the unwanted side effect of adding to the difficulty of distinguishing mediation from other forms of ADR.

Reading the Directive as a whole leads one to tentatively conclude that mediation seeks to avoid litigation, presuming the good faith of the parties and aiming to help them to freely reach an agreement without the imposition of terms by any third party. However, it is difficult to go further in defining mediation on the basis of the Directive. Different EU Member States took different approaches to transposing the Directive. So, while in Spain numerous regional laws have been enacted regulating family mediation and two national laws have addressed civil and commercial mediation, Portugal took the route of minor changes to its procedural law in order to essentially limit mediation to family contexts.

3 Specific features of mediation: principles, process and conflicts.

3.1 Principles, process and conflicts

One of the advantages of mediation is the *procedural flexibility* it affords the parties and the mediator to tailor the process to the needs of the specific conflict: "the mechanisms should aim at preserving the flexibility of the mediation process and the autonomy of the parties, and at ensuring that mediation is conducted in an effective, impartial and competent way. Mediators should be made aware of the existence of the European Code of Conduct for Mediators which should also be made available to the general public on the Internet" (Recital 17).

Hence, legislatures across Europe have wisely abstained from prescriptively regulating the methods of mediation. Those that have established regulations have adopted a minimalist approach to defining the process. For example, the Spanish Law 5/2012 of 6 July on mediation in civil and commercial matters (*Ley 5/2012 de 6 de julio de mediación en asuntos civiles y mercantiles*) regulates the minimum documentation that a mediator must complete (initial and final minutes) and the circumstances in which it is guaranteed that the agreement reached will be enforceable (article 6).

On the other hand, the Directive has encouraged mediators and mediation associations to develop best practice standards while maintaining the aforementioned procedural freedom. In most cases, the codes of conduct that have been established aim to offer assistance in creating appropriate levels of professional diligence. Compliance with the codes is not compulsory but is incentivized by the existence of public accreditation systems and seals of quality. It is striking that, in its articles regulating mediation standards, the Directive makes no reference to the recommendation of the European Parliament to develop national systems granting certification to bodies offering mediation training.

The 2008 Directive establishes impartiality, competence (article 4) and confidentiality (article 7) as the most important principles for mediators. The European Code of Conduct for Mediators identifies the following principles of mediation:

1. *Consent and voluntary participation.* The mediation process can be freely commenced and terminated, and both the parties and the mediator can abandon the process whenever they wish.

2. *Equality and impartiality.* This principle seeks to guarantee that the mediator has no relationships (positive or negative) with any of the parties in conflict, which should ensure a balanced mediation process under equal conditions for all parties involved.

3. *Neutrality***.** This rule guarantees that the mediator will neither guide nor direct the parties toward the resolution that the mediator, in their professional or personal judgment, considers more appropriate. The participants know their own circumstances and needs and the mediator is not acting as a technician or expert but as a facilitator.

4. *Confidentiality*. This principle prevents the mediator being called as a witness or expert in any trial or arbitration, as they are required to maintain confidentiality with respect to the entirety of the process. This obligation only lapses on the agreement of

all parties in conflict or when a competent criminal court orders that the mediator make a statement.

5. *Good faith* on the part of the conflicting parties: this seeks to protect the idea of mutual respect and trust between the parties with regard to both person and process. Certain types of behaviour are specified as inadmissible, among which is bringing a contemporaneous judicial claim.

We may conclude that these principles, together with the existence of a flexible process and appropriate training of mediators, should produce successful mediation processes and form the basis of the distinction between mediation and other ADR mechanisms.

3.2 Fields for mediation

The 2008 Directive provides a broad definition of the fields to which it may be applied, affirming that in cross-border disputes, mediation shall be used in civil and commercial matters "except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law" (art 2). Mediation can hence be applied to conflicts of a civil or commercial nature provided that they relate to matters admitting negotiation, settlement, or resolution in accordance with the free will of the parties.

