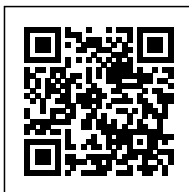


FEELING CHEATED

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Users of the justice system can end up frustrated and resentful but mediation is more effective, pragmatic and less costly, says Pascual Ortuño

The Spanish justice system is based on nineteenth century principles. It is a combination of tradition

and the rationalism of those times and was developed to serve as a guarantee of the rights of citizens as well as social and economic relations. It is based mainly on the values of a rural, pre-industrial economy.

However, in the twentieth century, the administration of justice began a process of adaptation to current needs, but, from the middle of that century, talk began about a crisis of justice since the start of the new democratic era. This led to a search for solutions, including legal reforms, an increase in the number of judges, and the modernisation of legal structures.

Despite political efforts, the public perception of the administration of justice is increasingly negative. Citizens are the ones who directly suffer the consequences of a justice system that does not work and does little to offer redress.

Sense of frustration

If we look at trade and commercial law, there is no meeting of creditors held in the courts that has any other purpose than the liquidation of the assets of the company at a low price. This leaves creditors feeling cheated and disappointed by the system.

Meanwhile, in relation to property, in cases where disputes arise between neighbours who live in the same property or family crises, the judicial process often leads to an increase in resentment between the parties.

There is also a sense of frustration with representatives of the judicial system such as court clerks, lawyers and notaries, because it offers no solutions to the people who use it.

It is in this context that a worldwide movement for the implementation of alternative means of providing effective, fast, pragmatic and less costly solutions to the complex problems related to social and economic issues in today's globalised world has arisen.

These alternative methods are not intended to compete with the administration of justice carried out by the courts, but they become part of the justice system in which they are inserted.

Obviously, there are exceptions – the courts still have an important role to play with regard to the type of litigation where there really are legal issues or factual discrepancies that require judicial intervention, or cases in which the forcible enforcement of a decision is necessary.

The case for mediation

One alternative dispute resolution method is mediation, where a neutral expert in communication and negotiation intervenes to try to get the parties to modify their positions and seek a solution.

The implementation of mediation does not depend on legal or government direction, but essentially the involvement of appropriate professionals who traditionally work in what is called the legal sector. Ultimately, the aim is the early prevention and resolution of conflicts, rather than setting targets for the number of cases where this type of intervention occurs.

A movement of professionals, created and coordinated by judges, prosecutors, lawyers, court clerks, notaries and solicitors, as well as civic associations, social workers, philosophers, sociologists and psychologists, needs to take stock of the first year of mediation in civil and commercial matters, as requested by the European Union.

Need for proper training

Though belatedly, law schools have reacted to this movement for a proactive and collaborative justice and some have introduced it as a core subject. A coalition of universities are offering postgraduate courses in mediation techniques and, instigated by the Spanish arm of GEMME, the European group of pro-mediation judges, working groups have been created in the main Spanish cities.

In the last 12 months, a lot of work has been done to facilitate pilot projects in the courts where a lot of unnecessary litigation occurs. Under law 5/2012, professional associations of lawyers, solicitors and notaries, chambers of commerce for conflicts of this nature and schools of psychologists and social workers are in the process of creating institutions that offer mediation services, thus relieving the courts that are suffering from being overworked.

The challenge now is the quality of mediation. The trivialisation of this method of practice by people who do not have the proper training could make it fail.

Pascual Ortuño is judge of the Provincial Court of Barcelona and European Vice at GEMME (European Association of Judges for Mediation)