The problem is that the concept of 'civil and commercial' in EU law is an independent idea which does not fully coincide with the understanding that domestic laws may have of the matters falling within the civil jurisdictional order (Gil Nievas, 2008). The majority of the countries that regulate mediation do not define what is to be understood by 'civil and commercial'; rather, they define the areas that their regulation does not cover. The Spanish legislation of 2012, then, excludes consumer, criminal, employment and administrative mediation from its scope (article 2.2), while Portuguese Law 29/2013 excludes family, criminal and employment mediation (article 10).

It is difficult to understand why areas such as criminal, consumer and employment mediation are excluded in this manner. Mediation is possible in all these fields, as the existence of specific regulation in each area shows (Rodriguez-Aranda Muñoz & De Prada Rodriguez, 2010). In fact, these are the very fields that urgently require a "generally applicable regime" on the same terms established for the other fields of mediation. These minimum rules are even more necessary than in the purely civil and comercial context, in which the principles, process, outcomes and conditions of mediation were already clearly regulated.

The task, then, is to determine which conflicts actually do fall within the scope of 'civil and commercial' mediation. Starting with the fields falling under the banner of 'civil' mediation, two main areas are noteworthy: family and community mediation.

The type of conflict falling within the scope of **family mediation** is well defined in most States and by most authors (Parkinson, 1997; García Villaluenga, 2006), including:

- Partner problems: married and common-law couples, with regard to problems arising from separation and divorce and their consequences in terms of living arrangements and related matters.

- Family problems: conflicts between other family members. Intergenerational mediation, including conflicts between relatives and in-laws to the fourth degree and regarding inheritances.

- Foster care: conflicts between the minor, foster family and biological family and negotiation of settlements relating to guardianship.

- Adoption: arrangement of meetings between biological and adoptive family to give effect to the right of adopted children to know their biological roots.

Some laws regulate mediation regarding conflicts relating to family businesses and business arrangements involving significant family ties.

The following conflicts, among others, fall within the scope of mediation in the commercial field:

- Partner conflicts in small- and medium-sized businesses.

- Conflicts relating to commercial relations between companies and clients/suppliers.

- Franchising/distribution conflicts.

- Conflicts relating to business leases, including in shopping centres.

In these fields, mediators tend to be lawyers or people with recognised prestige in the commercial or business environment to which the conflict pertains. Though specific legal and technical knowledge is not obligatory, lacking it may at times be an impediment for professionals not from legal or relevant business backgrounds.

Social or community mediation is harder to define. Community conflicts are a sort of "rag bag" containing all manner of conflicts arising within the context of citizens exercising their rights or deriving from community life. This is essentially the same as saying any possible conflict may fall under the umbrella term "community". In practical terms, we may state that community conflicts cover community conflicts, public conflicts and intercultural conflicts.

Community conflicts. These are conflicts arising out of problems with relationships between individuals and/or groups occurring in a shared space. These relationships may be spontaneous or planned, involve mutual dependency of some form, and may have arisen for a variety of reasons. Community conflicts arguably include personal disputes between individuals with no family ties, meaning the following conflicts fall within the definition:

- Leases: lessor-lessee conflicts.

- Residential property: conflicts between individuals living in the same building or complex.

- Neighbourhood conflicts: conflicts between individuals sharing a common space or living in close proximity, including neighbours, housing development issues, and boundary disputes.

- Education conflicts: conflicts affecting students, teachers and parents, including those regarding management or the educational institution itself.

Public conflict. Community mediation may be considered to cover conflicts between the rights and duties of citizens and those of the State or administration. The civil society comprises a web of institutions that manage public resources in the public interest. Finding ways to deal with social demands in a truly citizen-focused manner will depend on the ability to provide dialogue spaces and define areas of equality that offer real opportunities for interaction. Mediation in this context seeks to offer mechanisms to resolve conflicts that citizens may have with the public authority managing the resources in question, whether that authority is at administrative, local, autonomous or even State level.

The following are included within the definition of public conflicts:

- Conflicts relating to public policy, such as the removal of school meal subsidies or evictions of tenants in default.
- Conflicts relating to decisions by public authorities, such as proposed public works in particular neighbourhoods or streets that may not be supported by local residents.
- Uses of public spaces by different groups of citizens.
- Environmental conflicts, including waste management, locations of nuclear power stations, wind farms, etc.
- Healthcare conflicts between healthcare personnel, patients, and families.
- Conflicts within prisons, including disputes between prisoners and disagreements between prisoners and prison staff.

Intercultural conflicts. This field functions as an independent sub-category, requiring specific training of professionals or mediators. It must nonetheless be borne in mind that intercultural conflicts fall under the umbrella term of community conflict. Community mediation may be understood as the container and intercultural mediation the content, being a form of community mediation in which the intercultural aspect of the conflict must be considered as the key factor. Intercultural mediation may be defined as third-party intervention in multicultural social situations focused on achieving mutual recognition and procuring a closer relationship between the parties, involving affective communication, reciprocal understanding, and institutional compromise between ethno-culturally distinct social and institutional actors (Rădulescu & Mitrut, 2012).

4 Community mediation as a tool for citizen participation

4.1 Community mediation: more than mere conflict management

Community is conceived as something intangible, to which we all wish to belong and which in one form or another secures our wellbeing, security and knowledge. However, it also has a coercive and repressive function which clashes with individual freedoms, since being part of a community involves compromise and complying with the rules of that community.

Community conflicts arise when the customs and rules of a particular group or community do not permit individuals to pursue their own needs and interests.

As Rozenblum (2007) states, conflict may offer an opportunity to learn and produce positive and constructive effects if it is managed appropriately – however, when conflict is poorly handled, it may easily result in physical or emotional violence.

The social transformations of recent decades have resulted in a more diverse and pluralistic community life. In this context of change, with social structures acquiring a greater level of complexity in terms of social relationships and where there is "a progressive demand to balance representative participative democracy with participative/direct democracy and citizen participation in the management of public policy" (Pastor Seller, 2010, 10), a new social contract is required to offer new strategies that incorporate all the dimensions and perspectives of a problem within a single approach, with independent professionals that do not have strong interests coinciding with any of the parties.

Following Pastor and Torralba (2015, p. 15-16), we may argue that community intervention seeks a real form of "community empowerment" by enabling organizations and communities to take the leading role that rightly belongs to them in managing social change. This community empowerment is tangible when the community intervention allows and encourages community groups and organizations to carry out actions on their own behalf and at their own initiative. The authors identify the following actions in this respect: defining needs and opportunities; seeking participative solutions to problems; assessing and choosing the most appropriate solution; defining organization and action processes; carrying out plans; evaluating the level of satisfaction in terms of achievement of targets and social/political changes; and basing future actions on the outcomes of projects. The Global Agenda for Social Work and Social Development Commitment to Action (2012), which summarised the most pressing challenges now facing social work, made its declaration along these lines. The Agenda commits to advocating methodological approaches that support community empowerment to develop strong and inclusive communities "that enable all members to participate and belong"[11], striving thereby to achieve social and economic well-being for all.

Participation has become the main tool, objective and function of community intervention. Two concepts related to participation must be distinguished in the community context. The first is the idea of making citizens participants in the decisions that affect them, creating responsibility rather than the delegation of key issues to third parties – an exercise which should encourage the prevention of conflicts. The second conceives of participation as the access of citizens to the decisions that affect them as such, thereby promoting active citizenship and the empowerment of communities. Both of these two ideas fit perfectly within the mediation that is carried out in the community context, as we shall see.

We may begin with the first idea of participation as a means of preventing conflicts and creating responsibility for the decisions that are taken. The mediation process can only be successful with the participation and involvement of all interested parties. It may be argued that mediation fulfils *a pedagogical function* in the sense that the proper management of conflicts permits parties to recover or develop skills that assist them in resolving future problems. Greater citizen participation and increased responsibility in conflict resolution processes undoubtedly also implies improved observance of the terms of agreements reached. There is a higher degree of compliance with agreements achieved through mediation than with solutions imposed by third parties, which supports the claim advanced in the Global

Agenda for Social Work (2012) that mediation represents a more sustainable form of conflict resolution system. Mediation does not merely strive for a realistic analysis of conflicts. It also pushes for realistic agreements that do not require short-term reviews or changes but instead offer on-going solutions. In this regard, mediated solutions ought to incorporate all the situations that may arise in the future and should also attempt to predict and provide for any difficulties relating to compliance with the agreement reached.

Turning to the second concept, we may affirm that participation means educating citizens and increasing their competence. It is a vehicle for influencing decisions that affect the lives of citizens and an avenue for transferring political power. Community mediation is a social service allowing real citizen participation in public policy and in the taking of decisions affecting citizens – which is a fundamental citizen's right in itself, because it aims to improve mutual recognition between the conflicting parties and to secure the legitimacy of all interests and contributions. The objective is to create a "mediation culture" among citizens, politicians and social workers, which will then be reflected in the management of community conflict. Mediation allows for the inclusion of skills and techniques favouring pact culture and a creative and positive approach to conflict resolution.

As De Miguel (2006, p. 13) argues, community mediation is above all a powerful tool for democratization, which acts on interpersonal and community levels by way of the provision, availability, and/or construction of spaces for dialogue that guarantee (to a greater extent than other forms of social action) the expression of all voices involved in the process of constructing a better society in which to live. In the community context, it is defined as a human resource and a civic tool allowing the members of a society to manage and resolve disputes that arise in a private or public sphere in addition to participating in the construction of their society (Natό, Rodriguez Querejazu, & Carvajal, 2007)

4.2 Social work and mediation

Social work has always been close to conflictive contexts and situations on various levels. In their professional work, social workers have always acted as conflict managers, applying methods and techniques to prevent and resolve the problematic situations that arise in different areas of the profession, whether public or private. Faced with conflictive situations at individual, group or community level, social workers act by assessing and analysing the situation in a neutral and objective fashion in order to understand its root causes and, hence, to offer an appropriate solution in each circumstance. As such, they seek to achieve the positive transformation of a situation and to ensure that parties actively participate in decision-making, taking responsibility both for their actions and for seeking solutions (Consejo de Trabajo Social, 2014, p. 8).

That is, social work has taken mediation into account as another tool to be used in carrying out interventions.

The social changes arising out of the crisis require social workers to return to their roots, recovering the legitimacy of the community as an arena for collective action and redefining their professional activity (Lopez Pelaez & Diaz, 2015, p. 40). This re-think process has generated a debate related to social work intervention in community field and the difference between social work and mediation.

The Code of Ethics for Social Workers includes mediation among its functions but also recognizes others including information, investigation, prevention, support, direct care,

promotion and social integration, planning, administration and management, evaluation, supervision, teaching, and coordination.

In general, mediators only perform one of the functions required in the field of community mediation – that of conflict management. On the contrary, social workers are likely to cover all duties relating to the community context, rather than merely those pertaining to the task of mediation. A single professional (the social worker) may hence be better equipped to handle various kinds of intervention. In that sense, Munuera affirms that social work is:

> "the study of needs, social problems and especially the achievement of human rights…..a profession based on practice and an academic discipline which promotes social change and development, social cohesion and the strengthening and freedom of individuals. The principles of social justice, human rights, collective responsibility, and respect for diversity are fundamental elements of social work….This kind of intervention is wider and more complex than the specific intervention in social mediation conflict resolution, although both favour the construction of participative citizenship" (2014, p. 256).

However, mediation has been defended as a profession in itself for years. Almeida (2014) maintains that it is not merely a tool, but rather represents a new way of expressing the essence of social intervention, based on the participation of social actors by constructing alternatives through analysis of the social construction of the mediated intervention.

This debate is further complicated in areas such as the community context, since social workers are among many professionals that are traditionally identified as managing social conflicts in the community.

Differentiating mediation and social work becomes even more difficult if we consider that community mediation is mainly offered through municipal social services, within which the leading professionals tend to be social workers. They are particularly well suited to participate in the community sphere due to their knowledge of the administrative structure of social services and social intervention.

If we examine the interventions of social workers and mediators in this context, taking as a starting point that both professions seek community participation, democratization, inclusion and empowerment, how are the two professions different? This requires us to analyze whether, when social workers are contracted to act as community mediators under the umbrella of social services, they are engaged in a separate profession or merely performing a specific function within the scope of their original social work training.

The mediator can never stop being impartial and neutral, which means they can never perform functions involving evaluation, supervision, integration, advice, or support, in contrast to social workers. Neutrality is not a basic premise in the role of a social worker, whereas it is indispensable for a mediator.

The main aim of community mediation is to properly manage conflicts, but it goes beyond. Following Almeida:

> "community mediation usually refers to reappropriating the ability to act, to resolving conflicts and to restoring relations among community members; to furthering people's participation in conflict resolution and restoring social cohesion within the community,

> training community members on conflict resolution and their participation in conflict management and in the creation of new social ties; to the establishment of a harmonious society through non-violent resolution of conflicts; to drawing up an autonomous project of social regulation; to providing the community members with a dynamic form of citizenship; and to enhancing the vitality and stability of neighbourhood relations. It is not only a question of the field of intervention; it is another way of understanding the mediator's intervention and a linked conception of mediation" (2014, p. 220).

As we see, the role of the mediator goes beyond mere conflict management, encompassing the activation and strengthening of community life and neighbourhood relations, and requiring actions not contemplated in other types of mediation. These include developing an on-going relationship with locals to maintain awareness of the social reality. But even in these cases, the scope of activity of the mediator can never be as broad, or as focused on social intervention, as that of the social worker.

The mediation process is fully structured and defined in all European countries, with specified aims and possible outcomes. This process is specific to and based on respect for the principles of mediation. Not all of these principles are met in interventions in community contexts. It may, then, be said that mediation employs its own methodology and specific objectives that do not coincide with the methodology of the social worker.

5 Conclusions

This article began by emphasizing the strengths of mediation and recognizing the scope of mediation as a conflict resolution system capable of offering a flexible process, adapted to the needs of the parties in conflict. However, we argue that only an appropriate application of mediation, limited to the areas in which it is useful and in a manner such that it does not overlap with other professions, will secure its utility and prestige.

We have analysed three such limits in this article. The first refers to the contributions of mediation in comparison with other forms of ADR. We may conclude that what is truly essential to mediation is the flexibility of the process, as well as the mediator being a third party with no scope to offer a solution to the conflict. It is thus paramount to distinguish mediators from other frequently confused figures such as conciliators. The second limit is defined by the characteristics inherent to mediation: the principles of neutrality, confidentiality and impartiality that make the mediator a unique third party, as well as the areas in which mediation can be carried out, namely only those susceptible to inclusion within the concept of civil and commercial matters. In this regard, we have seen that there is no consensus at a European level as to what is civil and commercial, since very different areas may be excluded from the application of mediation. There is, however, greater consensus as to the inclusion of family, commercial and community conflicts within mediation's sphere of activity.

Finally, there is an important limitation in that mediators cannot perform functions that do not correspond to them, since this would represent an invasion of the functions belonging to other disciplines.

Community mediation is one of the fields that may be understood as fitting within the concept of "civil and commercial matters". Nonetheless, it is a type of mediation with features that may on occasion give rise to confusion with the intervention performed by social workers.

Community mediation is a new public service, seeking to develop active citizen participation by offering routes for citizens to be involved in conflict resolution and public policy. Mediation may act as a useful vehicle to strengthen the sense of belonging to a community and, thereby, may assist in the development of active (and responsible) citizenship. This manner of understanding community mediation allows us to affirm that mediation is an appropriate tool for the achievement of the objectives outlined in the 2012 Global Agenda for Social Work.

The functions of advice, interpretation, decision or evaluation cannot be considered to fall within the mediator's remit, though they are part of the social worker's role. For this reason, community mediation must be considered as a profession distinct from social work, with its different academic training and separate ethical principles and codes. Social work and mediation are undoubtedly two professions with much in common in the community context. As such, university courses ought to recognise and cover this relationship, identifying differences and encouraging students to value mediation as a potential professional career path.

Both mediators and social workers might lay claim to being the appropriate professionals to engage in community mediation, which extends well beyond the traditional conflict resolution aim of mediation.

Due to their background, professional experience and specific training, social workers have the ideal profile to practice mediation in the community context. However, we must distinguish when they are acting as mediators from when they are acting as social workers. Professionals should not confuse their role as social workers with their role as mediators, since mediators must possess specific skills, pursue their own goals, apply particular methods and comply with a bespoke code of conduct.

The current legal framework for mediation offers social workers a new professional space in which social mediation may be recognized as a field within social work and places social workers in the ideal professional position to respond to contemporary social conflicts.

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[1] Commission Recommendation 98/257 of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (Official Journal L 115, 17.4.1998, 31 ff.), pp 0031-0034, and Commission Recommendation 2001/310 of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (Official Journal L 109, 19.4.2001, 56 ff.)

[2] Note particularly the following regulation of ADRs in the consumer field.
- Directive 2008/52/CE of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Official Journal of the European Union L 136/3, 24.5.2008

- Communication from the Commission of 30 March 1998 on the out-of-court settlement of consumer disputes [COM (1998) 198 final]
- Communication from the Commission of 19 April 2002, Green Paper on alternative dispute resolution in civil and commercial law [COM (2002) 196 final]

[3] Guide to Enactment and Use of the UNCITRAL Model Law, Introduction, paragraph 7

[4] Recommendation R(98) 1 of the Committee of Ministers to Member States on family mediation of 21 January 1998

[5] Commission Recommendation 98/257, *op. cit.*, and Commission Recommendation 2001/310, *op. cit.*

[6] Recommendation (99) 19 of the European Council, on mediation in criminal matters

[7] Recommendation R(2002) 10 of the Committee of Ministers to Member States on mediation in civil matters of 18 September 2002, https://wcd.coe.int/ViewDoc.jsp?id=306401&Site=CM, last visited 29 May 2014

[8] Official Journal of the European Union, 25.4.2008 L136/3.

[9] "Transposition

1.Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. 2.Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive."

[10] Similarly, Recommendation R(98) 1 of the Committee of Ministers to Member States on family mediation defines it as "a process in which a third party, the mediator, impartial and neutral, assists the parties themselves to negotiate over the issues in dispute and reach their own joint agreements". The White Book on Out-of-court Conflict Resolution Mechanisms in Spain (*El Libro Blanco sobre Mecanismos Extrajudiciales de Solución de Conflictos en España*) (PAZ LLOVERAS. E. and Asociación Española para el Derecho y la Economía Digital (coord. Científico), at page 16, states that "the procedure is voluntary, informal and confidential, for which reason a neutral third party (one or more persons), with professional training suited to the needs of the conflict, assists the parties so that they may reach an agreement by themselves. The parties need this expert to be a guide, who listens to their interests and helps them to reach a mutually beneficial agreement."

[11] Pg. 5 Global Agenda 2012.